

THE OFFICIAL GAZETTE 12TH MARCH, 2005
LEGAL SUPPLEMENT — C

BILL No. 3 of 2005

Saturday 12th March, 2005

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

12th March, 2005.

The following Bill which will be introduced in the National Assembly is published for general information.

L. Coonjah,
Deputy Clerk of the National Assembly.



GUYANA

Bill No. 3 of 2005

Value-Added Tax Bill 2005

ARRANGEMENT OF SECTIONS

SECTION

PART I – Preliminary

1. Short title and commencement.
2. Definitions.
3. Fair market value.
4. Supply.
5. Supply by agent or auction.
6. Taxable activity.

PART II – Authority to Administer VAT

7. Administration of the Act; exercise of powers and performance of duties.
8. Confidentiality of tax and persons liable.

PART III – Imposition of Tax and Persons Liable

9. Imposition of tax and persons liable.

PART IV – Registration

10. Taxable person.
11. Registration.
12. Requirements for registration.
13. Cancellation of registration.

PART V – Rules Relating to Supplies

14. Time of supply.
15. Place of supply.
16. Value of supply.
17. Zero-rating.
18. Exempt supply.

PART VI – Imports

19. Time of import.
20. Value of import.
21. Exempt import.
22. Import declaration and payment of tax.

PART VII – Calculation of Tax Payable

23. Tax payable for tax period.
24. Input tax credit.
25. Input tax credit allocation and disallowance rules.
26. Post-sale adjustments.
27. Interest on unpaid tax.
28. Tax invoices and sales invoices.
29. Tax credit and debit notes.

Tax Administration Provisions

PART VIII – Tax Period, Returns and Assessments

30. Tax period.
31. Returns.
32. Extension of time.
33. Assessments.
34. General provisions relating to assessments.

PART IX – Refund of Tax and Tax Relief

35. Carry forward of excess credits and refund of tax.
36. Interest on overpayment.
37. Others eligible for tax refund.

PART X – Objections and Appeals

38. Objections.
39. Appeal to VAT Board of Review.
40. Appeal to High Court.
41. Burden of proof.

PART XI – Payment, Collection and Recovery

42. Due date for payment of tax.
43. Allocation of payments.
44. Recovery of tax as debt due.
45. Recovery of monies from persons leaving Guyana.
46. Security.
47. Preferential claim to assets.
48. Seizure of goods and vehicles.
49. Distress proceedings.
50. Recovery of tax from recipient of supply.
51. Recovery of tax from third parties.
52. Duties of receivers.

PART XII – Representatives and Special Cases of Taxable Persons

53. Persons acting in a representative capacity.
54. Power to appoint agent.
55. Branches.

56. Bodies of persons (other than incorporated companies).
57. Death or insolvency of taxable person; mortgagee in possession.
58. Trustee.

PART XIII – Records and Investigation Powers

59. Interpretation.
60. Record-keeping.
61. Access to records, computers, goods, and vehicles.
62. Records not in official language.
63. Notice to obtain information or evidence.

PART XIV – Offences and Penalties

Division I: Criminal Offences

64. Power to bring criminal charges.
65. Time limits for proceedings to be taken.
66. Failure to apply for VAT registration.
67. Improper VAT documentation.
68. False claim for VAT refund.
69. Failure to notify Commissioner of cessation of taxable activity.
70. Failure to comply with third-party payment notice.
71. Failure to comply with duties as receiver.
72. Failure to file VAT return.
73. Failure to maintain proper records.
74. Disclosure of confidential information.
75. False or misleading statements.
76. Obstructing taxation officers.
77. Offences by taxation officers.
78. Offences by companies, aiders and abettors.
79. Compounding of offences.

Division II: Civil Penalties

80. Civil penalty for failure to apply for VAT registration.
81. Civil penalty for failure to declare or pay VAT on import.
82. Civil penalty for failure to file VAT return.
83. Civil penalty for failure to maintain proper records.
84. Civil penalty for making false or misleading statements.
85. Recovery or remission of penalties.
86. Temporary closure of business premises.

Part XV – Miscellaneous

87. VAT registration number.
88. Forms and notices; authentication of documents.
89. Service of notices.
90. Tax-inclusive pricing.
91. Schemes for obtaining tax benefits.
92. Currency conversion.
93. Registration of certain goods prohibited in certain circumstances.
94. Auctioneer and agent.
95. Regulations.
96. Variation of consideration on a change in rate.
97. Application of increased or reduced rate.
98. Orders to amend Schedules or change amounts or tax rate.
99. Repeal of laws and interpretation.
100. Transitional.

SCHEDULES

Schedule I – Zero-rated Supplies for Purposes of Section 17

Schedule II – Exempt Supplies for Purposes of Section 17

Schedule III – Tax Invoices, Tax Credit Notes, and Tax Debit Notes for Purposes of Sections 28 and 29

Schedule IV – Registration Threshold Interest Rates, and Other Amounts for Purposes of Sections 11, 27, 28, 35, 36 and 37

Schedule V - Repeal of Laws - Section 99

A BILL**Intituled**

AN ACT to provide for the imposition and collection of Value-Added Tax.

A.D. 2005

Enacted by the Parliament of Guyana:-

PART I - Preliminary

Short title and commencement.

1. (1) This Act may be cited as the Value-Added Tax Act 2005.
- (2) The provisions of this Act relating to the registration of taxable persons shall come into operation on 1st May, 2006 and all other provisions, including the provisions relating to tax collection by registered persons, shall come into operation on 1st July, 2006.

Definitions.

2. In this Act, unless the context indicates otherwise –
 - "appealable decision" means an assessment or a decision described in sections 12(6), 13(13), 25(7), 31(4), 32(3), 35(13), 38(6), 39(7), 42(4), 46(4), 54(2), and 85(4);
 - "auctioneer" means a person engaged in a taxable activity that includes the supply of goods by auction as an auctioneer or agent for or on behalf of another person;
 - "capital goods" means an asset, or a component of an asset, which is of a character subject to an allowance for depreciation or comparable deduction for income tax purposes, and which is used in the course or furtherance of a taxable activity;
 - "cash value", in relation to a supply of goods under a credit agreement, means –
 - (a) where the seller or lessor is a bank or other financial institution, an amount equal to the sum of–
 - (i) the consideration paid by the bank or other financial institution for the goods or the fair market value of the supply of the goods to the bank or other financial institution, whichever is the greater; and

- (ii) any consideration for erection, construction, assembly, or installation of the goods borne by the bank or other financial institution; or
- (b) where the seller or lessor is a dealer, an amount equal to the sum of—
 - (i) the consideration at which the goods are normally sold by the dealer for cash; and
 - (ii) any consideration for erection, construction, assembly, or installation of the goods borne by the dealer;

“charity” means an association not for gain, including an institution of religious worship, a charitable organization, or any other society, association, or organization, whether incorporated or not, that —

- (a) is carried on otherwise than for the purposes of profit or gain to any proprietor, member, or shareholder; and
- (b) is, in terms of its memorandum, articles of association, written rules, or other document constituting or governing its activities—
 - (i) required to use any assets or income solely in the furtherance of its aims and objects; and
 - (ii) prohibited from transferring any portion of its assets or income directly or indirectly so as to profit any person other than by way of (1) the provision of charitable assistance, or (2) the payment in good faith of reasonable remuneration to any of its officers or employees for any services actually rendered to it; and
 - (iii) upon its winding-up or liquidation, obliged to give or transfer its assets remaining after the satisfaction of its liabilities to another society, association or organization with objects similar to those of the first-mentioned society, association, or organization;

“Commissioner” means the Commissioner General of the Revenue Authority, who is the person responsible for administration of this Act;

"consideration", in relation to a supply or import of goods or services, means the total amount in money or kind paid or payable (including a deposit on a returnable container) for the supply or import by any person, directly or indirectly, including any duties, levies, fees, and charges (other than VAT) paid or payable on, or by reason of, the supply or import, reduced by any price discounts or rebates allowed and accounted for at the time of the supply or import, but does not include –

- (a) a cash payment made by any person as an unconditional gift to an association not for gain; or
- (b) a deposit (other than a deposit on a returnable container), whether refundable or not, given in connection with a supply of goods or services unless and until the supplier applies the deposit as consideration for the supply or such deposit is forfeited;

"credit agreement" means a hire-purchase agreement or a finance lease;

"days" means official working days for the Guyana Revenue Authority, excluding all public holidays;

"employee" means any person receiving remuneration and includes an officer, servant, or person holding a position of employment;

"employment" means the position of an individual in the service of some other person (including the Government);

"exempt supply" means a supply of goods or services to which section 18 applies;

"finance lease", in relation to goods, means a lease of goods where –

- (a) the lease term exceeds seventy-five percent of the expected life of the goods; or
- (b) the lease provides for transfer of ownership at the end of the lease term or the lessee has an option to purchase the goods for a fixed or determinable price at the expiration of the lease; or

- (c) the estimated residual value of the goods to the lessor at the expiration of the lease term (including the period of any option to renew) is less than twenty percent of its fair market value at the commencement of the lease; or
- (d) the leased goods are custom-made for the lessee and at the end of the lease term will not be usable by anyone other than the lessee;

“game of chance” includes a raffle or lottery, or gaming by playing table games or gaming machines;

“goods” means all kinds of corporeal movable or immovable property, thermal or electrical energy, heat, gas, refrigeration, air conditioning, and water, but does not include money;

“immovable property” includes –

- (a) any estate, right, interest, or servitude on or over any land, and things attached to land or permanently fastened to anything attached to land; or
- (b) any real right in any such property;

“import” means –

- (a) in the case of goods, to bring or cause to be brought into Guyana; or
- (b) in the case of services, a supply of services to a resident person –
 - (i) by a non-resident person; or
 - (ii) by a resident person from a business carried on by the resident person outside Guyana,

to the extent that such services are utilised or consumed in Guyana, other than to make taxable supplies;

“importer”, in relation to an import of goods, includes the person who owns the goods, or any other person for the time being possessed of or beneficially interested in the goods;

"input tax" means VAT paid or payable in respect of a taxable supply to, or an import of goods by, a taxable person;

"invoice" means a document notifying an obligation to make a payment;

"Minister" means the Minister responsible for Finance;

"money" means –

- (a) a coin or paper currency recognized in Guyana as legal tender; or
- (b) a coin or paper currency of a foreign country that is used or circulated as currency; or
- (c) a bill of exchange, promissory note, bank draft, postal order, money order, or similar instrument,

other than an item of numismatic interest;

"non-resident person" means a person who is not a resident person and a person referred to in paragraph (d) of the definition of "resident person" to the extent that the person is not a resident person;

"output tax", in relation to a taxable person, means the tax charged under section 9(1)(a) on a taxable supply made by the person;

"person" includes the State, an agency of the State, a local authority, board, natural person, trust, company, and partnership;

"promoter of public entertainment" means a person who arranges the staging of public entertainment, but does not include entertainment organized by –

- (a) an approved educational institution; or
- (b) the board of management or a parent teacher association of an approved educational institution; or
- (c) a person who provides entertainment on a daily or weekly basis; or
- (d) a religious organisation;

"public entertainment" means any musical entertainment, sporting event, theatrical performance, comedy show, dance

performance, circus show, any show connected with a festival, or any similar show to which the general public is invited;

“recipient”, in relation to a supply or import, means the person to whom the supply or import is made or in the case of an import of goods, for whom the goods are intended;

“related persons” means –

- (a) a natural person and a relative of that natural person;
or
- (b) a trust and a person who is or may be a beneficiary in respect of that trust or whose relative is or may be a beneficiary; or
- (c) a partnership or company (other than a stock company) and a member thereof who, together with shares or other membership interests held by persons who are related to such member under another clause of this definition, owns twenty-five percent or more of the rights to income or capital of the partnership or company; or
- (d) a shareholder in a stock company and the stock company if the shareholder, together with shares held by persons who are related to such shareholder under another clause of this definition –
 - (i) controls twenty-five percent or more of the voting power in the stock company; or
 - (ii) owns twenty-five percent or more of the rights to dividends or of the rights to capital; or
- (e) two companies, if a person, either alone or together with a person or persons who are related to such person under another clause of this definition –
 - (i) controls twenty-five percent or more of the voting power in both companies; or
 - (ii) owns twenty-five percent or more of the rights to dividends or of the rights to capital in both companies;

- (f) a taxable person and a branch or division of that taxable person which is separately registered under section 55(3) as a taxable person; or
- (g) any branches or divisions of a taxable person which are separately registered under section 55(3) as taxable persons;

and, for purposes of paragraphs (c), (d), and (e) of this definition, a person is treated as owning, on a pro rata basis, shares or other membership interests which are owned or controlled by such person indirectly through one or more interposed persons;

“relative”, in relation to a natural person, means –

- (a) the spouse of the person; or
- (b) an ancestor, lineal descendant, brother, sister, uncle, aunt, nephew, niece, stepfather, stepmother, stepchild, or adopted child of that person or her spouse, and in the case of an adopted child her adopter; or
- (c) a spouse of any person referred to in paragraph (b), and for the purposes of this definition, an adopted child is treated as a natural child of the adopter;

“rental agreement” means an agreement for the letting of goods other than a hire-purchase agreement or a finance lease;

“resident person” means –

- (a) the State, an agency of the State, or a local authority in Guyana;
- (b) a natural person resident in Guyana that is, a natural person who resides permanently or being in Guyana intends to reside permanently in Guyana except for such temporary absences as to the Commissioner may seem reasonable and not inconsistent with the claim of such individual to be resident in Guyana, or who resides in Guyana for more than one-hundred and eighty-three days in the year;

- (c) a body, including a company, partnership, board, or trust, which is formed or created under the laws of Guyana or which is managed and controlled in Guyana; or
- (d) any other person to the extent that such person carries on in Guyana a taxable or other activity and has a fixed place in Guyana relating to such activity;

“Revenue Authority” means the Guyana Revenue Authority;

“sale” means an agreement of purchase and sale, and any other transaction or act whereby ownership of goods passes or is to pass from one person to another;

“services” means anything that is not goods or money;

“State” means Guyana or the Republic of Guyana;

“supplier”, in relation to a supply, means the person making the supply;

“taxable supply” means a supply of goods or services in Guyana in the course or furtherance of a taxable activity, other than an exempt supply;

“taxation officer” means the Commissioner, a delegate of the Commissioner, any other person in the service of the Government who is appointed to an office with responsibility for VAT, or a person who is acting on behalf of a person appointed to an office with responsibility for VAT;

“tax fraction” means the fraction calculated in accordance with the formula –
$$R/(1 + R)$$

where “R” is the rate of VAT applicable to the taxable supply;

“tax invoice” means a document provided as specified under section 28(1);

“trust” means a relationship where property is under the control or management of a trustee;

“trustee” means a person appointed or constituted trustee by act of parties, by order or declaration of a court, or by operation of law, and includes a person having or taking upon himself the administration or control of property subject to a trust; and

“value-added tax” (VAT) or “tax” means the tax imposed under this Act, and includes an amount to the extent that it is treated as tax for the purposes of this Act.

Fair market value.

3.

(1) In this section—

“similar import”, in relation to an import of goods or services, means any other import of goods or services that, in respect of the characteristics, quality, quantity, functional components, materials, and reputation of the first-mentioned goods or services, is the same as, or closely or substantially resembles, that import of goods or services; and

“similar supply”, in relation to a supply of goods or services, means any other supply of goods or services that, in respect of the characteristics, quality, quantity, functional components, materials, and reputation of the first-mentioned goods or services, is the same as, or closely or substantially resembles, that supply of goods or services.

(2) For the purposes of this Act, the fair market value of a supply or import of goods or services at a given date is the consideration in money which the supply or import, as the case may be, would generally fetch if supplied or imported in similar circumstances at that date in Guyana, being a supply or import freely offered and made between persons who are not related persons.

(3) Where the fair market value of a supply or import of goods or services at a given date cannot be determined under subsection (2), the fair market value is the consideration in money which a similar supply or similar import, as the case may be, would generally fetch if supplied or imported in similar circumstances at that date in Guyana, being a supply or import freely offered and made between persons who are not related persons.

(4) Where the fair market value of any supply or import of goods or services cannot be determined under

subsection (2) or (3), the fair market value shall be determined in accordance with any method approved by the Commissioner which provides a sufficiently objective approximation of the consideration in money which could be obtained for that supply or import had the supply or import been freely offered and made between persons who are not related persons.

- (5) The fair market value of a supply or import is determined at the time of the supply or import as determined under this Act.

Supply.

4. (1) Subject to this Act—

(a) a supply of goods means—

- (i) a sale of goods;
- (ii) a grant of the use or right to use goods, whether with or without a driver, pilot, crew, or operator, under a rental agreement, credit agreement, freight contract, agreement for charter, or other agreement under which such use or right to use is granted; or
- (iii) a transfer or provision of thermal or electrical energy, heat, gas, refrigeration, air conditioning, or water; and

(b) a supply of services means anything done which is not a supply of goods or money, including—

- (i) the granting, assignment, cessation, or surrender of a right; or
- (ii) making available a facility or advantage; or
- (iii) refraining from or tolerating an activity.

- (2) The disposition of a taxable activity as a going concern, or a part of a taxable activity that is capable of separate operation, is a supply of goods made in the course or furtherance of such taxable activity.

- (3) For the purposes of subsection (2), a taxable activity or a part of a taxable activity capable of separate operation is disposed of as a going concern where—

(a) all the goods and services necessary for the continued operation of that taxable activity or

that part of a taxable activity are supplied to the transferee; and

- (b) the transferor carries on, or is carrying on, that taxable activity or that part of a taxable activity up to the time of its transfer to the transferee.
- (4) A supply of goods in exchange for goods or services is a supply of goods.
- (5) A supply of services in exchange for goods or services is a supply of services.
- (6) Subject to subsections (17) and (21), the application by a taxable person of goods or services acquired for use in a taxable activity to a different use, including the provision of goods or services to an employee for personal use, is a supply of those goods or services by the taxable person in the course or furtherance of that taxable activity.
- (7) Where goods are repossessed under a credit agreement, the repossession is a supply of the goods by the debtor under the credit agreement to the person exercising the right of repossession, and where such debtor is a registered person the supply is made in the course or furtherance of the debtor's taxable activity unless such goods did not form part of the assets held or used by the debtor in connection with that activity.
- (8) Where a lay-away agreement is cancelled or terminates and the seller retains an amount paid by the purchaser or recovers an amount the purchaser owes under the agreement, the cancellation or termination is a supply of services by the seller in respect of the agreement.
- (9) The placing of a bet by a person with another person operating a game of chance is a supply of services by the person operating the game of chance to the first-mentioned person.
- (10) A supply of services incidental to a supply of goods is part of the supply of goods.
- (11) A supply of goods incidental to a supply of services is part of the supply of services.
- (12) A supply or import of services incidental to an import of goods is part of the import of goods.

- (13) Regulations may be made by the Minister to provide that a supply of goods and services is a supply of goods or a supply of services.
- (14) Where a supply consists both of a supply that is charged with tax at a positive rate and—
- (a) a supply charged with tax at a zero rate; or
 - (b) an exempt supply,
- each part of the supply is treated as a separate supply if reasonably capable of being supplied separately.
- (15) A supply of services by an employee to an employer by reason of employment is not a supply.
- (16) The provision of goods on consignment and the transfer of goods to a person acting in a representative capacity to the transferor is not a supply.
- (17) Where a taxable person supplies goods or services and a credit for input tax paid on the acquisition of such goods or services was denied, the supply by the taxable person is a supply of goods or services otherwise than in the course or furtherance of a taxable activity.
- (18) Where a supply described in subsection (2) was charged with tax at the rate of zero percent in terms of paragraph 2(o) of Schedule I, the acquisition of the taxable activity is a supply by the recipient in the course or furtherance of a taxable activity carried on by the recipient to the extent that the goods and services comprising the taxable activity were acquired for a purpose other than consumption, use, or supply in the course of making taxable supplies, unless this purpose relates to less than ten percent of the total taxable activity.
- (19) Where a right to receive goods or services for a monetary value stated on a token, voucher, gift certificate, or stamp, other than a postage stamp, is granted for a consideration in money, the issue of such token, voucher, gift certificate, or stamp is not a supply, except to the extent (if any) that such consideration exceeds that monetary value.
- (20) Subsection (19) does not apply to a phone card, prepayment on a cellular phone, or a similar scheme of advance payment for the rendering of services.

- (21) A person whose registration is cancelled under section 13 is deemed to have made a taxable supply in Guyana of any goods or services on hand at the date the registration is cancelled, but only if an input tax credit was claimed with respect to the goods or services.
- Supply by agent or auction. 5. (1) Subject to this section, a supply of goods or services –
- (a) made by a person as agent for another person (“the principal”) is a supply by the principal; or
 - (b) made to a person as agent for a principal is a supply to the principal.
- (2) Subsection (1) does not apply to services supplied by an agent to the agent’s principal.
- (3) A supply of goods by auction is treated as a supply of goods for consideration by the auctioneer as supplier made in the course or furtherance of a taxable activity carried on by the auctioneer.
- (4) Subsection (1) does not apply where the principal is a non-resident.
- Taxable activity. 6. (1) For the purposes of this Act, “taxable activity” means an activity carried on continuously or regularly by a person–
- (a) in Guyana,
 - (b) or partly in Guyana,
- whether or not for profit, that involves or is intended to involve, in whole or in part, the supply of taxable goods or services to any other person for consideration.
- (2) Taxable activity does not include–
- (a) an activity carried on by a person essentially as a private recreational pursuit or hobby; or
 - (b) an activity to the extent that the activity involves the making of exempt supplies.
- (3) Anything done in connection with the commencement or termination of a taxable activity is treated as carried out in the course or furtherance of that taxable activity.

- (4) Subject to subsection (5), a supply is made for consideration if the supplier directly or indirectly receives a payment for the supply from the recipient or any other person, including a payment wholly or partly in money or kind.
- (5) A supply made for consideration includes—
- (a) a supply made between related persons for no consideration; or
 - (b) a supply of goods for use only as trade samples; or
 - (c) a supply referred to in section 4(6) or (18).
- (6) Taxable activity includes a supply of public entertainment.