



# STANDARD INTERPRETATION GUIDELINE 2018-11

## VALUE ADDED TAX (VAT) – TIME OF SUPPLY RULES – SECTION 18

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This Standard Interpretation Guideline (SIG) sets out Fiji Revenue and Customs Service's (FRCS) policy and operational practice in relation to identification of time of supply under Section 18 and other applicable provisions of the Value Added Tax Act 1991 (VAT Act).

It is issued with the authority of the Chief Executive Officer (CEO) of FRCS.

All legislative references in this SIG are to the VAT Act, 1991 and the VAT Regulations, 1991 (unless otherwise stated).

This SIG is in effect from 4 July 2018 and may need to be reviewed in the event of any relevant legislative amendments.

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## **EXECUTIVE SUMMARY**

1. The general rule for time of supply is provided under Section 18(1) of the VAT Act, 1991 which provides that a supply is deemed to take place at the earlier of when:
  - a. a tax invoice is issued by the supplier or the recipient; or
  - b. any payment is received by the supplier; or
  - c. the delivery of the goods and services takes place.
2. This means that a supply is deemed to be made, for instance, at a time a supplier issues an invoice for the goods sold on credit or when a person pays a deposit on goods for which no invoice will be issued until a later date or when a delivery of goods or services takes place, whichever is the earlier.
3. This SIG is aimed at dealing with the time of supply rules in a holistic manner and considers the issuance of a tax invoice, receipt of any payment and delivery of goods and services in relation to the supply.
4. Furthermore, there are special rules prescribed under the VAT Act, 1991, that would determine when a supply is to be treated as being made for VAT purposes.
5. Prior to applying this SIG to a particular set of facts, it is necessary to establish that there is a transaction giving rise to a supply on which VAT will be charged under section 15(1) of the VAT Act. Section 18 is isolated to rules in relation to timing only and will apply to deem a time of supply if there is a transaction effecting a supply.
6. While section 18(1) deals with the general rules for time of supply, section 18(2) deals with specific scenarios which needs to be addressed separately. These specific scenarios have also been clarified in this SIG.

## **INTRODUCTION**

7. A person who is registered under section 22 of the VAT Act must charge VAT on supply of goods and services according to section 15 of the VAT Act.
8. The definition of supply carries the widest possible meaning in the VAT Act and states that it “includes all forms of supply”. Some transaction which constitute “supplies” include normal cash or credit sales, hire purchase, provision of services, leases, etc<sup>1</sup>.
9. Time of supply deemed under the VAT Act may have an impact on the business practices and administration.
10. The time of supply rules enable us to determine the rate of tax, value and determines when the liability to pay VAT arise. This SIG aims to provide clarity and consistency on these rules.

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<sup>1</sup> VAT Technical Manual pg. 1

11. Examples illustrated in this SIG demonstrates the CEO's interpretation and application of the time of supply rules under section 18 of the VAT Act.
12. The full text of the legislative provisions is contained in Appendix Two.

## LEGISLATIVE ANALYSIS

### General Time of Supply Rule

13. The general time of supply rule is covered in section 18(1) of the VAT Act 1991.

#### [VAT 18]

#### Time of supply

- (1) Subject to this Act, a supply of goods and services shall be deemed to take place at the time -
  - (a) a tax invoice is issued by the supplier or the recipient; or
  - (b) any payment is received by the supplier; or
  - (c) the delivery of the goods and services takes place, whichever is the earlier.

### Tax Invoice [VAT 18(1)(a)]

14. A tax invoice is distinct from an invoice. An invoice is merely a written notification that payment is required<sup>2</sup> while a tax invoice has specific particulars as required under the VAT Regulations, 1991.
15. Every person who is registered for VAT under section 22 of the VAT Act must issue a tax invoice for a taxable supply according to the VAT Regulations, 1991. Failure to issue a tax invoice in accordance with the Regulations is an offence under the VAT Act<sup>3</sup>
16. On the other hand , it is not compulsory for a registered person to issue a tax invoice for a transaction which does not exceed \$10, unless it is requested by the recipient.<sup>4</sup>
17. For transactions below \$100<sup>5</sup>, the following particulars must be on the tax invoice:
  - (a) the word "tax invoice" in a prominent place;
  - (b) the name and taxpayer identification number of the supplier;
  - (c) the date upon which the tax invoice was issued;
  - (d) a description of the goods and services supplied, and
  - (e) the consideration for the supply and a statement that it includes a charge in respect of tax.

Whereas, transactions above \$100<sup>6</sup> must contain the following:

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<sup>2</sup> NZ Master Tax Guide [¶132-150] Tax invoices for GST

<sup>3</sup> Section 71(m) of the Vat Act

<sup>4</sup> Regulation 7 of the VAT Regulations 1991

<sup>5</sup> Regulation 5 of the VAT Regulations 1991

<sup>6</sup> Regulation 1 of the VAT Regulations 1991

- (a) the words “tax invoice” in a prominent place;
- (b) the name, address and taxpayer identification number of the supplier;
- (c) the name and address of the recipient;
- (d) an individual serialised number and the date upon which the tax invoice was issued;
- (e) a description of the goods and services supplied;
- (f) the quantity or volume of the goods and services supplied, and
- (g) the total amount of the tax charged, the consideration, excluding tax, and the consideration, inclusive of tax for that supply

18. If the particulars listed above in paragraph 17 are not present on the (tax) invoice, the same is not recognized as a tax invoice and the time of supply rules under section 18(1)(a) is not triggered.
19. The determination of when a tax invoice is issued is generally quite simple and is determined by the actual time a tax invoice is issued by a supplier to a recipient for a supply of goods or services.
20. A tax invoice is usually issued by the registered supplier of goods or services but in a self-billing situation, may be issued by the recipient.<sup>7</sup>
21. If a tax invoice has not been issued for a supply of goods or services by a supplier, requirement of section 18(1)(a) has not been met. The transaction is further qualified under section 18(1)(b) which deals with any payment received by the supplier.

### **Payment [VAT 18(1)(b)]**

22. Payments can be received through cash, cheques, credit cards or other acceptable forms of payment.

#### **Cash**

23. For cash payments, time of supply is recognized when the money is physically paid to the supplier by the recipient of the goods or services.

#### **Cheques**

24. Cheques are a bit more complex to deal with. A cheque is a promise to pay and the money will not change hands until the cheque is cleared. Dishonored cheques pose another issue as it cannot be considered as payment received.
25. The issue of payment by cheque has not been considered by the domestic courts in the context of VAT or Income tax. Therefore, guidance is sought from New Zealand, from which our VAT Act has been adopted.
26. The NZ Case of *Ullrich v C of IR* [1964] NZLR 386 provides some guidance. On page 388 Perry J said:

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<sup>7</sup> VAT Technical Manual pg. 22

*“When a cheque is handed over in payment can that be regarded as a payment to the person receiving the cheque? My view is that if in the course of dealing between the parties contemplates a payment which may be by cheque then the handing over of a cheque would be payment on the date of handing over”*

27. The NZIRD has also issued a Public Ruling which states that payment occurs when a cheque is handed over.<sup>8</sup> The CEO of FRCS follows the same interpretation as NZIRD whereby payment is recognized when the recipient issues a cheque to the supplier as payment for the goods or services.

#### *Post Dated Cheques*

28. A cheque is still valid if it is ante-dated (carrying a prior date) or postdated (carrying a future date)<sup>9</sup>.

29. The CEO has also relied on the NZ case law of *The Court of Appeal in Pollock v BNZ* [1901] 20 NZLR 174 which considered the effect of a post-dated cheque. At page 182 the Court held that:

“by section 13 of 'The Bills of Exchange Act, 1883', the post-dating of a bill of exchange does not invalidate the instrument. It is in effect a bill of exchange payable on demand with a post-date upon which demand is to be made.”

30. The CEO holds that a postdated cheque is to be given the same treatment as a normal cheque (paragraph 27) given that if a post-dated cheque is accepted by a supplier, "payment" occurs for the purposes of section 18(1) of the VAT Act at the time the post-dated cheque is handed over or received by the supplier.

#### *Dishonored Cheques*

31. In the event a cheque is dishonored, an adjustment is made in the VAT returns of the supplier to reverse the payment<sup>10</sup>. That is, output tax would be reduced.

#### **Credit Cards**

32. Credit cards carry the same rules for determination of time of supply as cheques, that is, supply is deemed at the time the credit card is used to pay for goods or services.
33. Similar to cheques, if a credit card payment is invalidated, a relevant adjustment is made by the supplier in his or her returns to reduce the output tax.

#### **Deposits**

34. A deposit may be regarded as a “payment” of consideration for the supply of goods or services, and if that is the case, a deposit triggers the time of supply rules under section 18(1)(b).

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<sup>8</sup> NZ Public Ruling — BR Pub 96/12

<sup>9</sup> Section 13(2) of Bills of Exchange Act 1978

<sup>10</sup> VAT Technical Manual pg. 23

*A Deposit as Payment of Consideration<sup>11</sup>*

35. This is where deposits are paid under contracts and an agreement has been reached between the parties on all terms; only performance of the contract remains to be concluded.
36. If a deposit is construed as a payment of the consideration sum, that “payment” is received by the supplier of the goods or services and VAT must be accounted for accordingly.
37. In the case of *Taxpayer C v Fiji Revenue and Customs Authority VAT Action No. 3 of 2016*, where the deposit was deemed by the supplier as partial payment of the purchase price for land and the same was used to finance development costs, the Tax Tribunal held that:

*“...a deposit of the type paid to the taxpayer, must be regarded as falling into the expression when “any payment is received by the supplier” for the purposes of Section 18(1) of the [VAT] Act<sup>12</sup>.”*

38. The tribunal had relied on the decision of Wily DJ in *Case R11*<sup>13</sup> which states:

*“The only other element of s9<sup>14</sup> which calls for interpretation is the words “any payment”. Once again in my view, those words should be given their ordinary everyday meaning. The legislature has not stipulated for payment in full, but merely receipt of any part of the consideration which is payable in respect of the supply in question. Clearly a deposit such as was paid in this case, comes within that general definition.”*

*Deposit under conditional contract (between Supplier and Recipient)*

39. There may be a scenario where the supplier has received the deposit but the supplier cannot enjoy the benefit from the deposit until certain conditions are fulfilled. That is, a conditional contract exists.
40. As a conditional contract is binding on all parties and there are legally enforceable rights and obligations to each parties, the CEO holds that the time of supply is triggered when a deposit is made under a conditional contract.
41. It is imperative to note that there are two types of conditional contracts. One is where there are there are conditions which need to be met before a formal binding agreement is entered into by the supplier and the recipient and the other involves a formal agreement which the parties have entered into but the contract itself has certain conditions which need to be met.

The contracts where the conditions have to be satisfied prior to entering into a formal agreement will have the same tax treatment as if the deposit was paid to a supply without any contract.

The contract where there is a formal agreement already in place and the same has certain conditions which need to be met is addressed in this SIG.

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<sup>11</sup> As defined in section 2 of the VAT Act 1991

<sup>12</sup> Paragraph 23 of Ruling

<sup>13</sup> 1994 16 NZTC 6062

<sup>14</sup> Section 9 is the NZ equivalent to Fiji’s section 18

42. In practice, it would not be common for a recipient to pay a deposit directly to a supplier when a contract is conditional. In such cases stakeholders are involved.

*Deposit Paid to a Stakeholder*

43. For a person to be recognized as a stakeholder, there has to be an agreement which binds the “stakeholder”. A person cannot deem himself or herself as a stakeholder unilaterally. The agreement must state that the stakeholder is required to hold the deposit until a defined event takes place<sup>15</sup>.

The following factors are useful in determining whether a person is a stakeholder:

- a. The stakeholder does not act as agent for either party but holds a funds for both parties and has a contractual or quasi-contractual obligation to both parties. This may amongst other things include Real Estate Agents or Solicitors. Although the Real Estate Agent or a Solicitor may act on behalf of one party (in form only), he or she has an obligation to hold funds for both parties and may have a contractual or fiduciary duty to both parties;
- b. The stakeholder may be entitled to a benefit from holding the deposit in his or her possession. This may be in the form of interest or fees. *It is noted, however, that if any interest benefit from the deposit is payable to the supplier, a payment has been received by the supplier and the time of supply rules would be triggered;*
- c. The stakeholder may be liable for any losses suffered from holding the deposit; and
- d. The existence of a separate bank account in which the deposit is placed.

The factors listed above are not exhaustive or conclusive but may be considered to determine whether a stakeholder relationship exists.

44. A deposit that is paid to a stakeholder where the benefit is not enjoyed by the supplier, such as a Solicitor or a Real Estate Agent will usually be treated as “no receipt by the supplier” and the time of supply will not be triggered.
45. For instance, if a deposit is paid to a stakeholder which does not form a part of the consideration sum but forms a part of the third party’s fees or commission, the deposit cannot be recognized as a payment received by the supplier. On the other hand, the third party (if registered) may recognize the receipt and account for output tax as the same is a taxable supply by the third party.

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<sup>15</sup> NZ Interpretation Statement IS 10/03 page 10

46. Although a payment has been made and the element of “any payment” is satisfied, the payment is not received by the supplier and the second element of section 18(1)(b) is not satisfied.

47. A detailed analysis relating to deposit paid to a stakeholder is provided in the case of CIR v Dormer (1997) 18 NZTC 13,446 where Salmon J held that:

“In my view, a deposit is “received by a supplier” when it can be applied to the benefit of the vendor. A deposit is not received as long as any person holds it as stakeholder, whether that person is the supplier or an independent third party.”

“I should add it is the obligation to hold as stakeholder which prevents the time of supply provisions of s9 being triggered. Once this contract becomes unconditional, an agent is no longer holding the deposit as a stakeholder, but as agent for the supplier. That is, the deposit may at that point, be applied for the purchaser’s benefit. The circumstances of each case will determine in which capacity a person holds funds.”.

48. The above analysis gives rise to the **stakeholder rules** which has been summarized accordingly:

**If a stakeholder relationship exists<sup>16</sup> and a payment has been received by the stakeholder to keep in trust until certain conditions have been met, the time of supply will not be triggered until the conditions have been met and benefits of the payment can be applied to the supplier.**

49. For the time of supply rules to be triggered under section 18(1)(b) it is essential that the benefit is derived by the supplier from the payment of deposit by the recipient. If, however, the deposit is received by an agent of the supplier, the time of supply rules is triggered only when the benefit is received by the agent’s principal i.e. the supplier.

50. The most common example that is relevant to this discussion is land transactions. Deposits are normally paid to the supplier’s (vendor) solicitor by the recipient (purchaser)<sup>17</sup>. This deposit is kept in a trust fund and at this stage no benefit is enjoyed by the supplier, therefore time of supply is not triggered. It is only when certain conditions under the contract have been met including payment of deposit into the account of the supplier, the time of supply gets recognized under section 18(1)(b).

#### *Non-Refundable Deposits*

51. There may be some agreements where the deposit is stated to be non-refundable. The non-refundable deposit may be attributable to the benefit of supplier as soon as the deposit is paid.

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<sup>16</sup> As determined in paragraph 43

<sup>17</sup> The deposit may first go through the recipient’s solicitor’s trust account; however, this does not change the tax treatment.

However, there are some agreements where the non-refundable deposit is paid to a stakeholder and the same is not attributable to the supplier unless an event occurs, such as cancellation of the agreement.

This distinction is made on a case by case basis according to the terms of the agreement.

52. In the event the deposit is deemed to be beneficial to the supplier as soon as the deposit is paid, the CEO is of the view that the time of supply under section 18(1)(b) of the VAT Act is triggered when the non-refundable deposit has been paid.

53. In the event the non-refundable deposit is not deemed to be beneficial to the supplier unless an event occurs, such as cancellation of the agreement or forfeiture of deposit<sup>18</sup>, the 'Stakeholder Rules' explained in Paragraph 48 shall apply.

The time of supply will not be triggered until the particular event occurs and the benefit has been received by the supplier.

It is noted that VAT would not be calculated on the full consideration sum but on the value of the deposit if the deposit has been forfeited.

#### **Example 1 – Provision of Accommodation Services – Non-Refundable Deposit**

54. Mr. Adams goes online to make a booking at Hotel Smith where a standard room goes for \$100 a night. The terms of conditions stipulate that a 50% deposit is necessary to confirm the booking. The deposit is non-refundable.

Mr. Adams pays the 50% deposit of \$50 on 1<sup>st</sup> of April 2019 for a booking on 26<sup>th</sup> of April 2019. Mr. Adams cancels on the 3<sup>rd</sup> of April 2019. No tax invoice was issued when the online booking was made.

#### *Application of Time of Supply Rules*

Time of supply on the whole consideration sum of \$100 is triggered on 1<sup>st</sup> April 2019 as the deposit is non-refundable and its benefit can be directly enjoyed by the supplier from 1<sup>st</sup> April 2019.

#### **Example 2 – Provision of Accommodation Services – Deposit Refundable Within a Certain Period**

55. For example, Mr. Adams goes online to make a booking at Hotel Smith where a standard room goes for \$100 a night. The terms of conditions stipulate that a 50% deposit is necessary to confirm the booking. The deposit is fully refundable if cancellation is done 72 hours before the date of booking; otherwise 100% of the deposit sum would be forfeited.

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<sup>18</sup> Section 3(13) of the VAT Act 1991

**Situation 1 -**

Mr. Adams pays the 50% deposit of \$50 on 1<sup>st</sup> of April 2019 for a booking on 26<sup>th</sup> of April 2019. There is no cancellation of the booking by Mr. Adams and no tax invoice was issued when the online booking was made.

*Application of Time of Supply Rules*

Since a tax invoice was not issued by Hotel Smith to Mr. Adams, section 18(1)(a) does not apply. In reference to section 18(1)(b) a payment has been received by the supplier. The payment was not paid to a stakeholder but to the supplier directly, and Stakeholder Rules will not apply.

Therefore, time of supply is triggered on 1<sup>st</sup> April 2019 for the consideration of \$100.

**Situation 2**

Mr. Adams pays the 50% deposit of \$50 on 1<sup>st</sup> of April 2019 for a booking on 26<sup>th</sup> of April 2019. There is no cancellation of the booking by Mr. Adams and no tax invoice was issued when the online booking was made. Hotel Smith claims that they are a stakeholder and the deposit is kept in a separate bank account in trust because the same is refundable until 72 hours of booking

*Application of Time of Supply Rules*

Since a tax invoice was not issued by Hotel Smith to Mr. Adams section 18(1)(a) does not apply. In reference to section 18(1)(b) a payment has been received by the supplier.

As stated in paragraph 43, the supplier cannot unilaterally decide that the deposit will be held by the supplier or the third party as a stakeholder. There must be a contractual basis for the stakeholder relationship.

As there is no stakeholder relationship, and a payment has been received by the supplier for his benefit, time of supply has been triggered on 1<sup>st</sup> April 2019 for the consideration of \$100.

**Situation 3 -**

Mr. Adams pays the 50% deposit of \$50 on 1<sup>st</sup> of April 2019 for a booking on 26<sup>th</sup> of December 2019. Mr. Adams cancels his booking on the 18<sup>th</sup> of September 2019 and her receives the full refund. No tax invoice was issued when the online booking was made

*Application of Time of Supply Rules*

Since a tax invoice was not issued by Hotel Smith to Mr. Adams section 18(1)(a) does not apply. In reference to section 18(1)(b) a payment has been received by the supplier.

As there is no stakeholder relationship, and a payment has been received by the supplier for his benefit, time of supply has been triggered on 1<sup>st</sup> April 2019 for the consideration of \$100.

When the booking is cancelled on 18<sup>th</sup> of September 2019, the supplier will make necessary VAT adjustments in his or her returns to reduce the output tax for consideration of \$50.

### **Example 3 – Land Sales – Non-Refundable Deposit**

56. John approaches ABC Ltd (a company which sells sub divided land – no development involved) to purchase a piece of land for \$50,000. The terms and conditions of the sale and purchase agreement are as follows:
- a. Non Refundable Deposit of \$5000 to be paid to reserve land.
  - b. Remaining sum to be financed within 4 weeks to allow for transfer documents to be prepared and lodged with the Registrar of Titles.
  - c. The deposit and the balance is to be kept by the Suppliers' Solicitor in a separate trust account until the transfer documents have been lodged with the Registrar of Titles.
  - d. Failure to fulfill obligations under the agreement by the recipient may lead to termination of the agreement by the supplier and forfeiture of the deposit.

#### **Situation 1**

John pays the deposit of \$5000, on 31 July 2017 to the Supplier's Solicitor and visits his financier to arrange for the remaining sum. Necessary arrangements with the financier are made within time and the transfer documents are lodged with the Registrar of Titles on the 5<sup>th</sup> of September 2017. No tax invoice is issued

#### *Application of Time of Supply Rules*

A payment has been made by the recipient, however, it is paid to a stakeholder, therefore stakeholder rules apply.

The stakeholder rules state that if a stakeholder relationship exists and a payment has been received by the stakeholder to keep in trust until certain conditions have been met, the time of supply will not be triggered until the conditions have been met and the benefits of the payment can be applied to the supplier'.

Time of Supply is triggered on 5<sup>th</sup> of September 2017 which is when the conditions have been met and the funds are transferred from the trust account to the supplier's bank account.

#### **Situation 2**

John pays the deposit of \$5000 on 31 July 2017 and visits his financier to arrange for the remaining sum. Due to some issues, he is unable to arrange his finances and is unable to fulfill his obligations under the sale and purchase agreement. ABC Ltd terminates the agreement on 1 September 2017 and does not return the deposit sum. No tax invoice is issued

#### *Application of Time of Supply Rules*

Time of Supply is triggered on 1 September 2017. As per the agreement the non-refundable deposit is not deemed to be beneficial to the supplier unless an event occurs. The deposit is deemed to be beneficial to the supplier when the agreement is terminated by the supplier.

The agreement is terminated on 1 September 2017 and the deposit becomes beneficial to the supplier. Therefore, an output tax entry for the deposit sum only (\$5000) is made.

57. It is important to note that a contractual stakeholder relationship must clearly exist before the stakeholder rules will apply.
58. If a tax invoice has not been issued for a supply of goods or services by a supplier, or a payment has not been received by the supplier, sections 18(1)(a) and 18(1)(b) have not been met. Therefore, the transaction is qualified under section 18(1)(c) of the VAT Act which deals with delivery of the goods or service.

### **Delivery [VAT 18(1)(c)]**

59. The term “delivery” is not defined in the VAT Act but it is defined in the Sale of Goods Act 1979 as:

“the voluntary transfer of possession from one person to another”

60. The ordinary meaning<sup>19</sup> and the definition in the Sale of Goods Act denote that goods or services is delivered when there is a physical exchange of the goods or services from the supplier to the recipient.
61. In relation to a service, the time a service is delivered is not easily determined as the delivery is usually a continuous process. For example, a Solicitor may start providing his or her service for a land transaction from the preliminary stages, but the service is not “delivered” until the transaction has been completed.

Therefore, for a service, it is highly likely that the time of supply will be triggered when a tax invoice is issued or a payment is received by a service provider.

#### **Example 4 – Delivery of a Service by a Real Estate Agent**

62. Sam approaches Zen Real Estates as he is in the market for a piece of land. Zen Real Estates introduces Sam to ABC Ltd which is a company which sells subdivided land on the 15<sup>th</sup> of February 2018.
- Sam agrees to buy a piece of land from ABC Ltd and they both enter into a Sale and Purchase Agreement on the 1<sup>st</sup> of March 2018. Zen Real Estates sends a tax invoice for his services as a real estate to Sam on the 1<sup>st</sup> of March 2018.

#### *Application of Time of Supply Rules*

Although the real estate agent has commenced delivering his service from the 15<sup>th</sup> of February 2018, time of supply is triggered when the tax invoice is issued from Zen Real Estates to Sam, that is, on the 1<sup>st</sup> of March 2018.

While the delivery of the service has commenced, the same has not been completed. Therefore, delivery of a service has not taken place.

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<sup>19</sup> Case R11 1994 16 NZTC 6062

63. Section 18(1)(c) is meant to be a catch all limb which captures all taxable supplies which have not been captured under section 18(1)(a) and section 18(1)(b).

### **Special Time of Supply Rules**

#### **Coin or Token Operated Machines [VAT 18(2)(a)]**

64. Where payment for a goods or services is made by inserting coins or tokens in a device operated by a coin or token such as vending machines and parking meters, the time of supply is triggered when such coins or tokens are removed from the machine.
65. A purchase of a token that is to be used in a token operated machine will not trigger the time of supply rules until the token is used and is removed from the machine.

#### **Layby Sales [VAT 18(2)(b)]**

66. A layby sale is defined in section 64 of the Sale of Goods Act 1979<sup>20</sup> and is generally referred to a sale where the recipient pays by instalments and the goods are held by the supplier until a specific portion of the sum or the entire balance is paid off.
67. It is important to note that the definition of goods under the Sale of Goods Act includes all chattels personal which are the subject of trade or commerce and component parts of any such chattels. This includes goods which are attached to land, or forms a part of land but will be severed prior to sale and goods which are annexed to land but does not form a part of the land. The CEO holds that layby sale do not apply to land based on the definition of “goods” under the Sale of Goods Act.
68. For a layby sale, the time of supply is triggered at the time at which the ownership in the goods is transferred from the supplier to the buyer.
69. If the layby sale is cancelled and the supplier retains any amount (which may include recouped selling costs) from the installments made by the recipient, a supply is deemed to take place<sup>21</sup> and time of supply is triggered when such costs are retained.

#### **Example 5 – Layby Sales**

70. Ms. Brown has bought a necklace from XY Jewelers on layby for \$1000 on the 1<sup>st</sup> of November 2018. She has made a deposit of \$250 and the balance is to be paid within 3 months.

#### **Situation 1**

Ms. Brown is faithful to her payments and completes the payment of the balance (\$750) within the 3 months and takes possession of the necklace on the 1<sup>st</sup> of February 2019.

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<sup>20</sup> Attached in Appendix Two

<sup>21</sup> Section 3(9) of VAT Act

### *Application of Time of Supply Rules*

Layby sales is addressed under the special rules of Section 18(2)(b). Time of supply is triggered when possession is transferred from the supplier to the recipient for a layby transaction which has been completed.

Therefore, time of supply occurs on 1<sup>st</sup> February 2019.

### **Situation 2**

Ms. Brown defaults in her payments and is unable to pay the balance (\$750). She has however, made a total payment of \$500 to XY Jewelers. XY Jewelers retains \$150 as recouped selling costs and an additional \$25 as administrative costs and returns the remainder of \$325 to Ms. Brown on the 3<sup>rd</sup> of January 2019.

### *Application of Time of Supply Rules*

Layby sales is addressed under the special rules of Section 18(2)(b). The transaction has not been completed due to Ms. Brown defaulting in her obligations.

XY Jewelers has retained a total of \$175 from the transaction and as per section 3(9) of the VAT Act a supply in the sum is deemed to be made. Time of supply is triggered when an amount is retained by the supplier.

Therefore, the deemed supply takes place on 3<sup>rd</sup> January 2019.

## **Agreements for Hire [VAT 18(2)(c)]**

71. Where goods are supplied under an agreement for hire, or services are supplied under any agreement or enactment which provides for periodic payments, those goods or services shall be deemed to be successively supplied for successive parts of the period of the agreement or enactment, and each of the successive supplies shall be deemed to take place when a payment becomes due or is received, whichever is the earlier
72. An agreement for hire is defined in Section 18(3) and means an agreement for the bailment of goods for hire and includes a lease of goods and a rental agreement.
73. It further states that agreement under which the property in goods passes to the bailee or which expressly contemplates that the property in the goods will pass to the bailee are excluded from the definition of “an agreement for hire”.
74. To assist in the interpretation of the above the terms are defined as follows:
  - a. “Bailment” means the transfer of possession but not ownership of goods.
  - b. The bailor generally must be the supplier.
  - c. The bailee (recipient) must willingly take possession and have full control over the goods.
75. The important point from this discussion is that Hire Purchase agreements are excluded from the definition of “an agreement for hire”. A hire purchase agreement contemplates that the property

in the goods passes to the recipient or will pass to the recipient, therefore it is excluded from Section 18(2)(c).

76. Hire purchase agreements have been excluded from Section 18(2)(c) as there would be an obvious advantage to a registered person if hire purchase agreements fell under Section 18 (2)(c), as output tax would not need to be accounted for until each payment is due or received.<sup>22</sup> Consequently, as a hire purchase agreement is not addressed under special rules, the general time of supply rules would apply.
77. An agreement for hire might include an option to purchase the property in the goods. If the option to purchase is exercised, there will be a separate supply at the time the option is exercised with its separate qualification under the time of supply rules.

**Periodic Supply of Goods and Services with Period Payments [VAT 18(2)(d)]**

78. Where goods and services are provided in an agreement which involves periodic supply of goods and services with periodic or progressive payments of the consideration for the supply, the time of supply is triggered whenever any payment in respect of that supply becomes due, is received, or a tax invoice relating only to that payment is issued, whichever is the earlier.
79. The term periodic refers to at least two payments made in an intermittent or progressive manner.
80. In these agreements, it is necessary to establish that not only is the payment periodic but the supply of the goods or services as well. If the same has been established, all payments are to be treated in the same manner, even if it is described as a deposit.

**Example 6 – Logging Agreement - Periodic Supply of Goods and Services with Periodic Payments**

81. XY Ltd enters into an agreement with BC Ltd for the supply of timber. The agreement relates to the supply of 10,000 tonnes of timber supplied in batches of 2,500 tonnes with \$5,000 payable on each supply. The timber is supplied accordingly:

Date of Supply	Payment Date	Invoice Date	Time of Supply
2500 supplied on 1 <sup>st</sup> July 2018	2 <sup>nd</sup> July 2018	3 <sup>rd</sup> July 2018	1 <sup>st</sup> July 2018
2500 supplied on 7 <sup>th</sup> August 2018	7 <sup>th</sup> August 2018	9 <sup>th</sup> August 2018	7 <sup>th</sup> August 2018
2500 supplied on 9 <sup>th</sup> September 2018	9 <sup>th</sup> September	9 <sup>th</sup> September 2018	9 <sup>th</sup> September
2500 supplied on 1st November 2018.	4 <sup>th</sup> November 2018	30 <sup>th</sup> September 2018	30 <sup>th</sup> September 2018

<sup>22</sup> VAT Technical Manual pg 26

### *Application of Time of Supply Rules*

For the first two consignments, the date of the delivery becomes the time of supply as it is the earliest of the three relevant dates (payment is due, payment is received, and when a tax invoice is issued).

There is no difference between the date of payment and the invoice date for the third consignment therefore, there is no issue with the determination of the time of supply.

For the fourth consignment the date of invoicing is the earlier date and so it becomes the time of supply.

### **Construction, Land Development, Major Reconstruction or Extension of a Building or Engineering Work [VAT 18(2)(e)]**

82. For an agreement which involves the supply of goods or services supplied directly in the construction, land development, major reconstruction or extension of a building or engineering work and the agreement provides that the consideration for the supply becomes due and payable in a periodic manner in relation to the progressive nature of the supply, the goods or services would be deemed to be supplied whenever any payment in respect of that supply becomes due, is received, or a tax invoice relating only to that payment is issued, whichever is the earlier.
83. If the general time of supply rules were to be applied to the construction and other sectors mentioned above the time of supply would be triggered as soon as an invoice is issued or a payment is received by the supplier.
84. Agreements of such nature deals with high value sums and at times the final consideration sum is often unknown due to variations caused by external factors. This would make it difficult for the supplier to comply with its vat obligations under the general rules, thus special rules have been made to assist such sectors.
85. The agreement must provide that payment is due periodically as a result of the construction or development of the goods or property and the payment is payable due to the progressive nature of the construction or development.

### **Example 7 – Agreement to Construct a House**

86. Mr. Lee enters into an agreement with Home Improvement Ltd for the construction of a house. The terms of the agreement are made as such:

a. Total Price	\$200,000 plus \$18,000 VAT
b. 10% payable on signing of agreement	\$21,800 VIP
c. 30% payable on construction of foundation	\$65,400 VIP
d. 30% payable on construction of walls and roof	\$65,400 VIP
e. 20% payable on completion of furnishings	\$43,600 VIP
f. 10% payable on completion	\$21,800 VIP

The following occur throughout the construction of the house:

Phase	Date	Date of Invoice	Date of Payment	Time of Supply
Agreement Signed	15 <sup>th</sup> March 2019	15 <sup>th</sup> March 2019	16 <sup>th</sup> March 2019	15 <sup>th</sup> March 2019
Construction of foundation	4 <sup>th</sup> May 2019	5 <sup>th</sup> May 2019	6 <sup>th</sup> May 2019	4 <sup>th</sup> May 2019
Construction of walls and roof	17 <sup>th</sup> July 2019	17 <sup>th</sup> July 2019	15 <sup>th</sup> July 2019	15 <sup>th</sup> July 2019
Completion of furnishings	2 <sup>nd</sup> September 2019			
Completion	24 <sup>th</sup> October 2019	1 <sup>st</sup> November 2019	30 <sup>th</sup> October 2019	24 <sup>th</sup> October 2019

#### *Application of Time of Supply Rules*

The time of supply is determined at the earlier of the date payment is due, payment is received, and when a tax invoice is issued.

For phases 1,2 and 5, time of supply is when the payment is due. For the phase 3 the payment is received prior to completion or when the invoice is issued therefore time of supply is on date of payment

There is no difference between the date of payment and the invoice date for the fourth phase therefore, there is no issue with the determination of the time of supply.

87. The CEO has also considered the challenges faced by the land development industry and has taken the view that land developers should be included under the special rules of section 18(2)(e).
88. Historically, Land developers had to account for VAT on the total consideration sum as soon as a deposit was received.<sup>23</sup> This meant that the deposit could not form a part of the working capital necessary for development work.
89. In recognition of this challenge, the CEO has taken the position that section 18(2)(e) applies to land developers as well, which would allow VAT to be accounted for in a periodic and progressive manner.

#### **Whole of Consideration Is Not Determined at Time of Appropriation [VAT 18(2)(f)]**

90. Where goods and services are provided in an agreement where the goods are appropriated under the agreement by the recipient in circumstances where the whole of the consideration is not determined at the time those goods are appropriated, supply is deemed to take place when a payment in respect of that supply becomes due, is received, or a tax invoice relating only to that supply is issued by the supplier or the recipient, whichever is the earlier.

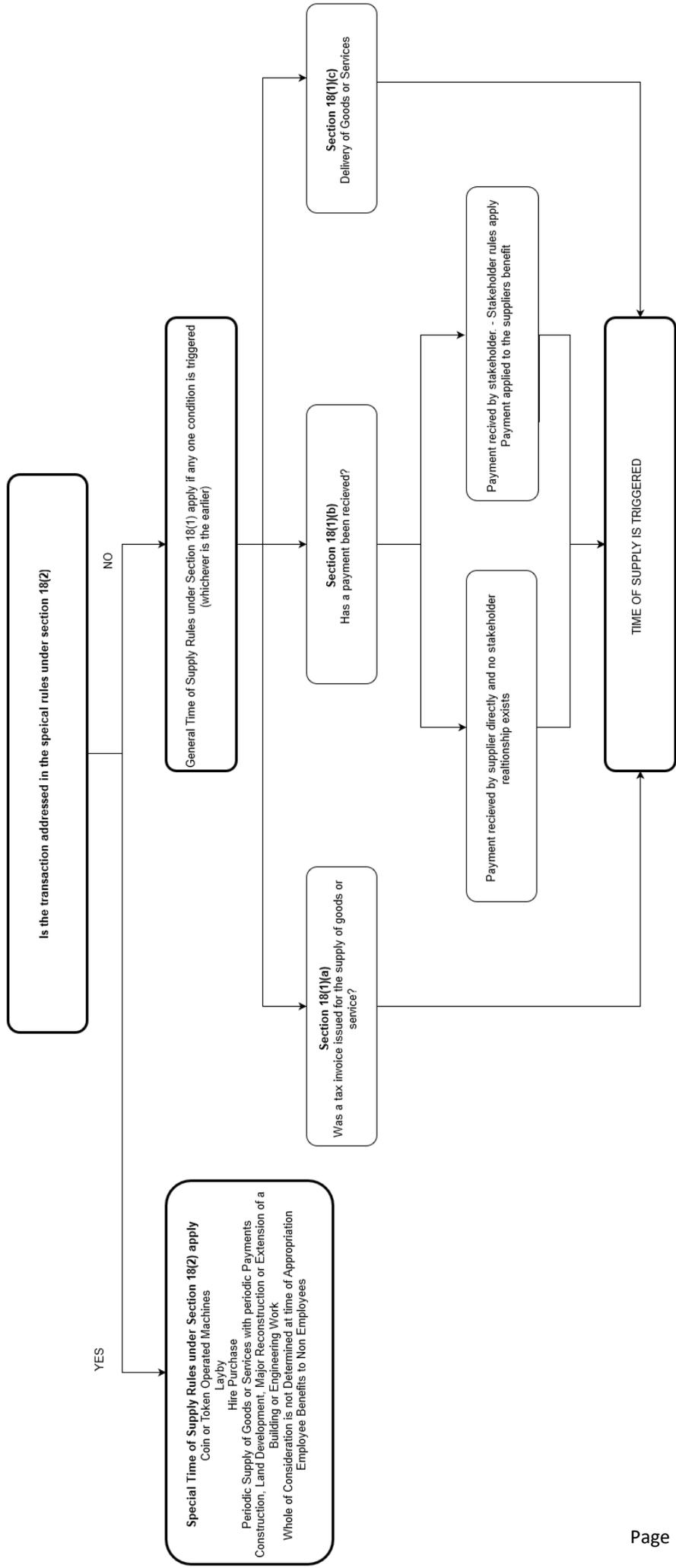
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<sup>23</sup> Refer to case law in paragraph 37

## **Employee Benefits to Non Employees [VAT 18(2)(g)]**

91. A registered person, in the course or furtherance of its taxable activity may provide an employee benefit for income tax or fringe benefit tax purposes to any other person who is not an employee.
92. In such an event the provision of the employee benefit is deemed to be a taxable supply under section 3(10) of the VAT Act unless the provision of the employee benefit has arisen due to a supply of an exempt goods or services.
93. Supply is deemed to take place at the time that the registered person is liable to deduct income tax from the value of the employee benefit in terms of the Income Tax Act 2015

## APPENDIX ONE: FLOWCHART FOR TIME OF SUPPLY RULES



## APPENDIX TWO: LEGISLATION

### [VAT 2] Interpretation

“Consideration”, in relation to the supply of goods and services to any person, includes any payment made or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods and services, whether by that person or by any other person; but does not include any payment made by any person as an unconditional gift to any non-profit body;

### [VAT 3] Meaning of the term “supply”

(9) Any contract that is a layby sale to which Part IV of the Sale of Goods Act, Cap. 230 applies shall not constitute a supply of goods and services unless the goods to which the contract relates are delivered to the buyer and the property therein is transferred to the buyer, provided that a supply of services shall, in respect of any such contract, be deemed to take place where -

(a) a layby sale is canceled pursuant to Part 4 of the Sale of Goods Act 1979; and

(b) the seller either -

(i) retains any amount paid to the seller to recoup that seller’s selling costs in respect of the layby sale; or

(ii) recovers any amount (including, or in addition to, the amount referred to in subparagraph (i) of this paragraph) from the buyer -

pursuant to Section 68 of the Sale of Goods Act 1979.

(10) Where and to the extent that any registered person, in the course or furtherance of making taxable supplies, has or is treated to have provided an employee benefit for income tax or fringe benefit tax purposes, to any other person, the provision of that employee benefit shall be deemed to be a supply of goods and services made by that registered person in the course of a taxable activity carried on by that registered

person, provided that this subsection shall not apply to any employee benefit to the extent that it has arisen by virtue of any supply of goods and services that is an exempt supply or a zero-rated supply.

(13) Notwithstanding Section 18 and 19 of this Act, any deposit held as security for the performance of an obligation is deemed to be consideration for the supply when:

(a) The deposit is forfeited due to non-performance of the obligation; or

(b) The deposit is applied as consideration for the supply

and the tax charged on that supply shall be attributable to the tax period in which the deposit is forfeited or applied.

### [VAT 18] Time of Supply

(1) Subject to this Act, a supply of goods and services shall be deemed to take place at the time -

(d) a tax invoice is issued by the supplier or the recipient; or

(e) any payment is received by the supplier; or

(f) the delivery of the goods and services takes place, -

whichever is the earlier.

(2) Notwithstanding anything in subsection (1), a supply of goods and services shall be deemed to take place -

(a) where the supply is for a consideration in money received by the supplier by means of any machine, meter, or other device operated by a coin or token, at the time any such coin or token is taken from that machine, meter, or other device by or on behalf of the supplier:

(b) where that supply is a supply to which of Section 3 (9) refers, at the time at which the property in the

goods is transferred to the buyer, provided that in any case in which a supply of services is deemed to take place pursuant to the proviso to, of Section 3 (9), that supply of services shall be deemed to take place at the time that the layby sale is cancelled pursuant to Part 4 of the Sale of Goods Act 1979;

- (c) where goods are supplied under an agreement for hire, or services are supplied under any agreement or enactment which provides for periodic payments, those goods or services shall be deemed to be successively supplied for successive parts of the period of the agreement or enactment, and each of the successive supplies shall be deemed to take place when a payment becomes due or is received, whichever is the earlier;
- (d) where and to the extent that goods and services are supplied progressively or periodically pursuant to any agreement or enactment which provides for the consideration for that supply to be paid in installments or periodically and in relation to the progressive or periodic supply of those goods and services those goods and services shall be deemed to be successively supplied, and each such successive supply shall be deemed to take place whenever any payment in respect of that supply becomes due, is received, or a tax invoice relating only to that payment is issued, whichever is the earlier;
- (e) where and to the extent that goods and services supplied directly in the construction, major reconstruction, manufacture or extension of a building or engineering work or land development are supplied pursuant to any agreement or enactment which provides for the consideration for that supply to become due and payable in installments or periodically in relation to the progressive nature of that

construction, manufacture or extension, engineering work or land development, those goods and services shall be deemed to be successively supplied, and each successive supply shall be deemed to take place whenever any payment in respect of that supply becomes due, is received or any tax invoice relating to that payment is issued, whichever is the earlier;

- (f) where goods are supplied under an agreement, other than an agreement for hire, and the goods or part of them are appropriated under that agreement by the recipient in circumstances where the whole of the consideration is not determined at the time those goods are appropriated, that supply shall be deemed to take place when and to the extent that any payment under the agreement is due or is received or a tax invoice relating to the supply is issued by the supplier or the recipient, whichever is the earlier;
  - (g) the supply of goods and services which is deemed to be made by a registered person pursuant to section 3 (10) shall be deemed to take place at the time that that registered person is liable to deduct income tax from the value of the employee benefit in terms of the Income Tax Act 2015.
- (3) For the purposes of subsection (2), the term “agreement for hire” means an agreement for the bailment of goods for hire and includes a lease of goods and a rental agreement but excludes an agreement under which the property in goods passes to the bailee or which expressly contemplates that the property in the goods will pass to the bailee.

## **[VAT REGULATIONS]**

(3) Subject to regulation 5 and 7, a tax invoice shall 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 and address of the recipient;
- (d) an individual serialised number and the date upon which the tax invoice was issued;
- (e) a description of the goods and services supplied;
- (f) the quantity or volume of the goods and services supplied, and
- (g) the total amount of the tax charged, the consideration, excluding tax, and the consideration, inclusive of tax for that supply.

(5) Notwithstanding anything in regulation 3, where the consideration in money for a supply does not exceed one hundred dollars or such amount as the Minister may from time to time by Legal Notice declare or the supply is made by a retailer, a tax invoice shall contain the particulars in regulation three or the following particulars:

- (a) the word "tax invoice" in a prominent place;
- (b) the name and taxpayer identification number of the supplier;
- (c) the date upon which the tax invoice was issued;
- (d) a description of the goods and services supplied, and
- (e) the consideration for the supply and a statement that it includes a charge in respect of tax.

(7) Notwithstanding any other regulation, a supplier shall not unless requested by the

recipient be required to provide a tax invoice if the consideration in money for a supply does not exceed ten dollars or such amount as the Minister may from time to time, by Legal Notice declare.

## **[SALE OF GOODS ACT 64] "Layby sale" defined**

64.-(1) For the purpose of this Act, a layby sale is a contract of sale of goods by retail under terms, express or implied, which provide that-

(a) the goods are not to be delivered to the buyer until the purchase price or a specified part or proportion thereon is paid, whether or not any charge is expressed to be payable for storage or delivery of the goods; and

(b) the whole or part of the purchase price-

(i) is to be paid by instalments (whether the number of instalments or the amounts of all or any of them is fixed by the contract or left at the option of the buyer) payable over a fixed or ascertainable period; or

(ii) is to be paid at the expiration of a fixed or ascertainable period with the option, express or implied, for the buyer to make payments in respect of the purchase price during that period, but a contract of sale of goods to be delivered by instalments, where the whole of the purchase price of each instalment is payable at the time that instalment is delivered, is not a layby sale.

(2) Where, by virtue of 2 or more agreements, none of which by itself constitutes a layby sale, there is a transaction which is, in substance or effect, a layby sale, the agreements shall be treated, for the purposes of this Act, as a layby sale made at the time when the last of those agreements was made.

## **[BILL OF EXCHANGE ACT 13] Ante-dating and post-dating**

13.-(1) Where a bill or acceptance or any endorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be

the true date of the drawing, acceptance or endorsement, as the case may be.

(2) A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday.