

COMMONWEALTH OF DOMINICA

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2006

VALUE ADDED TAX

S.R.O. 9

COMMONWEALTH OF DOMINICA

STATUTORY RULES AND ORDERS NO. 9 OF 2006

REGULATIONS**MADE BY THE MINISTER UNDER SECTION 102
AND OTHER SECTIONS OF THE VALUE ADDED
TAX ACT 2005 (No. 7 of 2005)**(Gazetted 16th February, 2006)

These Regulations are issued by the Minister for Finance pursuant to section 102 and specific authorization in other sections of the Value Added Tax Act 2005. Except as noted, all references to section numbers in these Regulations are references to sections of the Value Added Tax Act 2005.

**CHAPTER 1
General**

1. These Regulations may be cited as the

Short title and
commencement.

VALUE ADDED TAX REGULATIONS 2006

and shall come into force on the 1st day of March, 2006.

2. In these regulations, unless the context requires otherwise:

Interpretation.

“Act” means the Value Added Tax Act 2005;

“approved charitable organisation” means the following organisations:

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- a. R.E.A.C.H.
 - b. Community Hostels Inc. (Grotto home for the homeless)
 - c. Mahaut Senior Citizens Home
 - d. Portsmouth Senior Citizens Home
 - e. Operation Youth Quake
 - f. Dominica Infirmary
 - g. Dominica Red Cross
 - h. Dominica Save the Children
 - i. The Alpha Centre
 - j. Dominica Association of Disabled People
 - k. Christian Children's Fund
 - l. C.A.L.L.S.
 - m. Dominica Council on Aging
 - n. St. Vincent de Paul Society
 - o. Dominica Jaycees
 - p. Kiwanis Club
 - q. Rotary Club
 - r. Rotaract Club of Roseau
 - s. Lions Club of Dominica
 - t. Leo Club of Dominica
 - u. Optimist Club
 - v. House of Hope

“Comptroller”, means the Comptroller of Inland Revenue;

“consideration”, for a supply of goods or services means the total amount paid or payable for the supply directly or indirectly. The consideration includes any compulsory charges imposed on the person acquiring the supply, including compulsory services charges or fees imposed on hotel and similar services and added to the bill. Consideration for a supply by an employer does not include a completely voluntary payment made by a guest or customer to an employee, such as a voluntary tip by a hotel or restaurant guest or customer;

“Customs Act” means the Customs (Control and Management) Act;

“Minister” means the Minister for Finance; and

“VAT” or “tax” means the value added tax imposed by the Value Added Tax Act 2005.

3. (1) *In general.* This regulation provides for the treatment of specified transactions either as supplies of goods or the rendition of services, or as neither supplies of goods nor the rendition of services.

Supply of goods or rendition of services.

(2) *Supplying goods or services to employees (fringe benefits) – in general.* Section 4(6) of the Act treats the provision of goods or the rendition of services to an employee for personal use as a supply in the course or furtherance of a taxable activity and therefore taxable, unless the transaction is exempt under section 18 of the Act.

(2.1) *Supply to an employee for no consideration or inadequate consideration.* A supply of goods or services in kind by an employer to an employee for personal use under section 4(6) of the Act is treated as a supply for consideration under section 6(5)(c) of the Act and therefore is taxed, even if the employee did not pay (or paid less than market value) for the goods or services.

(2.2) *Fringe benefits provided in cash.* If an employer–

(a) provides an employee a cash advance,

(b) pays a supplier to the employee, or

(c) reimburses an employee,

for the cost of goods or services provided as a fringe benefit, the employer is not purchasing goods or services for use in making taxable

supplies and therefore is not entitled to claim any portion of the cost as an input tax deduction under section 25 of the Act.

(2.3) *Some fringe benefits are not taxed.* If an employer was not entitled to deduct input tax imposed and paid on the purchase of goods or services (such as a passenger vehicle), according to section 4(17) of the Act the application of those items in kind to an employee is not a supply in connection with a taxable activity and therefore is not subject to tax.

(2.4) *Fringe benefits in the form of services exempt from tax.* If a registered person supplies an exempt service (such as a medical service at a company-run clinic) to an employee, the service is not subject to tax and the employer is not entitled to an input tax deduction under section 25 of the Act for the tax on purchases allocable to the exempt services.

(3) *Combined supply taxable at different rates or that is both taxable and exempt.* Where a supply consists both of a supply that is charged with tax at a positive rate, and

- (a) a supply that is charged with tax at a different positive rate, or
- (b) a supply that is charged with tax at a zero rate, or
- (c) a supply that is exempt from tax,

each part of the supply is treated as a separate supply, unless one part is incidental to a main supply within section 4(10) or 4(11) of the Act. For example, assume that a hotel guest is charged \$1,000 for a hotel room and a day of sightseeing, with \$400 reasonably attributable to sightseeing. The \$400 supply of sightseeing is taxable at the standard rate under section 9(1)(a) of the Act and the \$600 for the hotel accommodation is taxable at the lower rate for hotel accommodations under section 9(1)(c) of the Act.

(3.1) *Delivery charges for goods.* Where a supply consists of a supply of goods that are to be delivered to the purchaser, unless the common practice is to charge the buyer separately for delivery and the buyer is charged separately for delivery, the charges for the delivery services are incidental to the main supply of goods within section 4(10) of the Act and therefore are treated as a single supply of the goods.

(3.2) *Incidental versus independent supplies.* If a commission agent renders domestic services on behalf of a principal, the services generally are independent supplies that are taxable unless they are zero-rated under section 17 of the Act or exempt under section 18 of the Act. If services rendered by a commission agent are incidental to a main supply, the services may receive the same VAT treatment as the main supply. It will be quite unusual for the services of a commission agent to be incidental to a main supply. For example, if a commission agent provides domestic transport, the commission received with respect to the domestic transport may be incidental to the exempt domestic transport.

(4) *Supplies to a representative.* According to section 4(16) of the Act, the transfer of goods to a person acting as a representative of the transferor under section 55 of the Act is not a supply and therefore does not attract tax.

(5) *Supplies to a person as agent.* Under section 5(1)(b) of the Act, a supply of goods or the rendition of services to a person who is serving as agent for a principal is treated as a supply to the principal.

(6) *Prepaid telephone or cellular phone cards.* The issuance of a phone card, prepayment on a cellular phone, or a

similar scheme of advanced payment for the rendition of services is a supply for VAT purposes. See section 4 (20) of the Act. The supply occurs when the phone card or similar item is issued or recharged. For the value of supply, see Regulation 10.

(7) *Transaction not a supply if input tax deduction denied on acquisition.* Section 4(17) provides that a supply of goods or services is not a supply in the course or furtherance of a taxable activity if the taxable person was not entitled to deduct input tax imposed and paid on the acquisition of such goods or services. Supplies by a taxable person within Section 4(17) are not subject to VAT. Section 4(17) does not apply if the taxable person did not pay VAT on the acquisition of the goods or services. For example, if goods were acquired before the effective date of the VAT, a supply of the goods is not within section 4(17). Section 4(17) does not apply to second hand goods acquired from an unregistered person because VAT was not charged on a tax invoice when the goods were acquired by the taxable person making the supply.

Tax on imports of goods.

4. (1) *In general.* Section 9(1)(b) of the Act imposes tax on the import of goods, other than an exempt import. This regulation applies to the import declaration and the payment of tax on imported goods.

(2) *Importer responsible for tax.* Under section 9(2)(b) of the Act, the person who is the importer of goods under the Customs (Control and Management) Act is liable for tax payable on the import of goods.

(3) *Customs Act rules applicable to imports subject to tax.* According to section 22(4) of the Act, except where the Act provides to the contrary, the provisions of the Customs (Control and Management) Act, relating to the import, transit, coastwise carriage, clearance of goods, and payment and recovery of duty, with such exceptions, modifications, and adaptations as the Minister may by regulation prescribe, shall apply, so far as relevant, to the tax charged under the Act on the import of goods. Section 22(4) of the Act applies to the procedural aspects of the Customs (Control and Management) Act.

(4) *Filing of import declaration.* Under section 22(2) of the Act, where tax is payable on an import of goods, the importer shall, upon entry of the goods, furnish the Comptroller of Customs with an import declaration and pay the tax due on the import.

(5) *Contents of import declaration.* The import declaration under the definition in section 2 of the Act is the declaration documents required for the entry of goods into Dominica. The documents must –

- (a) be in the form prescribed by the Comptroller of Customs,
- (b) state the information necessary to calculate the tax payable in respect of the import, and
- (c) be furnished in the manner specified by the Comptroller of Customs.

(6) *Collection of tax.* Under section 22(1) of the Act, the Comptroller of Customs –

- (a) must collect at the time of import and on behalf of the Comptroller of Inland Revenue, any tax due under the Act on an import of goods and, at that time, obtain the name and the taxpayer account number, if any, of the importer, the import declaration, and the invoice values in respect of the import; and
- (b) must make arrangements with the Postmaster-General to perform functions on behalf of the Comptroller of Customs in respect of tax on imports that arrive through the General Post Office.

5. (1) *In general.* Section 9(1)(c) of the Act imposes a 10 percent tax on the value of a taxable supply of accommodation services by a hotel, guest house, inn, or similar establishment. The section 9(1)(c) rate also applies to accommodation services

Reduced rate on accommodation services.

in an apartment or room, if the lessor provides utilities and furnishings, but the rate does not apply to these leases if the accommodation services are provided to a renter in a private home. The section 9(1)(c) rate applies to a taxable supply by a taxable person in Dominica. The lower rate applies to the charge for the room, including any service charge added to the room rate. See definition of consideration in Regulation 2.

(2) *Qualifying establishment.* The 10 percent tax under section 9(1)(c)(i) of the Act applies to accommodation services supplied by a hotel, guest house, inn, and a similar establishment. A similar establishment is an establishment that provides sleeping accommodation facilities for individuals for overnight or short-term stays of less than a month. If in rare circumstances a guest stays more than a month, this does not cause the establishment to fail to be considered a similar establishment. It includes daily or weekly accommodation for a tourist in a resort, condominium, or other similar facilities. Section 9(1)(c)(ii) of the Act applies the lower rate to the rental of accommodation services for longer lease periods, but only where the lessor supplies utilities and furnishings. The longer leases of these accommodation services are not covered under section 9(1)(c)(ii) of the Act if the tenant is a renter in a private home. For this purpose, a private home is the residence of the lessor, but only if the home is a single family dwelling. Student housing, while pursuing approved courses of study, that includes furnishings and utilities, is subject to tax at the rate under section 9(1)(c) of the Act.

(3) *Accommodation services.* The 10 percent tax rate under section 9(1)(c) of the Act applies only to supplies of accommodation services rendered by a qualifying establishment. Accommodation services include the use of a room for sleep or rest. Qualified services do not include rooms let, even if overnight, predominantly for business meetings, merchandise displays, or other commercial use. For example, a suite let for several calendar days to display merchandise does not qualify, even if a person showing the merchandise sleeps in the suite at night.

(4) *Services that qualify and services that do not qualify.* Accommodation services include breakfast or brunch included in qualifying establishment's daily room rate. Generally, qualifying services include only services provided within the confines of the hotel room, but some services provided within the room do not qualify. For example, internet access that is included in the daily room rate of all guests is subject to the lower rate, but not separate charges imposed for access to the internet. Laundry, use of sporting facilities, health clubs, and other fees separate from the room and maid services are not qualifying services. Separate charges for food or beverages or other non-accommodation services are not covered by the 10 percent rate, whether those services are provided in a hotel restaurant or bar or brought to the guest's room. If a qualifying establishment bundles qualifying and non-qualifying services in a single charge, the services must be apportioned in relation to the fair market value of each. No apportionment of a single charge is required if the value of non-qualifying services does not exceed 10 percent of the value of accommodation services.

6. (1) *In general.* Section 11 of the Act provides for obligatory and voluntary registration, and section 12 of the Act provides for the registration procedure. This regulation covers rules relating to registration.

Obligatory or voluntary registration and procedure.

(2) *Registration not required in specified cases.* Under section 11(4) of the Act, a person is not required to register under section 11 of the Act where the Comptroller is satisfied that the value of a person's taxable transactions exceeds or will exceed the amount specified under section 11(1) of the Act solely as a consequence of the cessation, or substantial and permanent reduction in the size or scale, of a taxable activity carried on by the person.

(3) *Procedure to obtain waiver of obligation to register.* A person whose taxable supplies exceed the threshold specified under section 11(1) of the Act must comply with the registration procedure in section 12 of the Act. A person may file with the Comptroller a request to waive the registration require-

ment or the Comptroller, without a request, may decide not to register an applicant if the person's taxable supplies exceeded or will exceed the threshold solely as a result of the reasons specified in Section 11 (4) of the Act and sub-regulation (2). For example, a person may request the waiver if the person discontinues selling a line of products and sells the remaining inventory of that line, producing substantial sales that will not recur in the future. The request must be in the form and contain the information specified by the Comptroller. The request must be filed by the date the person must apply for registration under section 11(1) of the Act. The Comptroller must inform the applicant of the decision within 15 working days of receiving the application.

(4) *Registration based on taxable turnover for a 3-month period.* Under section 11(10) and (11) of the Act, if a person's taxable supplies for any 3-month period exceed \$15,000, and there are reasonable grounds to expect that the person's taxable supplies during those 3 months and the next consecutive 9 months will exceed \$60,000, the person is required to register within 21 calendar days after the end of that 3-month period (section 11(10) & (11) of the Act).

(5) *Date registration is effective.* Section 12(6) of the Act provides for the date that registration becomes effective. The effective date depends upon the basis of the application for registration.

(5.1) *Threshold already satisfied.* Section 12(6)(a) of the Act provides that if a person must register because that person's taxable supplies exceeded the threshold in the prior 12 or fewer months, registration is effective at the beginning of the tax period immediately following the end of the period of 12 or fewer months. For example, if during an 8-month period from 1 February to 30 September, a person's taxable supplies exceeded the threshold, the person must apply for registration no later than 21 October. The person should apply

in September. The person's registration is effective 1 October, so the person must start charging tax on 1 October.

- (5.2) *Threshold to be satisfied in future.* Section 12(6)(b) of the Act provides that if a person must register because that person is expected to have taxable supplies exceeding the threshold in the next 365 calendar days, registration is effective from the beginning of the 365-day period. For example, if as of 31 March, a person expects to have taxable supplies above the threshold in the next 365 calendar days, the person must apply no later than 21 April and registration is effective 1 April.
- (5.3) *State or local authority taxable activity.* Section 11(6) of the Act provides that the State or a local authority must register regardless of its level of taxable turnover when it commences a taxable activity. Under section 6(2)(c) of the Act, a State or local authority is engaged in a taxable activity only to the extent that it conducts auctions, hires equipment, rents space, sells medicine and drugs, or when it engages in activity commonly conducted for profit. Under section 12(6)(b) of the Act, the State or local authority's registration is effective when it commences a taxable activity.
- (5.4) *Auctioneer.* Under section 11(7), an auctioneer must apply for registration no later than the date he becomes an auctioneer. Under section 12(6)(b), the auctioneer's registration takes effect on the date he starts engaging in business as an auctioneer.
- (5.5) *Promoter of public entertainment, or licensee or proprietor of place of public entertainment.* Under section 11(9) of the Act, a promoter of public entertainment, or a licensee or proprie-

tor of a place of public entertainment must apply for registration no later than 48 hours before commencing the public entertainment that is being promoted if it is reasonable to expect taxable supplies in a 12-month period including this public entertainment to exceed \$60,000. The 12-month period can include a period before or after this public entertainment. If the person is required to apply for registration, under section 12(6)(b) of the Act, registration becomes effective when the person starts making taxable supplies in connection with the public entertainment activity.

- (5.6) *Voluntary registration.* Under section 12(6)(c) of the Act, if a person not required to register applies under section 11 (5) of the Act for registration voluntarily, registration is effective at the beginning of the tax period immediately following the period in which the person applied for registration, assuming that the Comptroller grants the application for registration.
- (5.7) *Three-month threshold satisfied.* Under section 11(10) of the Act, a person must register because the person's taxable supplies exceed \$15,000 in a 3-month period and are expected to exceed \$60,000 in the combination of those 3 months and the next consecutive 9 months. Section 12(6)(d) of the Act provides that this person's registration is effective at the beginning of the tax period immediately following the end of that 3-month period.
- (5.8) *Failure to register.* Under section 12(5) of the Act, if a person required to register fails to register, the Comptroller may register the person and specify the effective date of the registration in the Comptroller's discretion. For example, assume that a person fails to register, but was

required to do so because taxable supplies exceeded the threshold on 31 December, 2006. If the Comptroller discovers on 15 July, 2007 that the person was required to register as of 31 December, 2006, the Comptroller may register the person, effective 1 January, 2007.

7. (1) *In general.* This regulation covers the cancellation of registration under section 13 of the Act.

Cancellation of registration.

(2) *Required notification.* Section 13(1) of the Act requires a registered person to notify the Comptroller within 7 calendar days of the date the person ceases to conduct taxable activities and the Comptroller must cancel the registration. Section 13(14) of the Act provides that a person who expects to sell a going concern must notify the Comptroller of that intent at least 3 calendar days before the sale closes, the purchaser acquires a legal interest in the assets to be acquired, or the assets of the going concern are transferred, whichever occurs first. The seller must submit a second notification under section 13(1) of the Act if the seller, as a result of the sale of a going concern, ceases to engage in taxable activity.

(3) *Information to be provided.* The required notification that a person is ceasing to conduct taxable activity, according to section 13(3) of the Act, must be in writing, and must state the date upon which the person is going to cease conducting taxable activities. The person also must state whether or not he or she intends to make taxable transactions within 12 months from that date. For example, a person who sells his existing business may decide to start a new business and make taxable supplies. The required notification under section 13(14) of the Act that a person is selling a going concern must be in writing.

(4) *Response by Comptroller.* The Comptroller must approve an application for the cancellation of registration under section 13(1) of the Act or, under section 13(4) of the Act, the Comptroller can initiate cancellation without any application unless, under section 13(2) of the Act, the Comptroller has

reasonable grounds to believe that the person will engage in taxable activity and make taxable transactions within 12 months from the date of cessation.

(5) *Effective date of cancellation.* Under section 13(1) of the Act, the cancellation of registration generally takes effect at the end of the last day of the tax period during which taxable activity ceases. The Comptroller has the authority to specify a different effective date. If the Comptroller initiates cancellation because he or she is satisfied that a taxable person is not engaged in a taxable activity or is not required or entitled to apply for registration, under section 13(4) of the Act, the Comptroller may cancel the person's registration, effective on the last day of the tax period during which the Comptroller becomes so satisfied or on another date the Comptroller specifies. For example, under section 13(6) of the Act, if the Comptroller is satisfied that the registered person did not make taxable transactions from the date the registration took effect, the Comptroller can cancel the registration retroactive to that effective date. The Comptroller must provide written notice of the date that the cancellation takes effect.

(6) *Deemed supply of goods on hand when the registration is cancelled.* When registration is cancelled, to the extent provided under section 4(21) of the Act, a registered person is deemed to have made a taxable supply in Dominica of the goods or services on hand on the date of cancellation.

(7) *Tax obligations after cancellation of registration.* Under section 13(11) of the Act, a taxable person's obligations or liability under the Act while registered, including the furnishing of returns and payment of tax, is not affected by cancellation of the person's registration. The person remains liable and the Comptroller can take action to enforce the person's obligations or tax liability.

Time of supply.

8. (1) *In general.* This regulation covers some of the time of supply rules in section 14 of the Act.

(2) *Repossession of goods.* Section 4(7) of the Act treats the repossession of goods under a credit agreement as a supply of the goods. Under section 14(5) of the Act, the supply occurs on the day that the goods are repossessed. The date of the supply may be later if the debtor may under any law be reinstated in his rights and obligations under the credit agreement. In this situation, the date of the supply is the day after the last day of any period during which the debtor may under such law be so reinstated. For example, if after goods are repossessed the debtor can have his rights to recover his goods reinstated by paying instalments in default, then even if the debtor does not make payments and have the right to recover his goods, the supply occurs on the day after the debtor loses his right to pay arrears and have his rights reinstated.

(3) *Transfer of a going business.* Section 4(2) of the Act treats, as a supply of goods, the transfer of a taxable activity (or a portion of a taxable activity capable of separate operation) as a going concern. The transfer may be zero-rated under Schedule I, paragraph 3(3) of the Act. If the buyer uses some of the acquired assets for purposes other than to make taxable supplies, according to section 4(18) of the Act, the buyer is treated as making a taxable supply on the acquisition of the going concern to the extent that the buyer uses the goods or services acquired for purposes other than to make taxable supplies. Under section 14(10) of the Act, the taxable supply by the buyer occurs when the supply of the going concern under section 4(2) of the Act occurs.

(4) *Advance receipt for services or a deposit.* Consideration, as defined in section 2 of the Act, does not include a deposit given in connection with a supply of goods or services. In contrast, an advance payment for the rendition of services in the future is included as part of the consideration for a supply for services. Section 14 (1) of the Act provides that a supply of services occurs at the earliest of the date the services are completed, an invoice covering the services is issued, or any consideration for services received. The classification of a

receipt as a deposit or advance payment depends on the facts and circumstances of the case. For example, an advance payment received by a hotel or other service provider for specific accommodations or other services to be provided in the future is presumed to be consideration for the service to be supplied and not a deposit for purposes of the definition of consideration in Section 2 of the Act.

Place of supply.

9. (1) *In general.* Section 15(3) of the Act provides that the place of supply of services generally takes place at the supplier's place of business from which the services are supplied. There are exceptions where the supply of services takes place where the recipient uses the services being supplied. There are special rules governing specific kinds of services. Supplies not described in section 15 generally are treated as taking place in Dominica.

(2) *Supplies by commission agents.* When a commission agent renders services in Dominica, the services generally are treated as supplied in Dominica. According to section 15(8) of the Act, if the services are rendered to a non-resident person the services may be treated as supplied in Dominica and exported for purposes of Schedule I to the Act. Those services therefore may qualify for zero-rating under section 17 of the Act. Services rendered by commission agents in Dominica are taxable (including zero-rating) unless the services are exempt under Schedule II of the Act.

Value of a supply.

10. (1) *In general.* Section 16 of the Act contains some rules governing the value of a supply. This regulation contains rules interpreting section 16. Generally, under section 16(1) of the Act, the value of a supply is the consideration for the supply. Consideration, under the definition in section 2 of the Act, is the total amount paid or payable directly or indirectly for a supply but not including the tax itself and other amounts described in that definition. The tax therefore is imposed on the VAT-exclusive prices.

(2) *Price discounts and rebates provided at the time of supply.* The consideration for a supply and therefore the value

of a supply is reduced by any price discounts or rebates allowed and accounted for at the time of the supply of goods or the rendition of services. For example, discounts taken at the cash register for goods on sale reduce the value of a supply subject to tax. Post-supply price adjustments do not affect the tax imposed on the supply. For example, if a retailer sells computer software and the manufacturer of the software offers a rebate to a purchaser of the software upon proof of purchase (such as submission of a tax invoice), the manufacturer's rebate does not reduce the consideration subject to tax when the retailer sells the software. Those adjustments must be accounted for by a registered seller and registered purchaser in accordance with post-sale adjustment rules in section 27 of the Act.

(3) *Tax not accounted for separately.* Where a portion of the price of a supply represents tax imposed by the Act that is not accounted for separately, the value of the supply is the price reduced by the amount of tax, determined as an amount equal to the product of the tax fraction multiplied by that price. The tax fraction under the definition in section 2 of the Act is $R/(1 + R)$, where "R" is the rate of tax (expressed as a percentage) under section 9(1) of the Act. For example, where the price (including tax that is not accounted for separately) is 115 and the tax rate is 15%, then the amount of tax is determined as follows:

$$115 (.15) / (1.15) = 100 (.15) = 15, \text{ and the value of the supply is } 115 \text{ less } 15, \text{ or } 100.$$

(4) *Transfers for no consideration or for less than fair value.* Section 16(3) of the Act provides that the value of a supply of goods without consideration or for less than fair market value is the fair market value of the goods. This special valuation rule applies only if the supplier and recipient are related persons or if the recipient is an approved charitable organisation. This rule is designed, in part, to prevent tax avoidance on transfers to purchasers who are not entitled to claim input tax deductions on purchases. When fair market value applies, a reduction for the amount of tax included in the fair market value must be computed as under sub-regulation 3 of this regulation.

(5) *Change of use of goods or services.* If a registered person converts an entire good or service from use in a taxable activity to a different use and the person was allowed an input tax deduction in respect of the acquisition of that good or service, section 4(6) of the Act generally treats the change in use as a supply of goods or services in the course or furtherance of a taxable activity. Under section 16(4) of the Act, the value of the deemed supply is the lesser of the consideration paid or payable on the acquisition of those goods or services, or the fair market value of the goods or services when they are converted to a different use. For example, if a computer acquired by a registered person for business use for \$1,000 now is worth \$400, the transfer of that computer to an employee for personal use is a taxable supply with a value of \$400.

(5.1) *Special rules.* Under section 4(17) of the Act, the change in the use of goods or services by a taxable person is not a taxable supply if that person was not entitled to claim a deduction for input tax imposed and paid on the acquisition of those goods or services. As a result, the valuation rules under section 16(4) of the Act do not apply to a change in the use of such goods or services. Under section 4(21) of the Act, the cancellation of registration does not produce a taxable supply of goods and services on hand on the date of cancellation to the extent that input tax on the acquisition of those goods or services was not deductible. As a result, the valuation rules under section 16(4) of the Act do not apply to a change in the use of those goods upon cancellation of registration.

(5.2) *Conversion of less than the entire goods or services to a different use.* This sub-regulation, while not exhaustive, governs the value of a supply under section 16(5) of the Act, when less than an entire good or service is applied to a

different use. If, in a transaction governed by section 4(6) of the Act, a registered person changes any part of the use of goods or services from use in a taxable activity to a different use, then generally, the change is treated as a conversion of the entire good or service to a different use unless the registered person establishes to the satisfaction of the Comptroller that less than the entire good or service was converted. There is an exception. If a registered person converts 10 percent or less of a good or service to a different use, the change in use is not treated as a supply under section 4(6) of the Act. Changes within a 12-month period are aggregated for purposes of determining the portion of a good or service that was converted to a different use under this sub-regulation.

(6) *Supply under a credit agreement.* Under section 16(6) of the Act, the value of a supply of goods under an instalment sale or finance lease (a credit agreement) is the cash value of the supply. The “cash value” is calculated as that term is defined in section 2 of the Act.

(7) *Value of repossession of goods under a credit agreement.* Where, under section 4(7) of the Act, the debtor is deemed to make a supply of goods when goods purchased by the debtor under a credit agreement are repossessed, the value of the supply under section 16(7) of the Act is an amount equal to the balance of the cash value (discussed in sub-regulation (8) of this regulation) of the supply that has not been recovered at the time of the supply.

(8) *Balance of the cash value.* The balance of the cash value of the supply under section 16(8) of the Act and this sub-regulation is the amount remaining after deducting from the cash value so much of the sum of the payments made by the debtor under the credit agreement as, on the basis of an apportionment in accordance with the rights and obligations of the parties to such

agreement, may properly be regarded as having been made in respect of the cash value of the supply. For example, assume that the seller of goods is a dealer who finances the purchase, the consideration for the sale was \$5,000, and the payments by the buyer properly attributable to the principal were \$1,500. For purposes of section 16(7) of the Act, the value of the goods repossessed is \$5,000 less \$1,500, or \$3,500.

(9) *Deposits reportable under a special rule.* The consideration and therefore the value of a supply does not include a deposit given by the purchaser in connection with a supply unless and until the deposit is forfeited or the supplier applies the deposit as part payment for the supply. This rule applies to refundable and non-refundable deposits, including payments under a lay-away plan, but does not apply to deposits on returnable containers. Deposits on returnable containers are treated as part of the consideration for a supply (see definition of consideration in section 2 of the Act), and are included in the value of the supply.

(10) *Value of a supply incident to the transfer of a going business.* Under section 4(18) of the Act, where the recipient of a zero-rated transfer of a going concern under Schedule I, paragraph 3(3) of the Act, acquired some of the goods or services in that transfer for a purpose other than to make taxable transactions, then, to that extent, the acquisition of those goods or services is treated as a supply of goods by the recipient in the course or furtherance of a taxable activity. The acquisition is not treated as a supply in connection with a taxable activity if less than 10 percent of the goods and services constituting the going concern are acquired for a purpose other than to make taxable supplies.

(11) *Calculation of the value under sub-regulation (10).* The value of the goods and services treated as a supply by the recipient under section 4(18) of the Act shall be the consideration for the acquisition of the taxable activity, reduced by an amount which bears to the amount of such consideration the same ratio as the intended use or application of the taxable activity

for making taxable transactions bears to the total intended use or application of the taxable activity. For example, assume that the consideration for a zero-rated supply of a going business is \$1,000,000 and that the recipient will use 80 percent of the acquired goods and services in making taxable supplies, the value of the acquisition deemed to be supplied by the recipient is \$1,000,000 – (80% x \$1,000,000), or \$200,000.

(12) *Supplies of goods used partly in taxable and partly in exempt activities.* When goods are used by a taxable person in mixed activities, the value of the supply of the goods must be apportioned between or among the multiple uses. For example, if goods used 60 percent in taxable activities and 40 percent in exempt activities are sold for a tax-exclusive price of \$10,000, and the portion of the goods used in exempt activities is treated as a supply not in the course or furtherance of taxable activities under section 4(17), then unless section 16(3) of the Act or another exception applies, the value of the taxable supply for purposes of section 16 is 60 percent of \$10,000 or \$6,000.

(13) *Value of supply of hotel accommodations booked through a travel agent or other commission broker.* When a hotel or similar establishment supplies hotel accommodation to an unregistered person (including a domestic or foreign travel agent or tour operator not registered under the Dominica VAT) and is obliged to pay the person making the reservation a commission or fee for arranging the accommodations, the value of the supply for purposes of section 16 of the Act is the amount of the tax-exclusive charges for the accommodation less the commission or fee payable to the person making the reservation. For this purpose, the commission or fee may not exceed the normal commission rate paid to a travel or booking agent who reserves accommodations on behalf of a client.

11. (1) In general. This regulation covers the value of imported services under section 20 of the Act reportable by the recipient under section 23 of the Act. Under the definition of an import in section 2 of the Act, imported services are taxable only

Reverse taxation on
import of services.

if they are supplied to a Dominican resident who does not use or consume the imported services in making taxable supplies in Dominica. For example, an import of services is taxed if imported by a person that renders exempt services such as a school rendering exempt educational services.

(2) *Value of imported services.* The value of an import of services reportable under section 23 of the Act generally is the amount of the consideration that the recipient is obliged to pay for the services, except that if the supplier and the recipient are related persons, under section 20(3) of the Act, the value of the import is its market value.

(3) *Price inclusive of tax.* Where a portion of the consideration charged for imported services taxable under section 20 of the Act represents tax that is not accounted for separately, the value of the import is the consideration under sub-regulation (2) of this regulation, reduced by the amount of tax, determined under regulation 10(3).

Input tax deduction
rules.

12. (1) *In general.* This regulation covers the input tax deduction rules under sections 25 and 26 of the Act.

(2) *Substantiation of input tax deductions – in general.* Under section 25(2) of the Act, subject to section 25(3), no input tax attributable to a supply or import is deductible under section 25 of the Act unless –

- (a) a tax invoice, or tax debit note or tax credit note, in relation to the supply, has been provided in accordance with sections 29 or 30 of the Act and the taxable person claiming the input tax deduction is holding that supporting document (unless an invoice is not required) at the time any return in respect of the supply is furnished; or
- (b) an import declaration or a document issued by the Comptroller of Customs evidencing payment of tax on an import is held by the taxable person

claiming the deduction at the time any return in respect of the import is furnished.

(2.1) *Period in which an input tax deduction is claimed.* A taxable person deducts input tax in the tax period in which the tax on a domestic acquisition is payable. For example, if an invoice sent on 28 January is received on 5 February, and tax is payable by the recipient when the invoice is received, the taxable person claims the input tax deduction in the tax period that includes 5 February.

(2.2) *Deduction allowed without a tax invoice.* Under section 25(3) of the Act, the Comptroller may allow a taxable person to claim an input tax deduction without the required supporting tax invoice if the Comptroller is satisfied that the taxable person took all reasonable steps to acquire the tax invoice, the failure to obtain the tax invoice was not the taxable person's fault, and the deduction claimed is correct.

(3) *Commencement or termination of a taxable activity.* Activity involved in commencing or terminating a taxable activity is considered to be related to taxable activity under section 6(3) of the Act. The costs incurred to begin or terminate a taxable activity therefore are costs taken into account in calculating the allowable input tax deductions under section 25 of the Act. There are limitations on refunds available for excess input tax deductions attributable to the commencement of a taxable activity, mentioned in regulation 20.

(4) *Input tax deductions on vehicles carrying goods.* Section 26(2)(a) of the Act denies a deduction for input tax on the acquisition of a passenger vehicle, unless the person acquires the vehicle for purposes of that person's business of dealing in, or hiring, such vehicles. "Passenger vehicles," according to section 26(1) of the Act, include motorcars and other motor vehicles

principally designed to transport people. This disallowance rule does not apply to a commercial truck, a double cab truck designed to carry goods, a pickup truck, or other vehicle used exclusively for the transport of goods.

(5) If a passenger vehicle acquired by a person in the business of dealing in, or hiring passenger vehicles, is provided by that person directly or indirectly for the benefit of an owner, officer or employee, the person is denied an input tax deduction on the acquisition of the vehicle to the extent of the tax on the portion of the passenger vehicle used by or for the benefit of such individual, or the person (while owning the vehicle) is deemed to have changed the use of the vehicle under section 4(6) of the Act. For example, if an employee of a car rental company will use for personal purposes a newly-acquired motor car usually rented to customers, the car rental company is denied an input tax deduction on the acquisition of the car for the portion of the tax on the rental car to be used for such purposes. The same rule applies if the car rental company permits a related person who does not work for the company to use a car usually rented to customers.

(6) *Input tax deductions on entertainment.* For purposes of section 26(2)(b) of the Act, an input tax deduction is not allowed for tax on the import or domestic purchase by a taxable person of goods or services for the purpose of entertainment. “Entertainment” is defined in section 26(1) of the Act as provision of food, beverages, tobacco, accommodation, amusement, recreation, or other hospitality. Entertainment includes restaurant meals for executives, employees, or customers, the rental of a lodge, the charge for satellite or cable television services, and the charge for food at a retreat for employees. Under section 26(2)(b)(i) of the Act, the disallowance rule does not apply to purchases of “entertainment” by a registered person engaged in the business of selling “entertainment” (such as a restaurant or disco) if the purchases are used directly in the supply of taxable entertainment in the ordinary course of business.

(7) *Input tax deductions on membership in a sporting, social, or recreational club, association, or society.* Section 26(2)(c) of the Act denies a deduction for input tax on fees or subscriptions for membership in a club, association, or society of a sporting, social or recreational nature. While not an exhaustive list, the disallowance rule applies to input tax on a membership in a hunting, drinking, dining, smoking, or similar establishment.

(8) *Allocation of input tax to taxable and other supplies.* The Act allows a deduction only for input tax on acquisitions used in making taxable supplies. Section 26(3) of the Act therefore requires a taxable person that makes taxable supplies and exempt supplies to make a proper allocation between them in order to ascertain the deductible input tax attributable to the taxable supplies.

(8.1) *Input tax allocation rules.* Under section 26(3)(a) and (b) of the Act, the input tax on acquisitions directly allocable to the making of taxable supplies is deductible in full, and the input tax on acquisitions directly allocable to the making of exempt supplies is disallowed in full. Input tax on acquisitions used in making both taxable and exempt supplies (dual-purpose acquisitions) must be allocated between them in accordance with the formula $A \times B/C$; that is, allocated in proportion to total taxable sales during the current tax period divided by total supplies in that period. For example, if during the month of August, the input tax not directly allocable to either taxable or exempt supplies is \$10,000, the total taxable supplies in August are \$6,000,000, and the total supplies in August are \$10,000,000, the input tax allocable to taxable supplies under this formula (and therefore deductible for August) is $\$10,000 \times 6,000,000/10,000,000$, or \$6,000.

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- (8.2) *Comptroller's discretion to use a different allocation formula.* The Comptroller is authorised under section 26(6) of the Act to allocate input tax for a taxable person who makes both taxable and exempt supplies in a tax period on a basis that the Comptroller considers reasonable, even if it departs from the allocation rules in section 26(3) of the Act, including the formula discussed in sub-regulation (8.1) of this regulation. The Comptroller's decision to use a different allocation formula is an "appealable decision" under section 26(7) of the Act that may be challenged only under Part IX (sections 36-40) of the Act.
- (8.3) *De minimis rule.* If a taxable person's ratio of taxable to total supplies under the formula $A \times B / C$ in section 26(3)(c) of the Act is more than 0.90, under section 26(4) of the Act, the taxable person may deduct the entire input tax on dual-purpose acquisitions used to make both taxable and exempt supplies. In other words, if more than 90 percent of total supplies are taxable supplies, the ratio in section 26(3)(c) of the Act is deemed to be 100%, and all input tax on the dual-purpose acquisitions is deductible.
- (8.4) *Allocation rule for financial institutions.* Section 26(5) of the Act provides that a bank or other financial institution making both taxable and exempt supplies in a tax period can deduct, under section 26(3) of the Act, only the input tax on acquisitions that are directly allocable to the making of taxable supplies. There is no deductible input tax under the formula in section 26(3)(c) of the Act on dual-purpose acquisitions used in making both taxable and exempt supplies.

(9) *Refund of excess input tax deductions.* Under section 24(2) of the Act, where the total input tax deductions available to a taxable person for a tax period exceed the total amount of tax chargeable on taxable transactions for that period, the amount of the excess is dealt with in accordance with the refund rules under section 52 of the Act.

13. (1) *In general.* This regulation applies if a registered person makes a supply of taxable goods or services, accounts for the supply in a tax return, and in a subsequent tax period, it is determined that the registered person will not be able to recover all or part of the consideration from the customer. If a registered person claims relief for a bad debt under this regulation and the customer subsequently pays all or a portion of the amount claimed as a bad debt, the registered person must report as output tax the presumed tax element in the recovered debt.

Bad debts.

(2) *Requirements to claim bad debt deductions.* Section 27(9)-(13) of the Act provides rules for registered persons to account for bad debts on supplies reported for VAT purposes. Under section 27(9) of the Act, a registered person can deduct, as an input tax deduction, the tax on a prior taxable supply to the extent that the consideration for the supply is treated as a bad debt. The deduction (a bad debt deduction) is treated as an input tax deduction under section 25(1) of the Act in calculating the net tax liability for the tax period.

Under section 27(13) of the Act, the bad debt deduction is allowed in two cases. The deduction is allowed if the taxable supply that gave rise to the bad debt was made to an unregistered person. The deduction also is allowed if the taxable supply was made to a registered person and the supplier issues a tax credit note to the registered defaulting customer, listing the amount claimed as bad debt deduction. The tax credit note must be sent to the customer within 14 calendar days from the date that the debt is written off and transferred to a bad debt account in the customer's name. The tax credit note must contain the particulars required under regulation 14. The registered, defaulting purchaser must report as output tax the tax reported on the tax credit note.

It is only the registered person that makes the supply that can claim an input tax deduction for the bad debt. An exception applies if a going concern is transferred and the transferee writes off an acquired account as a bad debt.

Under section 27(10) of the Act, the input tax deduction for the bad debt is equal to the tax fraction (definition in section 2 of the Act) multiplied by the portion of the taxable supply written off as a bad debt. The tax fraction is the one applicable when the original taxable supply was made. For example, if \$2,300 of a customer's account is written off and the tax rate at the time of the supply was 15%, the input tax deduction is $15/115 \times 2,300$, or \$300.

The bad debt deduction arises when the bad debt is written off by the seller on its books. Under section 27(11) of the Act, to be entitled to this deduction for a bad debt, the registered person must satisfy the Comptroller that reasonable efforts have been made to recover the debt due and payable.

In order to claim an input tax deduction for a bad debt written off, a registered person must retain a copy of the tax invoice for the supply on which the deduction is claimed. The person also must establish a separate bad debt account for each bad debt for which an input tax deduction is claimed. That account must include a record of the name of the customer, and the date and number of the invoice originally issued, the amount written off as a bad debt, the tax period in which the supply was reported, and the tax period in which the input tax deduction is claimed. If a tax credit note is issued, a copy must be retained.

(3) *Recovery of bad debt.* If a registered person recovers any portion of a debt that gave rise to a bad debt deduction, under section 27(12) of the Act, the registered person must report the following amount as tax on a taxable supply (output tax) in the tax period in which the debt is wholly or partially recovered. The amount reportable is calculated according to the formula $A \times B/C$, where

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- A** is the section 27(9) of the Act allowable input tax deduction for the bad debt,
- B** is the amount of the recovered bad debt, and
- C** is the total bad debt written off.

For example, if the original input tax deduction for the bad debt was \$1,500, the recovery was \$3 000, and the bad debt written off was \$10 000, the output tax reportable on the recovered bad debt is $1,500 \times 3,000 / 10,000$, or \$450. A clawback of VAT resulting from a recovery of a previously-deducted bad debt is required, even if the supplier is no longer registered for VAT purposes.

(4) *Casino bad debt.* For casinos, bad debts generally arise only with respect to chips issued against a patron's credit card. If the chips issued are included as gross bets in calculating a casino's output tax liability and the credit card charge is written off, the bad debt is treated as winnings paid out for purposes of calculating the net for output tax purposes. If a bad debt written off is recovered, the registered person treats the recovery as part of gross bets in calculating the casino's net for output tax purposes.

14. (1) Tax invoices – in general. Under section 29(1) of the Act, a registered supplier must issue an original tax invoice for a taxable supply to a registered recipient in the form required by the Comptroller and containing the information specified in this regulation. An unregistered supplier cannot issue a tax invoice.

Tax invoices and sales receipts.

(2) *Sales receipts – in general.* For purposes of section 29(2) of the Act, a registered supplier may issue a sales receipt in lieu of a tax invoice for a taxable supply to a registered recipient if the total consideration for the sale reported on the sales invoice is payable in cash and does not exceed \$5. Under section 29(7) of the Act, a registered supplier must issue sales receipts for all taxable supplies to unregistered recipients. For some supplies, the Comptroller may authorise the issuance of sales receipts with different information.

(3) *Limitations on issuance of tax invoice.* Under section 29(3) of the Act, a person may not issue a tax invoice other than as specified in section 29 of the Act and this regulation. Section 29(4) of the Act provides that a registered supplier can issue only one tax invoice for each taxable supply. However, under section 29(6) of the Act, the registered supplier can issue a copy marked as such if a registered recipient claims to have lost the original.

(4) *Right to demand a tax invoice.* Under section 29(5) of the Act, if a registered recipient has not received a required tax invoice, the recipient can make a demand for a tax invoice within 60 calendar days after the supply occurs. The demand must be in writing. The registered supplier must issue the tax invoice within 14 calendar days after receiving a valid demand.

(5) *Information required on tax invoices.* A tax invoice under section 29(1) of the Act is a pre-numbered document executed by the registered supplier in the form stipulated by the Comptroller and containing at least the following information:

- (a) the full name of the registered person making the supply and the purchaser, and the registered person's trade name, if different from the legal name;
- (b) the taxpayer account number of the registered person and the purchaser;
- (c) the description (including the number) of the goods delivered or services rendered;
- (d) the amount of the taxable transaction;
- (e) the tax due on the taxable transaction; and
- (f) the issue date of the tax invoice.

(6) *Information required on sales receipts.* A sales receipt under section 29(2) or (7) of the Act is a document executed by the registered supplier in the form required by the Comptroller and containing at least the following information:

- (a) the full name of the registered person making the supply, and the registered person's trade name, if different from the legal name;
- (b) the taxpayer account number of the registered person;
- (c) the description sufficient to identify the goods delivered or services rendered;
- (d) the amount of the taxable transaction;
- (e) the tax due on the taxable transaction; and
- (f) the issue date of the sales invoice.

(7) *Transactions involving an agent.* Where a taxable supply has been made by an agent on behalf of the agent's registered principal as specified under section 5(1)(a) of the Act, and the recipient of the goods or services supplied in the taxable transaction is a registered person, the agent may issue a tax invoice in accordance with the Act in relation to the transaction; and the principal shall not also issue a tax invoice in relation to the taxable transaction. Where a taxable transaction has been made to an agent on behalf of the agent's principal as specified under section 5(1)(b) of the Act and the principal is a registered person, at the request of the agent, a tax invoice in relation to the taxable transaction may be issued to the agent; and a tax invoice shall not also be issued to the principal in relation to the taxable transaction.

(8) *Supplies to persons eligible for a tax refund under section 54 of the Act.* Section 54(1) and (3) empower the Minister to authorise the grant of a refund of tax to designated persons, missions, organisations, governments, and approved charitable organizations. The authorisation for a refund is provided under Regulations 22 and 23. Notwithstanding the other provisions of this Regulation, a taxable person making a taxable supply to a person designated in Regulation 22 and 23 is obliged to issue to the person a document required by the Comptroller and containing the information required by the Comptroller.

(9) *Penalty for improper claim for a document specified under sub-regulation (8).* If a person improperly requests a document specified under sub-regulation (8) or submits a document specified under sub-regulation (8) in support of a claim for refund of tax under section 54 contrary to the authority granted under the Regulations is liable for a penalty not exceeding \$5,000.

Tax credit notes and tax debit notes.

15. (1) *In general.* Section 30 of the Act provides for the issuance of tax credit notes and tax debit notes in connection with post-sale adjustments. This regulation specifies the particulars required in tax credit and tax debit notes. The tax credit and tax debit notes are to be pre-numbered.

(2) *Tax credit notes.* Except as the Comptroller may otherwise allow, a tax credit note required by section 30(1) of the Act must contain at least the following particulars:

- (a) the words “tax credit note” in a prominent place;
- (b) the name, address, and taxpayer account number of the registered person making the supply;
- (c) the name, address, and taxpayer account number of the recipient of the supply;
- (d) the date on which the tax credit note was issued;
- (e) the value of the supply shown on the tax invoice, the adjusted value of the supply, the difference between those two amounts, and the tax charged that relates to that difference;
- (f) a brief explanation of why the tax credit note is being issued; and
- (g) information sufficient to identify the taxable supply to which the tax credit note relates.

(3) *Tax debit notes.* Except as the Comptroller may otherwise allow, a tax debit note required by section 30(3) of the

Act must contain at least the following particulars:

- (a) the words “tax debit note” in a prominent place;
- (b) the name, address, and taxpayer account number of the registered person making the supply;
- (c) the name, address, and taxpayer account number of the recipient of the supply;
- (d) the date on which the tax debit note was issued;
- (e) the value of the supply shown on the tax invoice, the correct amount of the value of the supply, the difference between those two amounts, and the tax charged that relates to that difference;
- (f) a brief explanation of why the tax debit note is being issued; and
- (g) information sufficient to identify the taxable supply to which the tax debit note relates.

16. Under section 28(1) of the Act, a person who fails to pay tax payable under the Act by the date it is due and payable is liable for interest for the period during which the tax remains unpaid. For tax payable with the filing of a regular VAT return, this date generally is the due date of the return. Thus, tax on a supply under section 9(1)(a) is due on the due date for the return for the period of the supply. Interest on unpaid tax on a domestic supply under section 9(1)(a) starts running on the due date for the return for the period of the supply and ends on the date of payment. Tax on an import of goods under section 9(1) (b) is due when the goods are entered for Customs purposes. See section 42 of the Act on the allocation of payments.

Interest on unpaid tax.

17. (1) *In general.* A return required by section 32 of the Act must be in the form prescribed by the Comptroller, and must -

Form and manner of filing returns.

- (a) state the information necessary to calculate the tax payable for the tax period in accordance with section 24 of the Act,

(b) be furnished on a form and in the manner prescribed by the Comptroller; and

(c) contain any supporting documents required by the Comptroller.

(2) *Comptroller discretion to require fewer, additional, or other returns.* Section 32(3) of the Act empowers the Comptroller, by notice in writing, to require any person (whether or not a taxable person) to file fewer, additional, or other returns for the purposes of the Act. A person required to file fewer, additional, or other returns may be required to do so on his or her own behalf (i.e., in relation to his or her own activities) or as agent or trustee of another person. The Comptroller's decision to require fewer, additional, or other returns is an "appealable decision" that may be challenged only under Part IX (sections 36-40) of the Act.

Extension of time.

18. Upon application by a person, the Comptroller has discretion under section 33 to grant the applicant permission to file a required return after the due date. The application for an extension of time to file a required return must be filed before the due date for the return. The grant of an extension of time to file a return does not extend the time when the tax is due and must be paid.

Assessment of tax.

19. (1) *In general.* As provided under section 34 of the Act, the Comptroller may issue an assessment of tax for a person who understated his tax obligation.

(2) *Reasons for an assessment.* The Comptroller may make an assessment under section 34 of the Act in a variety of circumstances. The assessment may relate to the tax payable or the tax a person represented as payable. The circumstances include the case where –

(a) a person fails to furnish a return as required by section 32 of the Act or fails to furnish an import declaration as required by section 22 or 23 of the Act;

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- (b) the Comptroller is not satisfied with a return or import declaration furnished by a person;
 - (c) the Comptroller has reason to believe that a person has become liable for the payment of an amount of tax but is unlikely to pay such amount;
 - (d) a person, other than a taxable person, supplies goods or services and represents that tax is charged on the supply;

 - (e) a taxable person supplies goods or services and the supply is not a taxable transaction or is a zero-rated transaction and, in either case, the taxable person represents that the transaction is taxable at a positive rate;
 - (f) a taxable person supplies goods or services and the person represents that the supply is taxable at the rate for accommodation services under section 9(1)(c) of the Act, and it is taxable at the standard rate (section 9(1)(a) of the Act); or
 - (g) the Comptroller has determined that a person has engaged in a section 97(2) of the Act scheme to obtain tax benefits.
- (3) *The person assessed.* The person assessed —
- (a) in the case of an assessment under section 34(1)(d), (e), or (g) of the Act, is the person making the supply; or
 - (b) in the case of an assessment under section 34(1)(f) of the Act, is the person whose liability has been determined under section 97(2) of the Act; or
 - (c) in any other case, is the person required to account for the tax under the Act.

(4) *Assessment based on an estimate.* In making an assessment under section 34 of the Act, under section 34(5), the Comptroller may estimate the tax payable by a person based on information available to the Comptroller.

(5) *Notice of assessment.* Where an assessment has been made under section 34 of the Act, section 34(9) of the Act provides that the Comptroller must serve a notice of the assessment on the person assessed, which notice shall include -

- (a) the tax payable; and
- (b) the date the tax is due; and
- (c) the time, place, and manner of objecting to the assessment.

(6) *Amending an assessment.* The Comptroller may, within three years after service of the notice of assessment (or within the period specified in section 34(4) of the Act if the Comptroller is not satisfied with a return or import declaration), amend an assessment by making such alterations or additions to the assessment as the Comptroller considers necessary, and the Comptroller shall serve notice of the amended assessment on the person assessed (section 34(10) of the Act). An amended assessment is treated as an assessment under the Act (section 34(11) of the Act).

(7) *Validity of notice of assessment.* The production of a notice of assessment under section 34(9) of the Act or a certified copy of a notice of assessment is receivable in any proceedings as conclusive evidence that the assessment has been duly made.

(8) *Document valid if in conformity with Act or Regulations.* No assessment or other document purporting to be made, issued, or executed under the Act or this regulation shall be-

- (a) quashed or deemed to be void or voidable for want of form; or

(b) affected by reason of mistake, defect, or omission therein, if it is, in substance and effect, in conformity with the Act or this regulation and the person assessed, or intended to be assessed or affected by the document is designated in it according to common understanding.

20. (1) *Carryover of excess deductions.* Under section 52(1)-(3) of the Act, except as provided in section 52(5), the general rule is that a taxable person must carry forward excess input tax deductions to six consecutive tax periods before the person is eligible to apply for a refund of any unused excess deductions. For example, except as provided under this Regulation, if a taxable person has excess deductions for March, the person must carry forward those excess deductions to April. If they are not fully used up against output tax in the April through September tax periods, the person may file a claim for a refund of the excess deductions remaining. The oldest carryover is used first. For example, if a taxable person has excess deductions for March and April, the excess deductions from March are used against the output tax in May before the excess deductions from April are used against the output tax in May. The Comptroller generally has three calendar months to pay the refund; that is, the Comptroller has until the end of December to pay the refund. However, under section 52(4) of the Act, if the Comptroller orders an audit of the refund claim, then the Comptroller has until the later of the end of December or 10 working days after the conclusion of the audit to pay the refund. The time provided for the payment of a refund of excess input tax deductions is subject to an overall limit. Under section 52(4) of the Act, the Comptroller is required to pay the refund only to the extent that the Comptroller is satisfied that the taxpayer is entitled to the amount of the refund claimed.

Refunds of excess input tax deductions and other overpayments.

(2) *Refund claims related to the commencement of a taxable activity.* Section 52(4) of the Act provides that the Comptroller is required to pay a refund of excess input tax deductions only to the extent the Comptroller is satisfied that the

taxpayer is entitled to the amount of the refund claimed. Generally, when a taxable person claims a refund of excess deductions under section 52(4) of the Act that is attributable to the commencement of a taxable activity, the Comptroller will not be satisfied that the taxable person is entitled to the refund claimed unless, from the available evidence, the Comptroller is satisfied that the taxable person will be using the goods and services giving rise to the excess deductions to engage in the making of taxable supplies.

(3) *Refund claims under section 52(8) of the Act.* If a person overpays tax other than in circumstances specified in section 52(1)(a) of the Act, then under section 52(8) of the Act, the person may file a claim for a refund of the excess. This procedure may apply, for example, to a person who is registered or not registered, and later discovers that a calculation error resulted in the overpayment of VAT on previously-reported transactions. If a person pays more tax on the import of goods or services than is imposed by the Act, the person can apply for a refund under section 52(8) of the Act. The request for a refund must be made in the form and contain the documentation required by the Comptroller of Customs. Section 52(8) also may be used when goods are consigned to a returning resident in care of a local representative, who pays the tax due as a deposit. When the returning resident arrives, he or she can process an import declaration and apply for a refund of the deposit to the extent that the returning resident meets the conditions of the exemption for the import of goods by returning residents in Schedule III of the Act.

(4) *Refund claim form.* A person entitled to file a claim for a refund of tax under section 52 of the Act must file the claim on the refund form required by the Comptroller, together with documentary proof required by the Comptroller to support the claim for refund.

Interest on delayed
refunds.

21. (1) *In general.* Section 53 of the Act provides time periods within which the Comptroller is obliged to pay refunds for:

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- (a) the excess of input tax deductions over output tax payable in a tax period, or
 - (b) the amounts resulting from an objection decision, an Appeals Commissioners' decision, or a High Court or Court of Appeal decision.

(2) *Period during which interest accrues.* If the Comptroller does not pay the refund in a timely manner as provided under section 53 of the Act, the Comptroller must pay interest for amounts under sub-regulation (1)(a) of this regulation, calculated from the date on which the refund was due until the date on which the payment of the refund is made, and for amounts under sub-regulation (1)(b) of this regulation, from the date the person paid the tax held to be refundable until the refund is made.

(3) *Interest rate.* Section 53(3) of the Act provides for interest at the rate of one per-cent per month or part thereof. The interest is calculated as simple interest.

22. (1) *Introduction.* Under section 54(1) of the Act, the Minister for Finance may, in consultation with the Minister for Foreign Affairs, issue regulations that authorise the refund of tax paid or borne on specified supplies to:

- (a) a person entitled to benefits under the Diplomatic Immunities and Privileges Act, an international convention that is legally binding in Dominica, or recognised principles of international law;
- (b) a diplomatic or consular mission of a foreign country established in Dominica with respect to transactions concluded for official mission purposes; and
- (c) an organisation or government pertaining to a technical assistance or humanitarian assistance agreement entered into with the Government of Dominica.

Refunds authorised with the concurrence of the Minister of Foreign Affairs.

Under section 54(2) of the Act, the refunds authorised are not available to a citizen or permanent resident of Dominica within the meaning of the Immigration Act.

(2) *List of eligible persons or organisations.* The list of persons or organisations eligible for refund under this regulation shall be issued from time to time by the Comptroller. The list must be approved by the Minister for Finance in consultation with the Minister for Foreign Affairs.

(3) *Documentation required with application for refund.* An application for a refund of tax to the persons specified in sub-regulation (1) must include documentation to support the refund request. The refund application must be submitted on the form and contain other information required by the Comptroller.

Refunds authorised with the concurrence of the Minister of Community Development.

23. (1) *Introduction.* Section 54(3) of the Act authorises the Minister for Finance, in consultation with the Minister of Community Development, to provide by regulations for refunds of tax paid on a supply of an unconditional gift of goods or services to an approved charitable organisation for use in connection with its charitable purpose. The refund under section 54(3) is not available for acquisitions made for resale.

(2) *Approved charitable organisation.* An approved charitable organisation, for purposes of this regulation, is an organisation included in the definition of an approved charitable organisation in regulation 1.

(3) *Documentation required with application for refund.* An application by an approved charitable organisation for a refund of tax under section 54 of the Act must include documentation to support the refund request. The refund application must be submitted on the form and contain other information required by the Comptroller.

24. Section 63 of the Act defines records as including accounting records, accounts, books, computer-stored information, and other relevant documents. The other relevant documents shall include documents that the Comptroller specifies as required to be maintained by a person.

Records.

25. Section 64(1) requires persons liable for tax under the Act to maintain specified records in Dominica. These records must be maintained at the person's principal place of business. For this purpose, the required records shall include records that the Comptroller specifies as required to be maintained in Dominica by such persons.

Records to be maintained in Dominica.

26. Section 106 of the Act authorises the Minister to extinguish a person's liability for tax, penalty, and interest due and payable under the Act. An extinguishment can be authorised only after the Comptroller completes a full investigation to determine the amount of a person's liability that is not collectible.

Remission of tax.

27. (1) Introduction. Under section 108(13) of the Act, the Minister may make regulations governing the transition from the repealed taxes to the value added tax. This regulation governs the registration for persons who are required to apply for registration as of the date the Act becomes effective. In order to issue tax invoices on the date the Act becomes effective, a person required to register must apply for registration before the Act becomes effective.

Transition rule requiring an application for registration before the effective date of the tax.

(2) *Persons Registered for Sales Tax.* Except in cases where they satisfy the Comptroller in advance of the effective date of VAT that they are not required to apply for VAT registration, all persons registered under the Sales Tax are required to apply for registration for VAT no less than 30 calendar days before the effective date of the VAT.

(3) *Persons Registered for Consumption Tax.* Except in cases where they satisfy the Comptroller in advance of the effective date of VAT that they are not required to apply for VAT registration, all persons registered under the Consumption Tax are

required to apply for registration for VAT no less than 30 calendar days before the effective date of the VAT. Persons registered for Consumption Tax may satisfy the Comptroller that they are not required to register if they comply with the following conditions:

- (a) File a form specified by the Comptroller by the date provided in the preceding sentence.
- (b) Affirm in the form required in (a) that it has not in the past 12 months ending on the effective date of the VAT, nor will it in the next 12 months beginning on the effective date of the VAT, make supplies taxable under the VAT Act exceeding the threshold required for registration under section 11 of the Act.

(4) *Persons Not Registered for Sales Tax or Consumption Tax.* Any person not otherwise required to register for VAT before the effective date of the VAT must apply for registration no less than 30 calendar days before the effective date of the VAT if the person will be required to apply for registration as of the effective date of the VAT under section 11 of the Act.

(5) A person who fails to apply for registration as required by this regulation is liable for a penalty of \$50 per day for each day or portion thereof that the failure continues.

(6) For purposes of this regulation, the Comptroller must serve a notice in writing of the decision on the application made under this regulation within 30 days of receipt of the application, and the failure to do so is treated as a decision by the Comptroller to register the applicant.

Contracts concluded.

28. Section 108(5) and (6) of the Act contains the transition rule governing contracts concluded before and after the March 1, 2006 effective date of the VAT. For this purpose, a contract is concluded when the parties enter into the contract.

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* Regulations 29 to 100 are to be made later.

CHAPTER 2*Zero-Rated Supplies*

101. Where a registered person has applied the rate of zero percent to a supply under Schedule I of the Act and under the regulations, the registered person must obtain and retain documentary proof acceptable to the Comptroller substantiating the person's entitlement to apply the zero rate to the supply. The registered person also must comply with all other conditions or restrictions that the Comptroller may impose for the protection of the revenue.

Substantiation of zero rating.

102. (1) Definitions. In this regulation –

Export of goods or services.

“export country” means any country other than Dominica and includes any place which is not situated in Dominica, but does not include a specific country or territory that the Minister of Finance may by Order designate as one that is not an export country;

“exported from Dominica” in relation to any movable goods supplied by a registered person under a sale or a credit agreement, means, subject to Schedule I, paragraph 4 of the Act -

- (a) consigned or delivered by the registered person to the recipient at an address in an export country as evidenced by documentary proof acceptable to the Comptroller; or
- (b) delivered by the registered person to the owner or charterer of a foreign-going aircraft or foreign-going vessel when such aircraft or vessel is going to a destination in an export country and such goods are for use or consumption in such aircraft or vessel, as the case may be.

(2) *Minister's designation that foreign country is not an export country.* The Minister may designate a country as one that is not an export country, but it is anticipated that this power will be exercised only in exceptional circumstances. The power may be exercised if another country discriminates against Dominica in the treatment of exports to Dominica under its value added tax or comparable tax.

(3) *Substantiation of zero rating.* To obtain zero rating for the export of goods and related services under this regulation, the exporter, at the port of exit, must identify the goods and present documentary proof required by the Comptroller. The export must comply with the requirements of Schedule I, paragraph 4(1) of the Act.

(4) *Supply by a licensed duty-free vendor.* Schedule I, paragraph 3(1)(c) of the Act zero rates a supply of goods by a licensed duty-free vendor. Zero rating applies only if that supplier provides documentation satisfactory to the Comptroller that the goods have been exported from Dominica. A licensed duty-free vendor is a vendor licensed under the Customs (Duty-Free Shopping) Act. The required documentation must be in the form and include the information required by the Comptroller of Customs.

(5) *Re-importation of goods exported from Dominica.* According to Schedule I, paragraph 4(2) of the Act, goods are not "exported from Dominica" if the goods have been or will be re-imported to Dominica by the supplier for export.

Fuel.

103. Schedule I, paragraph 3(1)(g) of the Act zero rates the supply of fuel. Fuel is motor spirit (gasoline) and other light oils and preparations, kerosene and certain other medium oils, gas oils, fuel oils not elsewhere specified or included, and liquefied petroleum gases under Customs Tariff Headings 2710.10, 2710.20, 2710.30, 2710.40, and 2711.10. For example, it does not include other petroleum products used in the operation of a vehicle.

104. (1) *Items covered.* Schedule I, paragraph 3(1)(h) of the Act zero rates the supply of flour, milk, rice, and sugar. Imports of the same products are exempt from tax under section 21(b) of the Act.

Food items.

(2) *Flour.* Zero-rating applies to the supply of flour under Customs Tariff Headings 11.01 and 11.02. Zero-rated flour is wheat or meslin flour, and cereal flours.

(3) *Milk.* Zero-rating applies to the supply of milk covered under Customs Tariff Headings 04.01 and 04.02. Zero-rated milk is milk or cream that is not concentrated nor containing added sugar or other sweetening matter; and milk and cream that is concentrated or containing added sugar or other sweetening matter. For example, buttermilk, yoghurt, and cheese do not qualify as milk.

(4) *Rice.* Zero-rated rice is rice covered under Customs Tariff Heading 10.06. It includes husked, milled, polished, par-boiled, and broken rice.

(5) *Sugar.* Zero-rated sugar is sugar covered under Customs Tariff Heading 1701.10; that is, raw sugar not containing added flavouring or colouring matter. For example, the exemption does not cover icing sugar, lactose, and maple sugar.

105. (1) *Introduction.* Schedule I, paragraph 3(1)(i) of the Act zero-rates the supply of a variety of products used to engage in agriculture and to transport unprocessed agricultural products. Unprocessed agricultural products are mentioned in Regulation 209.

Supplies of specified agricultural inputs.

(2) *Seedlings, cuttings, and fertilizers.* Schedule I, paragraph 3(1)(i)(i) of the Act zero-rates the supply of agricultural inputs classified as seedlings, cuttings, and fertilizers. These items are zero-rated if supplied in a form used for cultivation. This category includes not only seeds, but bulbs and roots when provided for cultivation. Fertilizers formulated for agricultural use are zero-rated as well.

(3) *Pesticides, insecticides, and other treatments approved for agricultural use.* Schedule I, paragraph 3(1)(i)(ii)

of the Act zero-rates pesticides, insecticides, and other treatments that the Minister of Agriculture declares by notice in the Gazette to be one of these preparations formulated for agricultural use that qualify under this sub-regulation.

(4) *Herbicides and fungicides.* Schedule I, paragraph 3(1)(i)(iii) of the Act zero-rates agricultural inputs that are classified as herbicides and fungicides under Customs Tariff Heading 3808.20.00 .

(5) *Hay, fodder, silage, and animal feed other than for pets.* Schedule I, paragraph 3(1)(i)(iv) of the Act zero-rates several items of animal feed. Hay, fodder, silage and animal feed are zero-rated. Zero rating is limited to products intended and sold for the feeding of livestock, poultry, fish, or wild animals (including wild birds not generally kept as household pets). Stock lick and substances used as a stock lick are zero-rated, whether or not they possess medicinal properties. The zero-rating does not apply to food for domesticated animals generally held as pets. For example, zero-rating does not apply to food sold for dogs, cats, and birds.

(6) *Specially designed ventilated boxes and packing film.* Schedule I, paragraph 3(1)(i)(v) of the Act zero-rates supplies of ventilated boxes and packing film that are specifically designed for use in transporting unprocessed agriculture products. The zero rating extends to boxes designed to transport flowers. Other boxes and packing film are not zero-rated, even if used to transport unprocessed agriculture products.

(7) *Agricultural and horticultural machinery.* Schedule I, paragraph 3(1)(i)(vi) of the Act zero-rates the supply of machinery and equipment that is specifically designed or adapted for use in agriculture and horticulture.

Supplies of specified fishing inputs.

106. (1) *In general.* Schedule I, paragraph 3(1)(j) of the Act zero rates a list of inputs used in the fishing business.

(2) *Supplies zero-rated.* The inputs listed as zero-rated supplies in Schedule I, paragraph 3(1)(j) of the Act are: fibreglass

and wooden boats, anchors, grapnels, G.P.S., compass, V.H.F. radio, fish finder, flare guns and flares, life vests, 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.

107. (1) *In general.* Schedule I, paragraph 3(1)(k) of the Act zero rates the supply of certain medical devices included under Customs Tariff Headings 87.13 and 90.21.

Supplies of medical devices.

(2) *Medical devices zero-rated.* The zero-rated medical devices are the invalid carriages and orthopaedic appliances covered under the Customs Tariff Headings 87.13 and 90.12. Other medical devices, such as eyeglasses and other corrective lenses, are not zero-rated.

108. (1) *In general.* Schedule I, paragraph 3(1)(l) of the Act zero-rates the first 50 units of electrical energy charged per billing cycle on a taxable supply to a dwelling by Dominica Electricity Services Limited in each billing period. For this purpose, units means kilowatt hours. A dwelling is defined in Schedule II, paragraph 1 of the Act and discussed in Regulation 205. The zero-rated supply is the total consideration charged for the 50 units of electrical energy, including the normal and any surcharge imposed.

Supplies of electrical energy.

(2) *Conditions and limitation imposed.* The zero rating applies to a supply of electrical energy to a person in a billing period. The person is entitled to only one zero-rated supply of 50 units of electrical energy per billing period, even if the person's billing is split into multiple bills for different areas of the dwelling. For example, if an individual has separate meters and invoices for cooking, heating, and lighting in a home, the individual is eligible for zero-rating for only one invoice per billing period.

109. Schedule I, paragraph 3(1)(m) of the Act zero-rates the supply of telecommunication services to a telecommunication carrier that conducts its business solely outside Dominica. This zero-rating is designed to cover telecommunication services that are in transit over Dominica or through Dominican facilities, but destined for consumption or use by a person outside Dominica.

Telecommunications services for nonresident carriers.

Transfer of a going concern.

110. (1) *In general.* The transfer of all or a portion of a taxable activity capable of separate operation as a going concern in conformity with section 4(3) is a supply of goods in the course or furtherance of the taxable activity under section 4(2) of the Act. A person selling a going concern must notify the Comptroller under section 13(14) of the Act of the upcoming sale at least three calendar days before the earliest of the date -

- (a) the sale closes;
- (b) the purchaser acquires any legal interest in the assets to be acquired; and
- (c) the assets of the going concern are transferred, if the transfer meets the requirements of Schedule I, paragraph 3(3) of the Act, the transfer can be zero-rated. In appropriate cases described in section 4(18) of the Act, a portion or the entire transfer that is zero-rated to the supplier may be treated at the time of acquisition as a taxable supply by the person acquiring the going concern.

(2) *Conditions under Schedule I, paragraph 3(3) of the Act to obtain zero-rating.* To obtain zero-rating, the parties must comply with the following requirements imposed under Schedule I, paragraph 3(3) of the Act:

- (a) The supply must be of a going concern between registered persons that meets the requirements of section 4(2) and 4(3);
- (b) The transferor must satisfy the pre-supply notice requirement imposed by section 13(14);
- (c) Under a post-supply notice requirement, a notice of the supply must be furnished to the Comptroller in writing and signed by the transferor and transferee; and
- (d) The post-supply notice must include the essential details of the supply.

(3) *A going concern.* A going concern is an income-producing activity capable of separate operation that is in fact operational and capable of being carried on without interruption after the transfer, but not a dormant or prospective business. A transfer qualifies if it constitutes the entire taxable activity of the supplier that is a going concern or a portion of a taxable activity of the supplier if capable of being carried on as a going concern as required by section 4(3).

- (3.1) A supply can be of a going concern even if the transferred business is not profitable, or is being transferred to a liquidator, receiver, trustee in bankruptcy, or other person appointed upon the insolvency of a registered person.
- (3.2) The supply is zero-rated only if it takes place on or after the effective date of the VAT.
- (3.3) A supply of a going concern comes within the zero rating of Schedule I, paragraph 3(3) of the Act, even if the supply is to a person with no previous interest in the business. Zero-rating applies to a supply of an existing business that involves only a change of legal entity or form of doing business, such as from a partnership to an incorporated company.
- (3.4) It is not necessary for the transferee to operate the particular income-producing activity acquired, so long as it is capable of separate operation.
- (3.5) To illustrate the concept of a going concern, the supply of a vacant factory building held as an investment does not qualify for zero-rating as the transfer of a going concern. The transfer of machinery and a factory building that have been used to manufacture shipping boxes is a supply of a going concern that can qualify for zero-rating.

(4) *Pre-supply notice requirement.* A person selling a going concern must notify the Comptroller under section 13(14) of the Act of the upcoming sale at least three calendar days before the earliest of the date –

- (a) the sale closes;
- (b) the purchaser acquires any legal interest in the assets to be acquired; and
- (c) the assets of the going concern are transferred.

(5) *Post-supply notice requirement.* Schedule I, paragraph 3(3)(b) requires the transferor and transferee to furnish the Comptroller a notice in writing within 21-calendar days after the supply takes place.

- (5.1) Unless the transferor and transferee both are registered persons and both sign and file in a timely manner the post-supply notice expressing their intent to treat the transfer as a supply of a going concern under Schedule I, paragraph 3(3) of the Act, the transfer is not zero-rated, even if in fact it is a transfer of a going concern.
- (5.2) The Schedule I, paragraph 3(3)(b) 21-calendar day period within which the notice must be filed is determined under the time of supply rules in section 14 of the Act.
- (5.3) If the transferee previously was not a registered person, the supply can qualify for zero rating only if the transferee is registered by the date the transfer takes place.
- (5.4) If the parties satisfy the notice requirements in Schedule I, paragraph 3(3) and the transfer does not qualify as a zero-rated supply of a going concern under section 4(2) of the Act, the consideration charged for the supply is treated as being exclusive of VAT, the transfer is subject to tax, the value of the supply for tax purposes is the consideration charged, and the transferee can claim an input tax deduction to the extent allowable under the Act. If under the agreement between the parties the selling price is increased to include VAT in the event of nonqualification of the

transfer, then the value of the supply is determined on the basis of the adjusted selling price under the contract (reduced, under the general rules, by the amount of VAT).

(6) *Details of the transfer.* Under Schedule I, paragraph 3(3)(c), the notice to the Comptroller required under this regulation must include the details of the supply. To satisfy this requirement, the notice must include a complete list of the assets transferred, the market value of each asset transferred, the nature of the business conducted by the transferor and the business to be conducted by the transferee with the acquired assets, and the length of time the transferor's business has been operated with the assets transferred. The transferor must report any assets that will be used in making supplies that are not taxable supplies. The Comptroller may require additional information from the transferor or transferee, or both, or may waive the requirement to value individual assets of nominal value.

(7) *Supply upon cancellation of transferor's registration.* If the transferor cancels its registration as part of the transfer of a going concern, then under section 4(21) of the Act the goods not transferred as part of the going concern generally constitute a supply of the goods by the transferor at their market values, except that this rule does not apply to goods for which the transferor has not been allowed an input tax deduction under section 25 of the Act.

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CHAPTER 3

Exempt Supplies

201. (1) *In general.* A supply of financial services is exempt from tax under Schedule II, paragraph 2(a) of the Act to the extent provided in regulations. Financial services exempt under this regulation are exempt, whether provided for explicit or implicit fees.

Financial services.

* Regulations 111 to 200 are to be made later

(2) *Definition of financial services.* The financial services exempt under the definition in Schedule II, paragraph (1) of the Act, include the following:

- (a) granting, negotiating, and dealing with loans, credit, credit card transactions, credit guarantees, and any security for money, including management of loans, credit, or credit guarantees by the grantor; or
 - (b) transactions concerning money (including the exchange of currency), deposit, savings, and current accounts, payments, transfers, debts, cheques, or negotiable instruments, other than debt collection and factoring; or
 - (c) provision of credit under a hire-purchase agreement or sale of goods, but only if the finance charges are invoiced separately from the consideration payable for the goods, and the separate charge is disclosed to the recipient of the goods; or
 - (d) the provision, or transfer of ownership, of an insurance policy, or the provision of reinsurance in respect of any such policy, whether the services are performed by insurance brokers or insurance agents; or
 - (e) the management of investment funds, including transactions involving an interest in a benefit fund, provident fund, pension fund, retirement annuity fund, or preservation fund; or
 - (f) transactions by issuers, brokers, or dealers involving shares, stock, bonds, and other securities, but not including custody services; or
 - (g) other financial services rendered by banks within the scope of their banking business.
- (2.1) *Invoicing finance charges.* For purposes of sub-regulation (2)(c) of this regulation, if a supplier makes

a taxable supply of goods on credit and includes the finance charges in the total amount payable by the buyer in instalments, the total amount payable for the goods (including any finance charges) is subject to tax. If, on the other hand, the seller lists the consideration for the goods and the finance charges separately on the tax invoice, tax is imposed at the time of the supply only on the consideration for the goods.

(3) *Definitions of specific terms.* For purposes of this regulation, the following definitions apply:

“*cheque*” includes a postal order, a money order, a traveller’s cheque, or any order or authorization (whether in writing, by electronic means, or otherwise) to a financial institution to credit or debit any account;

“*currency*” means any banknote or other currency of any country, other than when used as a collector’s piece, investment article, item of numismatic interest, or otherwise than as a medium of exchange;

“*insurance policy*” means insurance cover under a policy treated as general insurance business or as long-term insurance business under the Insurance Act;

(4) *Financial services rendered by businesses that are not registered as banks or financial institutions.* Financial services that are listed as exempt under this regulation are exempt, whether rendered by a registered bank or financial institution or by any other person.

(5) *Taxable services, even if associated with financial services.* Some services are not exempt under Schedule II, paragraph 2(a) of the Act, whether or not they are rendered in connection with an exempt financial service. They include, but are not limited to the following:

(a) Legal, accounting and record package services, actuarial, notary, and tax agency services (in-

cluding advisory services) when rendered to a supplier of financial services or to a customer of that supplier of financial services;

- (b) Safe custody for cash, documents, or other items;
- (c) Data processing and payroll services;
- (d) Debt collection or factoring services;
- (e) Trustee, financial advisory, and estate planning services; and
- (f) Leases, licenses, and similar arrangements relating to property other than a financial instrument.

(6) *Accounting and record package services.* For purposes of sub-regulation (5) of this regulation, accounting and record package services are services provided to a financial institution rendering exempt financial services that include a financial clearing system that may be part of the settlement process, the posting of financial transactions to or the maintenance of the accounts of the financial institution's customers, and the rendering of services ancillary to the services just described.

(7) *Factoring.* The mere acquisition of a debt is not a taxable transaction, including debt acquired by a factor. The services related to debt recovery, litigation, and the management of the recovery of the amount due from debtors are taxable, including sales accounting services under a factoring arrangement and other services related to factoring.

(8) *Mixed supplies.* If an exempt or taxable financial service is incidental to a main supply, or if such a financial service is the main service, the rules in section 4 of the Act on mixed and incidental supplies apply.

(9) *Input tax deduction allocation rules.* Banks and other financial institutions that make both taxable and exempt supplies may claim input tax deductions under section 26(3) of the

Act only on domestic acquisitions (including rentals) and imports used directly in making taxable transactions (section 26(5) of the Act). Other providers of financial services are subject to the allocation rules in section 26 of the Act.

- (9.1) *De minimis exception to the allocation rules.* Consistent with section 26(4) of the Act, the provisions under section 26(3) of the Act on the allocation of input tax deductions between exempt and taxable transactions do not apply (and full input tax deductions otherwise allowable are allowed) to a registered person who derives more than 90 percent of the person's total supplies in a tax period from taxable transactions. For this purpose, when calculating the value of the taxable and total supplies, the supplier should use gross figures for supplies other than intermediation services and use net interest amounts (interest income less interest expense) for financial intermediation services.
- (9.2) *Comptroller's discretion to authorize another allocation method.* Section 26(6) of the Act and Regulation 12 gives the Comptroller discretion to deviate from the Act's allocation rules and determine the allocation of input tax deductions between taxable and exempt supplies on a basis that the Comptroller considers reasonable. In appropriate cases, a financial service provider with annual turnover of \$150,000 or less may be granted permission to allocate its input tax deductions solely on the basis of the ratio of taxable supplies to total supplies, but to obtain this approval, the financial service provider must satisfy the Comptroller:
- (a) that there are substantial practical difficulties in using the allocation rules in the Act; and

(b) that use of the formula in this sub-regulation would result in a reasonably accurate allocation of input tax deductions to taxable supplies.

(9.3) *Records and other data.* Regardless of method used to allocate input tax deductions under section 26 of the Act, the registered person must retain records to substantiate the method used. The Comptroller may require financial service providers to submit statistical data on various product lines.

(10) *Insurance exemption.* The exemption for financial services extends to the premiums for insurance cover under an insurance policy.

(11) *Riders to insurance policies.* The premium attributable to riders attached to an insurance policy that is exempt from tax constitutes exempt services if the riders are only incidental to the provision of the insurance cover.

(11.1) Services covered in riders to exempt insurance policies that are not incidental to the insurance coverage are taxable to the extent that the independent supply of those services would be taxable.

(11.2) The Comptroller shall have the sole discretion to determine whether a non-insurance rider is incidental to the main insurance policy.

(12) *Issuer of an insurance policy.* The premium on an insurance policy is exempt only if the premium is charged on a policy issued by a person who is registered to issue such policies under the Insurance Act.

(13) *No exemption for warranties.* An insurance policy does not include insurance cover on a warranty in respect

of the quality, fitness or performance of tangible property. A supply customarily provided in the form of a warranty that goods or services will perform as promised or the items can be returned or repaired is not an exempt supply if structured as an insurance policy.

202. (1) *In general.* Schedule II, paragraph 2(b) of the Act exempts the supply of medical services and the services of registered optometrists to the extent provided in regulations.

Medical services and optometrist services.

Medical services are exempt, whether provided with or without charge and whether paid by the patient or resident or any third party, if the medical services meet two conditions:

- (a) they are rendered in a qualified medical facility or by a qualified medical practitioner, or both, and
- (b) they qualify as exempt medical services in this regulation.

(2) *Qualified medical facility.* For a service rendered in a facility to be an exempt medical service, the service must be rendered in a qualified medical facility. For purposes of this regulation, a qualified medical facility is the office of a qualified medical practitioner. It also includes a licenced hospital, maternity home, nursing home, convalescent home, or clinic.

(3) *Qualified medical practitioner.* A qualified medical service is exempt if it is provided by a qualified medical practitioner or under the supervision and control of a qualified medical practitioner. A qualified medical practitioner is a person who is registered as being qualified under the Medical Practitioners, Dentists and Veterinary Surgeons Registration Act, the Nurses Registration Act, and the Midwife Act to perform medical, dental, nursing, convalescent, rehabilitation, midwifery, paramedical, and other services.

(4) *Qualified medical services in general.* To qualify for the exemption, medical services must consist of qualified

services (including meals and accommodations) in a qualified medical facility, or medical services rendered by a qualified medical practitioner, or both. Medical services involve the diagnosis, treatment, prevention, or amelioration of a disease, including the promotion of mental health, but do not include services for cosmetic reasons other than those required in connection with a disease, trauma, or congenital deformity.

(5) *Qualified services in a qualified medical facility.* For purposes of sub-regulation (1) of this regulation, exempt medical services include the services provided to a dweller or patient by a qualified medical practitioner in a qualified facility, as well as meals and accommodations, nursing and personal care, and assistance with daily living activities to meet the needs of the resident or patient.

(6) *Exempt medical services.* For purposes of sub-regulation (1) of this regulation, exempt medical services include the following:

- (a) medicines and drugs that are administered in a hospital, maternity, nursing, or convalescent home, or clinic, for which there is no separate charge;
- (b) laboratory, x-ray, or other diagnostic services;
- (c) the use of operating rooms, case rooms, or anesthetic facilities, including necessary equipment or supplies;
- (d) the use of radiotherapy, physiotherapy, or occupational therapy facilities in rendering exempt medical services;
- (e) accommodation and meals (except in a restaurant or cafeteria available to persons other than patients or residents) provided to patients or residents in the course of receiving exempt medical services;

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- (f) services rendered by the medical facility staff (including orderlies or technicians) in connection with exempt medical services;
 - (g) dental, periodontal, and endodontal services rendered in connection with a disease, trauma, or congenital deformity, but not dentistry for cosmetic reasons;
 - (h) ambulance services; and
 - (i) psychoanalytic services.

(7) *Prescription drugs.* Prescription drugs and other medicines are taxable if supplied for a separate charge, whether supplied by a medical practitioner, in a medical facility, by a pharmacy, or otherwise.

203. (1) *In general.* Schedule II, paragraph 2(c) of the Act exempts the supply of veterinary services to the extent provided in regulations. The exemption covers the professional services rendered by a veterinarian registered under the Medical Practitioners, Dentists and Veterinary Surgeons Registration Act. The exemption does not cover services rendered for domesticated animals like dogs, cats, and birds.

Veterinarian services.

(2) *Prescription drugs.* Prescription drugs and other medicines are taxable if supplied or administered by a veterinarian or anyone else for a separately-invoiced charge.

204. (1) *In general.* Schedule II, paragraph 2(d) of the Act exempts education services as defined in Schedule II, paragraph 1 of the Act, to the extent provided in regulations. Qualified charges for education services are exempt if the services meet two conditions:

Educational services.

- (a) they are specified in these regulations; and
- (b) they are provided to students by a qualified educational institution.

(2) *Qualified educational institutions.* To qualify for the exemption, the services must be provided to students by a duly registered:

- (a) pre-primary, primary, or secondary school;
- (b) technical college, community college, or university; or
- (c) educational institution established to promote adult education, vocational training, technical education, or for the education or training of physically or mentally handicapped persons.

(2.1) *Public and private institutions.* An educational institution in sub-regulation (2) of this regulation is qualified, whether it is a private school operating on a for-profit basis, or a non-profit organisation, church, charity, or a department of government.

(2.2) *Pre-primary school defined.* A pre-primary school is defined under section 2 of the Act as a registered and licensed Early Childhood Education Facility.

(2.3) *Accreditation required.* An educational institution in sub-regulation (2) of this regulation is a qualified institution only if the institution is registered or is being evaluated for registration by the accrediting or licensing agency at the time the services are rendered.

(3) *Exempt education services.* The following categories of services qualify as exempt education services:

- (a) courses of instruction provided to students at a qualified educational institution;
- (b) qualified meal plans, and other associated goods or services provided in kind by a qualified educational institution as part of the education program of a qualified provider of education services;

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- (c) the administration of examinations, if provided by the educational institution or the State; and
 - (d) charges for tuition, school facilities, and curriculum-related activities and instruction under sub-regulation (4) of this regulation.

Transportation of students. Charges for school bus transportation comes within the exemption for domestic transportation under Schedule II, paragraph 2(n) of the Act and regulation 43.

(4) *Qualified charges for tuition, facilities, and curriculum-related activities and instruction.* Qualified charges for tuition, facilities, and curriculum-related activities and instruction are:

- (a) instruction or tutoring related to a qualified course;
- (b) compulsory levies for facilities as part of a supply of exempt educational services;
- (c) student council fees, athletic fees, and other mandatory fees related to course registration;
- (d) charges for reports, library services, identity cards, record keeping and other administrative services provided by the educational institution and directly related to the supply of education courses; and
- (e) charges for course materials, the rental of curriculum-related goods by the supplier of the education (e.g., the rental of musical instruments), field trips directly related to the curriculum if not predominantly recreational.

Facility charges. Qualified facility charges are charges for buildings, grounds, libraries, and computer, science and other laboratories.

(5) *Education services not covered by the exemption.* The exemption for education services does not cover the following education courses –

- (a) courses in video recording or photography or other hobbies, unless they are part of a degree- or diploma-granting program;
- (b) courses, such as picture framing, cooking, and personal investment, that are designed to improve knowledge for personal purposes; and
- (c) music lessons that are not part of a school curriculum.

(6) *Education of religious workers.* Religious workers receiving education are treated as students for purposes of this regulation.

(7) *Exempt education services provided by a pre-primary, primary, or secondary school.* In addition to services exempt under sub-regulation (3) of this regulation, exempt education services rendered by a pre-primary, primary, or secondary school include –

- (a) basic instruction, including special education courses;
- (b) fees or charges for a program before or after school that is operated by the school to the extent exempt as after-school care under Schedule II, paragraph 2(i) of the Act and regulation 207;
- (c) charges for the use of school musical instruments or sports equipment;
- (d) services rendered by students or their teachers as part of the instructional program; and
- (e) charges for students to attend a school play, dance, field trip, or other school-sanctioned activity primarily for the students.

(8) *Exempt education services rendered by a university, community college, or technical college.* Exempt education services rendered by a university, community college, or technical college include in class and correspondence courses that qualify for credit toward a degree or diploma, whether or not the student is pursuing a degree or diploma program.

(9) *Exempt adult education, vocational training, technical education, and education or training of physically or mentally handicapped persons.* The education exemption for adult education, vocational training, technical education, and for the education or training of physically or mentally handicapped persons covers charges for –

- (a) adult education courses leading to a degree or diploma or courses that are likely to enhance employment-related skills of the students enrolled in the courses;
- (b) courses of study at a vocational school that develop or enhance a student's occupational skills;
- (c) courses leading to, or to maintain or upgrade, a professional or trade accreditation or designation recognized by the appropriate government accrediting agency; and
- (d) a certificate or examination in a course or program for accreditation or designation.

Employment-related skills. Courses enhance employment-related skills if the course objectives specify those skills that students will acquire, and there is a reasonable expectation that the skills taught will be used by the students in their employment, businesses, professions or trades, rather than for recreational, hobby, artistic, or cultural purposes.

(10) *Supplies, other than course, not covered by the exemption.* The exemption for education services does not include –

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- (a) the rental of facilities by an educational institution to an outside group;
 - (b) commissions and other fees received from the placement of coin-operated machines on the institution's property; and
 - (c) the sale of non-course material, such as items containing the school logo.

Dwellings and leases of land for dwellings or agricultural purposes.

205. (1) *In general.* Schedule II, paragraph 2(e) of the Act exempts from tax the sale of a residential accommodation (a dwelling), including the land attributable to the residential accommodation. The lease of a residential accommodation (including land for a residential accommodation) or the grant by an employer of a residential accommodation to an employee or officer holder is exempt under Schedule II, paragraph 2(f) of the Act. The sale or lease of land used or to be used for agricultural purposes is exempt under Schedule II, paragraph 2(g) of the Act. All of these supplies are exempt to the extent provided in regulations. Other leases of real property, including land, are taxable.

(2) *Dwelling.* A "dwelling," defined in Schedule II, paragraph (1) of the Act includes buildings, structures, and other places or parts thereof that are used or intended to be used predominantly as places of residence or abode of natural persons, including appurtenances, but not commercial rental establishments. The land surrounding a dwelling complex, including the driveway, paths, gardens and landscaped grounds for the use and enjoyment of residents is part of the dwelling. A commercial rental establishment is defined in Schedule II, paragraph (1) of the Act.

(3) *Input tax deductions.* Under section 26 of the Act, a registered person who leases new or used property as a dwelling is denied input tax deductions for tax on any costs attributable to the exempt lease of the dwelling.

(4) *Employer-provided dwelling.* When an employer provides a dwelling to an employee or office holder, and the benefit is limited to the recipient's period of employment, term of office, or other agreed period, the supply of the dwelling is exempt from tax. However, the same fringe benefit may be treated as a taxable supply by the employer in the course or furtherance of a taxable activity. The exemption takes priority. As a result, the employer under section 26 of the Act is denied input tax deductions for tax on costs attributable to this exempt fringe benefit.

(5) *Sale or lease of parking space in a dwelling complex.* The lease of a parking space in a dwelling complex as part of a lease of a dwelling is exempt.

(6) *Sales and leases of land for agricultural purposes.* Under Schedule II, paragraph 2(g) of the Act exempts the sale or lease of land if it is used or to be used principally for agricultural purposes. To qualify for the exemption, the supplier must receive and retain written documentary evidence that the land will be used for an agricultural purpose. Any portion of the land used for a taxable activity is not covered by the exemption. An agricultural purpose includes activities related to livestock, and the cultivation of crops, seeds, plants, and trees. This exemption does not apply to the disposition or sale of the lease. The sale of agricultural land is exempt if the purchaser certifies in writing that the land will be used for agricultural purposes. The certification must be in the form approved by the Comptroller. The seller must submit this certification with the return for the period covered by the sale in the form and in the manner provided by the Comptroller.

206. (1) *In general.* Schedule II, paragraph 2(h) of the Act, to the extent provided in regulations, exempts a supply by the State or a local authority if the consideration for the supply is nominal in amount or not intended to recover costs. This exemption is intended to prevent the State or a local authority that ordinarily provides certain goods or services without charge to start charging a nominal consideration for its goods or services in order to claim input tax deductions on acquisitions used in making the

Supplies provided by the State or a local authority for nominal consideration or consideration insufficient to recover costs.

supplies of those goods or services. This exemption serves as an anti-abuse rule to be invoked by the Comptroller, not at the initiative of the State or a local authority. The exemption applies when the Comptroller has made a determination that the consideration charged is nominal in amount or not intended to recover the cost of the goods provided or services rendered.

(2) *Supplies covered by the exemption.* This exemption covers supplies made by the State or a local authority for consideration that is substantially below fair value and is not intended to recover the costs of providing the goods or services. For example, if a local authority provides clothes for needy individuals and charges a nominal price, such as \$1, for articles of clothing worth \$25, the supply is exempt from tax and the local authority is denied input tax deductions on acquisitions allocable to these supplies.

Day care, after-school

207. (1) *In general.* To the extent provided in regulations, Schedule II, paragraph 2(i) of the Act exempts a supply of services by a day care business for pre-school children or older persons with physical or mental handicaps, after-school care provided in a pre-primary or primary school, and summer camp services for children under 18 years of age. For purposes of this regulation, a pre-primary school is a registered and licensed Early Childhood Education Facility.

(2) *Services covered.* Supplies by a day care provider are exempt from tax to the extent that the charges are for the care of the pre-school child or the handicapped person while at the day care facility, and any meals and supplies provided at the facility. For example, if a person provides day care for a pre-school child and charges hourly, daily or other periodic rates that include the care of the child and meals at the facility, the charges are exempt from tax. Charges for the care of a child and meals in a pre-primary or primary school before or after school hours are exempt. Summer camp charges for accommodations, meals, and activities for children under 18 years of age are exempt from tax.

Supplies of clothing, equipment, travel, and other goods or services not specifically listed as exempt in this sub-regulation are not covered by this exemption.

208. To the extent provided in regulations, Schedule II, paragraph 2(j) of the Act exempts from tax supplies of games of chance conducted by non-profit organisations and lotteries operated by two lottery commissions. The lotteries that are exempt from tax are those conducted by Dominica Lotteries Commission and the Windward Islands Lotteries Commission. The bets placed at the games of chance conducted by non-profit organisations and the sale of lottery tickets by these commissions are not subject to tax, and the non-profit organisations and lottery commissions are not entitled to deduct input tax on winnings paid out or on acquisitions used in making these exempt supplies.

Lotteries and specified games of chance.

209. (1) *In general.* Schedule II, paragraph 2(k) of the Act exempts a supply by a producer of unprocessed agricultural products. Schedule II, paragraph 2(s) of the Act exempts the export of unprocessed agricultural products. The supplies and exports are exempt to the extent provided in regulations.

Unprocessed agricultural products.

(2) *Supply of unprocessed agricultural products.* The domestic supply of unprocessed agricultural products is exempt if supplied by the producer of those products, but only if the products do not undergo further processing before sale. Unprocessed agricultural products include seeds, plants, trees, vines, and their produce, such as oranges or vegetables, so long as they do not undergo further processing after removal from the land, plant, tree, or vine. They also include raised or caught products, such as fish, whether supplied live or dead.

(3) *Export of unprocessed agricultural products.* The export of unprocessed agricultural products are exempt from tax. Thus, the same products that are exempt if sold domestically are exempt if exported.

210. To the extent provided in regulations, Schedule II, paragraph 2(l) of the Act exempts the sale of bread, but only when sold

Bread.

by the person who baked the bread. The exemption covers bread and rolls that do not contain any added ingredients or sweeteners. For example, the exemption covers basic bread and dinner rolls, but not bread or rolls with icing, fruit, or chocolate added on top or inside the product.

International transport services pertaining to goods or passengers.

211. (1) *In general.* To the extent provided in regulations, Schedule II, paragraph 2(m) of the Act exempts the supply of international transport services. Schedule II, paragraph 1 of the Act, defines “international transport services.” They involve the service, including ancillary transport services, of transporting passengers or goods by road, water, or air on an international journey. Schedule II, paragraph 2(t) of the Act exempts services to a non-resident who is not a taxable person if the services are not provided through an agent or other person, and the services comprise the handling, pilotage, salvage, or towage of a foreign-going aircraft while in Dominica. Those services also are exempt if provided in connection with the operation or management of a foreign-going aircraft or foreign-going vessel. Services rendered to a non-resident who is not a taxable person are exempt if they are to arrange services ancillary to the transportation of goods within Dominica within Schedule II, paragraph 2(u) of the Act.

(2) *Definitions.* In this regulation –

“ancillary transport services,” as provided in Schedule II, paragraph 1 of the Act, means stevedoring services, lashing and securing services, cargo inspection services, preparation of customs documentation, container handling services, and storage of transported goods or goods to be transported;

“foreign-going aircraft” means an aircraft engaged in the transportation for reward of passengers or goods wholly or mainly on flights between airports in Dominica and airports in export countries or between airports in export countries;

“foreign-going vessel” means a vessel engaged in the transportation for reward of passengers or goods

wholly or mainly on voyages between seaports in Dominica and seaports in export countries or between seaports in export countries;

“international transport services” means, except for services zero-rated under Schedule I of the Act –

- (a) the services, including ancillary transport services, of transporting passengers or goods by road, water, or air -
 - (i) from a place outside Dominica to another place outside Dominica where the transport or part of the transport is across the territory of Dominica;
 - (ii) from a place outside Dominica to a place in Dominica; or
 - (iii) from a place in Dominica to a place outside Dominica;
- (b) the services of transporting passengers from a place in Dominica to another place in Dominica to the extent that the transport is by aircraft and constitutes “international carriage” as defined in Section 3 of the Convention on International Civil Aviation;
- (c) the services, including any ancillary transport services, of transporting goods from a place in Dominica to another place in Dominica to the extent that those services are supplied by the same supplier as part of the supply of services to which (a) of this definition applies; or
- (d) the services of insuring or the arranging of the insurance or the arranging of the transport of passengers or goods to which (a) to (c) of this definition applies.

(3) *Example of ancillary transport services within paragraph (c) of definition of international transport services.* Services, including ancillary transport services, within the defini-

tion of international transport services includes the storage of goods within Dominica by an export freight company (to be transported by air or ship) until the goods are accumulated from a number of domestic exporters and then transported in bulk to the dock or airport.

Domestic transport.

212. (1) *In general.* Schedule II, paragraph 2(n) of the Act exempts the supply of transportation of goods and passengers by land within Dominica by any mode of transport. The exemption applies when the major element of a supply is transport from one place to another. A tourist taking a taxi ride from an airport to a hotel is exempt from tax. If the transportation represents an incidental component of the main supply and is not an aim in itself, the supply is classified on the basis of the main supply. For example, the supply of a sightseeing tour within Dominica is a taxable supply. If the domestic transport portion of a domestic sightseeing tour is provided by a transport company or taxi association, the exempt domestic transport component of the tour is no more than the negotiated transport charge. If the domestic transport is provided by the company providing the sightseeing tour or activity, then the domestic transport is treated as incidental to the taxable sightseeing activity, and no portion of the tour or sightseeing charge is considered as attributable to exempt domestic transport.

(2) *Scope of exemption for the delivery of goods supplied domestically.* The domestic transportation of goods is exempt from tax only when the transportation constitutes a supply independent of the supply of the goods. If a seller supplies goods and includes in the price the service of transporting the goods to a location selected by the purchaser (such as a sale of f.o.b. destination), no portion of the consideration for the supply is exempt under Schedule II, paragraph 2(n) of the Act. If the seller supplies goods and charges the same consideration for the goods, whether the seller, the purchaser, or an independent transport company transports the goods from the location of the goods to a location selected by the purchaser, no portion of the consideration is exempt under Schedule II, paragraph 2(n) of the Act. If the

seller supplies goods for a consideration that does not include transportation, the purchaser is responsible for the transportation service, and the seller adds a separately-stated transportation charge to the selling price of the goods, the transportation charge is exempt under Schedule II, paragraph 2(n) of the Act.

(3) *Scope of exemption for the domestic delivery of imported goods.* If goods are imported and the domestic transportation of the goods is included in the value of the goods for VAT purposes under section 20(1) (a) of the Act, no part of the value of the import is exempt under Schedule II, paragraph 2(n) of the Act. The cost of freight added to the value of an import of goods under section 20(1)(b) of the Act does not include separately-stated charges for the domestic transportation of imported goods. Such separately-stated charges imposed on the purchaser for the domestic transportation of imported goods are exempt from tax under Schedule II, paragraph 2(n), except to the extent that such charges are included in the value of the goods for VAT purposes under section 20(1)(a) of the Act.

213. To the extent provided in regulations, a supply of water by the Dominica Water and Sewerage Company is exempt from tax under Schedule II, paragraph 2(o) of the Act. The exemption applies to water supplied for household, for commercial, or for agricultural use. The exemption does not apply to a supply by the company of water in a container that has a capacity of less than 50 litres or such other quantity as an order issued by the Minister shall specify.

Water provided by
Dominica water and
Sewerage Company.

214. (1) *In general.* To the extent provided in regulations, Schedule II, paragraph 2(p) of the Act exempts a supply of services by a Trade Union to a member or to another union of services if the supply is made in the ordinary course of its trade union activities. For example, the exemption applies to the representation of members in arbitration, but not to any commercial activities by the union that compete with private enterprise.

Services by trade union
to members.

(2) *Supplies not covered.* Services supplied by outside suppliers directly or indirectly to the union or a union member is not exempt. Goods supplied by the union to its members are not covered by the exemption.

Services provided by a facility to aged, indigent, infirm or disabled persons that need care.

215. To the extent provided in regulations, Schedule II, paragraph 2(q) of the Act exempts services provided directly by a home to described categories of persons that need care. The exemption applies to the care provided to aged, indigent, infirm, or disabled persons. It covers meals and accommodations provided in kind by the facility. For example, services provided directly by a home for the aged or an institution for infirm persons are exempt.

Membership and fees for specified sports associations.

216. (1) *In general.* To the extent provided in regulations, Schedule II, paragraph 2(r) of the Act exempts the consideration received by a non-profit sports association as membership subscriptions or fees. The exemption applies only to qualifying sports associations.

(2) *Qualifying sports associations.* A qualified sports association is a non-profit sports association that is affiliated with the National Sports Council under the Sports Act.

Articles of religious worship.

217. Schedule II, paragraph 2(v) of the Act exempts articles of religious worship to the extent provided in regulations. The exemption covers the import and domestic supply of articles used directly in religious services that are not customarily suitable for general use. For example, the exemption includes rosaries, communion cups, and vestments for religious leaders. The exemption covers the import and domestic supply of the covered items. It does not include wine, incense, or musical instruments.

Printed matter.

218. Schedule II, paragraph 2(w) of the Act exempts a supply of printed matter, articles and materials included under the Customs Tariff Headings 49.01 and 4903.00. The exemption covers newspapers and magazines.

Live animals and insects.

219. The supply of live animals or insects is exempt under Schedule II, paragraph 2(x) of the Act. The exemption does not cover domesticated animals generally held as pets.

* Regulations 220 to 300 are to be made later.

CHAPTER 4

Exempt Imports

301. Schedule III, paragraph 1 of the Act exempts the import of an unconditional gift of goods to an approved charitable organisation. An approved charitable organisation is defined in regulation 2. The exemption does not apply to goods acquired for re-sale.

Unconditional gifts of goods to approved charitable organisations.

302. Schedule III paragraph 2 of the Act exempts the import of an unconditional gift of goods if the goods are consigned to the State. The exemption applies only if before the goods are entered for Customs purposes, the Comptroller of Customs has written notification from the Financial Secretary that the goods are to be exempt from tax. The exemption does not apply to goods acquired for re-sale.

Unconditional gifts of goods to State.

303. (1) *In general.* To the extent provided in regulations, Schedule III, paragraph 9 of the Act exempts the import of goods by a Dominican who is returning home for permanent residence. This regulation defines the scope of that exemption that will be administered by the Comptroller of Customs.

Goods imported by a returning resident.

(2) *Returning resident.* The exemption provided under Schedule III, paragraph 9 is limited to a person who satisfies the eligibility conditions in paragraph (3) of this regulation and has:

- (a) a passport establishing Dominica nationality;
- (b) documents acceptable to the Comptroller of Customs that substantiates residential status outside Dominica for at least the past seven years; and
- (c) documents acceptable to the Comptroller of Customs that substantiates the applicant's intention to re-establish permanent residence in Dominica.

Documents to substantiate residential status outside Dominica may include entries in a foreign passport, an alien resident card, or a work permit accompanied by a letter from an employer

abroad. Documents to substantiate an intent to re-establish permanent residence in Dominica may include proof of retirement, proof of ownership of a dwelling home or land in Dominica, or proof of planned investment in Dominica. A “returning resident” is limited to one member of a family of returning residents. For this purpose, a family includes a husband, wife and their children below the age of eighteen.

(3) *Eligibility conditions.* A person is not a “returning resident” for purposes of Schedule III, paragraph 9 of the Act and this regulation unless the person:

- (a) has attained the age of eighteen years;
- (b) has been a resident outside Dominica continuously for at least seven years;
- (c) has returned permanently to Dominica;
- (d) retains ownership and use of the goods exempt from tax for the person’s personal use;
- (e) does not sell, lend, hire out or otherwise dispose of any goods granted exemption under this sub-regulation within a period of five year after re-establishing residence status in Dominica; and
- (f) has not previously received exemption from the tax under Schedule III, paragraph 9.

(4) *Items covered by the exemption.* A returning resident that meets the eligibility requirements under this regulation is entitled to import the following items exempt from tax under Schedule III, paragraph-

- (a) new or used household and personal effects (other than building material), including not more than one:

- (i) television;
 - (ii) DVD, VCR or equivalent device;
 - (iii) stereo system;
 - (iv) refrigerator;
 - (v) cooker/stove range;
 - (vi) washing machine and dryer;
 - (vii) microwave oven;
 - (viii) freezer;
 - (ix) laptop or desktop computer and printer; and
 - (x) other items as published by the Comptroller;
- (b) one new or used motor vehicle as provided in sub-regulation 6 of this regulation.

(5) *Time limit for import to qualify for the exemption.*

The exemption granted under Schedule III, paragraph 9 is limited to qualifying goods that enter Dominica for Customs purposes within three months before or after the returning resident arrives in Dominica. The Financial Secretary of the Ministry of Finance may grant an extension beyond the three-month period if the application for extension is filed within the three-month period after the person's arrival in Dominica.

(6) *Eligible vehicle.* A motor vehicle is included in sub-regulation 4(b) of this regulation only if the vehicle, new or used, was purchased in Dominica or abroad and satisfies the following conditions:

- (a) either:
- (i) it was purchased before returning to Dominica; and it was imported by the returning resident from the country where the returning resident resided immediately before returning to Dominica; or

(ii) it was purchased from a licensed motor vehicle dealer who sold it to the returning resident directly from Customs bonded warehouse;

(b) either:

(i) for a vehicle acquired other than by inheritance, the importer provides documentary proof (acceptable to the Comptroller of Customs) that the vehicle was used by the returning resident outside of Dominica, such as bill of sale, certificate of title, foreign registration document, police certificate of registration, an insurance policy covering the vehicle, or a document confirming the prior export of the vehicle from Dominica; or

(ii) for a vehicle acquired by inheritance, the importer provides documentary proof (acceptable to the Comptroller of Customs) that the vehicle was owned by the decedent abroad, such as a document listed in (b) (i) above, as well as a death certificate of the testator, or an authenticated document from the executor; and

(c) the returning resident enters into an agreement with the Comptroller of Customs that:

(i) the vehicle will not be sold, gifted, exchanged, or otherwise disposed of within five years of entry without paying the applicable tax; and

(ii) for the following events or transactions occurring within five years of the date that the vehicle entered Dominica, he or she will notify the Comptroller of any disposition of the vehicle, of the

erson's departure from Dominica for a period of more than six months or of any transfer of the use of the vehicle if the person leaves Dominica temporarily for a period of up to six months.

If a vehicle is exempt from tax under this regulation, the exemption does not extend to the returning resident's liability for any tax, duty, or surcharge (other than Value Added Tax) that may apply to the imported vehicle.

(7) *Violation of conditions or eligibility for the exemption.*

(a) *In General.* If a person imports goods and obtains an exemption from tax under Schedule III, paragraph 9 and this regulation, and subsequently violates any of the conditions or eligibility requirements under this regulation, the person is liable for tax equal to the tax that would have been chargeable if the particular violation or failure to satisfy the requirements under this regulation occurred at the time of the entry of the goods into Dominica, plus interest and penalties. For purposes of sub-regulation (3) (d) of this regulation, a person is deemed to reside outside Dominica if the person leaves Dominica for an uninterrupted period of six months.

(b) *Limited exception may be granted by the Financial Secretary.* Notwithstanding (a), if a returning resident leaves Dominica for an uninterrupted period of more than six months, then in special circumstances the Financial Secretary may be notice in writing treat the person as continuing to reside in Dominica.

(c) *Exception for vehicles.* If a returning resident imports a vehicle exempt from tax under this regulation and violates any of the conditions for

the grant of that exemption under sub-regulation (6) of this regulation, the Comptroller may, in addition to collection of any tax, interest, and penalties due with respect to the imported vehicle, seize the vehicle and, if the amount due is not paid within two months after the date of seizure, may sell the vehicle at public auction and apply the net proceeds to the tax, interest and penalties due.

Goods imported by a
returning resident.

304. Schedule III, paragraph 10 exempts from tax goods imported by a Dominica person upon return from studies abroad to the extent provided in regulations. Returning students are entitled to the exemption for the goods covered in paragraph X in the List of Conditional Duty Exemptions specified in the Second Schedule of the Customs Import and Export Tariffs (Amendment) Order 2001 (SRO 18 of 2001) to facilitate the movement of persons.

Made this 8th day of February, 2006.

ROOSEVELT SKERRIT
Minister for Finance

DOMINICA

Printed by the Government Printer at the Government Printery, Roseau
(Price \$16.40)