

REPUBLIC OF VANUATU

BILL FOR THE VALUE ADDED TAX (AMENDMENT) ACT NO. OF 2018

Explanatory Note

The purpose of this Bill is to amend the Value Added Tax Act [CAP 247] (“the Act”) to ensure that it is properly aligned with the new Tax Administration Act.

The amendments made by this Bill intend to ensure that the rules under the new Tax Administration Act apply generally to the Value Added Tax Act.

Definitions in subsection 2(1) of the Act are amended to align with the Tax Administration Act.

Changes to Resident of Vanuatu

The Value Added Tax Act is also amended to better align the concept of resident of Vanuatu with how the term is more widely used. The International Tax Cooperation Act No. 7 of 2016 and its Automatic Exchange of Information Regulations provide for the exchange of tax information based on a person’s tax residence.

The definitions are replaced with more modern definitions that are more aligned with international practices.

An individual is currently treated as a resident of Vanuatu if he or she has spent not less than 12 months in Vanuatu in the preceding 24 months. This will be replaced by a rule that will determine residence based on where the individual’s home is, whether they have been present in Vanuatu for at least 183 days commencing or ending in the particular calendar year. A citizen of Vanuatu who is an officer or employee of the Government or a public authority is also treated as a resident.

A company will be resident if it is managed and controlled in Vanuatu or is incorporated, registered or otherwise created in Vanuatu.

The current definition of “resident of Vanuatu” is used to determine taxability of certain supplies. The current definition is broad and includes situations where someone is a non-resident but operating in Vanuatu through a fixed or permanent residence in Vanuatu.

This rule is removed from the definition of “resident in Vanuatu” and is not treated as a separate test for determining whether a VAT transaction is taxable.

Recycled Goods

The amendments in items 1, 7, 22, 24, and 39 will treat exporters of recycled goods and scrap metal in the same way as other exporters and allow them to treat exports of goods for recycling as zero rated sales. This will mean that these businesses will be entitled to claim VAT deductions for purchases and will not be subject to Value Added Tax on exports. This is consistent with normal Value Added Tax treatment of exports.

Under the current law, exports of scrap metal are exempt sales and the exporter is not entitled to any Value Added Tax deduction in respect of that business activity.

Scrap metal will be removed from being an “exempt supply” in Schedule 1 of the Act so that it will now be subject to the normal Value Added Tax rules. In addition, the definition of scrap metal will no longer exclude aluminium cans.

The proposed amendments insert a new definition of “recyclable materials” that will include scrap metal, aluminum cans, plastic bottles and other materials.

All recyclable materials will be excluded from the definition of “second hand goods”. This will mean that all recycling businesses, including scrap metal, plastic bottles, aluminum cans etc., will be subject to the same VAT treatment. They will be zero rated exports and input credits will be allowed for purchases from registered suppliers.

Value Added Tax Deductions

The Bill also adjusts the amount of Value Added Tax deductions allowed to a taxpayer in respect of certain insurance and second hand goods transactions. This reflects the increase in the rate of Value Added Tax from 12.5% to 15% on 1 January 2018.

Finally, the Bill will ensure that a person who is entitled to a deduction under paragraph 19(4)(c) for purchases from unregistered suppliers, will not be entitled to zero rating on those goods if exported. It is not intended that the tax outcomes should change depending on whether the taxpayer decides to claim a deduction or not.

Minister of Finance and Economic Management



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Arrangement of Sections

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BILL FOR THE VALUE ADDED TAX (AMENDMENT) ACT NO. OF 2018

An Act to amend the Value Added Tax Act [CAP 247].

Be it enacted by the President and Parliament as follows-

1 Amendment

The Value Added Tax Act [CAP 247] is amended as set out in the Schedule.

2 Commencement

- (1) Subject to subsection (2), this Act commences on 1 April 2019.
- (2) Items 23 and 25 commence on 1 January 2018.

SCHEDULE

AMENDMENTS OF VALUE ADDED TAX ACT [CAP 247]

1 Subsection 2(1)

Insert in their correct alphabetical positions:

““approved form” has the same meaning as under the Tax Administration Act No. of 2018;

“recyclable materials” includes:

- (a) raw or processed materials that can be reprocessed into products, materials or substances whether for the original or other purposes; and
- (b) scrap metal;”

2 Subsection 2(1) (definition of “associated person”)

Repeal the definition, substitute

““associate” has the same meaning as in the Tax Administration Act No. of 2018;”

3 Subsection 2(1) (definition of “Department”)

Repeal the definition, substitute

““Department” means the Department of Customs and Inland Revenue;”

4 Subsection 2(1) (definition of “Director”)

Repeal the definition, substitute

““Director” means the Director of the Department of Customs and Inland Revenue;”

5 Subsection 2(1) (definition of “person”)

Repeal the definition, substitute

““person” has the same meaning as in the Tax Administration Act No. of 2018;”

6 Subsection 2(1) (definition of “scrap metal”)

Delete “, but does not include aluminium beverage containers”

7 Subsection 2(1) (definition of “second hand goods”)

Delete “scrap metal.”, substitute “recyclable materials;”

8 Subsection 2(1) (definitions of “prescribed form”, “relative”, “resident of Vanuatu”, “tax file number” and “Tribunal”)

Repeal the definitions.

9 Subsection 2(1) (definitions of “unconditional gift” and “open market value”)

Delete “associated persons”, substitute “associates”

10 After section 2

Insert

“2A. Definition of resident of Vanuatu

(1) For the purposes of this Act:

“resident of Vanuatu” means a resident individual, resident company, resident professional partnership, resident estate, the Government, or a public authority;

(2) For the purposes of subsection (1):

“resident company” means a company that:

- (a) is incorporated, registered, or otherwise created in Vanuatu; or
- (b) is managed and controlled in Vanuatu;

“resident estate” means the estate of an individual who was a resident individual at the time of death;

“resident professional partnership” means a partnership that:

- (a) is formed in Vanuatu; or
- (b) is managed and controlled in Vanuatu;

(3) For the purposes of subsection (2), “resident individual” means an individual who:

- (a) has his or her home in Vanuatu during the year; or

- (b) is present in Vanuatu for a period of, or periods amounting in aggregate to, 183 days in any 12 months period commencing or ending in the calendar year; or
 - (c) is a citizen of Vanuatu who is an officer or employee of the Government or a public authority.
- (3) In addition to subsection (2):
- (a) an individual who:
 - (i) is a resident individual for the current calendar year; and
 - (ii) was not a resident individual for the preceding calendar year,

is a resident individual in the current calendar year only for the period commencing on the day on which the individual was first present in Vanuatu; and
 - (b) an individual who:
 - (i) is a resident individual for the current calendar year; and
 - (ii) who is not a resident individual for the following calendar year,

is treated as a resident individual in the calendar year only for the period ending on the last day on which the individual was present in Vanuatu.”

11 Subsections 3(10) and 3(11)

Delete “associated person”, substitute “associate”

12 Subsection 6(2)

Delete “associated persons”, substitute “associates”

13 Subsection 7(1)

- (a) Delete “resident in Vanuatu”, substitute “a resident of Vanuatu or is a non-resident carrying on business in Vanuatu through a fixed place of business”

- (b) Delete “not resident of Vanuatu” substitute “a non-resident of Vanuatu that is not carrying on business in Vanuatu through a fixed place of business”

14 Subsection 7(2)

Delete “not resident in Vanuatu” substitute “a non-resident of Vanuatu that is not carrying on business in Vanuatu through a fixed place of business”

15 Subsections 12(3), 12(4), 16(1), 16(2), 17(1), 21(3), 21(6) and 22(3)

Delete “prescribed”, substitute “approved”

16 Subsection 12(5A)

Delete “form prescribed by the Director”, substitute “approved form”

17 Subsections 16(3), 16(4), 54(2), 54(3), and 54(4)

Repeal the subsections.

18 Subsection 18(4)

Delete “refunded by the Director to the registered person under section 41”, substitute “applied in accordance with subsection 45(5) of the Tax Administration Act No. of 2018”

19 Section 19 (heading)

Delete “refund due”, substitute “negative amount of”

20 Subsection 19(1)

Delete “refund due to”, substitute “negative amount of”

21 Subsection 19(2)

Delete “refund”, substitute “negative amount”

22 Paragraph 19(4)(c)

Delete “one-ninth of the consideration in money for all supplies of second-hand goods to the registered person”, substitute “the consideration in money for all supplies of second-hand goods to the registered person divided by 7.6667”

23 Subparagraph 19(4)(c)(iv)

Delete “not resident in Vanuatu” substitute “a non-resident of Vanuatu carrying on business in Vanuatu through a fixed place of business”

24 Paragraph 19(4)(e)

Delete “one-ninth of any payments made during the taxable period by the registered person to indemnify another person under a contract of insurance”, substitute “the amount of any payment made during the taxable period by the

registered person to indemnify another person under a contract of insurance divided by 7.6667”

25 Subparagraph 19(4)(e)(iii)

Delete “nor resident in Vanuatu” substitute “, a resident of Vanuatu or a non-resident of Vanuatu carrying on business in Vanuatu through a fixed place of business”

26 Subparagraph 19(7)(c)(i)

Delete “associated persons”, substitute “associates”

27 Paragraph 19(10)(b)

Delete “a refund due to the registered person”, substitute “applied”

28 Section 20

Repeal the section, substitute

“20. Payment of tax

A registered person must pay any tax payable calculated under section 19 for a taxable period by the day on which the return must be filed for the period.”

29 Paragraph 23(1)(e)

Delete “prescribed”, substitute “approved”

30 Parts 5, 6, 7, 10 and 12

Repeal the Parts.

31 Sections 41A, 43, 44, 46, 48, 49, 56, 57 and 58

Repeal the sections.

32 Paragraph 47(6)(a)

Delete “not resident in Vanuatu” substitute “a non-resident of Vanuatu or a non-resident carrying on business in Vanuatu through a fixed place of business”

33 Subsection 54(1)

Repeal the subsection, substitute

“(1) A registered person must keep such records as are necessary to:

- (a) enable the calculation of the tax payable (including a nil amount) by, or a negative amount of, the person for a taxable period; and
- (b) provide evidence of exempt or zero-rated supplies made by the person during a taxable period.”

34 Section 72

Delete “prescribed”, substitute “approved”

35 Schedule 1 – Clause 9A

Repeal the clause.

36 Schedule 2

Repeal the Schedule, substitute

“SCHEDULE 2

Exempt Importations

Goods admitted free of VAT under Parts 2(A), 2(B), and 3 of Schedule 1 to the Import Duties (Consolidation) Act [CAP 91].”

37 Schedule 3 – Clause 5

Delete all the words from and including “Any supply of services” to and including “performed.”, substitute:

“Any supply of services to a person:

- (a) who is a non-resident of Vanuatu carrying on business in Vanuatu through a fixed place of business; and
- (b) who is outside Vanuatu at the time the services are performed.

38 Schedule 3 – Subclause 12(a)

Delete “not resident in Vanuatu” substitute “a non-resident of Vanuatu carrying on business in Vanuatu through a fixed place of business”