

COMMONWEALTH OF DOMINICA

ACT NO. 17 OF 2008

I assent**N. J. O. Liverpool**
*President*10th December, 2008.**AN ACT TO AMEND THE VALUE ADDED TAX ACT,
NO. 7 OF 2005.**(Gazetted 18th December, 2008.)**BE IT ENACTED** by the Parliament of the Commonwealth of
Dominica as follows:**1.** This Act may be cited as the -

Short title.

VALUE ADDED TAX (AMENDMENT) ACT, 2008.

Interpretation.
Act No. 7 of 2005.

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

Amendment of section 4
of the Act.

3. Section 4 of the Act is amended -

(a) by deleting subsection (20) and substituting the following-

“(20) Subsection (19) does not apply to a phone card, prepayment on a cellular phone, or a similar Scheme of advance payment for the supply of goods or the rendering of services.”;

(b) by inserting the following new subsection (23) -

“(23) The Minister may by Regulation prescribe rules to determine whether a transaction constitutes a supply for the purposes of this section.”.

Amendment of section 11
of the Act.

4. Section 11 of the Act is amended -

(a) in subsection (1) in paragraphs (a) and (b) by deleting the figure “\$60, 000” and substituting the figure “\$120,000”;

(b) in subsection (9) by deleting the figure “\$60,000” and substituting the figure “\$120,000”;

(c) in subsection (10) in -

(i) paragraph (a) by deleting the figure “\$15,000” and substituting the figure “\$30,000”;

(ii) paragraph (b) by deleting the figure “\$60,000” and substituting the figure “\$120,000”;

(d) in subsection (11) by deleting the figure “\$15, 000” and substituting the figure “\$30,000”;

(e) by inserting the following new subsection immediately after subsection (11) -

(12) For a person engaged in the supply of hotel or similar accommodation, the supply of commercial property for lease or the supply of professional services as provided in Regulations, the amount specified in subsections (1) (a) and (b) and (10) (b) as \$120,000 is \$60,000 and the amount specified in subsection (10)(a) as \$30,000 is \$15,000.

(13) A person is subject to a \$60,000 annual threshold if the person renders services that are subject to the \$60,000 threshold and also makes supplies that are subject to the \$120,000 threshold.”.

5. Section 12 of the Act is amended by inserting the following new subsection immediately after subsection (13) –

Amendment of section 12 of the Act.

“ (14) For the purpose of subsections (2) and (7), if within the 15 day period the Comptroller requests additional information from the applicant in order to determine if the applicant is eligible to apply for registration under section 11, the 15 day period is suspended until the Comptroller receives the required information in the form prescribed by the Comptroller.”

6. Section 13 of the Act is amended -

Amendment of section 13 of the Act.

(a) by deleting subsection (4) and substituting the following -

“(4) If the Comptroller is satisfied that a taxable person -

- (a) is not carrying on a taxable activity;
- (b) was not required or entitled to apply for registration;
- (c) has no fixed place of abode or business;
- (d) has not kept proper accounting records relating to any business activity carried on by that person; or

-
- (e) has not submitted regular and reliable tax returns as required by section 32,

the Comptroller may cancel the registration of the person with effect from the last day of the tax period during which the Comptroller became so satisfied, or from such other date as the Comptroller may determine and the Comptroller shall notify the person in writing of the date on which the cancellation takes effect.”;

- (b) by deleting subsection (5);

- (c) in subsection (6) by deleting the words “or (5)”.

Amendment of section 14
of the Act.

- 7.** Section 14 of the Act is amended by inserting the following new subsection immediately after subsection (13) -

“(14) The Minister may by Regulation prescribe rules to determine the time of a supply of particular goods or services which are not governed by this section.”.

Amendment of section 15
of the Act.

- 8.** Section 15 of the Act is amended -

- (a) by deleting subsection (3) and substituting the following -

“(3) Subject to this section and to Regulations made by the Minister, a supply of a service takes place at the location of the place of business of the supplier from which the services are supplied.”;

- (b) in subsection 4 -

- (i) in paragraph (g) by deleting the word “or”;
- (ii) in paragraph (h) by deleting the period and inserting the words “; or”;

(iii) by inserting the following new paragraph (i)-

“(i) telecommunications services.”.

9. Section 16 of the Act is amended by inserting the following new subsection immediately after subsection (19) -

Amendment of section 16 of the Act.

“(20) The Minister may by Regulation prescribe rules to determine the value of a supply of particular goods or services not governed by this section.”.

10. Section 26 of the Act is amended in subsection (2) –

Amendment of section 26 of the Act.

(a) in subparagraph (ii) of paragraph (b) by deleting the word “or”;

(b) in paragraph (c) by deleting the period and inserting the word “; or”;

(c) by inserting the following paragraph immediately after paragraph (c) –

“(d) a taxable supply to, or import by, the person of goods or services acquired for the repair or maintenance of a passenger vehicle, unless the person is in the business of refurbishing for resale or of hiring of such vehicles, and the repair or maintenance was directly related to such refurbishing or hiring business.”.

11. Section 52 of the Act is amended –

Amendment of section 52 of the Act.

(a) in subsection (2) by deleting the words “subsection (5) and (14)” and substituting the words “subsections (5), (14) and (16)”;

(b) by inserting the following subsection immediately after subsection (15) -

“(16) (a) Notwithstanding subsection (3), if the Comptroller is satisfied that a taxable person has an excess under subsection (1)(a) and is otherwise entitled to a refund under this section, the Comptroller may waive the required carryforward for six consecutive tax periods and authorise the taxable person to file a claim for a refund of the amount in accordance with subsection (3).

(b) The Comptroller shall not issue a waiver under paragraph (a) unless he has reason to believe that the taxable person will report excess amounts under subsection (1)(a) within the six consecutive tax periods.”.

Amendment of section 65..

12. Section 65 of the Act is amended in paragraph (c) of subsection (1) by inserting the following new subparagraph immediately after subparagraph (ii) –

“(iii) inspect the process of that person, including the method adopted in recording the supplies;”.

Insertion of section 66A.

13. The Act is amended by inserting the following new section immediately after section 66 –

“Access to information from third parties.

66A. (1) For the purposes of the administration or the enforcement of this Act, including the obtaining of full information in respect of the supplies and input tax of any person who is or may be liable to tax, the Comptroller may, by notice in writing, require that person or any other person –

(a) to furnish to the Comptroller at such time as may be specified in the notice such further tax return or other information as may be required by him;

-
- (b) to produce, at such time and place as may be specified in the notice, for examination by the Comptroller or for retention by him for such period as may be reasonable for his examination, any accounts, books of account, statement of supplies and purchases or other documents which the Comptroller considers necessary for such purpose and, if any such information is not available in the English language, to produce, at the expense of the person who is or may be liable to tax, a translation in English prepared and certified by an approved translator;
- (c) to attend, at such time and place as may be specified in the notice, for the purpose of being examined by the Comptroller in respect of the assessable or chargeable tax for himself or any other person or any transaction or matters appearing to the Comptroller to be relevant thereto.
- (2) Without prejudice to the generality of subsection (1), the Comptroller may require -
- (a) a bank to furnish to him details of any banking account or other assets which may be held on behalf of any person, or to furnish a copy of bank statements of any such banking account;
- (b) a bank to permit the Comptroller or any officer authorised by him to inspect the records of the bank with respect to the banking account of any person;

- (c) the attendance of any officer of a bank before him to give evidence respecting any bank accounts or other assets which may be held by the bank on behalf of any person.”.

Insertion of new sections
77A, 77B, 77C.

14. The Act is amended by inserting the following new sections immediately after section 77 –

“Failure to
file returns.

77A. A person who, for two or more consecutive or non-consecutive tax periods, fails to file returns within the time and in the manner prescribed under section 32 commits an offence and on summary conviction is liable to a fine of \$10,000 or imprisonment for six months, or to both.

Collection
of tax by non-
registered
persons.

77B. A non-registered person who collects tax on a supply commits an offence and on summary conviction is liable to a fine of \$25,000 or imprisonment for two years, or to both.

Failure to
issue
invoices.

77C. A registered person who within 60 days after the date of a taxable supply or, where applicable within the 14-day period specified in section 29(5), fails to issue invoices or sales receipts on the supply as required under section 29 commits an offence and on summary conviction is liable to a fine of \$10,000 or imprisonment for six months, or to both.”.

Deletion and
substitution of section
83 of the Act.

15. The Act is amended by deleting section 83 and substituting the following -

“83. A person who -

- (a) issues a false invoice or sales receipt;

-
- (b) uses a false taxpayer account number;
 - (c) provides a tax invoice, sales receipt, tax credit note or tax debit note or fails to provide a tax credit note or tax debit note otherwise than as required by section 29 or 30,

is liable for a penalty not exceeding \$ 25,000.”.

16. The Act is amended by deleting section 92 and substituting the following -

Deletion and substitution of section 92 of the Act.

“92. Notwithstanding anything in any other law, where a person -

- (a) fails to file returns in accordance with section 32;
- (b) being liable to pay the tax, fails to pay the tax on three occasions; or
- (c) violates any other rule made under this Act which is designated a serious delinquency by Regulation,

the Comptroller may publish, in a newspaper circulating in the State, the name of the person or the name of the business of that person or both.”.

17. The Act is amended by inserting the following new section immediately after section 108 -

Insertion of new section 109.

“109. A provision in another law that grants an exemption under section 18 or 21 of the Act, a zero rate under section 17 of the Act, or a rate lower than that provided under section 9(1) (a), (b), or (e) does not come into effect for purposes of this Act until a corresponding amendment is made to this Act.”

Amendment of Schedule I
of the Act.

18. Schedule I of the Act is amended in paragraph 1 in the definition of “fuel” by deleting Customs Tariff Heading “2710.19.60”.

Amendment of Schedule
II of the Act.

19. Schedule II of the Act is amended in paragraph 2 -

(a) by deleting paragraph 2(k) and substituting the following -

“(k) a supply of locally produced agricultural products;”

(b) by deleting paragraph 2(1) and substituting the following -

“(l) a supply of locally produced bread;”;

(c) in subparagraph (aa)(x), by deleting the word “use;” and substituting the words “use; and”;

(d) inserting the following new subparagraph immediately after subparagraph (aa)(x) -

“(xi) spray oils under Customs Tariff Heading 2710.19.82, and potting mix under Customs Tariff Heading 3824.90.10 to grow seedlings used in agriculture.”;

(e) in subparagraph (bb), by deleting the words “outboard engines up to 100 hp” and substituting the words “outboard engines up to 150 hp”.

(f) by inserting the following new subparagraph immediately after subparagraph (cc);

“(dd) a supply of services to International Business companies within the offshore sector with respect to company registration and administrative services;”

(g) by inserting the following new subparagraph immediately after subparagraph (dd);

“(ee) Materials imported for use by registered political parties for promoting their parties. Such materials must bear the names, insignia or symbol of the party or a combination of the same and must be imported in the name of the party and be invoiced to the said party”.

20. Schedule III to the Act is amended by inserting the following new paragraphs immediately after paragraph 12 –

Amendment of Schedule III.

“13. Subject to rules that the Minister may prescribe by regulation, the importation by an educational institution of building materials, pre-fabricated buildings, furniture, fixtures, and equipment if -

(a) at the time of importation, the educational institution is -

- (i) a public school or assisted private school under the Education Act 1997; or
- (ii) an accredited university issued a permit by the Minister of Education under the Education Act 1997;

Act No. 11 of 1997.

(b) the building materials are to be used for the construction, repair, or renovation of property registered in the name of the educational institution; and

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

14. (a) Goods temporarily admitted -

- (i) for processing, provided such goods do not become the property of the importer;
- (ii) (including parts thereof) for repair, cleaning or reconditioning;
- (iii) for specific purposes; or
- (iv) subject to exportation in the same state.

(b) Containers temporarily imported under Customs Tariff Heading 8609.00.”

Amendments to take
effect on different dates.

21. The amendments to section 11 of the Act by section 4 of this Act shall be deemed to have come into effect on the 1st day of September, 2007.

Passed in the House of Assembly this 14th day of October, 2008.

ALEX F. PHILLIP (MRS.)
Clerk of the House of Assembly.

DOMINICA

Printed by the Government Printer at the Government Printery, Roseau
(Price \$2.40 cents)