



STANDARD INTERPRETATION GUIDELINE 2020-34

VALUE ADDED TAX 1991 – BUDGET AMENDMENTS 2020-2021

This Standard Interpretation Guideline (“SIG”) sets out Fiji Revenue and Customs Service’s (“FRCS”) policy and operational practice in relation to the Budget Amendments 2020-2021 for the Value Added Tax (VAT) legislation.

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 subsidiary legislations (unless otherwise stated).

This SIG is in effect from 1st August 2020 and may need to be reviewed in the event of any relevant legislative amendments.

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PURPOSE

1. This SIG is aimed at providing the CEO's interpretation and application of the legislative amendments which relate to the VAT legislation as a result of the 2020-2021 budget amendments.
2. It also provides clarity on how the amendment of the VAT laws have an impact on current practice as well as the transitional rules pre and post budget amendment.

INTRODUCTION

3. Labelled as a sweeping tax reform in his budget address, the Minister for Economy, the Honorable Aiyaz Sayed-Khaiyum stated that this year's budget represents an overhaul – one that will be vital to driving new economic activity.
4. In light of the above, the 2020-2021 National Budget has effected legislative amendments to the VAT legislation (Value Added Tax 1991) to capture changes in government policies.
5. The VAT (Budget Amendment) Act 2020¹ changes include:
 - a) Section 21 – Reverse charge on supplies received from abroad;
 - b) Section 22 – Persons making taxable supplies to be registered;
 - c) Section 23 – Cancellation of registration;
 - d) Section 27A – Branches or divisions containing residential accommodation;
 - e) Section 39 – Calculation of Tax Payable;
 - f) Schedule 1 – Exempt supplies; and
 - g) Regulation 10 of the VAT Act 1991.
6. Hence, this SIG will discuss in detail each of the above legislative changes.

LEGISLATIVE ANALYSIS

VAT (Budget Amendment) Act 2020

7. The following section of the SIG will discuss on 2020-2021 VAT budget changes in accordance with the VAT (Budget Amendment) Act 2020 effective from 1st August 2020.

¹ Act No. 15 of 2020

a) Section 21 – Reverse Charge on supplies received from abroad

8. Prior to the Budget Amendment 2020-2021, VAT was applicable on “relevant services”² received from abroad by a Fiji person under section 21³.

Under this section, the Fiji person, whether registered or not in respect of the supplies received from abroad, the consequences apply as if such person had supplied the services in Fiji in the course or furtherance of his taxable activity and that supply were a taxable supply.

9. In such occasions, only the registered person claims the VAT paid on supplies received from abroad and not the non – registered person, thus providing a nil effect for the registered person.
10. To address this issue and following the National Budget 2020-2021, Section 21 of VAT Act 1991 is amended by –:

(a) in subsection (2)–
(i) deleting “Subject to subsection (3), where” and substituting “Where”;
and
(ii) deleting “(and particularly so much as charges tax on supply and entitles a registered person to a deduction for input tax)”;
(b) deleting subsection (3);

11. The above change was introduced to ensure that reverse charge implications on the supplies of imported services do not apply to a registered person due to the nil effect implication.
12. Section 21(4) of the Principal Act is amended as follows:

(c) deleting subsection (4) and substituting the following—

“(4) For the purposes of this Act, where subsection (2) treats a supply of relevant services as being made by a person in the course or furtherance of that person’s taxable activity, the value of that supply must be for whatever consideration was paid or payable for the relevant services.”;

13. The amendment to section 21(4) in paragraph 12 above, following the budget amendment aligns the section to the exclusion of registered person from the reverse charge implications net.
14. In addition, there is an inclusion of a new subsection to section 21 of the Principal Act, and the new amendment is as follows:

² Definition is provided for under section 21(1) of VAT Act 1991

³ VAT Act 1991

*(e) after subsection (6), inserting the following new subsection—
“(7) Notwithstanding subsections (1) to (6), this section does not apply
to a registered person.”.*

15. The implications following the amendment is that; on or after 1st August 2020, Reverse Charge shall apply to non – registered persons only on imported services⁴. The Reverse Charge mechanism is no longer applicable to registered persons effective from 1st August 2020.

VAT on Residential Accommodation

b) Section 22 – Persons making taxable supplies to be registered

16. Section 22 of the VAT Act 1991 is the legislative basis for VAT registration.
17. Prior to the Budget Amendment 2020-2021, the VAT Act 1991⁵ captured special registration rules for persons engaged in the supply of residential accommodation which is expected to exceed a gross annual turnover of \$100,000.
18. Section 22 of VAT Act 1991 is amended⁶ by Section 3 of Act No. 16 of 2020 which is as follows:

“Section 22 of the Principal Act is amended by deleting subsections (4A) and (4B).”

19. Therefore, the Budget Amendment 2020-2021 amends the VAT Act 1991 by deleting sections 22(4A) and 22(4B) to totally exempt VAT on the supply of residential accommodation by way of hire. Hence, the supply of residential accommodation by way of hire will now be an exempt supply with effect from 1st August 2020.

c) Section 23 – Cancellation of Registration

20. Prior to the Budget Amendment 2020-2021, there have been rules in the current VAT Act which captured the cancellation of VAT registration by persons who have registered for VAT purposes in respect of the supply of residential accommodation by way of hire.
21. Section 23 of the VAT Act 1991 is amended⁷ by inserting a new subsection (9) after the deletion of sections 23 (9-12)as follows:

*“(9) Notwithstanding section 3(4), where a person ceases to be registered
in relation to the supply of residential accommodation, any input tax
credit or VAT refund claimed by the person from the date of the person’s*

⁴ Paragraph 14 of Schedule 2 of VAT Act 1991

⁵ Sections 22(4A) and 22(4B) of VAT Act 1991

⁶ Section 3 of Act No. 16 of 2020

⁷ Section 4 of Act No. 16 of 2020

registration to the date of cancellation of the person's registration, is not recoverable by the Chief Executive Officer."

22. Section 3(4) provides for deemed output upon cessation of taxable activity. However, section 23(9) limits the application of section 3(4) in relation to cessation of supply of residential accommodation. Therefore, no VAT inputs claimed will be recovered.
23. Additionally, in line with the intention of the law, the CEO will not deem any output upon cancellation of VAT registration of a person who supplies residential accommodation by way of hire under section 3(4) of the VAT Act 1991.

d) Section 27A – Branches or divisions containing residential accommodation

24. The legislative authority for 'Branches or divisions containing residential accommodation' is covered under section 27A of the VAT Act 1991.
25. Following the Budget Amendment 2020-2021, the VAT 1991 Act has been amended by deleting section 27A, whereby section 6 of the Act No. 16 of 2020 states:

"The Principal Act is amended by deleting section 27A."

26. Therefore, section 27A of the VAT Act 1991 is removed to align to the VAT registration and cancellation of VAT registration amendments in respect of the supply of residential accommodation by way of hire. As a result, section 27A becomes obsolete due to the amendment of the law.

e) Section 39 – Calculation of tax payable

27. Prior to the Budget Amendment 2020-2021, section 39(10) provides that a person registered for the purpose of supplying residential accommodation by way of hire is allowed a deduction on payments for any expenses including the construction of the residential property for rental purpose. This is effected from the date of registration.
28. The 2020-2021 Budget Amendment amends⁸ section 39(10) of the VAT Act 1991 by deleting:

- a) *"section 22(4B) and (5)" and substituting "section 22(5)"; and*
b) *(b) "including the construction of the residential property for rental".*

29. The rationale for the above amendment is to remove any references to the construction of residential property for rent as this becomes obsolete as a result of the amendment to section 22 of the VAT Act 1991.

⁸ Section 6 of Act No. 16 of 2020

f) Schedule 1 – Exempt supplies

30. Prior to the Budget Amendment 2020-2021, Paragraphs 2 and 2A of the Schedule 1 to the VAT Act 1991 excluded the supplies made by a person in relation to the supply of residential accommodation.

31. The 2020-2021 budget⁹ amends Schedule 1 of the VAT Act 1991 as follows:

“Schedule 1 to the Principal Act is amended by—

(a) in paragraph 2, deleting “excluding residential dwelling as specified in paragraph 2A”; and (b) deleting paragraph 2A.”

32. The rationale for the amendment is to exempt VAT on any supply of residential accommodation by way of hire irrespective of the gross turnover from such supply.

g) Consequential Amendment

33. To align to the Budget Amendment in relation to the applicability of reverse charges to a registered person on payments of supplies received from abroad, references to “registered person” under Regulation 10 of the VAT Act has been deleted accordingly.

34. Another consequential amendment includes the deletion of the provisions of section 72A. This amendment is stipulated under Act No. 29 of 2020

Implications effective 1st August 2020

35. To facilitate with the smooth implementation of the changes in the law, the CEO provides clarification on rules around the administration of the amendments effective 1st August 2020.

36. In summary, effective from 1st August 2020:

- a) VAT on payments relating to supplies received from abroad will only be applicable to non-registered persons; and
- b) VAT in relation to the supply of residential accommodation¹⁰ will cease to apply.

37. Whether VAT is applicable or not on payments for supplies received from abroad is dependent on the date of payment. For instance, if payment is relating to a supply received by a non-registered person

⁹ Section 7 of Act No. 16 of 2020

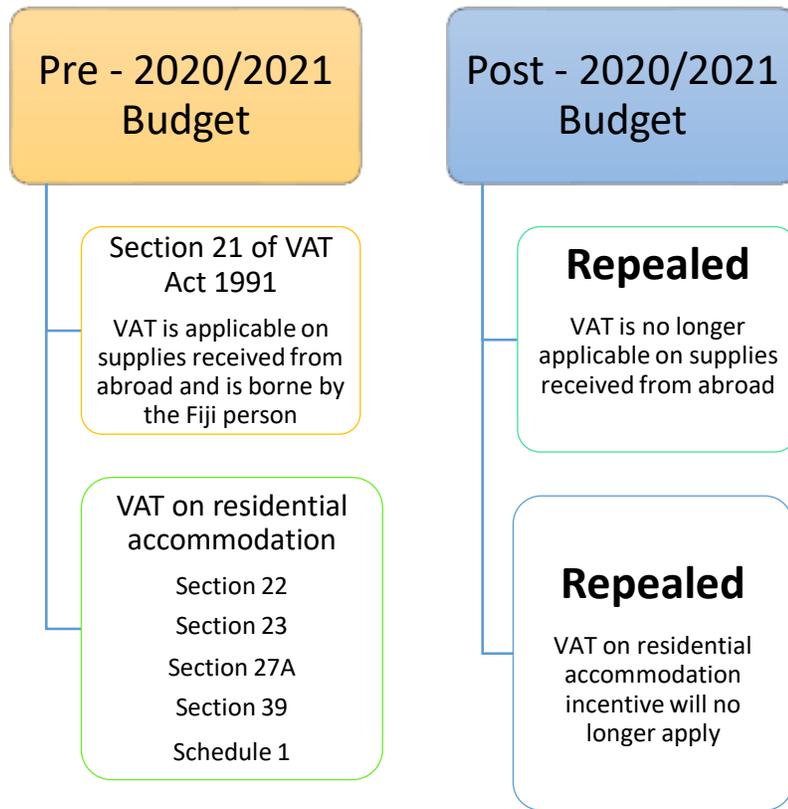
¹⁰ Pre-budget 2020/2021 amendment

relating to a period prior to budget amendment and remittance occurs after the budget amendment, then VAT shall apply to the non-registered person only.

38. With regards to VAT on residential accommodation, a person who has been VAT registered in respect of the supply of residential accommodation by way of hire prior to 1st August 2020 must:
- a) not charge VAT output on the supply of residential accommodation on or after 1st August 2020; and
 - b) not claim any expenses or payments relating to the construction of residential accommodation on or after 1st August 2020 since the supply of residential accommodation by way of hire will be considered as an exempt supply.
39. Persons who have been VAT registered for the purpose of claiming expenses in relation to the construction of residential accommodations will have their registration cancelled accordingly.
40. The VAT inputs earlier claimed on expenses or any payments relating to the construction of residential accommodations will not be recouped effective from 1st August 2020.
41. Similarly, in line with the intention of the law, the CEO will not deem any output upon cancellation of registration of a person who supplies residential accommodation by way of hire under section 3(4) of the VAT Act 1991.
42. However, if cancellation of VAT registration in respect of the supply of residential accommodation occurs in any period prior to the Budget Amendment 2020-2021, then the normal VAT rules¹¹ will apply.
43. For further enquiries, please email tipu@frcs.org.fj for more information.

¹¹ Section 23(9) – 23(12) of VAT Act 1991 (Pre-Budget amendment)

APPENDIX 1 – Annexure





I assent.

J. K. KONROTE
President

[31 July 2020]

AN ACT

TO AMEND THE VALUE ADDED TAX ACT 1991

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

- 1.—(1) This Act may be cited as the Value Added Tax (Budget Amendment) Act 2020.
- (2) This Act comes into force on 1 August 2020.
- (3) In this Act, the Value Added Tax 1991 is referred to as the “Principal Act”.

Section 21 amended

2. Section 21 of the Principal Act is amended by—
 - (a) in subsection (2)—
 - (i) deleting “Subject to subsection (3), where” and substituting “Where”;
 - and
 - (ii) deleting “(and particularly so much as charges tax on supply and entitles a registered person to a deduction for input tax)”;
 - (b) deleting subsection (3);

(c) deleting subsection (4) and substituting the following—

“(4) For the purposes of this Act, where subsection (2) treats a supply of relevant services as being made by a person in the course or furtherance of that person’s taxable activity, the value of that supply must be for whatever consideration was paid or payable for the relevant services.”;

(d) in subsection (6), deleting “subsection (4)(a)” and substituting “subsection (4)”; and

(e) after subsection (6), inserting the following new subsection—

“(7) Notwithstanding subsections (1) to (6), this section does not apply to a registered person.”.

Section 22 amended

3. Section 22 of the Principal Act is amended by deleting subsections (4A) and (4B).

Section 23 amended

4. Section 23 of the Principal Act is amended by deleting subsections (9) to (12) and inserting the following new subsection—

“(9) Notwithstanding section 3(4), where a person ceases to be registered in relation to the supply of residential accommodation, any input tax credit or VAT refund claimed by the person from the date of the person’s registration to the date of cancellation of the person’s registration, is not recoverable by the Chief Executive Officer.”.

Section 27A deleted

5. The Principal Act is amended by deleting section 27A.

Section 39 amended

6. Section 39(10) of the Principal Act is amended by deleting—

(a) “section 22(4B) and (5)” and substituting “section 22(5)”; and

(b) “including the construction of the residential property for rental”.

Schedule 1 amended

7. Schedule 1 to the Principal Act is amended by—

(a) in paragraph 2, deleting “excluding residential dwelling as specified in paragraph 2A”; and

(b) deleting paragraph 2A.

Consequential amendment

8. The Value Added Tax Regulations 1991 is amended in regulation 10 by deleting “registered”.