

REPUBLIC OF KIRIBATI

VALUE ADDED TAX ACT, 2013 (Section 51)

VALUE ADDED TAX REGULATIONS, 2014

In exercise of the powers conferred by section 51 of the Value Added Tax Act, 2013, the Beretitenti acting in accordance with the advice of the Cabinet, hereby makes the following Regulations –

Short Title and Commencement

1. These Regulations may be cited as the Value Added Tax Regulations, 2014 and come into force on the same day as the Value Added Tax Act, 2013 comes into force.

Interpretation

2. (1) In these Regulations, “Act” means the Value Added Tax Act 2013.

(2) All other expressions used but not defined in these Regulations have the meaning assigned to them under the Act.

Mixed Supplies

3. (1) This Regulation applies when the following conditions are satisfied –

(a) there is a single supply (referred to as the “primary supply”) of any of the following –

(i) two or more different types of goods;

(ii) two or more different types of services;

(iii) goods and services;

(b) if the goods or services were supplied in separate supplies, different rules would have applied under the Act to those separate supplies;

(c) section 13 does not apply to the primary supply.

(2) If this Regulation applies, each item of goods or services provided in the primary supply is treated as the subject of a separate supply occurring at the time of the primary supply.

(3) The price of each separate supply under sub-regulation (2) is calculated according to the following formula –

$$A \times B/C$$

where –

- A is the total price for the primary supply;
- B is the fair market value of the separate supply at the time of the primary supply; and
- C is the sum of the fair market values of each separate supply at the time of the primary supply.

(4) Despite this Regulation, the Board may treat a primary supply in any manner that the Board considers reasonable provided the treatment is a true reflection of the value to the recipient of each item of goods and services provided in the primary supply.

Deemed Taxable Supply on Cancellation of Registration

- 4. For the purposes of section 12(2) of the Act -
 - (a) no amount is deemed to be output tax in relation to input tax payable on inventory on hand to the extent that the input tax has not been paid at the time of cancellation of a person's registration; and
 - (b) no input tax credit is allowed for input tax paid in relation to inventory on hand if the input tax is paid after cancellation of the person's registration.

Application of Goods to Private or Exempt Use

5. For the purposes of section 19 of the Act, if a registered person has applied goods to a private or exempt use and, at the time the goods are first applied to private or exempt use, the registered person has not paid, or fully paid, the input tax payable on the acquisition of the goods –

- (a) no amount is deemed to be output tax in relation to input tax that has not been paid at the time the goods are first applied to private or exempt use; and
- (b) no input tax credit is allowed for input tax paid in relation to the acquisition of goods if the input tax is paid after the goods have been first applied to private or exempt use.

Gambling Supplies

6. (1) The amount of VAT imposed on taxable gambling supplies made by a registered person is determined under this Regulation for each VAT period rather than for each gambling supply.

(2) In each VAT period, a positive amount, if any, computed according to the following formula is treated as output tax of a registered person who makes taxable gambling supplies –

$$(A - B) \times C$$

where –

- A is the total amounts wagered with the person in the period;
- B is the total monetary prizes paid out by the person in the period; and
- C is the tax fraction.

(3) If the amount calculated under sub-regulation (2) for a VAT period is a negative amount, no amount is included under this section in the output tax of the registered person for that period.

(4) A registered person making taxable gambling supplies is not allowed any input tax credits for creditable acquisitions made for the purposes of making those supplies.

(5) A registered person must not issue a tax invoice for a taxable gambling supply.

(6) Section 25 of the Act does not apply to a gambling supply.

(7) In this regulation –

“gambling event” means -

- (a) the conduct of a lottery, raffle, bingo, or similar undertaking; or
- (b) a race, game, sporting event, or other event that has or is intended to have an outcome;

“gambling supply” means -

- (a) the supply of a ticket (however described) in a lottery, raffle, bingo, or similar undertaking; or
- (b) the acceptance of a bet (however described) relating to the outcome of a gambling event;

“taxable gambling supply” means a gambling supply that is a taxable supply;

“total amounts wagered”, in relation to a registered person and a VAT period, means the sum of the following amounts -

- (a) the price for all of the gambling supplies made by the registered person in the VAT period;
- (b) any amounts recovered by the registered person in the VAT period in respect of an amount written off in the current or a previous VAT period that were included in total monetary prizes under paragraph (d) of the definition of that term; and

“total monetary prizes”, in relation to a registered person and a VAT period, means the sum of the following amounts, whether or not the relevant gambling event, gambling supply, or gambling loss occurred during the period -

- (a) the monetary prizes paid by the registered person in the period because of the outcome of gambling events;
- (b) the amounts of money paid in the period by the registered person to a recipient of the registered person’s gambling supplies because of an agreement between them requiring the registered person to repay a proportion of the recipient’s losses from those supplies;
- (c) a negative amount, if any, computed under sub-regulation (2) in the immediately preceding period;
- (d) an amount that the registered person writes off in its financial accounts as a bad debt in relation to all or part of the price for a gambling supply made by the registered person that is due as a debt to the person and has not been received.

(7) A payment referred to in paragraph (b) of the definition of “total monetary prizes” is not treated as the price for a supply.

Prepaid telecommunications cards

7. (1) This regulation shall apply to the following –

- (a) a supply of a prepaid telecommunications card by a telecommunications supplier, other than when the supply of the card is made to another telecommunications supplier;
- (b) a supply of a prepaid telecommunications card by a person acting as the distributor or agent (referred to as a “telecommunications intermediary”) of a telecommunications supplier for the supply of such cards.

(2) If a telecommunications supplier supplies a prepaid telecommunications card at a discount to a telecommunications intermediary, the price of the supply is calculated without reduction for the discount.

(3) If a telecommunications intermediary buys and on-sells a prepaid telecommunications card –

- (a) the sale of the card by the telecommunications intermediary is not treated as a supply for the purposes of the Act; and
- (b) the acquisition of the card is not treated as an acquisition for the purposes of the Act.

(4) For the avoidance of doubt, if a telecommunications supplier supplies a prepaid telecommunications card through a telecommunications intermediary who acts as agent for the telecommunications supplier, the price of the supply is calculated without taking into account the commission paid to the intermediary.

(5) A supply of agency services by a telecommunications intermediary acting as agent, whether for a telecommunications supplier or another telecommunications intermediary, in relation to the distribution of a prepaid telecommunications card is treated as if it were not a supply.

(6) In this Regulation –

“prepaid telecommunications card” means a card or similar item in whatever form it is issued, including electronically, that entitles the holder to receive supplies of telecommunications services up to its face value, and includes a pre-paid Subscriber Identity Module (“SIM”) card, a rechargeable card, a internet access card, or any other form of prepayment of telecommunications services; and

“telecommunications supplier” means a person who supplies telecommunications services.

Allowance of an Input Tax Credit

8. (1) For the purposes of section 25(1) of the Act and subject to section 26 of the Act, if a registered person makes both taxable and other supplies during a VAT period, the input tax credits allowed to the person for the VAT period are determined as follows –

- (a) if a creditable acquisition made by the registered person relates wholly to making taxable supplies, an input tax credit is allowed for the full amount of input tax paid in respect of the acquisition;
- (b) if a creditable acquisition made by the registered person relates wholly to making supplies that are not taxable supplies, no

input tax credit is allowed for the input tax payable in respect of the acquisition;

- (c) if a creditable acquisition made by the registered person relates, directly or indirectly, partly to making taxable supplies and partly to making other supplies, the sum of the input tax credits allowed for such acquisitions during the VAT period is calculated according to the following formula –

$$A \times B/C$$

where –

- A** is the total amount of input tax payable in respect of creditable acquisitions made by the person during the VAT period, less input tax accounted for under paragraphs (a) and (b);
- B** is the value of all taxable supplies made by the registered person during the VAT period; and
- C** is the value of all supplies made by the registered person during the VAT period, other than supplies made through an enterprise carried on by the person outside Kiribati.

- (2) Despite sub-regulation (1) -

- (a) if the fraction B/C in sub-regulation (1)(c) is more than 0.80, the registered person is allowed input tax credits for all of the input tax paid on creditable acquisitions made by the person during the tax period included in component **A** of the formula in sub-regulation (1)(c); and
- (b) if the fraction B/C in subsection (1)(c) is less than 0.20, the registered person is not allowed input tax credits for any input tax paid on creditable acquisitions made by the person during the tax period included in component **A** of the formula in sub-regulation (1)(c).

Tax Invoice

9. (1) Subject to sub-regulation (2), the approved form for a tax invoice must contain the following particulars –

- (a) the words “TAX INVOICE” in a prominent place;
- (b) the name, address, and taxpayer identification number of the supplier;

- (c) the name, address, and taxpayer identification number of the recipient;
- (d) the individualised serial number of the tax invoice and the date on which the tax invoice is issued;
- (e) the description of the goods supplied (including quantity or volume) or services provided and the date on which the supply was made;
- (f) the price of the supply and the amount of VAT charged.

(2) When the value of a taxable supply by a registered person to another registered person is less than \$500, the approved form for a tax invoice for the supply may contain only the following particulars –

- (a) the words “TAX INVOICE” in a prominent place;
- (b) the date the tax invoice is issued;
- (c) the name of the supplier;
- (d) the taxpayer identification number of both the supplier and the purchaser;
- (e) a brief description of the goods or services supplied, the price of the supply, and the amount of VAT charged.

Credit and Debit Notes

10. (1) The approved form for a credit note must contain the following particulars –

- (a) the words “CREDIT NOTE” in a prominent place;
- (b) the name, address, and taxpayer identification number of the supplier;
- (c) the name, address, and taxpayer identification number of the recipient;
- (d) the individualised serial number of the credit note and the date on which the credit note is issued;
- (e) a brief description of the circumstances giving rise to the issuing of the credit note, including information sufficient to identify the taxable supply to which the credit note relates;

- (f) the price shown on the tax invoice for the supply, the correct amount of the price, the difference between those two amounts, and the amount of VAT that relates to the difference.
- (2) The approved form of a debit note must contain the following particulars -
- (a) the words "DEBIT NOTE" in a prominent place;
 - (b) the name, address, and taxpayer identification number of the supplier;
 - (c) the name, address, and taxpayer identification number of the recipient;
 - (d) the individualised serial number of the debit note and the date on which the debit note is issued;
 - (e) a brief description of the circumstances giving rise to the issuing of the debit note, including information sufficient to identify the taxable supply to which the debit note relates;
 - (f) the price shown on the tax invoice for the supply, the correct amount of the price, the difference between those two amounts, and the amount of VAT that relates to the difference.

Application of Section 31 of the Act

11. (1) Section 31 of the Act applies to a contractor entitled to an exemption from VAT under an aid project.

(2) For the purposes of facilitating the refund of VAT provided for in section 31, if a person is entitled to a refund under section 31 in respect of a taxable supply made to, or taxable import made by, the person is exempt from the payment of VAT –

- (a) for a taxable supply made to the person by a registered person, on presentation of the person's VAT exemption card to the supplier at the time of supply; or
- (b) for a taxable import made by the person, on presentation of the person's VAT exemption card to the Comptroller of Customs at the time of import.

(3) For the purposes of sub-regulation (2), the Board may issue a person entitled to a refund under section 31 with a VAT exemption card in the approved form and subject to such conditions as to use as may be specified on the card.

(4) The Board must immediately cancel a VAT exemption card issued to a person if the person –

- (a) uses the card in circumstances other than those provided for in sub-regulation (2) or contrary to the conditions on the card; or
 - (b) allows another person to use the card.
- (5) In this regulation –

“aid project” means a project for the benefit of Kiribati provided for in an international agreement and which is financed by a grant or concessional loan made to the Government by an international organisation or foreign government; and

“contractor” means a person engaged by the Government, an international organisation, or a foreign government to provide services under an aid project.

Record-keeping

12. In addition to the documents required to be kept by a registered person under section 36(3) of the Act, or any other section of the Act or of these Regulations, every registered person is required to keep all books, documents, and records necessary to explain and show the calculation of the person’s output tax, input tax, and net VAT payable for each VAT period, including, but not limited to, the following –

- (a) VAT accounts;
- (b) purchases and sales ledgers;
- (c) invoices (whether or not they are tax invoices) for acquisitions made by the person;
- (d) copies of invoices (whether or not they are tax invoices) issued for supplies made by the person;
- (e) records of any tax invoices for which the recipient of a supply requested a copy to be issued;
- (f) income and expense accounts;
- (g) cash register rolls and tapes (if applicable);
- (h) bank statements;
- (i) documents or records relating to the supply of goods or services to officers, directors, and employees, whether or not a price was charged for the supply;
- (j) any other documents or records related to the enterprise of the registered person, such as bookings, diaries, correspondence,

computer print-outs, audit reports, contracts, or any other accounts or records in any way related to the registered person's enterprise.

Manner of Filing Documents

13. A return, application, notice, or other document to be filed under the Act must be filed in accordance with the Revenue Administration Act.

Application of Customs Act to VAT

14. For the purposes of section 40(2) of the Act –

- (a) in addition to the provisions specified in section 40(2), the provisions of the Customs Act relating to the forfeiture of goods and the review of assessment of import duty, in so far as relevant and with such exceptions and modifications as necessary, apply in relation to the VAT payable on a taxable import; and
- (b) section 31(1)(b) of the Customs Act applies to an import only if the total amount of import duty, VAT, and excise tax payable on the import of a postal article is less than \$500 and section 77 of the Customs Act applies to an import only if the total amount of import duty, VAT, and excise tax payable on an import is less than \$20.

VAT Representatives of Non-residents

15. For the purposes of section 41 of the Act, “non-resident” also includes the following –

- (a) a partnership or trust formed or settled outside Kiribati;
- (b) a foreign government or political subdivision of a foreign government;
- (c) an international organisation.

Variation of Price on a Change in Rate of Value Added Tax

16. (1) If –

- (a) a registered person (referred to as the “supplier”) has entered into an agreement for the supply of goods or services to another person (referred to as the “recipient”); and
- (b) subsequent to entering into the agreement, VAT is imposed on the supply, or the rate of VAT applicable to the supply is increased,

the supplier may, despite anything to the contrary in any agreement or law, recover from the recipient, in addition to the amounts payable by the recipient under the agreement, an amount equal to the amount of VAT imposed or an amount equal to the amount by which VAT was increased on the supply, as the case may be.

(2) If -

- (a) a registered person (referred to as the supplier") has entered into an agreement for the supply of goods or services to another person (referred to as the "recipient"); and
- (b) subsequent to entering into the agreement, VAT on the supply is withdrawn or the rate of VAT applicable to the supply is decreased,

the supplier must, despite anything to the contrary in any agreement or law, reduce the amount payable by the recipient by an amount equal to the amount of VAT withdrawn or the amount by which VAT was decreased, as the case may be.

(3) Subject to sub-regulations (4) and (5), when sub-regulation (1) or (2) applies in respect of a supply of goods or services subject to any fee, charge, or other amount (whether a fixed, maximum, or minimum fee, charge, or other amount) prescribed by, or determined pursuant to, any Act, regulation, or measure having force of law, that fee, charge, or other amount may be increased or must be decreased, by the amount of VAT or further VAT payable, or the amount of VAT no longer payable, as the case may be.

(4) Sub-regulation (3) does not apply when the fee, charge, or other amount has been altered in any Act, regulation, or measure having force of law to take account of any imposition, increase, decrease, or withdrawal of VAT.

(5) Nothing in sub-regulation (3) is to be construed so as to permit any further increase or require any further decrease, as the case may be, in a fee, charge, or other amount when the fee, charge, or other amount is calculated as a percentage or fraction of another amount that represents the price in money for a taxable supply.

Application of Increased or Reduced Rate

17. (1) When a supply of services is treated as a successive supply under section 14(4) of the Act for a period beginning and ending before the date (referred to as the "change date") on which a change in the rate of VAT levied becomes effective in respect of the supply or the date on which the VAT is imposed or withdrawn in respect of the supply and the supply is treated under section 14 as having been made on or after that date, then -

- (a) in the case of a change in the VAT rate on the change date, the rate of VAT applicable to the supply is the rate applicable immediately before the change date;

- (b) in the case of the imposition of VAT on the change date, the supply is treated as not being subject to VAT; or
- (c) in the case of withdrawal of the VAT on the change date, the supply is treated as being subject to VAT as if the VAT had not been withdrawn.

(2) When a supply of services is treated as a successive supply under section 14(4) of the Act during a period beginning before and ending on or after the date (referred to as the "change date") on which a change in the rate of VAT levied becomes effective in respect of the supply or the date on which the VAT is imposed or withdrawn in respect of the supply and the supply is treated under section 14 as having been made on or after the change date, the price of the supply must, on the basis of a fair and reasonable apportionment, be treated as consisting of a part (referred to as the "first part") relating to the performance of services before the said date and a part (referred to as the "second part") relating to the performance of services on or after the said date and -

- (a) in the case of a change in the rate on the change date, the VAT payable in respect of the first part is determined at the rate applicable before the change date and the VAT payable in respect of the second part is determined at the rate applicable on the change date;
- (b) in the case of the imposition of VAT on the change date, the first part is not subject to VAT; or
- (c) in the case of the withdrawal of the VAT, the first part is subject to VAT as if the VAT had not been withdrawn.

Amendment to First Schedule

18. Pursuant to section 51(1) of the Act, the First Schedule is amended in paragraph (1) -

- (a) in sub-paragraph (a) -
 - (i) by deleting sub-sub-paragraph (ii) and substituting the following sub-sub-paragraph -
 - "(ii) not more than 200 cigarettes or 250 grams of tobacco products;"
 - (ii) in sub-sub-regulation (iii), by inserting "not more than" before "250";
 - (iii) by deleting sub-sub-paragraphs (iv) and (v) and substituting the following sub-sub-paragraphs -

- “(iv) not more than 4 litres of wine;
- (v) not more than 2.25 litres of alcohol, other than wine;”
- (b) in sub-paragraph (c), by deleting “on which the total VAT and other taxes payable do not exceed” and substituting “for private use up to a maximum value of”;
- (c) in sub-paragraph (f), by deleting the stop and substituting a semi colon; and
- (d) by inserting the following sub-paragraph after sub-paragraph (f) –
 - “(g) an import of goods on which no customs duty is payable as set out in the Ministry of Finance and Economic Development Policy for Exempting Customs Import and Export Duty, as amended from time to time.”.

Amendment to Second Schedule

19. Pursuant to section 51(1) of the Act, the Second Schedule is amended in paragraph (1) by inserting the following sub-paragraphs after sub-paragraph (j) –

- “(k) a supply of uncooked rice;
- (l) a supply of uncooked flour made from wheat;
- (m) a supply of kerosene;
- (n) a supply of a bicycle or parts for a bicycle;
- (o) a supply of repair services for a bicycle;
- ~~(p)~~ a supply of a mosquito net;
- (q) a supply of benzol (benzene);
- (r) a supply of oil No.50;
- (s) a supply of an exercise book.”

Amendment to Third Schedule

20. Pursuant to section 51(1) of the Act, the Third Schedule is amended –

- (a) in Part I, in paragraph (1) –

- (i) in sub-sub-paragraph (f)(ii), by deleting "and" at the end of the sub-paragraph;
- (ii) in sub-paragraph (g), by deleting the stop at the end of the sub-paragraph and substituting a semi colon;
- (iii) by inserting the following sub-paragraph after sub-paragraph (g) –

"(h) a supply of a fishing licence to a person who will use the licence principally to make exports of fish."; and

(b) in Part II –

- (i) in the introductory words of the Part, by deleting "supply is a zero-rated supply" and substituting "supplies are zero-rated supplies"
- (ii) by inserting the following paragraph after paragraph (1) –

"(2) The transportation of passengers in Kiribati by a bus, truck, or taxi, other than by a tour operator."

Dated this day 10 April, 2014

Anote Tong

Anote Tong
Beretitenti

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Tea Tiira

Tea Tiira
Secretary to the Cabinet