

2006

VALUE ADDED TAX
(AMENDMENT)

ACT 4

15

**COMMONWEALTH OF
DOMINICA**

ACT No. 4 OF 2006

I assent



N. J. O. Liverpool
President

15th June, 2006.

**AN ACT TO AMEND THE VALUE ADDED TAX ACT
2005 (No 7 of 2005)**

(Gazetted 22nd June, 2006)

Be it enacted by the Parliament of the Commonwealth of
Dominica as follows:

Short title.

1. This Act may be cited as the-

VALUE ADDED TAX (AMENDMENT) ACT 2006

Interpretation (Act No. 7
of 2005).

2. In this Act “the Act” means the Value Added Tax Act
2005

Amendment of section 2
of the Act.

3. Section 2 of the Act is amended as follows:

(a) in the definition of the word “import” by deleting it
and substituting the following:

“import means-

(a) in the case of goods, bringing or causing to be
brought into Dominica; or

(b) in the case of services, a supply of services to a
resident-

(i) by a non-resident; or

(ii) by a resident from a business carried on by
the resident from outside Dominica,

to the extent that such services are not to be utilised
or consumed by a registered person in making taxable
supplies in Dominica;”;

(b) in the definition of the word “money” by deleting in
paragraph (c) the words “other than an item of
numismatic interest” and inserting them to be appli-
cable to paragraphs (a), (b) and (c) of that definition;

(c) in the definition of “related persons” by deleting in
paragraph (d) (i) the words “stock company” and
substituting the words “company limited by shares”;

(d) by inserting the following definition after the
definition of the word “resident”-

“ “returnable container” means a container:

(a) belonging to a class of containers specified in
regulations;

(b) for which a deposit is charged by the supplier;
and

(c) the deposit for which is required by law or agreement to be refunded or allowed as a credit to the person returning it;”.

4. Section 4 of the Act is amended by deleting subsection (17) and substituting the following new subsection:

Amendment of section 4 of the Act.

“(17) Where a taxable person supplies goods or services and that person was not entitled to claim a deduction for input tax imposed and paid on the acquisition of such goods or services, the supply by the taxable person is a supply of goods or services otherwise than in the course or furtherance of a taxable activity.”

5. Section 9 of the Act is amended in subsection (1) as follows:

Amendment of section 9 of the Act.

- (a) in paragraph (a) by inserting after the words “(1)(c)” the words “and (d)”;
- (b) in paragraph (b) by deleting the word “and”;
- (c) in paragraph (c) by inserting after the word “supply” the words “by a taxable person in Dominica”;
- (d) in paragraph (c)(i) by deleting the word “and”;
- (e) in paragraph (c)(ii) by deleting the words “utilities and” and by inserting the words “to a non-resident” after the word “lessor” and by substituting “home; and” for “home.”;
- (f) by inserting after paragraph (c) (ii) the following paragraph:
 - “(iii) accommodation services in an apartment or room in a facility constructed or improved with assistance under the Hotel Aid Act or the Fiscal Incentives Act; and”
- (g) by inserting after paragraph (c) the following paragraphs (d) and (e) :-

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“(d) to the extent provided in regulations, 10 percent of the value of a taxable supply by a taxable person of the dive activity portion of a dive package; and

(e) 15 percent of the value of a supply of goods by a registered or unregistered person, mission, organisation, or government that obtained an exemption from tax or a refund of the tax on the import or domestic acquisition of such goods if such supply occurs within five years after the goods are acquired.”

Amendment of section 10
of the Act.

6. Section 10 of the Act is amended in subsection (1) by deleting the words “section 108” and substituting the words “section 102”.

Amendment of section 11
of the Act.

7. Section 11 of the Act is amended as follows :

(a) in subsection (2), (3), (4), (6) and (8) by inserting after the words “subsection (1),” the words “(9), or (10)”;

(b) in subsection (7) and (9) by inserting after the words “subsection (1),” the words “or (10)”;

(c) in subsection (10) -

(i) by deleting the words “ a person is required to apply for registration where, during any period of three months” and substituting the words “ a person who carries on a taxable activity and is not registered is required to apply for registration where-”; and

(ii) in paragraph (a) by inserting before the words “that person” the words ‘during any period of three months’.

Amendment of section 12
of the Act.

8. Section 12 of the Act is amended by deleting paragraph (b) (ii) and substituting the following:

“(ii) will not submit regular and reliable tax returns, as required under this Act.”

9. Section 13 of the Act is amended in subsection (8) *(a)* by inserting after the words “section 11(1)” the words “or (10)”.

Amendment of section 13.
of the Act.

10. Section 14 of the Act is amended in subsection (13) by deleting the word “subsection” and substituting the word “section”.

Amendment of section 14
of the Act.

11. Section 15 of the Act is amended in subsection (4) as follows-

Amendment of section 15
of the Act.

- (a)* in paragraph *(f)* by deleting the word “or”;
- (b)* in paragraph *(g)* by deleting the period and inserting the words “; or”; and
- (c)* by inserting the following new paragraph *(h)* -
“*(h)* the supply of goods via electronic commerce and the supply of internet access or similar services.”.

12. Section 16 of the Act is amended by inserting the following subsections after subsection (17)-

Amendment of section 16
of the Act.

“(18) Notwithstanding this section, the value of services consisting of a hotel accommodation or tour package in Dominica arranged by a non-resident, unregistered travel agent or a non-resident, unregistered tour operator is the consideration charged by the registered supplier for those services, less the commission or fee paid to that travel agent or tour operator for those services.

(19) For purposes of subsection (18), -

- (a)* the deduction for the commission or fee paid cannot exceed 20 per cent of the registered supplier’s published rates for those services; and
- (b)* the output tax reported on the hotel accommodation or tour package specified in subsection (18) is not less than the tax the

registered supplier charged the foreign travel agent or tour operator for the covered services.”

Amendment of section 17
of the Act.

13. Section 17 of the Act is amended by inserting after the words “section 9(1)(a),” the words “(c), or (d)”.

Amendment of section 19
of the Act.

14. Section 19 of the Act is amended -

(a) in subsection (1) by deleting the words “An import” and substituting the words “Except as provided in subsection (3) an import”; and

(b) by inserting the following as subsection (3)

“(3) For the purposes of subsection (1), an import of goods destined for a duty-free shop occurs at the time when the goods arrive in Dominica.”

Amendment of section 20
of the Act.

15. Section 20 is amended in subsection (3) by deleting paragraph (b) and substituting the following-

“(b) the supplier and the recipient are related persons,
the value of the import is the fair market value of the import.”

Amendment of section 25
of the Act.

16. Section 25 of the Act is amended -

(a) in subsection (1)

(i) by inserting in paragraph (d) after the words “supplier;” the word “and” and

(ii) by deleting paragraph (e) and renumbering paragraph (f) as paragraph (e);

(b) in subsection (4) by its repeal.

17. Section 27 of the Act is amended -Amendment of section 27
of the Act.

- (a) in subsection (1)
 - (i) by deleting in paragraph (d) the words “supplier;” and substituting the words “supplier.”
 - (ii) by deleting paragraph (e).
- (b) in subsection (9) by deleting the words “subsections (5), (6) and (7)” and substituting the words “subsection (13)”.

18. Section 29 of the Act is amended by inserting after subsection (7) the following new subsection:Amendment of section 29
of the Act.

“(8)Notwithstanding this section, -

- (a) a registered supplier making a taxable supply to a person, mission, organisation, or government specified in section 54(1) may issue an original tax invoice covering that supply to the person, mission, organisation, or government in the form and containing the information specified in regulations; and
- (b) if a recipient referred to in (a) claims to have lost the original tax invoice for a taxable supply, the registered supplier may provide a copy clearly marked “copy.””

19. Section 36 of the Act is amended -Amendment of section 36
of the Act.

- (a) by deleting in subsection (1) the words “41(3), and 45(1)” and substituting the words “41(5) and 45(4)”;
- (b) by deleting in subsection (4) the words “payment referred to in subsection (5)” and substituting the words “payment of fifty percent of the amount assessed”; and

(c) by inserting the following new subsection after subsection (8):-

“(9) For the purposes of subsections (4) and (5), if an assessment is based solely on a calculation error in a filed return, an objection to the assessment does not suspend the taxpayer’s obligation to pay any of the amount assessed.”.

Amendment of section 37
of the Act.

20. Section 37 of the Act is amended in subsection (2) as follows:

(a) in paragraph (a) by deleting the words “; and ” and inserting the words:

“and, if lodged” and

(b) in paragraph (b) by inserting the word “must” before the word “serve”.

Amendment of section 45
of the Act.

21. Section 45 of the Act is amended in subsection (1) by deleting the words “due from” and substituting the words “or may become payable by”.

Amendment of section 46
of the Act.

22. Section 46 of the Act is amended as follows:

(a) by deleting subsection (1) and substituting the following:

“(1) From the date on which tax becomes due and payable under this Act and until the tax is paid, the Comptroller has a lien upon -

(a) the assets of the person liable to pay the tax;
and

(b) any asset of a related person if the Comptroller reasonably believes that the person liable to pay the tax legally owns the asset and transferred the asset to the related person in order to avoid the payment of tax.”;

- (b) by deleting in subsection (3) the word “is” where it appears in the third line and substituting the word “are”;
- (c) by deleting subsection (5) and substituting the following :-

“(5) Where the Registrar registers a security interest referred to in subsection (3) he shall notify the owner of the property, within fifteen days of such registration, that the security interest has been registered.”;

and
- (d) by deleting in subsection (6) the words “who may within 30 calendar days” and substituting the words “and that person may”.

23. Section 47 of the Act is amended by -

Amendment of section 47
of the Act.

- (a) deleting in subsection (2) the word “cary” and substituting the word “carry”; and
- (b) deleting subsection (4) and substituting the following:

“(4) Where goods are seized under subsection (1) or a vehicle is seized under subsection (2), the Comptroller is required to serve on the owner of the goods or vehicle or on the person who had custody or control of the goods or vehicle immediately before seizure, a notice in writing, within fourteen days after the seizure -

 - (a) identifying the goods or vehicle;
 - (b) stating that the goods or vehicle has been seized under this section and the reasons for seizure; and
 - (c) setting out the terms of subsections (7), (8), and (9).”

Amendment of section 48
of the Act.

24. Section 48 of the Act is amended in subsection (4)(b) by deleting the words “within ten working days after the distress is levied” and substituting the words “after the ten working day period referred to in subsection (3)”.

Amendment of section 52
of the Act.

25. Section 52 of the Act is amended -

(a) in subsection (2) by deleting the words “subsection (8)” and substituting the words “subsections (5) and (14)”;

(b) in subsection (6) by deleting in paragraph (a) the words “section 106” and substituting the words “section 107”; and

(c) by inserting after subsection (13) the following new subsections (14) and (15):-

“(14) Notwithstanding anything in this section, the Comptroller may first apply the amount of any excess under subsection (1) in reduction of any tax, levy, interest, or penalty payable by the person in terms of this Act, other taxes collected by the Comptroller under any other Acts, and any unpaid amounts under the Acts repealed by section 107.

(15) For purpose of this section, subsection (1)(b) applies to a person entitled to a refund of tax under section 54(1) and (3)”.

Amendment of section 54
of the Act.

26. Section 54 of the Act is amended in subsection (1) by deleting the words “or import by”.

Amendment of section 58
of the Act.

27. Section 58 of the Act is amended -

(a) in paragraph (d)(iii) of subsection (1) by deleting the words “or (ii)”;

(b) in subsection (6) by deleting the word “be” before the word “committed”; and

(c) by inserting the following subsection as subsection (7):

“(7) In this section the expression “unincorporated body” shall include “unincorporated associations”.

28. Section 59 of the Act is amended in paragraph (b) by inserting before the word “association” the word “unincorporated”.

Amendment of section 59 of the Act.

29. Section 71 of the Act is amended in subsection (2) by deleting in paragraph (a) the words “documents or data” and substituting the words “or data”.

Amendment of section 71 of the Act.

30. Section 81 of the Act is amended-

Amendment of section 81 of the Act.

(a) in subsection (1) by deleting the word “11 (8)” and substituting the words “11 (1), (6), (7), (9) and (10)” and

(b) by deleting the marginal note and substituting the following-

“Failure to register or display a certificate.”.

31. Section 87 of the Act is amended by deleting the words “not exceeding” and by substituting the word “of”.

Amendment of section 87 of the Act.

32. Section 100 of the Act is amended in subsection (2) by deleting in paragraph (d) the words:

Amendment of section 100 of the Act.

“the tax due as if such supply were taxable.” and substituting the words “a receipt or certificate issued by the Comptroller or the Comptroller of Customs that payment of tax has been made.”

33. Section 102 of the Act is amended in subsection (1) by deleting the word “of” after the words “carrying into effect”.

Amendment of section 102 of the Act.

Amendment of section
107 of the Act.

34. Section 107 of the Act is amended in subsection (2) by deleting the word “or” appearing before the words “consumption tax”.

Amendment of section
108 of the Act.

35. Section 108 of the Act is amended as follows:

(a) in subsection (8) by deleting that subsection and substituting the following:

“(8) If goods or services subject to sales tax were supplied or rendered before the date on which this Act came into effect and payment is made within four months after this Act came into effect, VAT is not imposed on the supply of the goods or services.”;

(b) in subsection (9) by deleting that subsection and substituting the following new subsection :-

“(9) If goods were supplied successively and services rendered successively as provided in section 14(8) or (9), or services subject to sales tax were rendered during a period that began before and ended after this Act came into effect, VAT is imposed on the portion of the consideration for the goods supplied and services rendered after this Act came into effect, except that to the extent that consideration for the goods supplied or services rendered before this Act came into effect is paid more than four months after this Act came into effect, the consideration is treated as consideration for the supply of goods or services rendered on the day after the end of that four month period.”

(c) in subsection (10) by deleting the word “9 (b)” and substituting the word “(9)”; and

- (d) in subsection 13 by deleting all the words from the words “consumption tax” and substituting the following:-

“consumption tax, sales tax, hotel occupancy tax, the start of value added tax, or the transition from consumption tax, sales tax and hotel occupancy tax to value added tax.”

SCHEDULE

36. Schedule I of the Act is amended -

Amendment of Schedule I
of the Act.

- (a) in paragraph 1 in the definition of “fuel” by deleting the Customs Tariff Headings “2710.10, 2710.20, 2710.30, 2710.40 and 2711.10” and substituting the following Customs Tariff Headings -

“2710.11.10, 2710.11.20, 2710.11.30, 2710.11.40, 2710.11.90, 2710.19.10, 2710.19.20, 2710.19.30, 2710.19.40, 2710.19.50, 2710.19.60, 2710.19.70, and 2710.10.00.”

- (b) in paragraph 3 under the title “1.SUPPLY OF GOODS”, by inserting after subparagraph (h)(iv) the following-

“(h)(v) formula preparation for infant use;”

- (c) in paragraph 3 under the title “(1) SUPPLY OF GOODS” by deleting subparagraphs (i) and (j)

- (d) in paragraph 3 under the title “1.SUPPLY OF GOODS”, subparagraph (l) by substituting the number “100” for the number “50”.

- (e) in paragraph 3 under the title “1.SUPPLY OF GOODS”, in subparagraph (m) by substituting the word “Dominica.” with the words “Dominica; and” and inserting the following as paragraph (n).

“(n) a transfer by a registered person of commercial real property subject to the stamp duty to the extent that the property was used by the supplier in making taxable supplies.”; and

- (f) in paragraph 3(3) by deleting in subparagraph (a) the words “13(4)” and substituting the words “13(14)”.

Amendment of Schedule II
of the Act.

37. Schedule II of the Act is amended -

- (a) by deleting in paragraph 1 (b)(ii) of the definition of “commercial rental establishment” the words “utilities and”;
- (b) by moving in paragraph 1 (d) of the definition of “commercial rental establishment,” the words “ but does not include, unless within paragraph (d).” to the position flush with the (d) indent;
- (c) by deleting in paragraph 2 (h) the word “inamount” and substituting the words “in amount”;
- (d) by deleting in paragraph 2 (p) the words “ non-government organisation, community based organisation” wherever these words occur;
- (e) by inserting after paragraph 2(q)(iv) as (q)(v) the words “handicapped persons;”
- (f) by deleting paragraph 2(v) and substituting the following “(v) a supply of religious services by an institution of religious worship” ;
- (g) by deleting in paragraph 2 (w) the word “and”;

(h) in paragraph 2(x)

(i) by deleting the words “pets.” and substituting the words “pets;” and

(ii) by inserting after paragraph 2 (x) the following subparagraphs (y), (z), (aa), (bb), and (cc):

“(y) Except as provided in Schedule I paragraph 3(1)(n) and as provided in subparagraph (e) to (g), a transfer of real property subject to stamp duty under the Stamp Act.

(z) basic construction services as defined in the Regulations on a dwelling -

(i) to the extent that the services are rendered directly by a person in the home construction business to the homeowner, and

(ii) to the extent attributable to the construction of the person’s dwelling.

(aa) a supply of the following agricultural inputs:

(i) seed, seedlings, cuttings and fertilizers;

(ii) pesticides, insecticides, and other treatments approved for use in agriculture by the Ministry of Agriculture;

(iii) herbicides, fungicides and nematicides approved for use in agriculture by the Minister of Agriculture;

(iv) animal feed other than food for domesticated animals generally held as pets;

(v) ventilated boxes and packing film specifically designed for use in transporting unprocessed agriculture products;

-
- (vi) machinery and equipment specifically designed for agricultural or horticultural use;
 - (vii) plant propagation bags;
 - (viii) poultry spectacles, waterers, feeders;
 - (ix) a supply by the Ministry of Agriculture to a livestock farmer of fencing wire, for use on livestock farms;
 - (x) a greenhouse specifically designed for horticultural use;
- (bb) a supply of the following fishing inputs — fibreglass and wooden boats, anchors, grapnels, G.P.S, compass, V.H.F. Radio, fish finder, flare guns and flares, lifevests, life ring, buoys and floats, monofilament fishing lines, gaff, harpoons, outboard engines up to 100 hp, inboard diesel engines, winches, spools, line haulers, jigging reels and propellers; and
- (cc) a supply of a returnable crate used to transport beverages for consideration not exceeding the separately - stated deposit.”.

Amendment of Schedule III
of the Act.

38. Schedule III of the Act is amended

(a) by replacing paragraph 1 with the following:

“1. An unconditional gift of goods to an approved charitable organisation, other than for purposes of re-sale, if the Comptroller of Customs has written notification from the Financial Secretary before entry, that the goods are to be exempt from tax”

(b) by deleting paragraph 4 and substituting the following:

“4. The Comptroller may exempt from tax, capital goods imported, if the following conditions are satisfied before the importation -

- (a) the importer is a registered person under section 11 (5);
- (b) the importer has a valid licence under the Hotel Aid Act or the Fiscal Incentives Act;
- (c) the importer has not commenced taxable activity;
- (d) the Financial Secretary approves of a Master List of the capital goods eligible for exemption;
- (e) the goods are consigned directly to the approved importer;
- (f) capital goods eligible for exemption are goods to be used in a taxable activity and goods that qualify under section 26;
- (g) the importer whose investment has been approved under (b) above has filed all required returns and paid all taxes due under all tax acts; and
- (h) the importer agrees to pay the amount of tax otherwise payable on the import of the capital goods if the importer violates the terms of the licence agreement, if the importer’s registration is cancelled as a result of the expiration of the licence, or if the registration is cancelled in accordance with provisions of this Act.”

Chap. 85:04.
Chap. 84:51

(c) by deleting in paragraph 6 the word “withut” and substituting the word “without”.

(d) by deleting in paragraph 7 the words “tobacco.” and substituting the words “tobacco).”

(e) by deleting paragraph 10 and substituting the following:-

“10. Articles of religious worship imported by a church if the Comptroller of Customs has written notification from the Financial Secretary before entry, that the articles are to be exempt from tax.”

(f) by inserting the following paragraphs 11 and 12 -

“11. The Minister, to the extent provided in Regulations, may exempt specified imports of goods by the persons and for the purposes referred to in section 54(1).

12. The import of building materials for a church that meets the following conditions and other conditions imposed by the Minister by Regulations:

(a) at the time of import, the church was registered at the Registry for a minimum of 10 years;

(b) the church has at least 150 members; and

(c) the materials are to be used for the construction, repair, or renovation of property registered in the name of the church; and

(d) the Financial Secretary approved the exemption for the import and notified the Comptroller of Customs of the imports to be exempt.”.

Amendments to take effect
on different dates.

39. (1) The amendments made to the Act by paragraph (d) inserted by section 5(g), section 12 and by paragraph (cc) inserted in Schedule II by section 37 of this Act shall take effect on the 1st day of June 2006.

(2) The amendments made to the Act by other sections of this Act shall be deemed to have come into effect on the 1st day of March, 2006.

Passed in the House of Assembly this 10th day of May, 2006

HELEN E. AMBO
Clerk of the House of Assembly (Ag.)

DOMINICA

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