

# Ministry of Finance

## VAT Department

VAT Guidance for Land and Property  
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**This guidance is provided on the basis of continuing public consultation and will be expanded and revised as necessary, based on feedback.**



## Introduction

This guide is intended to provide businesses supplying land and property within The Bahamas with additional information about Value Added Tax ("VAT"). It should be read in conjunction with the Value Added Tax Bill 2014 ("VAT Bill"), the Value Added Tax Regulations 2014 ("VAT Regulations"), the VAT Rules and The Bahamas VAT Guide ("VAT Guide"), all of which can be found on the website of the Government of The Bahamas ("Government").

## Is the sale or rental of land and property subject to VAT?

The sale, transfer, lease, rental or hire or any other supply of land or property located in The Bahamas is normally subject to VAT at the standard rate with the following exceptions:

1. In accordance with Part I of the Second Schedule, section 5 of the VAT Bill, the sale or rental of a dwelling is exempt from VAT.
2. In accordance with Part I of the Second Schedule, section 6 of the VAT Bill, the transfer of vacant land is exempt from VAT.
3. In accordance with Part I of the Second Schedule, section 7 of the VAT Bill, the lease of land is exempt from VAT where a dwelling is erected on the land or there is an intention to erect a dwelling on the land.
4. In accordance with Part I of the First Schedule, section 5 of the VAT Bill, land and property transferred by a VAT registrant to another VAT registrant as part of a the transfer of a taxable activity as a going concern is subject to VAT at the zero rate provided all provisions within the VAT Bill and VAT Regulations are complied with.

## What is a dwelling?

In accordance with the VAT Bill the supply of a "dwelling" is exempt from VAT, therefore, it is important to determine what is considered a dwelling. In the VAT Regulations, a dwelling is defined as a building, premises, structure, or other place, or any part thereof, used or intended for use predominantly as a place of residence or abode of a natural person together with any appurtenances belonging thereto or enjoyed therewith excluding a commercial rental establishment.

A condo, house, flat, apartment, room, caravan, houseboat, tent or camping site can all be considered a dwelling. Garages, sheds, outbuildings and gardens, provided they are supplied with and considered part of the property that is considered a dwelling, will be considered part of that dwelling.

If you own a condo, house, flat or apartment and lease it, furnished or unfurnished, for periods normally exceeding 45 days, to a person who will occupy it as their usual place of abode, your supply will be exempt from VAT. The VAT exemption will apply even if you carry on a property rental business and lease several properties on this basis.

## What is a commercial rental establishment?

The supply of a commercial rental establishment is not considered a supply of a dwelling. The sale, transfer, lease, rental or hire or any other supply of a commercial rental establishment located in The Bahamas is therefore subject to VAT at the standard rate (7.5%).

An explanation of what is considered a commercial rental establishment is provided in Section 10 of Part I of the VAT Regulations.

A commercial rental establishment includes a condo, apartment, flat or similar accommodation where the accommodation is leased normally or regularly for continuous periods of 45 days or less. It also includes such accommodation where the accommodation is owned or acquired by a non-resident under the International Persons Landholding Act (Ch. 140) where the permit specifies that such accommodation will be used for rental purposes and that accommodation is normally rented or leased for continuous periods of 45 days or less.

As a condo apartment or similar accommodation can be considered a dwelling or a commercial rental establishment, you must determine the VAT treatment by considering its normal use. For example, a one-off short-term rental (less than 45 days) of a condo that is usually rented on a long-term basis will not be considered a supply of a commercial rental establishment. Similarly, if you usually provide a condo for rental on a short-term basis and you rent it out for a longer period of 2 months this will still be considered a taxable activity.

A supply of a commercial rental establishment does not include:

- accommodation in a boarding establishment provided by an employer, not for the profit of any person but solely for the benefit of their employees, related person of the employer or dependants of the employer;
- accommodation in a boarding establishment provided by a local government council and not for the profit of any person; or
- accommodation in a registered hospital, maternity home, nursing home, convalescent home, or clinic.

The conversion of a commercial rental establishment to a dwelling is a taxable supply unless, prior to conversion, you submit to the Comptroller of VAT ("the Comptroller") a written declaration of the intention to convert such an establishment. If you submit a

declaration you can treat the supply as exempt from VAT. If you are registered for VAT and making taxable supplies of a commercial rental establishment (such as a condo), decide to change the use of that establishment, and do not submit a written declaration, you will need to declare and account for VAT on the value of the rental establishment at the time of conversion.

### What if I operate a rental pool?

The supply of accommodation for periods of normally 45 days or less by the operator of a collective rental agreement ('pool administrator') is subject to VAT. The pool administrator may be a hotel or other person responsible for administration of the accommodations. The supply of the accommodation to the tourist/tenant is considered to be made by the pool administrator.

A pool administrator, when considering whether there is a requirement to register for VAT must take into account all the income from all the accommodation they administer.

If the pool administrator does not pay any VAT due on the rental of a property then the Comptroller has the right to collect the VAT payable from the owner of the accommodation.

### What if I own accommodation such as a condo and make it available through a rental pool?

If you make your accommodation available to a pool for them to rent to tenants this is not a supply for VAT purposes. This means that you do not have to register for VAT or submit VAT returns. If the administrator responsible for the rental pool fails to pay VAT on the supply of the accommodation, you as the owner will be liable for the VAT relating to the accommodation you own.

### What if I rent accommodation such as a condo direct to visitors?

If you normally supply the accommodation on a long-term basis for periods of over 45 days where the accommodation is likely to be considered the tenant's permanent residence, your supplies are exempt from VAT.

If your supply of the accommodation is normally provided on a short-term basis of 45 days or less then you are making taxable supplies. You will need to consider whether you are required to register for VAT (see section "When do I need to be registered for VAT?").

### Is a property management fee subject to VAT?

The management of a property is a taxable activity and subject to VAT. This includes maintenance fees for use of communal areas, maintenance and repairs and administration charges.

### Is the sale of a commercial rental establishment subject to VAT?

The sale of a commercial rental establishment is a taxable supply. If you are registered for VAT and sell a commercial rental establishment your supply will be subject to VAT unless the sale of the property forms part of a transfer of a business (see section "Transfer of a business").

In accordance with section 19 (7) of the VAT Bill, if you are not registered for VAT and did not recover any VAT charged as input tax when you purchased the property, you will *NOT* be required to register for VAT or charge VAT on the sale of the property provided the Comptroller is satisfied that the sole reason that you will exceed the VAT registration threshold is due to the sale of capital goods (the property).

### What is the VAT treatment of timeshare?

The sale of timeshare is a taxable activity as timeshare is not a supply of a dwelling.

### What is the VAT treatment of commercial property?

The sale, rental or other supply of a commercial property is subject to VAT at the standard rate.

Commercial property includes, but is not limited to:

- warehouses
- factories
- retail outlets
- restaurants
- hotels and commercial rental establishments
- offices
- storage facilities
- industrial units

If you sell commercial property to a buyer that can recover the VAT on the cost of the property, you may be able to treat the sale as a transfer of a business. For conditions of a transfer of a business see the section “Transfer of a business”.

If the transaction cannot be treated as a transfer of a business you can request permission from the Comptroller to offset the output tax due by the seller against the input tax recoverable by the buyer. To do this, you must submit a written request prior to the transaction taking place. The request must include VAT registration details of both the buyer and seller and a signed agreement for the offset by both the buyer and the seller. You must receive written confirmation from the Comptroller before implementing the offset.

### **What if the property has both a commercial and residential element?**

Some properties may have both a commercial and residential element, for example a store with an apartment for rental on a long-term basis (a dwelling). Where there are separate rental contracts the treatment is quite clear, the commercial element will be subject to VAT and the residential element will be exempt from VAT.

If the property is rented under one rental contract with the charge for both the store and the apartment combined into one rental amount then the charge for the rent should be apportioned in accordance with the floor space occupied for each use.

### **What if I rent the property to someone who resides outside The Bahamas?**

It doesn't matter where the person you rent to resides. The supply of land and property is considered to take place where the property is located.

### **What if I only supply land?**

The sale, transfer, lease, rental or hire or any other supply of land located in The Bahamas is subject to VAT except in the following circumstances:

The sale of vacant land is exempt from VAT. In this regard the normal (i.e. dictionary) definition of “vacant land” applies.

The lease of land to the extent that such land is principally used, or intended to be used, for accommodation as a dwelling which is erected or to be erected on the land is exempt from VAT.

### **What if I rent or sell property that is not located in The Bahamas?**

The sale or rental of property located outside The Bahamas is not subject to VAT in The Bahamas.

### **What if I charge for utilities?**

A supply of electricity, water, or other utilities is subject to VAT. If your charge for the utilities is included in the rental charge for a dwelling or any other property where the rental is exempt from VAT, you should apportion the charge for the utilities and charge VAT on the portion that relates to the supply of the utilities. Remember you only have to charge VAT if you are registered for VAT. If you are registered for VAT you can offset the VAT incurred on the cost of purchasing the utilities against the VAT you charge your tenant. If you charge your tenant exactly what the utilities cost you there will be no VAT to pay to the Comptroller in respect of this supply.

### **What if I charge my tenants for a portion of the insurance cost?**

A supply of insurance of a property is subject to VAT from July 1, 2015. If your charge for insurance is included in the rental charge for a dwelling or any other property where the rental is exempt from VAT, you should apportion the charge for the insurance and charge VAT on the portion of the rent that relates to the insurance. As with a supply of utilities, you only need to apply VAT if you are registered for VAT and if you are registered for VAT you can offset the VAT incurred on purchasing the insurance against the VAT you charge the tenant.

### **What if I supply reception, switchboard facilities, office services or equipment?**

Any supply of these services, if charged for a separate fee, will be subject to VAT at the standard rate. If included in the rental amount, then they will already be captured for VAT purposes.

### **What if I offer a rent free period?**

If you offer a rent free period to entice a tenant to commit to a rental contract there is no supply for VAT purposes. If the tenant does something in return for the rent free period, such as decorate the accommodation or repair the property, there is a supply by both the tenant to you and a supply of accommodation by you to the tenant. The value of the supply by you, the landlord, would be considered



the amount you would have charged the tenant for rent for that period in accordance with the lease and subject to VAT if the rent will ordinarily be subject to VAT.

## Transfer of a business

The sale of a business that makes taxable supplies is ordinarily subject to VAT; however, where certain conditions are met, the sale of the business can be treated as the transfer of a going concern which is subject to VAT at the zero rate of VAT.

For a commercial rental business to be treated as the transfer of a going concern:

- the buyer must be registered for VAT;
- the property should be occupied by a tenant, or a lease has been signed, or the property is being actively marketed as available to rent; and
- the necessary documentation has to be completed, signed and filed with the Comptroller 14 days prior to the transfer.

The advantage of treating a sale of property as a transfer of a going concern is that the seller does not have to charge VAT and the buyer does not have to fund the payment of VAT to the seller and claim a refund of the VAT from the Comptroller.

Further details of the conditions that need to be met for the transfer of a going concern can be found in Part II section 16 of the VAT Regulations.

## When do I need to register for VAT?

If you supply goods or services that are subject to VAT (i.e. taxable supplies) you will have to register for VAT if you either:

- make taxable supplies and the value of these supplies for the previous 12 months has exceeded a specific limit referred to as the "VAT threshold" (see below); or
- at the beginning of any 365 day period you consider that the value of your taxable supplies will exceed the VAT threshold in the next 365 days.

The VAT threshold is \$100,000 of taxable supplies.

For further details of the requirements of registering for VAT see the VAT Guide.

## How do I charge VAT?

For all taxable supplies you must provide the buyer with a VAT invoice. If you are charging rent that is subject to VAT, you must raise an invoice so that your tenant can recover any VAT charged as input tax where able to do so. If you enter a lease to supply a property that is subject to VAT on a continuous basis with periodic payments you can raise an invoice each time a payment is due or you can raise an invoice annually which clearly states:

- the date each payment is due;
- the value of each payment; and
- the VAT amount for each payment.

If you raise an annual invoice, VAT will be due on the date each payment is due rather than the date of the invoice.

Further details of the information that must be contained on an invoice are provided in the VAT Guide in the section "How do I charge VAT?"

## When is the tax point?

The tax point is the date when a sale is considered to take place for VAT purposes, which is sometimes referred to as the time of supply. It is important to determine the tax point as this will determine which VAT return you include your sale on. There are rules that tell you if the tax point is the date of the actual supply, the date of the invoice or some other date, depending on the circumstances.

It's important to put the right date for the time of supply on your invoice, because both you and your customer will need this information to make sure that the VAT on the invoice is accounted for on the right VAT return.

You must also issue invoices within 60 days of the actual supply taking place, although it is recommended that you raise your invoices within 28 days of a supply to enable your customers to recover any VAT charged.

The time of supply is the earliest of:

- receipt of payment;
- the date an invoice is raised;
- the date goods are delivered or made available to the recipient; or
- the date the performance of services is completed.

There is a special rule for the supply of land or property under a rental or other agreement whereby the rent is payable periodically.

The tax point for such supplies is the date payment becomes due or is paid, whichever is the earlier. If you raise an annual invoice and payment is due monthly a tax point will be created each month.

For example, if you raise an invoice on the 1 January and the rent is \$10,000 a month and the dates payment is required are stated on the invoice the output tax due each month will be  $\$10,000 \times 7.5\% = \$750$ .

If payment is received prior to an invoice being raised, for example, if you receive a deposit; this creates a tax point for the amount you have received as payment. VAT will become due on the amount you have been paid. You should calculate the amount of VAT due by using the VAT fraction. The VAT fraction for 7.5% is 3/43. For example, if you receive a deposit in May for \$10,000, the amount of VAT you declare on the May VAT return is  $\$10,000 \times 3/43 = \$697.67$

If deposits are put into an escrow account to which you have no access, then you have not received payment and no VAT will be due until the funds are released from escrow.

## How do I account for the VAT on the goods and services I supply?

The VAT on your supplies is called output tax. You declare your output tax falling due each period on your VAT return. You must declare all sales which fall within the VAT period on the relevant VAT return. For example, if you are on monthly VAT returns, all sales that occur in March must be included on the March VAT return.

Your input tax is offset against your output tax and you pay to the Comptroller the balance. Sometimes the input tax may exceed the output tax in which case you may be able to request a refund.

For further details on when you can claim a refund see the VAT Guide section "When can I claim a refund of VAT?"

## THE RECOVERY OF VAT ON PURCHASES

The VAT you pay to your suppliers is referred to as input tax.

### What is input tax?

Input tax is the VAT you are charged on your business purchases and expenses, including:

- goods and services supplied to you in The Bahamas;
- import VAT you paid on goods you import from outside The Bahamas; and
- import VAT you paid on any services supplied from outside The Bahamas.

### What can I reclaim as input tax?

You can normally reclaim input tax on purchases that relate to supplies made by you where the supplies you make are liable to VAT at the standard rate or the zero rate. You can only reclaim VAT on supplies that have been made to you in the course of business.

### What can't I reclaim as input tax?

There is some expenditure for which you cannot claim input VAT. These items of expenditure can be found in section 50 of the VAT Bill.

You cannot recover VAT paid on goods or services that are not used, or intended to be used, in the course or furtherance of a taxable activity carried on by you. If you buy goods and services that are going to be used in your business and personally you must apportion the VAT paid between business and non-business use, and only claim the VAT back on the business use.

You cannot reclaim VAT on costs that relate to exempt supplies. For example, if you rent an apartment that is used as a dwelling you cannot recover the VAT on the management fees, or the costs incurred in maintaining the property.

Where costs relate to both taxable and exempt supplies you need to apportion the VAT in relation to the value of the supplies made.

For example, if you receive rental income from both commercial property and residential accommodation you will make both taxable and exempt supplies.

To determine how much VAT you can recover if you make both taxable and exempt supplies you should use the standard method of apportionment or, if you do not consider this method gives you a fair and reasonable allocation of costs you can apply to the Comptroller to use a special method. In your application you must detail the method you propose to use. You must not use a special method without written agreement from the Comptroller.

The standard method of apportionment is outlined in the VAT Guide.

### What VAT can I reclaim if I rent my condo as holiday accommodation through a rental pool?

As you are not registered for VAT you cannot reclaim any VAT you incur personally, however, the rental pool administrator can recover VAT on your behalf that relates directly to taxable supplies that you make. For example, if you make the condo available to the rental pool for 365 days of the year, and make no personal use of the condo, the rental pool administrator can recover any VAT incurred on costs directly relating to the rental of the condo such as the maintenance and management fees. If the condo is not available to

the pool whilst you are using it yourself, for example, if you use the condo for one month a year, then the pool administrator will be able to recover 11/12ths of the VAT incurred on any direct costs.

### What VAT can I reclaim if I have a condo which I use privately for friends and family and rent out to visitors?

If you have a condo or similar accommodation and you use it privately and rent it out as holiday accommodation and are registered for VAT, you must apportion the VAT you incur on costs. You are only entitled to claim the VAT on the portion of the costs that relate to the taxable supplies for the period you rent it out.

### Property on hand at the time of deregistration

If you have property on hand at the time of deregistration you will be making a self-supply of that property and must account for any output tax due at the time of deregistration. Output tax will be due if the property would have been subject to VAT had you sold the property, and you have recovered VAT on costs in respect of that property. The value on which output tax will be due should be determined in accordance with Part II of the Third Schedule of the VAT Regulations.

### What if I buy goods or services from suppliers situated outside The Bahamas?

If you buy goods or services from suppliers outside The Bahamas you will need to determine if they are subject to import VAT. Goods and services are subject to import VAT if they would ordinarily be subject to VAT if supplied in The Bahamas. For example, if a financial service is exempt from VAT in The Bahamas, it will also be exempt from VAT if imported. If the goods or services you import are subject to import VAT you must declare the importation and pay any import VAT due in accordance with the VAT Regulations. For further information, see the section on "Imports" in the VAT Guide.

### What is VAT grouping?

Transactions between separate entities, even where there is common ownership, can be subject to VAT. This can create a VAT cost and restrict the way in which companies under common ownership are structured.

For example, a group may own several properties including residential and commercial. A separate company is formed to own and lease each property, however, the staff and overhead costs

are all incurred at head office level. Any recharge for the staff and overhead costs will be subject to VAT which can cause a cash flow issue. Additionally, if any of the companies own residential property that is exempt from VAT they will not be able to recover all the VAT incurred on the charge by head office.

VAT grouping permits a group of companies to apply to be treated as a single taxable person for VAT purposes. Any transaction between members of a VAT group is disregarded for VAT purposes. The registration is made in the name of the representative member, who is responsible for completing and rendering the single return on behalf of the group. Whilst the representative member is responsible for paying the VAT or receiving any repayment due, all the companies are jointly and severally liable for any VAT debts. Supplies between group members are normally disregarded for VAT.

If any member of the VAT group makes supplies that are exempt for VAT then the input tax for the whole VAT group would need to be apportioned. This can have advantages or disadvantages depending on the amount of VAT exempt supplies made by the group.

VAT grouping is optional and at the discretion of the Comptroller. There are further details on who can join a VAT group in the VAT Guide. If you would like to apply for VAT grouping you should contact the Comptroller providing details of the companies that you would like to VAT group, including the taxable or exempt income of each company.

### Any other points I need to know?

As a VAT registrant you also must at all times ensure that you display your VAT registration certificate in a conspicuous place at each location where you carry on taxable activity.

Proper record keeping is also important as the Comptroller can, at any time, undertake an audit of the taxable activity carried on by you to determine your liability to pay VAT.

You must remember it is your responsibility to ensure that you are compliant as a VAT registrant and that you are charging, collecting and remitting to the Comptroller the correct amount of VAT.

## The Law

You may find the following references to the legislation useful.

### VAT Bill

Definitions

Part IV section 19 - registration

Part V section 29 - transfer of a going concern

Part V section 31(9) - the conversion of a condo or commercial rental establishment to a dwelling

Part V section 31(6) - self supply at the time of deregistration

Part V section 33 - place of supply

Part XII section 98 - transitional provisions

First Schedule Part II (1) - zero rate for supplies outside The Bahamas

First Schedule Part I section 5 - supply by a registrant to another registrant as a going concern

Second Schedule Part I - exempt supplies items 5, 6, and 7

### VAT Regulations

Definitions

Part I section 4 (4) - supply of a dwelling

Part I section 4 (5) - supply of a condo or similar

Part I section 10 - commercial rental establishment

Part I section 11 - condos leased collectively

Third Schedule (regulation 27) Part I - classification of real property

Third Schedule (Regulation 27) Part II - capital goods



## Contact Us

Further information can be obtained from the Taxpayers Services help desk: 1 (242) 225 7280

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