

EXPLANATORY NOTES TO VALUE ADDED TAX BILL 1997

Note: The following are general explanatory notes to the Bill. The paragraph numbers and subparagraph numbers refer to the numbers of sections and subsections in the Bill.

1. Short title and commencement.
2. Defines certain important terms. The following should be noted.

The exclusion from the definition of "consideration" of unconditional gifts is designed to avoid difficulties potentially arising for charitable and other non-profit bodies.

The definition of "registered person" includes a person who is liable to be registered but has defaulted in completing the necessary formalities. The definition ensures that the person remains subject to V AT obligations.

The definition of "services" includes anything which is not "goods" and hence includes choses in action.

The definition of "taxable supply" includes zero-rated supplies and accordingly ensures that input tax deductions are fully available notwithstanding the fact that certain outputs are zero-rated.

3. This section includes certain things within the concept of "supply" so as to ensure that tax is payable in respect of amounts received. Specifically included are sales by a creditor of goods on behalf of the registered person debtor, grants or subsidies from the Crown, a deemed supply of all taxable activity assets on cessation of registration, indemnity payments received under contracts of insurance if (in general terms) the insurance contract was itself subject to VAT and amounts received for participation in lotto or casino games of chance. Subsection (7) separates out the taxable and zero-rated aspects of a supply which is partially one and partially the other.
4. This section broadly defines the concept of "taxable activity" which is one of the key elements necessary in order for tax to be imposed on a supply. Generally it includes anything involving the continuous or regular supply of goods or services for consideration. It does not matter whether the activities are profit-making or not but the concept does not include hobbies, provision of employment services under a contract of employment and an activity to the extent to which it involves exempt supplies. Anything done in connection with the commencement or termination of an activity is treated as being in the course of the activity.
5. This section contains rules to clarify precisely when a supply of goods and services is treated as taking place, which is primarily relevant for determining which monthly return must include tax on the supply. Generally a supply takes place as soon as a tax invoice is issued, a payment is received or the goods or services are delivered (whichever is the earliest). Of particular note are the rules inserted to deal with agreements for hire or agreements involving periodic or progressive supplies, with the general approach being that the arrangement is treated as involving successive supplies. There is also a specific rule to deal with circumstances where it is not possible at the time of supply to identify the total amount of consideration.
6. This section defines the value of a supply for the purposes of the calculation of the VAT amount. Generally the value of a supply is taken by aggregating the consideration in money and any non-monetary consideration valued at its open market value. An amount equal to any value added tax charged is then deducted from the total so as to produce a V AT-exclusive amount. An anti-avoidance rule applies to transactions between related parties to impose an open-market value. Specific rules are introduced to deal with certain specific circumstances, such as gambling.

7. This section defines the place of supply, as supply in the Cook Islands is another key element to the imposition of the tax. In the case of goods, generally the supply is treated as taking place in the Cook Islands if the goods are in the Cook Islands, but a special rule applies in the case of importation and exportation. In the case of services, a supply is treated as taking place in the Cook Islands if the supplier operates in the Cook Islands.
8. This section defines where a supplier operates and generally treats a supplier as operating in the Cook Islands if resident in the Cook Islands or operating through a branch of fixed establishment in the Cook Islands in respect of a supply.
9. This section ensures that the Crown is liable to V AT in respect of supplies made by Crown agencies and instruments.
10. This section imposes V AT on supplies by a registered person in the course of a taxable activity in the Cook Islands and on importation of goods into the Cook Islands. Subsection (3) excludes from the application of the tax the exempt supplies listed in the First Schedule and the exempt importations listed in the Second Schedule. Subsection (4) ensures that the rules in the Customs Act 1913 for collection of tax apply to V AT payable on importation.
11. This section imposes the rate of tax. Generally the rate of tax is 12.5% applied to the value of the supply. In the case of importation, 12.5% applies to the aggregate of the value of the goods for customs duty purposes and any duties imposed on importation. Subsection (2) overrides the general rule and applies a zero-rate of V AT to the zero-rated supplies listed in the Third Schedule.
12. This section imposes the registration requirement, being another a key element of the circumstances which must exist in order for the tax to apply. Generally a person must be supplying goods or services in the course of a taxable activity for a total consideration exceeding \$30,000 per annum. The value of exempt supplies is disregarded as is the value of any extraordinary supplies occurring due to a substantial change in the scale of taxable activity being carried on. There is provision for voluntary registration. Subsection (7) excludes from calculation of the threshold amount any amounts which in fact become payable simply to recover VAT.
13. This section provides for cancellation of registration on application or if the Collector is satisfied that a registered person is no longer liable to be registered and chooses to cancel registration.
14. A registered person must notify the Collector of such matters as changes of address etc.
15. This section imposes a requirement for monthly tax returns, by the 20th day of the following month. A specific return is required to be filed by a creditor selling goods on behalf of a registered person. The Collector may extend the time of filing a return.
- 15A. This section introduces an alternative accounting basis, called a payments basis. This is easier for small business operators to comply with and overcomes any problems which may arise from the invoice system. A registered person may elect at any time to make returns on either the invoice basis or the payments basis, with the Collector's approval.

If a registered person does not elect either basis, he or she is deemed to have elected the payments basis.

- 15B. This section sets out calculation methods for determining whether there is any tax payable or refund due as a consequence of a change in accounting basis.
16. This section provides rules for calculation of the tax. Generally the amount of tax is to be calculated by aggregating all amounts of tax payable in respect of supplies by the registered person where the time of supply falls during the month and then deducting all amounts of tax payable in respect of input supplies acquired by the registered person during the month. Included in the amounts able to

27. This section imposes a priority for unpaid tax in circumstances of liquidation, bankruptcy, receivership etc, generally ranking the unpaid tax after preferential claims and fixed charges.
28. This section provides that no statute of limitation will bar any action for recovery of tax.
29. This section provides rules for refund of tax in circumstances where input tax deductions exceed the output tax payable in respect of a month. Generally the refund must be paid by the Collector within 15 working days. However, the Collector can defer payment of a refund if not satisfied with the return and undertake further investigation. A refund can be offset against unpaid VAT, income tax or other tax or duty amounts payable to the Crown. This section also provides rules for time limits for notice to be given to taxpayers of further investigation and information requests.
30. This section requires the Collector to pay interest to a taxpayer at the rate of 1 % per month in circumstances where the refund is not paid within the required period of 15 days. However, interest is not payable for periods during which the Collector is undertaking further investigation or where the taxpayer has failed to furnish a monthly tax return.
31. This section provides rules for refund of any tax overpaid by a taxpayer.
32. This section applies certain provisions of the Income Tax Act 1997 relating to relief from tax to VAT.
33. This section permits a group of companies to be treated as a single taxpayer for the purposes of VAT, with intra-group supplies being disregarded. Generally, one member of the group is nominated as the representative member required to perform tax obligations, but without prejudice to the joint and several liability of group members for the tax. Under subsection (9), the concept of group registration can also be applied to persons other than companies in circumstances where there is common control.
34. This section provides for rules governing the application of the VAT legislation to unincorporated bodies. Generally, the body is treated as being a registered person rather than individual members.
35. This section provides for rules governing supplies by and to agents. Generally the supply is treated as being by or to the principal for whom the agent acts. However the agent may issue a tax invoice or receive a tax invoice in substitution for the principal. Specific rules also apply in circumstances where an auctioneer and a principal agree that the supply will be treated as being made by the auctioneer.
36. This section provides for receivers, liquidators, mortgagees in possession and other like representatives to be treated as registered persons during a period of incapacity of a registered person.
37. This section provides that agents in the Cook Islands for non-resident taxpayers are liable for the obligations of the non-resident.
38. This section permits a company to have an input tax deduction in respect of goods or services acquired on behalf of the company prior to incorporation.
39. This section provides for various offences for failure to comply with obligations under the Act and imposes various specific penalties depending upon the category of offence.
40. This section provides that officers and employees of corporate bodies commit an offence if they fail to comply with obligations under the Act imposed on the corporate body for which the person is responsible.
41. This section provides for rules concerning the taking of proceedings in respect of offences.