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VALUE ADDED TAX (SUPPLY OF REAL PROPERTY) (GENERAL) RULES, 2023

Arrangement of Rules

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MINISTRY OF FINANCE

S.I. No. 15 of 2023

VALUE ADDED TAX ACT, 2014

(NO. 32 OF 2014)

VALUE ADDED TAX (SUPPLY OF REAL PROPERTY) (GENERAL) RULES, 2023

The Comptroller, in exercise of the powers conferred by section 17 of the Value Added Tax Act, 2014 (*No. 32 of 2014*), makes the following Rules —

1. Citation.

- (1) These Rules may be cited as the Value Added Tax (Supply of Real Property) (General) Rules, 2023.
- (2) These Rules shall be deemed to have come into force on the 1st day of July, 2022.

2. Interpretation.

- (1) In these Rules —
 - “**Act**” means the Value Added Tax Act, 2014 (*No. 32 of 2014*);
 - “**assessment number**” means the identifier issued by the Chief Valuation Officer to a piece, parcel or lot of real property on the assessment lists for the purposes of the Real Property Tax Act (*Ch. 375*);
 - “**beneficiary**” in relation to a decedent’s estate means a person who is entitled to an interest in any real property in the estate by devise or under the laws of intestacy;
 - “**change in beneficial ownership**” in relation to real property means the substitution or addition of any one or more persons as the beneficial owner or owners of that property;
 - “**devise**” means a gift of real property by will;
 - “**instrument for a supply of real property**” means a deed of conveyance, mortgage deed, long-term lease, share purchase agreement or other instrument that evidences a supply of real property, or a memorandum of transaction under section 38F of the Act;
 - “**Chief Valuation Officer**” has the meaning ascribed to it in the Real Property Tax Act (*Ch. 375*);

“partition” means a division of real property held for or by two or more beneficial owners, into separate lots and the vesting in each beneficial owner sole ownership of one or more individual lots of the divided property;

“party to a supply of real property” means the supplier or recipient of a supply of real property; and “parties” shall be construed accordingly;

“recipient” or **“transferee”** means a person who receives a supply of real property;

“real property tax” has the meaning ascribed to it in the Real Property Tax Act (*Ch. 375*) and includes a surcharge payable under section 21 of the Real Property Tax Act (*Ch. 375*);

“supplier” or **“transferor”** means a person who makes a supply of real property;

“transfer of real property” includes —

- (a) any conveyance, assignment or other disposition of any real property, whether effected or evidenced by deed or not and whether for valuable consideration or by way of gift;
 - (b) the sale, assignment or delivery of any chattels or other personal property to the purchaser of any real property or his nominee as a part of or incidental to any transaction relating to the transfer of any real property;
 - (c) any exchange of real property for other real property;
 - (d) the issuance or transfer to any person or his nominee of any interest in any real property holding entity; or
 - (e) any other transaction whether by way of merger or otherwise, that has the effect of vesting the beneficial interest in any real property or any interest in a real property holding entity in any person alone or with any other person;
- (2) The term “land” in the definition of real property under section 2 of the Act includes vacant real property, dwellings, commercial buildings, condominiums, tenements or any other structures attached to the land and time-shares.
 - (3) References in the Act to goods of a kind and for a use within the customs duties exemptions in clause 2 of the Hawksbill Creek Agreement scheduled to the Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) Act (*Ch. 261*) do not include real property.
 - (4) Unless the context otherwise requires, words or phrases used in these Rules, which are not defined in this rule, have the same meaning ascribed to them in the Act or the Regulations.

3. Time of supply.

- (1) A supply of real property takes place upon the first to occur of the following —
 - (a) the execution of the instrument that contains or evidences the supply of the real property;
 - (b) the completion date of the transaction for the supply of the real property;
 - (c) the date that the transaction for the supply of real property is substantially performed.
- (2) A transaction is substantially performed where —
 - (a) a substantial amount of the consideration is paid;
 - (b) the transferee is entitled to possession of the property;
 - (c) the first amount of rent is paid; or
 - (d) an option or right of preemption is acquired.

4. Liability to account for and pay VAT on a supply of real property.

- (1) VAT is chargeable on every supply of real property —
 - (a) by any person;
 - (b) whether or not the parties to the supply execute an instrument evidencing the supply.
- (2) VAT on a supply of real property is due and payable on the date of the supply and, subject to the provisions of section 32 (16) of the Act, is required to be paid in full directly to the Comptroller within one hundred and eighty calendar days of the date of the supply.
- (3) Notwithstanding paragraph (2), where a registrant makes a supply of real property in the course or furtherance of a taxable activity carried on by such registrant —
 - (a) the registrant supplier must account for the VAT chargeable on the supply of real property as part of the taxable supplies made by the supplier; and
 - (b) the recipient, if also a registrant, must account for the input VAT paid or payable as part of the taxable supplies made to the recipient, recorded in the return filed for the tax period in which the real property was supplied.
- (4) Where land is supplied in a separate legal transaction from and which occurs before the construction of a building or other structure thereon —

- (a) VAT on the supply of the land must be paid in full within one hundred and eighty days of the date of the supply of the land; and
 - (b) VAT on the contract for the construction of the building or other structure on the land is chargeable at the standard rate in accordance with the time of supply rules in section 32 of the Act.
- (5) A supply of construction goods or services in relation to real property under an agreement providing for installments or periodic payments which is connected to the subsequent conveyance of the real property on which the structure is constructed shall be treated as follows —
 - (a) the construction goods or services are treated as successively supplied for each period to which a payment for the goods or services relates;
 - (b) VAT at the standard rate in relation to each successive supply is due in the tax period when a payment becomes due, is received, or an invoice relating only to such payment is issued, whichever is the earliest to occur; and
 - (c) where a Comptroller's receipt is presented, VAT paid in relation to the supply of the construction goods or services will be taken into consideration in determining the amount of VAT payable on the conveyance of the real property.
- (6) The parties to a supply of real property are required to submit the instrument that contains or evidences the supply of real property to the Comptroller for VAT to be assessed on the supply.
- (7) Where —
 - (a) any supply of real property is not contained in or evidenced by any deed of conveyance or other instrument that evidences the supply; or
 - (b) the parties to a supply of real property have determined in good faith that the instrument evidencing the supply is not in a form suitable for the impressing of a VAT stamp thereon,it shall be the joint and several obligation of the parties to the supply to execute a memorandum of transaction setting out the consideration and all other facts and circumstances affecting the VAT chargeable in respect of the supply.
- (8) All the parties to a supply of real property are jointly and severally liable for the payment of the VAT due on the supply.

5. Change in beneficial ownership.

- (1) A supply of real property where there is no change in beneficial ownership means a transfer of real property —

- (a) from a trustee to a vested beneficiary;
 - (b) from a trustee to another trustee where —
 - (i) the terms of the trust or trust deed, the beneficiaries and the trust assets remain the same;
 - (ii) the change in trustee is purely for administrative purposes and there is no variation in the rights and obligations of the trustees or beneficiaries.
- (2) A transfer of real property from the legal and beneficial owners to —
- (a) one or more of the legal and beneficial owners; and
 - (b) one or more other persons,
- is subject to tax at the applicable rate in the Third Schedule of the Act to the extent that the transfer results in a change in beneficial ownership, unless the transfer is zero rated in accordance with the Act and the VAT Rules.
- (3) Subject to paragraph (1) of rule 9, where real property is partitioned —
- (a) the transaction shall constitute a change in the beneficial ownership of the property;
 - (b) each partitioned lot shall be treated as a separate supply of real property regardless of whether the parties execute separate deeds;
 - (c) the change in beneficial ownership for each partitioned lot shall be calculated based on the proportionate share that each owner had in the lot before the partition and the beneficial ownership of the lot after the partition;
 - (d) the applicable rate of VAT for each supply shall be determined based on the value of each partitioned lot;
 - (e) the value of the supply for each partitioned lot shall be deemed to be equal to the proportionate change in beneficial ownership of such lot multiplied by the value of the lot;
 - (f) the total VAT payable for the partition of the undivided property shall be based on the sum of the VAT payable for each partitioned lot.

6. Compliance with the Real Property Tax Act (Ch. 375).

- (1) The Comptroller shall not stamp any instrument for a supply of real property unless —
 - (a) with effect from the 1st October, 2022, the real property is assessed by the Chief Valuation Officer for real property tax;
 - (b) all real property tax assessed by the Chief Valuation Officer in relation to the real property is paid in full: and

- (c) the instrument complies with this rule.
- (2) Every instrument for a supply of real property executed on or after the 1st October, 2022 must state the assessment number for all real property supplied in the manner prescribed by the Comptroller in paragraph (3).
- (3) The assessment number for real property required under paragraph (2) must be stated at the top of the front page of the instrument that is submitted for stamping or in a schedule within such instrument.
- (4) With effect from the 1st October, 2022, every instrument for a supply of real property executed before the 1st October, 2022 must be accompanied by a declaration in the prescribed form stating the assessment numbers for all real property supplied.

7. Assessment of VAT due on a supply of real property.

- (1) VAT due on a supply of real property may be assessed by the Comptroller at any time.
- (2) Where the Comptroller makes an assessment of VAT due on a supply of real property, the Comptroller must serve a notice of the assessment on the supplier or recipient of the supply or a legal or other representative of the supplier or recipient by any of the methods of service permissible under section 97A of the Act.
- (3) A notice of assessment for the supply of real property shall be in writing addressed to either the supplier or the recipient of the supply or to both the supplier and the recipient of the supply.
- (4) Notwithstanding the provisions of this rule, where a supply of real property is made by a registrant or an unregistered taxable person, any VAT unpaid in relation to the supply may be assessed by the Comptroller together with an assessment of the overall taxable activity of such registrant or unregistered taxable person under section 60 of the Act.

8. Comptroller's receipt.

- (1) A Comptroller's receipt shall be issued for all payments made in relation to VAT due on a supply of real property, including payments made under the provisions of section 32 (16) of the Act.
- (2) All Comptroller receipts must be retained and presented with the deed of conveyance or memorandum of transaction or other instrument for the supply of real property at the time of presentation for stamping as evidence of all previous VAT payments made with regard to that supply.
- (3) The Comptroller's receipt must contain the following information —

- (a) the words “Comptroller’s Value Added Tax Receipt” in a prominent place;
- (b) the supplier’s name, address, tax identification number and national insurance number;
- (c) the recipient’s name, address, tax identification number and national insurance number;
- (d) the receipt’s identification or serial number;
- (e) the property’s assessment number;
- (f) the description of the property;
- (g) the date of the receipt;
- (h) the date of the VAT assessment;
- (i) the rate of VAT;
- (j) the amount of tax paid, where applicable.

9. Zero Rated Supplies.

- (1) The following supplies of real property are zero rated —
 - (a) a conveyance by way of assent or deed of assent transferring real property in a decedent’s estate, from the legal personal representative to the beneficiaries to give effect to —
 - (i) the provisions of a devise by the decedent or the rules of intestacy; or
 - (ii) an agreement between the beneficiaries to —
 - (aa) partition the real property; or
 - (bb) otherwise to separate the interest of each beneficiary, in accordance with the pro rata share allotted to each beneficiary in the real property;
 - (b) a transfer of real property made pursuant to an adjustment order under the Matrimonial Causes Act (*Ch. 125*) in either a non-contentious divorce settlement or contentious divorce proceedings;
 - (c) a deed of rectification, confirmatory conveyance, affidavit of loss or other instrument for a supply of real property where —
 - (i) stamp duty or VAT has already been paid in full on a previous instrument submitted for stamping in respect of the same transaction; and
 - (ii) both instruments relate to the same transaction and there is no difference in the parties or any other provision of either instrument, other than the correction of clerical or other errors;

- (d) instruments relating to the vesting of any real property in any person by virtue of any statutory or common law entitlement, except a merger;
- (e) the renunciation or release of dower;
- (f) subject to the provisions of the relevant VAT Rules, an application approved by the Comptroller for —
 - (i) the transfer of a home mortgage;
 - (ii) an inter vivos gift of real property to a qualifying transferee; or
 - (iii) the acquisition of a first dwelling by a Bahamian citizen valued up to \$300,000;
- (g) a supply of real property between members of a VAT group or two or more companies that are constituent members of the same group of companies in accordance with the provisions of rule 16;
- (h) the gift or voluntary disposition of real property by one company to another company, other than a supply under paragraph (g), where —
 - (i) a minimum of 95% of the shares of every class of both the transferor and transferee companies are beneficially owned by the same person;
 - (ii) no other person owns or has agreed to acquire any right, power, title, option or other interest in, over or concerning the shares or interest in the property of either the transferor or transferee company held by the 95% beneficial owner;
- (i) an instrument relating to the vesting of real property to a vested beneficiary under a trust in accordance with the provisions of the trust;
- (j) an instrument or transaction in relation to any loan in relation to real property granted under the Bahamas Co-operative Credit Unions Act (*No. 9 of 2015*), or any other instrument in relation to real property executed by or on behalf of co-operative credit unions registered under the Bahamas Co-operative Credit Unions Act (*No. 9 of 2015*) or executed by an officer or member relating to the business of the co-operative credit union;
- (k) grants, leases, writs, or other instruments issued by and on behalf of the Crown and The Bahamas in relation to a supply of real property other than a crown lease;
- (l) subject to the provisions of these rules, a supply of real property involving no change in beneficial ownership;

- (m) a charge or encumbrance on real property created by statute or arising from an order of the court;
 - (n) where approved by the Minister, a deed of conveyance of property to an entity registered under the Non-profit Organisations Act or a government educational institution registered with the Ministry of Education, on the condition that —
 - (i) the entity does not transfer the property for 10 years; and
 - (ii) the use of the property and fixtures thereon is limited to religious, social, educational, or civic undertakings.
- (2) The Comptroller shall publish from time to time the documents that will be accepted to establish that a supply of real property is zero rated.

10. Value of a supply of real property.

- (1) The value of the supply of any real property, other than a mortgage, for the purpose of charging VAT shall be the higher of —
 - (a) the total of the consideration for the supply; and
 - (b) the fair market value of the supply.
- (2) Subject to subsection (2) of section 36 of the Act, the consideration for a supply of real property is the total amount in money or money's worth paid or payable for the supply less the amount of any price discounts or rebates allowed and accounted for at the time of the supply.
- (3) The fair market value of a supply of real property shall be the highest of the following —
 - (a) the value of the property as assessed by the Chief Valuation Officer under the Real Property Tax Act (*Ch. 375*);
 - (b) the value of the property reported by the taxpayer for financial accounting purposes;
 - (c) the valuation provided by a reputable third party in the business of valuing real property;
 - (d) the value of the property at the time the instrument for the supply of the real property is presented for VAT stamping.
- (4) A person who is aggrieved by the assessment of VAT for a supply of real property may object to the assessment in accordance with the provisions of section 81 of the Act upon the service of the notice of assessment.
- (5) An objection must be accompanied by payment of the total amount of VAT assessed or security for the total amount assessed in a form acceptable to the Comptroller, at the time the objection is lodged.

11. Mortgages.

- (1) Where a supply of real property is a mortgage the value of the supply shall be the total amount being borrowed by the mortgagor.
- (2) Where a mortgage deed and other instruments are executed as part of the collateral to secure the same loan, VAT is chargeable at the applicable rate in the *Third Schedule* on only one of the security instruments, provided that —
 - (a) the entire amount of the loan is secured by the instrument to be chargeable with VAT;
 - (b) all the instruments that form a part of the collateral to secure the loan are submitted simultaneously for stamping.
- (3) Where paragraph (2) applies —
 - (a) the parties may elect the instrument to be stamped by the Comptroller for the payment of VAT at the rate in the *Third Schedule*; and
 - (b) all other instruments submitted simultaneously for stamping that form a part of the collateral to secure the same loan shall be stamped zero rated by the Comptroller.

12. Treatment of input tax credits.

- (1) Subject to paragraph (2) and section 50 of the Act, a registrant that makes supplies of real property in the course or furtherance of a taxable activity carried on by such registrant may claim input tax deduction for —
 - (a) taxable supplies made to such person; and
 - (b) taxable imports made by such person,that are used in the course or furtherance of the taxable activity carried on by the registrant.
- (2) VAT on a supply of real property to a registrant or other taxable person shall not be allowable as an input tax deduction.

13. VAT on the transfer of an interest in a real property holding entity.

- (1) An interest in a real property holding entity includes —
 - (a) a share; or
 - (b) any other legal or beneficial interest,in a real property holding entity.
- (2) The following transactions are chargeable to VAT in like manner as a direct transfer of real property where entered into for the purpose of

effecting a direct or indirect change in the beneficial ownership of any real property —

- (a) the allotment or issuance to any person or his nominee of any shares of any class in any company such that the person to whom such shares are issued or his nominee thereby becomes entitled to voting rights, dividends, or the surplus assets of the company in place of any person who previously enjoyed those rights;
 - (b) the variation of the rights of shareholders of a company such that the person in whose favour such rights are varied becomes entitled to dividends or the surplus assets of the company in substitution for or to the exclusion of the other shareholders;
 - (c) the admission to membership of any person in a company limited by guarantee whether having a share capital or not such that he becomes entitled to dividends or the surplus assets of the company in substitution for or to the exclusion of the other members;
 - (d) any declaration of trust under which the present owner of real property declares himself a trustee of that real property for another person;
 - (e) any purchase by a company of its own shares, any redemption or cancellation of shares, any retention of shares as treasury shares, any conversion or exchange of shares into, or for, shares or other property of any class or description, or any other action of whatsoever nature that effects or facilitates any direct or indirect increase in the overall proportions of any person's shareholdings or effective equity in a company;
 - (f) any other transaction under or in relation to any trust, company, partnership, association or other unincorporated entity resulting in any person indirectly acquiring or succeeding to the beneficial ownership of any real property or any part thereof;
 - (g) the addition of any person to the beneficial class of a trust and the contemporaneous or subsequent removal or exclusion of the other beneficiaries of the trust such that the only person who remains beneficially interested under the trust is the person so added.
- (3) A real property holding entity includes any company that is the parent of any subsidiary that owns real property.
- (4) Where an interest in a real property holding entity is transferred, any real property legally or beneficially owned by the real property holding entity is deemed to be transferred in the same proportion of value as the interest acquired in the real property holding entity.
- (5) The supply of an interest in a public company that is a member of a registered securities exchange is chargeable to VAT where —

- (a) the transfer of such interest creates a controlling interest or changes the controlling interest in a real property holding entity; or
 - (b) the transaction is entered into for the purpose of effecting a direct or indirect change in the beneficial ownership of any real property.
- (6) A transfer of an interest in a real property holding entity is taxable at the rate of 10% regardless of whether the transferee is an individual, a company or another entity, unless the supply is zero rated in accordance with the Act and the VAT Rules.
- (7) For the purposes of this rule —
- “controlling interest”** means a change, acquisition or transfer that results in —
- (a) a shareholding of greater than 50% of the authorized and issued share capital of any class of a real property holding entity;
 - (b) an entitlement greater than 50% to a right to profits or dividends by any person or group of related persons;
 - (c) an interest that is greater than 50% of the legal or beneficial ownership of a real property holding entity; or
 - (d) a percentage legal or beneficial ownership interest in a real property holding entity that is 50% or less, where the owner of that interest actually directs the business or affairs of the entity without the requirement of consent of any other person;
- “parent”** means any company that —
- (a) owns the majority of the issued shares of any class of shares in another company; or
 - (b) that ultimately controls another company either directly or through its control of an intervening subsidiary or subsidiaries however many in number;
- “subsidiary”** means any company the majority of whose issued shares of any class are owned or controlled by another company.

14. Sale and transfer of time-shares.

For the purposes of the Act the sale or transfer of a time-share interest shall constitute a sale or transfer of real property and accordingly shall be chargeable to VAT at the applicable rate for a transfer of real property as set forth in the *Third Schedule*, based on the value of the time-share interest.

15. Dividends-in-specie.

- (1) Subject to paragraph (2), a dividend-in-specie, or other transfer or vesting of the beneficial interest in real property by a company to or in any of its members, shall constitute a change in beneficial ownership and accordingly shall be subject to VAT in the same manner as if such change in beneficial ownership had occurred in favour of a person who was not a member of the company.
- (2) A dividend-in-specie, or other transfer or vesting of the beneficial interest in real property by a company to—
 - (a) a person who alone beneficially owns; or
 - (b) two or more persons who as joint tenants own,
95% or more of the shares of the company shall only constitute a change in beneficial ownership to the extent of the proportion of the company's shares that are not beneficially owned by such person or persons.
- (3) For the avoidance of doubt, paragraph (2) does not include persons who separately own shares in a company which cumulatively amount to 95% of the issued shares of the company.
- (4) This rule shall apply whether the dividend-in-specie or other transfer or vesting of the beneficial interest in real property occurs in the course of the winding-up of a company or otherwise.

16. Transfers between related companies.

- (1) Subject to the provisions of this rule, a supply of real property between members of a VAT group or two or more companies that are constituent members of the same group of companies shall only be zero rated where—
 - (a) the supplier and recipient are 95% beneficially owned by the same person;
 - (b) no person, other than the recipient and a pre-existing member of the same group, owns or has agreed to any right, power, title, option or other interest in, over or concerning the shares or property of either the supplier or recipient;
 - (c) no part of the consideration for the supply is payable to any person that is not a member of the VAT group or a constituent member of the same group of companies; and
 - (d) there is no change in the beneficial ownership of the companies.
- (2) Subject to the provisions of this rule, the gift or voluntary disposition of real property by one company to another company, that are not members

of a VAT group or constituent members of the same group of companies, shall only be zero rated where —

- (a) a minimum of 95% of the shares of every class of both the transferor and transferee companies are beneficially owned by the same person;
 - (b) no other person owns or has agreed to acquire any right, power, title, option or other interest in, over or concerning the shares or interest held by the 95% beneficial owner in the property of either the transferor or transferee company.
- (3) The shares of two companies shall only be determined to be 95% beneficially owned by the same person where —
- (a) 95% of the shares of each company are beneficially owned by the same persons; and
 - (b) each of those persons have the same proportionate interest in both companies.
- (4) A supply of real property to which this rule applies shall, where the conditions of paragraph (1) or (2) —
- (a) are satisfied, only be subject to VAT at the applicable rate in the *Third Schedule* to the extent of the difference in beneficial ownership between the supplier and recipient companies; or
 - (b) are not satisfied, be subject to VAT at the applicable rate in the *Third Schedule* on the total value of the supply.
- (5) Where the parties to a supply of real property to which this rule applies are registrants they are required to account for the supply in the VAT return for the tax period in which the supply occurred.

17. Transitional provisions.

- (1) Notwithstanding the time of supply provisions in rule 3, any instrument for the supply of real property —
 - (a) taxable under the *Third Schedule* of the Act; and
 - (b) submitted for stamping on or after the 1st day of July, 2022, shall be subject to the rates of tax in the *Third Schedule* at the time of submission.
- (2) For the purposes of clarity, paragraph (1) shall not —
 - (a) alter the time that a supply occurs in accordance with rule 3;
 - (b) affect the application of a late fine under rule 18 where the VAT due on a supply of real property is not paid within the time prescribed in rule 4;

- (e) result in the zero rated treatment of any supply of real property that was not zero rated at the time of supply;
- (f) affect the operation of the provisions of the Act that were in force at the time that any supply took place, other than the rate of tax in the *Third Schedule*.

18. Late payment.

Where the VAT due on a supply of real property is not paid in full within the time prescribed under paragraph (2) of rule 4, the instrument for the supply of the real property shall not be stamped by the Comptroller unless the following are paid —

- (a) the outstanding VAT; and
- (b) late fines as prescribed under section 38D of the Act.

19. Revocation.

VAT Rule 2019-001 Supply of Real Property (General) is revoked.

Made this 15th day of March, 2023.

Signed
SHUNDA STRACHAN
Comptroller of Vat