

VALUE ADDED TAX REGULATIONS, 2016 (L.I. 2243)

ARRANGEMENT OF REGULATIONS

Regulation

Registration

1. Registration name
2. Group registration for purposes of section 12 (1) of the Act
3. Separate registration of divisions of business
4. Compulsory registration
5. Application for copies of certificate for branches
6. Registration of Ministries, Departments and Agencies
7. Registration by non-resident person providing telecommunication services or electronic commerce
8. Transfer of a going concern
9. Taxpayer Identification Number
10. Cancellation of registration

Taxable Value

11. Discounts and rebates

Supply of Goods and Services

12. Supplies made by a partnership
 13. Supplies made by members of a group
 14. Supplies made by non-resident person
 15. Indicative list for financial services
- #### Time and Place of Supply, Tax Invoice, Sales Receipt, and Retail Scheme
16. Time of supply
 17. Goods supplied on sale or return
 18. Imported goods
 19. Casinos, lottery and other game of chance
 20. Place of supply of service rendered by non-resident portion of a business
 21. Tax invoices
 22. Sales receipt
 23. Notification of decision of Commissioner-General on the use of sales receipt

24. Retail scheme
25. Annual adjustments for retail scheme
26. Approval for the use of retail scheme
27. Use of electronic device under retail scheme
28. Other schemes to be approved by the Commissioner-General
29. Withdrawal of privilege

Calculation of Tax Payable

30. Application of subtraction method to used goods

Tax Returns, Records and Assessment

31. Value Added Tax records
32. Manner of maintaining records by branch or division
33. Manner of maintaining records by registered group
34. Assessment to include interest and penalties
35. Liability of persons ceasing to be partners
36. Liability of members of a registered group

Deduction of Input Tax and Refunds

37. Non-deductible input tax
38. Entertainment expenses
39. Supplies made to a non-resident leaving the country
40. Relief supply
41. Input tax on benefits
42. Repatriation of export proceeds
43. Denial of input tax

Miscellaneous Provisions

44. Returnable container
45. Use of banks
46. Contracts entered into before and after the effective date of the tax
47. Value Added Tax manuals
48. Purchases prior to registration
49. Tax payable by auctioneer

- 50. Bad debts
- 51. Separate supply
- 52. Application of offences and matters pertaining to the tax
- 53. Interpretation

SCHEDULE

Indicative List for Financial Service

VALUE ADDED TAX REGULATIONS, 2016

IN exercise of the power conferred on the Minister responsible for Finance by section 64 of the Value Added Tax Act, 2013 (Act 870), these Regulations are made this 30th day of June, 2016.

Registration

Regulation 1—Registration name

The name for registration of a taxable person for value added tax purposes shall

- (a) in the case of an individual, be the name of the individual, except that where the application indicates a business registered name, the name for registration shall be both the individual name and the business name;
- (b) in the case of a partnership, be the name of the partnership; and
- (c) in any other case, be the name submitted on the application form for registration.

Regulation 2—Group registration for purposes of section 12 (1) of the Act

(1) Two or more corporate bodies may on an application to the Authority be registered as members of a group under subsection (1) of section 12 of the Act, if each is a registered corporate body in the country and has an established place of business in the country, and

- (a) one of them controls the others in the group; or
- (b) one company controls all the members of the group.

(2) Subject to subregulations (3) and (4), where a group of taxable persons apply, for the purpose of payment of the tax, to be treated as one designated taxable person, the Commissioner-General may by written notice to the applicants

- (a) approve that the persons form a registrable group for the purposes of subsection (1) of section 12 of the Act;
- (b) nominate a representative member for the group under section 62 of the Act; and
- (c) register the persons as a group.

(3) The Commissioner-General may, before registering a number of persons as a group under subregulation (2), direct that a specified person be included in the group or excluded from the group.

(4) The Commissioner-General may in writing to a group after the registration of the group under this regulation,

- (a) appoint one member of the group as the representative member of the group,
- (b) include a further company in the group,
- (c) exclude a company from the group, or
- (d) declare the group registration cancelled, where the Commissioner General considers it necessary to do so for the effective collection of the tax.

Regulation 3—Separate registration of divisions of business

A taxable person shall, in an application for separate registration under subsection (3) of section 12 of the Act, state the divisions including self-accounting branches of the business where there are more than two branches or divisions of the business.

Regulation 4—Compulsory registration

- (1) Where a person who qualifies as a taxable person fails to apply for registration, the Commissioner-General may notify and direct that person in writing to apply to be registered within thirty days after service of the notice on that person.
- (2) Where a person notified by the Commissioner-General fails to apply for registration, the Commissioner-General may issue a warrant in the form and manner determined by the Commissioner-General to lock up or seal off the business premises of that person until the person applies for registration.
- (3) The Commissioner-General or an officer in the discharge of duties under this regulation or any other regulation may seek the assistance of the Police.

Regulation 5—Application for copies of certificate for branches

- (1) In accordance with paragraph (b) of subsection (2) of section 9 of the Act, a taxable person who has branches in other locations shall apply for copies of the certificate, in the form and manner determined by the Commissioner-General, for each of the branches where the person engages in a taxable activity.
- (2) An individual who engages in a taxable activity different from the registered taxable activity shall apply for a certificate in the name of that other taxable activity in the form and manner determined by the Commissioner-General and subregulation (1) shall apply if that taxable activity also has branches.
- (3) The copies of the certificate shall be provided at a fee determined by the Commissioner-General.
- (4) A person may apply to the Commissioner-General for a copy of the certificate where the certificate of that person has been lost, mutilated or destroyed.
- (5) The Commissioner-General shall, upon being satisfied that the certificate has been lost, mutilated or destroyed, issue to the taxpayer a certified copy of the registration certificate upon payment of the fees determined by the Commissioner-General.

Regulation 6—Registration of Ministries, Departments and Agencies

For the purposes of paragraph (c) of subsection (1) of section 11 of the Act, a Ministry, Department, Agency, statutory body, District Assembly or other entity of Government shall register for the tax when it carries on taxable activity including,

- (a) auction;

- (b) hiring of equipment;
- (c) renting of space; or
- (d) any activity commonly conducted for profit.

Regulation 7—Registration by non-resident person providing telecommunication services or electronic commerce

(1) For the purpose of section 16 of the Act, the Commissioner-General may in writing and subject to conditions that the Commissioner-General may determine, permit a non-resident person providing telecommunication services or electronic commerce to

- (a) register for the tax;
- (b) file returns; or
- (c) account for the tax by electronic means.

(2) A person who acts as an agent or carries on business on behalf of a non-resident person who is required to register under section 16 of the Act but who has failed to register shall register for the tax.

(3) For the purpose of this regulation, “an agent” includes a representative or any other person representing the interest of a taxpayer in this country whether or not there is a subsisting contract between the person and the taxpayer.

Regulation 8—Transfer of a going concern

(1) For the purposes of a transfer of a business as a going concern under the Act,

(a) a going concern is not a dormant or prospective business but an income-generating activity capable of separate operation and that is in fact operational and capable of operating without interruption after the transfer;

(b) a transfer qualifies as a transfer of a going concern where it constitutes the entire taxable activity of the supplier that is a going concern or a portion of such taxable activity capable of being carried on as a going concern;

(c) a supply can constitute a transfer of a going concern even where the transferred business is not profitable, or is being transferred to a liquidator, receiver, trustee in a bankruptcy or other person appointed upon the insolvency of a taxable person;

(d) the supply is not zero rated unless a notice in writing in the prescribed form signed by both the transferor and transferee is filed with the Commissioner-General fourteen calendar days prior to the date the sale, transfer, or acquisition of legal interest takes place and contains the details of the supply.

(2) For the purposes of subregulation (1), a sale is deemed to be concluded where

- (a) consideration is paid, whether partial or in full;
- (b) the deed of sale is duly executed;
- (c) the rights, assets and liabilities attributed to the sale become the entitlement of the transferee; or
- (d) the operation of taxable activities is in the control of the purchaser.

(3) A taxable person who in respect of a transfer of a business as a going concern fails to comply with subsection (4) of section 18 of the Act does not qualify for zero rating.

(4) Despite paragraph (c) of subregulation (1), a lawful sale of a going concern shall not attract any criminal liability.

Regulation 9—Taxpayer Identification Number

The Commissioner-General shall, before the registration of a person or group of persons for the purposes of the tax, issue to that person or group of persons, a Taxpayer Identification Number, where that person or group of persons do not already have a Tax Identification Number.

Regulation 10—Cancellation of registration

(1) The Commissioner-General may cancel a registration pursuant to an application made in the prescribed form, where

(a) the Commissioner-General is satisfied that the registered taxpayer

(i) did not meet the registration threshold during the twelve month period immediately before the application was made, or

(ii) will not meet the threshold during the twelve month period following the date of the application; and

(b) a minimum period of two years has elapsed since the effective date of the registration.

(2) Subregulation (1) does not apply to

(a) an auctioneer;

(b) the Government; or

(c) a promoter of public entertainment.

Taxable Value

Regulation 11—Discounts and rebates

For the purpose of determining consideration in respect of the value for taxable supply under section 43 of the Act, any discount or rebate is acceptable only if the discount or rebate is non-discriminatory and available to every recipient of the supply.

Supply of Goods and Services

Regulation 12—Supplies made by a partnership

Where two or more persons in a partnership make a taxable supply, the partnership shall, for the purposes of the Act, be the supplier of the goods or services.

Regulation 13—Supplies made by members of a group

Where two or more corporate bodies have been registered as members of a group under these Regulations, any business carried on by a member of the group shall be treated as being carried on by the representative member, and

- (a) any supply of goods or services by a member of the group to another member of the group shall be disregarded for the purposes of the tax;
- (b) any other supplies made by or to a member of the group shall be treated as supplies made by or to the representative member appointed under paragraph (b) of subregulation (2) of regulation 2; and
- (c) any tax paid or payable by a member of the group on the importation of goods from a place outside the country shall be treated as paid or payable by the representative member and the goods shall be treated as imported by the representative member.

Regulation 14—Supplies made by non-resident person

A transaction involving either goods or services supplied in the country by a non-resident person shall be considered to have been made in the country, if,

- (a) the transaction is made in the course of a business carried on in the country; and
- (b) at the time of the transaction, the person is registrable under the Act.

Regulation 15—Indicative list for financial services

Pursuant to item 19 of paragraph (a) of the First Schedule of the Act, the supply of the financial services specified in the Schedule shall be subject to the tax.

Time and Place of Supply, Tax Invoice, Sales Receipt, and Retail Scheme

Regulation 16—Time of supply

- (1) A supply under a scheme of advance payment occurs when a phone card, cellular phone prepayment or other form of advance payment is supplied or made.
- (2) A supply of goods by transfer on consignment occurs when the documents on the goods have been entered in the name of the consignee.
- (3) Where a contract for a taxable supply provides for retention by the recipient of part of the purchase price pending satisfactory completion of the whole or part of the contract, the tax becomes payable on the part of the purchase price retained, on the occurrence of any of the following events, whichever occurs earlier:
 - (a) payment of the retained part of the purchase price becomes due to the supplier;
 - (b) payment of the retained part of the purchase price is received by the supplier; or
 - (c) on issue by the supplier of a tax invoice for the retained part of the purchase price.
- (4) A taxable supply made under the contract, other than under a hire-purchase agreement, that is appropriated for the use of some person other than the purchaser under the terms of the contract in circumstances where the total consideration is not determined at the time of appropriation is deemed to have taken place when any of the following events, occurs, whichever occurs earlier:
 - (a) payment of the whole or part of the consideration for the supply becomes due to the supplier;
 - (b) payment of the whole or part of the consideration for the supply is received by the supplier; or
 - (c) on issue by the supplier of a tax invoice for the supply.

Regulation 17—Goods supplied on sale or return

Where goods are supplied on sale or return, the tax point is the earliest of

- (a) the date when the purchaser chooses to keep the goods;
- (b) the issue of a tax invoice by the seller;
- (c) the receipt of payment by the seller, other than a deposit;
- (d) the expiry of the period within which the customer may return the goods; or
- (e) twelve months after the date of dispatch by the seller.

Regulation 18—Imported goods

The time of supply for imported goods is

- (a) the time at which the import duties on the goods become due under the Customs Act, 2015 (Act 891);
- (b) in the case of goods removed from an export-processing zone, the time at which the import duties on the goods become due; and
- (c) in any other case when the goods are brought into the country.

Regulation 19—Casinos, lottery and other game of chance

(1) The time of supply for gaming activity is subject to the following provisions:

- (a) for the supply of services involving number forecasting, lottery or any other game of chance, the time of supply shall be the time at which the numbers are drawn or at which the results are declared;
- (b) for the supply of services involving horse racing or other similar racing, the time of supply shall be the time at which the race takes place;
- (c) for the supply of service by a gaming machine, the time of supply shall be the time at which collection is removed from the machine, or the time at which the transaction is recorded by the machine, whichever is earliest.

(2) The time of supply of services involving casino betting shall be on the last day of the taxable period in which the supply takes place.

Regulation 20—Place of supply of service rendered by non-resident portion of a business

(1) In pursuance of subsection (3) of section 42 of the Act, services rendered by a non-resident portion of a business to the portion of the business carried on in this country

- (a) is treated as services imported into the country by the portion of the business carried on in the country; and
- (b) is chargeable to the tax in accordance with paragraph (c) of sections 2 and 53 of the Act.

(2) Subject to these Regulations, subregulation (1) applies to all services rendered and includes the storage by an overseas portion of the business of computer data of the business carried on in the country.

Regulation 21—Tax invoices

(1) A taxable person shall, in accordance with subsection (1) of section 41 of the Act, on supply of taxable goods or service to a customer issue to the customer a tax invoice.

(2) A tax invoice shall contain the following:

(a) the name, address and Tax Identification Number of that taxable person;

(b) the date and time of supply;

(c) the number of the invoice taken from a consecutive series;

(d) the name of the customer or business name and address and Tax Identification Number if a taxable person;

(e) a description sufficient to identify the goods or services supplied including the quantity of the goods or the extent of the services supplied;

(f) the type of transaction by reference to the following categories:

(i) sale;

(ii) hire purchase, hire, lease or rental;

(iii) exchange;

(iv) goods and services supplied from the taxable person's own supplies;

(g) the tax-exclusive charge for each description of goods or services supplied;

(h) the rate of the tax;

(i) the total charge on the invoice, exclusive of the tax;

(j) the rate of any discount;

(k) the total tax charged; and

(l) the total charge inclusive of the tax.

(3) Unless a registered person is authorised by the Commissioner-General in writing to print that person's own invoice similar to the invoice prescribed by the Commissioner-General, the tax invoice issued by a registered person shall be the invoice printed by the Commissioner-General.

(4) Where under subregulation (3), a person is authorised, the authorisation shall be for a period determined by the Commissioner-General and authorisation may be renewed.

(5) An original tax invoice shall not be provided in any circumstance other than that specified in subregulation (1).

(6) In the case of supplies made at the retail stage where recipients are not taxable persons, the tax may be charged in accordance with regulations 22 to 28.

(7) In the case of import of goods, the appropriate customs forms and receipts certifying payment of the tax shall be used as the control document for establishing eligibility for input tax credit.

Regulation 22—Sales receipt

(1) A taxable person who makes a taxable supply may apply for approval to use a sales receipt pursuant to subsection (3) of section 41 of the Act.

(2) The Commissioner-General may authorise the issue of a sales receipt where

(a) the taxpayer makes low value, high volume supplies;

(b) supplies are paid for in cash; and

(c) the taxable person uses an electronic device approved by the Commissioner-General for the issue of the sales receipt.

(3) The sales receipt in subregulation (1) shall be printed in duplicate and shall contain the following minimum information:

(a) the name and full address of the supplier;

(b) the Tax Identification Number;

(c) the serial number of the receipt;

(d) either the gross amount of the transaction, including the tax or the amount of the transaction and the tax; and

(e) the date of the transaction.

(4) The authorisation shall be for a period determined by the Commissioner-General and may be renewed.

(5) Despite subregulation (2), upon a request by a purchaser who is registered for the tax, the vendor shall issue a tax invoice showing the information required by or under subsection (6) of section 41 of the Act making reference to the serial number of the receipt covering the transaction.

(6) A sales receipt does not qualify for input tax deduction.

Regulation 23—Notification of decision of Commissioner-General on the use of sales receipt

(1) The Commissioner-General shall, in writing, notify any person of a decision to approve or reject an application to issue a sales receipt within thirty days of receipt of the application.

(2) Despite subregulation (1), where the Commissioner-General requests for additional information from the taxpayer, the thirty days shall begin from the day the information is provided.

Regulation 24—Retail scheme

(1) A taxable person who is a retailer of taxable goods may apply for approval to use a retail scheme.

(2) A taxable person who has been given approval by the Commissioner-General under subregulation (1) shall

(a) record the value and brief details of each supply as it occurs and before the goods leave the business premises;

(b) keep copies of all purchase invoices issued by suppliers;

(c) keep a cash register, book, or other records of all daily gross takings received and cash payments made at the time that they are made and at the end of each day the takings received and the cash payments made shall be totaled separately; and

(d) record in the appropriate records at the end of each month the output tax chargeable on supplies made and deductible input tax shown Oil tax invoices in respect of supplies received.

(3) For the purpose of paragraph (d) of subregulation (2), the output tax shall be calculated by applying the following method:

Step 1: Add up the total daily gross takings in the month; and

Step 2: Multiply the total at Step 1 by the tax fraction defined under section 65 of the Act.

(4) Where a retailer of goods makes both taxable and exempt supplies, the retailer shall first apportion the daily gross takings between taxable supplies and exempt supplies.

(5) For the purpose of subregulation (4), the retailer shall

(a) keep a separate record of exempt supplies and deduct the total of the exempt supplies from the daily gross takings in the month; or

(b) calculate from the purchase records, the total value of all goods purchased for resale in the month and the total value of taxable goods purchased for resale in the month.

(6) For purposes of paragraph (a) of subregulation (5), the output tax shall be calculated by applying Step 2 in subregulation (3) to the balance.

(7) For the purpose of paragraph (b) of subregulation (5), the output tax shall be calculated by applying the following method:

Step 1: Divide the total taxable purchases for resale in the month by the total purchases for resale in the month;

Step 2: Multiply the result of Step 1 by the total daily gross takings in the month; and

Step 3: Apply the tax fraction to the result of Step 2.

Regulation 25—Annual adjustments for retail scheme

(1) A taxable person who calculates the output tax using the method specified in paragraph (b) of subregulation (4) of regulation 24 shall, on the anniversary of starting to use the method and on each subsequent anniversary, make an annual adjustment to the output tax for that year.

(2) The adjustment shall be calculated by applying the same method but substituting purchases for resale in the year for purchases for resale in the month in Step 1 and substituting total daily gross takings in the year for total daily gross takings in the month in Step 2.

(3) The taxable person shall compare the result of this adjustment with the total output tax previously calculated for that year and adjust the difference on the return for the next accounting period.

(4) In the event of a change in the rate of the tax, a taxable person shall make an adjustment to the output tax to cover the period from the date of the last adjustment until the date of the change in the rate of the tax and on each anniversary of the change.

Regulation 26—Approval for the use of retail scheme

(1) The Commissioner-General may authorise the use of retail scheme for a period determined by the Commissioner-General and the authorisation may be renewed.

(2) A taxable person who is authorised to operate a retail scheme shall issue a sales receipt under regulation 22.

Regulation 27—Use of electronic device under retail scheme

A taxable person who operates a retail scheme shall install an electronic device provided for under paragraph (c) of subregulation (2) of regulation 22.

Regulation 28—Other schemes to be approved by the Commissioner-General

(1) The Commissioner-General may, in accordance with paragraph (g) of subsection (1) of section 64 of the Act, issue directives to authorise the use of other appropriate schemes by a registered retailer to ensure the proper accounting for the tax.

(2) The Commissioner-General may issue directives authorizing other methods of taking account of the output tax chargeable and input tax deductible by other registered persons.

Regulation 29—Withdrawal of privilege

The Commissioner-General may

(a) revoke the authorisation to issue an own invoice or sales receipt, and

(b) withdraw the right to operate a scheme from a registered person at any time, if the conditions specified under these Regulations are breached or any other directives are not complied with to the satisfaction of the Commissioner-General.

Calculation of Tax Payable

Regulation 30—Application of subtraction method to locally procured used goods

(1) A taxable person who deals in locally procured used goods may apply to the Commissioner-General for approval to charge the tax on the difference between the buying price and the selling price of certain used goods subject to the condition that no input tax shall be taken on, any goods purchased for resale, and a permanent record will be kept showing

(a) in respect of purchases,

(i) the date of the purchase;

(ii) the name and full address of the person from whom the goods were purchased;

(iii) a sufficient description of the goods to clearly identify them, including part and serial numbers, if any; and

(iv) the total amount paid; and

(b) in respect of sales,

(i) the date of the sale;

- (ii) the name and full address of the person to whom the goods are sold to;
- (iii) the selling price, exclusive of the tax;
- (iv) the difference between the purchase price and the selling price;
- (v) the rate of the tax;
- (vi) the amount of the tax on the difference; and
- (vii) the total amount received.

(2) The details specified in subregulation (1) shall be recorded at the same time as the respective purchase or sale is made.

(3) Where a taxable person has been granted approval by the Commissioner-General to use the subtraction method, a sales receipt provided for in regulation 22 shall be issued in place of a tax invoice.

(4) Where the transaction involves used goods and is between two registered persons, the normal method for accounting for the tax shall apply.

(5) If the registered person using the subtraction method described in this regulation fails to maintain satisfactory records that registered person shall be required to account for the tax on the full selling price of the goods sold and pay the amount of the tax with the next tax return.

Tax Returns, Records and Assessment

Regulation 31—Value Added Tax records

(1) Each registered person shall, unless otherwise provided for in this regulation, for the purpose of accounting for the tax, keep the following records:

- (a) a Value Added Tax account to show total output tax and the amount due to or due from the Commissioner-General for each month;
- (b) relevant business and accounting records including sales and purchase journals, cash books, ledgers and other subsidiary books of account;
- (c) copies of all tax invoices and sales receipts issued;
- (d) tax invoices and sales receipts received;
- (e) documentation relating to the importation and exportation of goods and services;
- (f) all debit and credit notes or other documents providing evidence of an increase or decrease in the value of goods and services purchased or sold; and
- (g) any other records that the Commissioner-General may specify.

(2) The accounting software used by a registered person shall be one that is approved by the Commissioner-General.

(3) On application by a registered person, the Commissioner-General may permit the records required to be kept under the Act and under these Regulations to be maintained electronically, subject to the conditions that

(a) the Commissioner-General shall have unrestricted access to the records of the registered person during normal business hours;

(b) the registered person shall provide, at the expense of the registered person, print-outs of any information required by the tax officer;

(c) the registered person shall provide a competent Information Communication Technology personnel, at the expense of the registered person, to assist the Commissioner-General in any verification or audit the Commissioner-General may wish to conduct; and

(d) the registered person shall make the records available for examination by the Commissioner-General whenever examination is required.

(4) The registered person shall keep the records required to be kept under sub-regulation (1) for a minimum period of six years and shall after the six years, only destroy the records with the written permission of the Commissioner-General.

Regulation 32—Manner of maintaining records by branch or division

Where a business opts for each branch or division to be registered separately under subsection (3) of section 12 of the Act, each branch or division registered separately shall maintain separate accounting records for the purpose of the tax and shall file returns accordingly.

Regulation 33—Manner of maintaining records by registered group

(1) Where a group of corporate bodies opts to be registered as a single unit under subsection (3) of section 12 of the Act, all the members of the group shall adopt the same tax period and the same accounting basis for the tax.

(2) Despite the fact that no output tax shall be paid on transactions between members of the group, each member of the group shall maintain distinct records, including tax invoices, for all transactions between members of the group.

Regulation 34—Assessment to include interest and penalties

The amount of an assessment issued under section 54 of the Act shall include any interest payments and penalties incurred by the taxable person up to the date of issuance of the assessment.

Regulation 35—Liability of persons ceasing to be partners

A person who notifies the Commissioner-General of the intention of that person to cease to be a partner in a business, remains jointly and severally liable for the payment of any taxes due from the business in any prescribed accounting periods up to the time that person ceased to be a member of the partnership.

Regulation 36—Liability of members of a registered group

Where a number of corporate bodies have been registered as members of a group under these Regulations, each member of the group is liable for any tax due from the representative of the group to the Commissioner-General.

Deduction of Input Tax and Refund

Regulation 37—Non-deductible input tax

(1) The restriction on deduction of input tax on a motor vehicle and vehicle spare parts, specified in subsection (5) of section 48 of the Act, does not apply to

(a) a motor vehicle purchased or imported by a taxable person who is in the business of dealing in or hiring of motor vehicles for the purposes of the business; or

(b) a motor vehicle, other than a motor car, purchased or imported by a taxable person wholly, exclusively and necessarily for use in the business.

(2) For the purposes of this regulation, a motor car is any motor vehicle of a kind normally used on public roads which has three or more wheels and

(a) is constructed or adapted solely or mainly for the carriage of passengers; or

(b) to the rear of the driver's seat, has roofed accommodation which is fitted with side windows or which is constructed or adapted for the fitting of side windows.

(3) Despite subregulation (2), a motor car does not include

(a) a vehicle capable of accommodating only one person or suitable for carrying twelve or more persons;

(b) a vehicle of not less than three tonnes unladen weight;

(c) an ambulance or a prison van; or

(d) a vehicle constructed for a special purpose other than the carriage of persons and which does not have any other accommodation for carrying persons than what is incidental to that purpose.

Regulation 38—Entertainment expenses

For the purposes of subsection (6) of section 48 of the Act, entertainment expenses include.

(a) food and other ingredients purchased in order to provide meals to staff, clients, and business associates- and includes

(i) year-end lunches and parties,

(ii) hiring of venues for those functions;

(iii) expenses incurred for the provision of free meals at workplace canteens; and

(iv) complimentary staff refreshments in the nature of tea, coffee and other beverages, or snacks provided to staff;

(b) business lunches, golf days, or other entertainment of customers and clients in restaurants, theatres, night clubs or sporting events;

(c) goods and services in the nature of catering services, furniture, equipment, utensils and similar goods and services used in canteens, kitchens, and dining rooms acquired for providing employees with subsidised or free meals if the direct and indirect costs of providing those benefits and facilities are not covered by the price charged;

(d) beverages, meals, entertainment shows, amusements or other hospitality supplied to customers and clients at product launches and promotional events; and

(e) capital goods in the nature of hospitality boxes, holiday houses, yachts, private aircraft, and similar goods which are used for entertainment.

Regulation 39—Supplies made to a non-resident leaving the country

The Commissioner-General may authorise refund of the tax charged on goods purchased in the country for consumption outside the country by a person not resident or domiciled in the country.

Regulation 40—Relief supply

For the purposes of subsection (2) of section 38, unless otherwise directed by the Minister, a person entitled to relief shall be required to pay the tax and apply for refund in accordance with section 50 of the Act.

Regulation 41—Input tax on benefits

(1) Input tax, incurred by a registered taxpayer on inputs for an employee of that taxpayer, is not deductible, unless it is proven to the satisfaction of the Commissioner-General that the input was sold to the employee or rendered to the employee as a service, and the sale or the service is included in the periodic return of the dealer as a taxable transaction, the price of which was set in accordance with the provisions of subsection (8) of section 48 of the Act.

(2) For the purposes of subregulation (1),

“employee” includes a person who shares in the ownership of the business or is one of the directors of the business; and

“input”, in respect of an employee means an asset or a service, in the nature of a meal, housing, gifts or entertainment or any other similar asset intended for the enjoyment, profit, welfare or benefit of an employee or of members of the family of the employee.

Regulation 42—Repatriation of export proceeds

For the purposes of subsection (1) of section 50 of the Act, repatriation of total export proceeds is subject to any enactment in force which allows the taxable person to retain part of the export proceeds outside the country.

Regulation 43—Denial of input tax

A taxable person shall be denied deduction of input tax paid on acquisition of goods or services in subsection (4) of section 19 and section 25 of the Act only where the taxable person is not entitled to deductible input tax under subsections (5), (6) and (7) of section 48 of the Act.

Miscellaneous Provisions

Regulation 44—Returnable container

(1) For the purposes of section 65 of the Act, a returnable container is a container that is

(a) an article of a permanent character strong enough to be suitable for repeated use;

(b) specially designed to facilitate the carriage of goods by one or more modes of transport without intermediate reloading;

(c) fitted with a device that permits ready handling and particularly its transfer from one mode of transport to the other; and

- (d) designed to be easy to fill and empty.
- (2) For the purpose of subregulation (1), a returnable container includes
 - (a) a heavy duty container for industrial application;
 - (b) industrial gas or oxygen cylinder;
 - (c) a pallet container;
 - (d) shipping and protective storage bin; and
 - (e) any other container that may be approved by the Commissioner -General.

Regulation 45—Use of banks

- (1) The Commissioner-General may enter into an agreement with any bank under which the bank agrees to receive tax returns and tax payments on behalf of the Authority.
- (2) The use of a bank under an agreement under this regulation does not relieve the Commissioner-General of the responsibility to collect and account for the tax.

Regulation 46—Contracts entered into before and after the effective date of the tax

- (1) Where a contract was concluded between two or more parties before the effective date of the tax, and no provision relating to the tax was made in the contract, the supplier shall recover the tax due on any taxable supplies made under the contract after the effective date of the tax.
- (2) Where a contract concluded after the effective date of the tax does not include a provision relating to the tax, the contract price shall be deemed to include the tax and the supplier under the contract shall account for the tax due.
- (3) For the purpose of this regulation, effective date of the tax refers to the date the tax became applicable to the taxable person.

Regulation 47—Value Added Tax manuals

The Commissioner-General may issue administrative, accounting, and operational manuals, that the Commissioner-General considers necessary for collecting and accounting for the tax.

Regulation 48—Purchases prior to registration

- (1) A taxable person may benefit from subsection (12) of section 48 of the Act if that taxable person
 - (a) is in possession of an invoice or the relevant customs documentation and receipts of payments made; and
 - (b) produces an inventory of all goods on hand on the effective date of registration.
- (2) A taxable person shall submit a claim for recovery of the tax under subsection (12) of section 48 of the Act in the form and manner determined by the Commissioner-General.

Regulation 49—Tax payable by auctioneer

- (1) Where an auctioneer makes a taxable supply of goods under an auction, the auctioneer shall charge the output tax

(a) on the amount of a successful bid; or

(b) in the case of a sale out-of-hand, the purchase price.

(2) An auctioneer shall account and pay for the output tax whether or not it is included in the total cost or price charged to the bidder or purchaser.

(3) An auctioneer shall account for the tax on the supply of services provided in the normal course of business.

Regulation 50—Bad debts

Pursuant to paragraph (b) of subsection (3) of section 46 of the Act, a debt shall be considered irrecoverable where a taxable person satisfies the Commissioner-General of the following:

(a) the taxable person has undertaken action for recovery of the debt;

(b) the action for the recovery has exhaustively proven futile; and

(c) the taxable person has made all the necessary entries in the book of accounts.

Regulation 51—Separate supply

Without limiting section 31 of the Act and for the purpose of section 23 of the Act, a part of supply of goods and services shall be treated as reasonably capable of being supplied separately only where the part is not incidental to the supply.

Regulation 52—Application of offences and matters pertaining to the tax

The provisions of the Act regarding offences in respect of the tax and matters pertaining to the tax apply to these Regulations.

Regulation 53—Interpretation

(1) Words and expressions used in these Regulations have the same meaning as in the Act.

(2) In these Regulations, unless the context otherwise requires, “assessment” means the verification of the tax liability of a taxpayer by the Commissioner-General;

“collection” means the removal of token or money from a gaming machine;

“District Assembly” includes Metropolitan and Municipal Assemblies;

“export processing zone” means a free zone as declared under section 7 of the Free Zone Act, 1995 (Act 504);

“going concern” means a business entity which is not likely to cease operation in the foreseeable future as specified in regulation 8;

“permanent record” means a record either in electronic or print format that can last for a period of at least six years;

“retail scheme” means one of the methods of accounting for the tax as set out in regulations 26, 27 and 28;

“Tax Identification Number” means a unique number used to identify a tax payer registered by the Commissioner-General under section 4 of the Taxpayers Identification Numbering System Act, 2002 (Act 632);

“transfer of consignment” means the process of transferring ownership of goods from one person to another person; and

“sales receipt” means a receipt generated by a cash register or an electronic point of sale device on the authority of the Commissioner-General as specified in regulation 22.

SCHEDULE

(Regulation 15)

INDICATIVE LIST FOR FINANCIAL SERVICES

Financial services for which fees, commissions and similar charges imposed are subject to the tax or the National Health Insurance Levy under the provisions of the Act include services relating to

1. Current accounts, foreign and local
2. Bank draft, payment order
3. Stopped cheques
4. Returned cheques
5. Commission on turnover
6. Overdraft processing or renewal fee
7. Revolving acceptance credit
8. Arrangement fee for facilities
9. Statements and certificates of balance
10. Clearing charges
11. Cheques for collection
12. Standing orders
13. Telephone banking
14. Safe custody
15. Cheque books including
 - (a) sale of cheque leaflet; and
 - (b) replacement of lost cheque book
16. Issuance of debit cards and credit cards
17. Revolving credits
18. Collateral management

19. Transfer of documents to other banks
20. Guarantees, bonds, tender, performance
21. Request for forex drafts
22. Outwards transfer: swift or telex
 - (a) drafts or money orders
23. Travelers cheques, drafts
24. Cheque lodgments for corporate bodies and third parties only
25. Evacuation fee, cash-in-transit
26. Unpaid standing order
27. Closure of accounts
28. Remote banking services including
 - (a) online banking;
 - (b) electronic statement;
 - (c) e-clients;
 - (d) phone banking;
 - (e) short messaging service banking;
 - (f) mobile banking;
 - (g) monthly subscription; and
 - (h) financial transaction fee.
29. Lending fees including
 - (a) commitment fee, arrangement fee, processing fee, facility fee and other similar fee;
 - (b) processing fee;
 - (c) property valuation fee, open market value;
 - (d) guarantee commission;
 - (e) bid security;
 - (f) bank credit letter, letter of intent;
 - (g) mobilisation guarantee;
 - (h) retention guarantee;
 - (i) performance bond; and
 - (j) default or restructured.

30. Other loans, excluding salary advance but including

- (a) arrangement fees;
- (b) new loans;
- (c) top-ups; and
- (d) early settlement fees.

31. Letters of credit, imports including

- (a) establishment commission
 - (i) arrangement fee; and
 - (ii) presentation under l/c drawings;
- (b) amendments in the nature of
 - (i) increase in amount;
 - (ii) extension of period;
 - (iii) extension of period - another quarter; and
 - (iv) discrepancy; and
- (c) other amendments.

32. Documentary bills for collection, imports including

- (a) handling charges - customers;
- (b) negotiation commission;
 - (i) advice of fate;
 - (ii) bills deleted; and
 - (iii) protest;
- (c) payment commission in the nature of per quarter holding charges;
- (d) prior approval, customers in respect of
 - (i) own resources;
 - (ii) telex or cable charges; and
 - (iii) swap charge; and
- (e) customers allocated funds from bank in relation to
 - (i) exchange; and
 - (ii) telex or cable charges.

HON SETH E. TERKPER

Minister responsible for Finance

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