

VALUE ADDED TAX (AMENDMENT) (NO. 2) ACT, 2015-33

Arrangement of Sections

1. Short title
2. Amendment of section 2 of Cap. 87
3. Amendment of section 7 of Cap. 87
4. Amendment of section 13 of Cap. 87
5. Amendment of section 15 of Cap. 87
6. Insertion of section 22A into Cap. 87
7. Insertion of section 28A into Cap. 87
8. Amendment of section 34 of Cap. 87
9. Amendment of section 46 of Cap. 87
10. Amendment of section 47 of Cap. 87
11. Amendment of section 51 of Cap. 87
12. Amendment of section 60 of Cap. 87
13. Amendment of section 69 of Cap. 87
14. Amendment of section 73 of Cap. 87

15. Amendment of section 75 of Cap. 87
16. Amendment of section 82 of Cap. 87
17. Amendment of section 90 of Cap. 87
18. Amendment of section 91 of Cap. 87
19. Insertion of section 91A into Cap. 87
20. Amendment of section 98 of Cap. 87
21. Amendment of section 99 of Cap. 87

BARBADOS

I assent
ELLIOTT F. BELGRAVE
Governor-General
18th December, 2015.

2015-33

An Act to amend the *Value Added Tax Act*, Cap. 87 to increase the efficiency of tax administration, provide for the imposition of value added tax on certain mobile services and enhance the enforcement provisions in the Act and for related matters.

[Commencement: 28th December, 2015]

ENACTED by the Parliament of Barbados as follows:

Short title

1. This Act may be cited as the *Value Added Tax (Amendment) (No. 2) Act, 2015*.

Amendment of section 2 of Cap. 87

2. *Section 2 of the Value Added Tax Act, Cap. 87, in this Act referred to as the principal Act, is amended by inserting in the appropriate alphabetical order the following definition:*

““electronic service” means an essentially automated service which is supplied via the internet or a similar electronic network and cannot be obtained without the use of information technology;”.

Amendment of section 7 of Cap. 87

3. *Section 7 of the principal Act is amended by*

(a) *deleting subsection (7) and substituting the following:*

“(7) A registrant who makes a taxable supply in Barbados to another registrant shall, within 30 days of the supply, issue a tax invoice to the other registrant containing such particulars as may be prescribed.”; and

(b) *inserting immediately after subsection (12) the following:*

“(13) Notwithstanding anything in this section, with effect from the 1st day of January, 2016, the tax imposed on the supply of the mobile services of voice, data and text messaging is 22 percent and is payable by the registrant at the time the supply is made.”.

Amendment of section 13 of Cap. 87**4. *Section 13 of the principal Act is amended by inserting immediately after subsection (3) the following as subsection (3A):***

“(3A) For the purposes of this Act, where a supplier provides an electronic service, the provision of the electronic service shall be deemed to be a supply of services.”.

Amendment of section 15 of Cap. 87**5. *Section 15 of the principal Act is amended by deleting subsections (6) and (7) and substituting the following:***

“(6) Notwithstanding subsection (5), where a person pays in Barbados for international travel or for an international package tour, but the journey begins outside of Barbados and

(a) the ticket for the journey or tour is issued outside of Barbados in the name of another person who is outside Barbados at the time payment is made; or

(b) the entire journey takes place outside of Barbados,

the supply of the international travel or the international package tour shall be deemed to have taken place outside of Barbados.

(7) For the purposes of this section “ticket” means any written instrument issued within or outside of Barbados whereby a person on a journey is entitled to be provided with transportation either from Barbados or from a place outside of Barbados, or any re-written or re-issued document thereof, to the like effect and includes an electronic coupon, itinerary, receipt or boarding document issued by a carrier.”.

Insertion of section 22A into Cap. 87

6. *The principal Act is amended by inserting immediately after section 22, the following as section 22A:*

“Re-payment of input tax

22A. Where in accordance with section 53, a registrant has written off as a bad debt, all or part of the consideration for a taxable supply made to another registrant and the registrant to whom the supply was made claimed allowable input tax in respect of that supply, that registrant shall repay to the Comptroller any input tax claimed in respect of the supply.”.

Insertion of section 28A into Cap. 87

7. *The principal Act is amended by inserting immediately after section 28, the following as section 28A:*

“Tax to be paid directly to the Comptroller

28A. Where an accounting officer or any officer authorised by him for the purpose enters into a contract on behalf of the Government with a registrant for the provision of goods or services to the Government, the amount payable to the registrant as tax in respect of the supply of goods or services, shall be paid directly to the Comptroller by the accounting officer or the officer authorised by him for that purpose.”.

Amendment of section 34 of Cap. 87**8. *Section 34 of the principal Act is amended by******(a) deleting subsection (4) and substituting the following:***

“(4) A person who fails to comply with subsection (1), (2) or (3) of this section shall

- (a)* be compulsorily registered from such date as is applicable under this Act or such other date as the Comptroller determines is applicable;
- (b)* pay to the Comptroller a penalty not exceeding \$1 000 as the Comptroller determines; and
- (c)* not be entitled to a refund of input tax under section 47 for the period during which that person should have been registered for the purposes of this Act.”; and

(b) deleting subsection (4C) and substituting the following:

“(4C) Where a person who is registered under subsection (4A) fails to commence the taxable activity, the Comptroller may, subject to subsections (4D), (4E) and (4F), cancel the registration of that person and that person shall be required to pay to the Comptroller within 21 days of the cancellation of the registration or such further period as the Comptroller may allow, an amount equivalent to the total tax that the registrant is deemed by section 46(2) to have paid on account of the output tax payable by him and which had been refunded to him during the period of his registration.”.

Amendment of section 46 of Cap. 87**9. *Section 46 of the principal Act is amended by***

- (a) inserting immediately after subsection (1) the following as subsection (1A):*

“(1A) The Comptroller may at any time, in writing, extend the time for payment of any output tax beyond the date on which it is required to be paid under subsection (1).”; and

- (b) inserting immediately after subsection (6) the following as subsection (7):*

“(7) Where, under subsection (1A), the Comptroller extends the time for payment of an amount of output tax, interest is payable under subsection (4) as if the time for payment of that amount had not been extended.”.

Amendment of section 47 of Cap. 87**10. *Section 47 of the principal Act is amended by deleting subsection (6) and substituting the following:***

“(6) Interest of less than \$5 shall not be payable under subsection (4) or (5).”.

Amendment of section 51 of Cap. 87**11. *Section 51 of the principal Act is amended***

- (a) in subsection (1) by deleting paragraph (b) and substituting the following:*

“(b) an amount of output tax equal to the total of all allowable input tax that the person was deemed by subsection 46(2) to have paid on account of output tax payable by the person for taxable periods that ended while he was registered shall be deemed to be payable by the person in the last taxable period during which he was registered.”; and

(b) *by deleting subsection (3).*

Amendment of section 60 of Cap. 87

12. *The principal Act is amended by deleting section 60 and substituting the following:*

“Remissions

60.(1) The Minister may, by order published in the Gazette, waive, remit or refund, in whole or in part, any tax, penalty, interest or other amount payable under this Act where he is satisfied that it is just and equitable to do so, or in order to give effect to the terms of any agreement or arrangement to which Barbados is a party.

(2) An order made under subsection (1) may contain such terms and conditions as the Minister considers appropriate.”.

Amendment of section 69 of Cap. 87

13. *Section 69 of the principal Act is amended in subsection (2) by deleting paragraph (f) and substituting the following:*

“(f) the Comptroller shall, where a refund for a taxable period is payable to the person, apply the refund payable against any outstanding tax, penalty, interest or other amount payable under this Act by the

person and pay the balance, if any, to the receiver on behalf of the person; and”.

Amendment of section 73 of Cap. 87

14. *Section 73 of the principal Act is amended by inserting immediately after subsection (4) the following as subsection (5):*

“(5) The *Electronic Transactions Act*, Cap. 308B, applies, *mutatis mutandis*, to this Act. ”.

Amendment of section 75 of Cap. 87

15. *Section 75 of the principal Act is amended by inserting immediately after subsection (1) the following as subsection (1A):*

“(1A) Where the records and books of account referred to in subsection (1) are kept in an electronic form, they shall be kept in a retrievable format that is easily accessible by the Comptroller.”.

Amendment of section 82 of Cap. 87

16. *Section 82 of the principal Act is amended by deleting subsection (6) and substituting the following:*

“(6) Interest of less than \$5 shall not be paid or applied under subsection (5).”.

Amendment of section 90 of Cap. 87

17. *Section 90 of the principal Act is amended by inserting immediately after subsection (2) the following as subsections (3), (4), (5), (6) and (7):*

“(3) Where a tax debtor fails to pay the amount specified in an unpaid tax certificate within 21 days after the filing of the certificate in accordance with subsection (2), the Comptroller may publish a notice of the unpaid tax certificate in at least 2 newspapers, each having a circulation of not less than 5 days in any one week in Barbados.

(4) An unpaid tax certificate filed in the High Court in accordance with subsection (2) shall affect lands, tenements or hereditaments as to purchasers, mortgagees or judgment creditors as if the certificate were a judgment registered under section 2 of the *Registration of Judgments Act*, Cap. 210.

(5) A copy of an unpaid tax certificate filed in the High Court and certified as such by the Registrar of the Supreme Court, shall be lodged with the Registrar of Titles who shall issue a receipt in such form as he may determine in respect of the unpaid tax certificate.

(6) Where the amount referred to in subsection (2) has been paid or remitted to the Crown in satisfaction of an unpaid tax certificate, the Comptroller shall certify in a memorandum of satisfaction that the tax debtor has paid such amount.

(7) A memorandum of satisfaction referred to in subsection (6) shall be filed in the court in which the unpaid tax certificate is registered and, in the case of an unpaid tax certificate filed in the High Court, a copy of the memorandum of satisfaction, certified as such by the Registrar of the Supreme Court, shall be lodged with the Registrar of Titles who shall issue a receipt in such form as he may determine in respect of the memorandum of satisfaction.”.

Amendment of section 91 of Cap. 87

18. Section 91 of the principal Act is amended by inserting immediately after subsection (6) the following as subsection (6A):

“(6A) For the purposes of this section “third party” includes commercial banks, credit unions and other financial institutions where the tax debtor has an account.”.

Insertion of section 91A into Cap. 87

19. *The principal Act is amended by inserting immediately after section 91 the following as section 91A:*

“Distress

91A.(1) Subject to section 90, where the Comptroller delivers a demand for an amount payable or remittable under this Act, including the rate of interest thereon requiring the tax debtor to make the payment forthwith and the tax debtor fails to comply with that demand, the Comptroller or other person authorised by him may, by warrant, levy distress against the goods and chattels of the tax debtor.

(2) The Comptroller shall only issue a warrant to levy distress under subsection (1) where he has served the tax debtor personally with a written notice of his intention to levy distress and a schedule of the items to be seized.

(3) A warrant to levy distress shall be issued 5 days after the date of service of a notice under subsection (2) or as soon as is practicable thereafter.

(4) It shall be lawful for the Comptroller or other person authorised by him, in the presence of a member of the Police Force, to enter into the premises of a tax debtor upon a warrant to take and seize as a distress for any amount payable under this Act, any goods and chattels of the tax debtor except those goods and chattels that

(a) are held by the tax debtor subject to the terms of a hire purchase agreement or a lease;

(b) constitute fixtures, the removal of which will cause irreparable damage to the tax debtor's premises; or

(c) constitute tools of trade,

to appraise, sell or otherwise dispose of the same towards satisfaction of the amount payable under this Act for which distress is taken and the charges of the distress, appraisement and sale.

(5) Entry upon any such warrant shall not be made on a Sunday, Good Friday or Christmas Day or at any time except between the hours of 8 in the morning and 5 in the afternoon.

(6) A person who destroys, sells or otherwise disposes of any of the goods contained in a schedule of items to be distrained upon under subsection (2) is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for a term of one year or both.”.

Amendment of section 98 of Cap. 87

20. *Section 98 of Cap. 87 is amended in subsection (1) by inserting immediately after paragraph (b) the following as paragraph (bb):*

“(bb)having received a notice referred to in section 93, fails to pay the amount specified in that notice or to provide security in an amount and a form satisfactory to the Comptroller for payment thereof and wilfully leaves or attempts to leave Barbados;”.

Amendment of section 99 of Cap. 87

21. *Section 99 of the principal Act is amended by deleting subsection (1) and substituting the following:*

“(1) Any person who contravenes any provision of this Act or the regulations for which no other fine or term of imprisonment is provided under this Act is guilty of an offence and, in addition to any penalty he is otherwise liable to pay, is liable on summary conviction to a fine of \$25 000.”.