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VALUE ADDED TAX PROPOSAL FOR THE BAHAMAS

Alexandra T. Hall

The Government of The Bahamas proposes to introduce a system of value added tax ("VAT") in The Bahamas.

VAT will be payable on most goods and services imported into The Bahamas or purchased locally. The draft legislation provides that the standard rate of VAT (i.e. the rate charged on the majority of goods and services) will be 15%, with 10% VAT being charged on hotel accommodations, services included in the room rate for accommodations and food and beverages supplied within a hotel or similar establishment. The draft legislation also identifies certain supplies of goods and services as zero-rated (e.g. goods that are exported and services where the benefit is enjoyed outside of The Bahamas) or exempt (e.g. bread basket items, services provided by charities, and domestic financial services not provided for an explicit fee).

Where a contract is executed before the introduction of VAT and the contract does not include any provisions relating to VAT but the supplier becomes a registrant, the draft legislation allows the supplier to recover from the recipient the tax due on the supply.

VAT will only be chargeable by persons and businesses registered with the soon to be created Central Revenue Administration (the "CRA"). Registrants will be issued a Certificate of Registration

and the draft legislation mandates that these Certificates be displayed in a conspicuous place. Therefore, customers walking into a business should be able to determine if the business can charge VAT. A VAT Register, which will be available for public inspection, will also be maintained by the CRA.

For most businesses, the threshold for mandatory registration with the CRA will be \$100,000 of taxable activity per annum. Businesses whose taxable activity involves the supply of hotel accommodation or commercial leases will have a lower mandatory registration threshold of \$50,000 per annum. Businesses whose taxable activity is below the mandatory registration threshold may apply to the CRA for voluntary registration if they show that they can maintain proper accounting records.

VAT will be charged on the total consideration payable for goods and services. In the case of imported goods, this will be the customs value plus the cost of insurance and freight (where not otherwise included), plus the amount of any customs duty, excise tax, environmental levy or surcharge and other tax except VAT and any customs service charges.

VAT is not cumulative. Tax is paid only on the value added during the various stages

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For additional copies of FOCUS, please contact Antonia Burrows at 242 502 5200 or at aburrows@higgsjohnson.com.

The importer is responsible for paying VAT due on imports, which will be collected by the Customs Department at the time of entry.

in the production/manufacture/sales process. Registered businesses that provide taxable goods and services will be able to claim credit for and deduct the VAT they pay during the production of the taxable goods or service (the “input tax”) before remitting VAT charged on their sales (the “output tax”) to the Government. Therefore, businesses will only send to the CRA the difference between the total output tax and input tax during any period. VAT returns must be filed within 21 days of the end of the month in which the supply occurred.

Where the input tax paid by a business is greater than the output tax collected during any month, the difference (the “credit”) may be carried forward for 3 months. If a credit balance remains after 3 months, an application for a refund may be made to the CRA.

Because registrants must file returns with the CRA within 21 days of the end of the month when a supply of goods and services occurs, it may result in a business paying the CRA the amount of VAT payable on a taxable activity before the business has received payment for such goods or services. Where a business can prove that six months has passed since goods or services were supplied but payment was not received, the draft legislation provides that the debt can be written-off and an input tax deduction can be claimed for such amount if reasonable collection efforts have been made.

VAT payable on taxable supplies must be forwarded to the CRA by the person making the supply. The importer is responsible for paying VAT due on imports, which will be collected by the Customs Department at the time of entry.

Where taxable services are imported into

The Bahamas, the draft legislation provides that the importer and recipient of such services are jointly and severally liable for the payment of VAT.

The draft legislation outlines serious fines and penalties for the failure to pay VAT. The maximum fine that can be imposed by the CRA on individuals is \$50,000 and \$150,000 for companies, partnerships, trusts, or associations.

Other penalties that can be imposed include:

- the seizure of goods where the Commissioner has a reasonable ground to believe that the goods comprise a taxable supply by a taxable person or a taxable importation and that VAT has not or will not be paid on the supply or import;
- forcible closure of the business of a person who has repeatedly failed to comply with the VAT legislation; and
- publication of the names of persons who have repeatedly failed to comply with the VAT legislation.

For business owners and customers in a new environment, the introduction of VAT means that:

- contracts must expressly address VAT and state which party is responsible for its payment;
- accounting and billing systems should be capable of calculating the VAT payable and generating different forms of sales slips (i.e. a VAT Invoice if the customer is a VAT registrant or a VAT Receipt if the customer is a non-registrant); and
- employees should know whether goods and services are taxable at the

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standard or reduced rate, zero-rated, or exempt.

Editor's Note - The Prime Minister has announced that Value Added Tax will no longer be implemented at a rate of 15%.

He did not indicate what the new rate would be or when VAT would be implemented. We will provide an update in our next issue of FOCUS.

Alexandra T. Hall is an Associate in the Ocean Centre office and is a member of the Commercial practice group with experience in various aspects of company and commercial law.



DATA PROTECTION IN THE CAYMAN ISLANDS

Gaela Fitzgibbons

The Draft Data Protection Law will give rights to individuals whose personal data is processed in the Cayman Islands and regulate the use of that personal data by those in control of it.

A comprehensive European style data protection law may come into force in the Cayman Islands within the next few months.

A draft bill (the "Draft Data Protection Law") is currently with the Attorney General's office for review and is expected to come before the Legislative Assembly this spring. The Draft Data Protection Law is a redraft of a 2011 draft bill (the "2011 Draft Bill") and is designed to comply with the adequacy requirements of European Directive 95/46 EC on data protection.

The 2011 Draft Bill, which is based on current Jersey law, was released for public consultation in 2012. Although it has not been made public, the Draft Data Protection Law that is currently with the Attorney General's office is expected to be similar in scope and application to the 2011 Draft Bill.

Key Points

The Draft Data Protection Law will give rights to individuals whose personal data is processed in the Cayman Islands and regulate the use of that personal data by those in control of it ("data controllers").

The Draft Data Protection Law is expected to:

- apply to data controllers established in the Cayman Islands and also to certain overseas entities with processing functions in the islands;
- apply to the public and private sectors alike, to local and exempted companies;
- apply in respect of all types of personal data (that is data relating to an identifiable individual, wherever they are located);
- impose requirements on data controllers to handle personal information fairly and lawfully;
- require personal data to be collected, used, stored and accessed only for specified purposes;
- limit the collection and use of personal data to that which is adequate, relevant and not excessive for the legitimate purposes for which it was collected;
- ensure personal data is kept up to date by data controllers;
- limit personal data retention and impose data security requirements;
- restrict overseas transfers of personal

Data controllers and organizations that will be regulated by the Draft Data Protection Law should be ready to implement a compliance plan once the draft becomes law.

data;

- require periodic registration by data controllers with the Information Commissioner's Office;
- include US style security breach notification provisions;
- give individuals rights to access their personal data and to object to its processing, to direct marketing and to automatic processing;
- give individuals the rights to complain, stop processing and receive compensation, among other remedies; and
- give the Information Commissioner's office enforcement powers including the right to impose monetary penalties on data controllers.

Data controllers will be accountable for complying with the requirements of the Draft Data Protection Law and liable for breaches.

It is understood that efforts have been made in the Draft Data Protection Law to simplify the 2011 Draft Bill and to take into account the ongoing package of data protection reforms in Europe, which aim to

strengthen privacy rights. Such reforms include a right to be forgotten, easier access by individuals to their personal data and greater control by individuals over how their personal data is used.

Transitional Provisions

Once passed it is expected that the Draft Data Protection Law will contain transitional provisions covering a period of up to 12 months. This period may be reduced for larger organizations, which may be required to comply sooner with certain provisions of the law, including the registration provisions.

Compliance Planning

Data controllers and organizations that will be regulated by the Draft Data Protection Law should be ready to implement a compliance plan once the draft becomes law. Multinational organizations will need to expand their global data protection policies to embrace the provisions of Cayman Islands data protection law and to incorporate compliance with Cayman requirements into their internal audit checklists.

Gaela Fitzgibbons is a data protection expert with over 15 years of experience advising companies on global data protection compliance strategies. She is also a member of the Cayman Islands Law Society and Caymanian Bar Association Joint Committee on the Data Protection Bill.



VAT ON REAL ESTATE IN THE BAHAMAS

Alexandra T. Hall & Jonathan Deal

If value added tax ("VAT") is in fact introduced, it will have wide-ranging effects on the Bahamian real estate industry.

Part II of the Third Schedule to the draft Value Added Tax Bill (the "Bill") provides that no VAT will be assessed on (i) the transfer of vacant residential land; (ii) the

sale or rental of a dwelling and the land attributable to the dwelling; (iii) the leasing of a dwelling and the land attributable to the dwelling; and (iv) the leasing of vacant land if the land is used, or is intended to be used, for residential purposes. Although the Bill is silent on the transfer of

commercial property, the Government has indicated that transactions on which *ad valorem* stamp duty is payable will not attract VAT.

The Third Schedule exemptions do not extend to rental income from commercial property. Therefore, where a landlord meets the registration threshold of \$100,000, 15% VAT will be charged on the rent. The exemptions listed in the Third Schedule to the Bill also do not extend to professional services related to the transfer of land. Therefore 15% VAT will be levied on appraiser fees, legal fees and real estate agents' commissions where the service provider is a VAT registrant. Where a real estate agent or broker enters into a franchise agreement with a company outside of The Bahamas, VAT will be chargeable on the total commission earned on the sale before the franchise fee is remitted.

Rental income from condos, timeshare units and houses owned by non-residents of The Bahamas will be subject to VAT where the Permit from The Bahamas Investment Authority indicates use for rental purposes and the rental income exceeds the annual registration threshold.

Administrators of condos or other rental properties forming part of a rental pool must register with the Central Revenue Administration ("CRA") if the aggregate rents received from the properties exceeds or is expected to exceed \$50,000.00 in any given 365 day period. Where an administrator remits the VAT received to the CRA, the owner of the unit is relieved of VAT liability. The Administrator's fees will also be subject to VAT.

A property owners association or similar body which levies a membership or

annual fee that confers a right or privilege such as access to a club will be treated as making a taxable supply. Where the association is a VAT registrant, the membership or other fee will be subject to 15% VAT.

Should VAT be implemented, hotels will no longer be required to collect hotel guest tax from persons staying at their establishment. Instead a 10% VAT will be levied. The obligation to collect and pay VAT at this rate will extend to owners of owner-occupied rental homes who currently collect hotel guest tax, assuming they meet the \$50,000 registration threshold. If the annual rental income received from the property does not meet the registration threshold, no tax will be charged on the rental.

The Bill includes transitional provisions relating to transactions entered into prior to the date when the Bill comes into force ("the effective date"). VAT will be charged on invoices issued or paid within six months prior to the effective date where the goods and services are supplied after the effective date. Where a contract for the supply of construction goods and services is executed before the effective date, only that portion of the construction goods and services supplied after the effective date will be subject to VAT.

The Bill provides that where a contract has been executed before the introduction of VAT and the supply made after the effective date, the supplier may recover the amount of VAT payable from the recipient of the supply.

Where a rental agreement is executed before the introduction of VAT but continues after the effective date, VAT is assessable only on that portion of the rental income earned after VAT is

Should VAT be implemented, hotels will no longer be required to collect hotel guest tax from persons staying at their establishment. Instead a 10% VAT will be levied.

introduced.

VAT will have a significant impact on transactions involving real estate and it behooves those involved in the sector to prepare for its arrival.

Alexandra T. Hall is an Associate in the Ocean Centre office and is a member of the Commercial practice group with experience in various aspects of company and commercial law. Jonathan Deal is a law student and an intern in the Real Estate & Development practice group.

GINA M. BERRY ASSUMES ROLE OF COUNTRY MANAGING PARTNER IN THE CAYMAN ISLANDS



Cayman Partner and chair of the Real Estate & Development practice group, Ms. Gina M. Berry, has been appointed the Country Managing Partner in the Cayman Islands.

Gina will have responsibility for the management of the Cayman office and the partners are confident that the accomplished skills and talent which she brings to the firm will strengthen and consolidate the practice of the firm in the Cayman Islands.

Global Managing Director, Oscar N. Johnson Jr. commented that it was refreshing to have an energetic, positive and dedicated woman of Gina's calibre officially take on the mantle of leadership in a firm where she had already devoted much effort.

Gina's distinguished legal career has also won the respect of her peers, colleagues and clients; and she has been singled out with various awards for client as well as community service.

NEW ASSOCIATES WELCOMED IN THE BAHAMAS



Mr. Felix F. L. Beneby Jr. specializes in Civil and Commercial Litigation.

Felix obtained a Bachelor of Laws degree (LL.B. (Hons)) in 2011 from The University of Buckingham. He continued his studies at the University of the West of England where he completed the Bar Practitioner's Training Course in 2012. Additionally, he has trained with the Alternative Dispute Resolution (ADR) Group of London, and is accredited as a civil and commercial mediator.

Felix was called to the Bar of England and Wales and to The Bahamas Bar in 2012. He completed pupillage and became an Associate in December 2013.

NEW ASSOCIATES WELCOMED... (cont'd)



Mr. Theo Burrows is an Associate in the Private Clients & Wealth Management practice group.

Theo obtained a LL.B. (Hons) from the University of Kent in 2009. Subsequently, he completed the Bar Vocational Course at the University of Northumbria and was called to the Bar of England and Wales in 2010. From 2010 to 2012, Theo lived in The People's Republic of China and during this time studied Mandarin at Tsinghua University in Beijing, China.

Theo was called to the Bahamas Bar in 2012 and upon completion of his pupillage he became an Associate in October, 2013.



Ms. Lisalette T. Gibson's main areas of practice include trusts and estates having spent over 25 years prior working in Wealth Management in the Private Banking Industry.

After successfully completing her STEP Diploma in 2003, Lisalette pursued her law studies at the University of London, where she obtained her LL.B. (Hons) degree in 2008. She completed her Certificate of Legal Education from the Eugene Dupuch Law School and was subsequently called to the Bahamas Bar in 2011.

Lisalette joined the firm as an Associate in 2013.



Ms. Andrea A. Moultrie's main areas of practice include commercial and corporate law.

Andrea obtained a Bachelor of Laws (LL.B.) (Hons) degree from the University of Cardiff in 2009. She completed the Bar Vocational Course at Northumbria University, and was thereafter called to the Bar of England & Wales and to the Bahamas Bar in 2010. In 2011 she earned a Master of Laws (LL.M.) degree, with a concentration in Environmental Law, from Northumbria University.

Andrea joined Higgs and Johnson as an Associate in 2013. She currently serves as Vice-Chair on the Board of Directors of the College of The Bahamas Alumni Society.



Ms. Jonnell K. Rigby specialises in real estate and real property law.

Jonnell obtained a Bachelor of Laws degree (LL.B. (Hons)) from the University of Essex. She completed the Bar Professional Training Course and later earned a Master of Laws degree (LL.M.) from City Law School. She was called to the Bar of England and Wales in July 2011 as a member of the Honourable Society of Lincoln's Inn and to the Bahamas Bar in September of that same year.

Jonnell became an Associate at Higgs & Johnson in 2012 following completion of her pupillage.

ATTORNEYS PRESENT TO BREA ON VAT



Partner, Christel Sands-Feaste was invited by the President of the Bahamas Real Estate Association ("BREA"), Franon Wilson, to give a presentation to BREA's members on the implications of Value Added Tax ("VAT") to the real estate industry. Alexandra Hall, an Associate in the Commercial practice group was a co-presenter.

The presentation was broadcast live as a webinar to BREA members throughout The Bahamas enabling the panel to respond to questions posed by members in the Family Islands.

Mrs. Sands-Feaste noted, 'This was a good opportunity to provide an overview of the implications of VAT for the real estate industry in The Bahamas.'

Mr. Wilson stated, 'The presentation exceeded our expectations. They provided the necessary information in a comprehensive manner that allowed our members a better understanding of how VAT will impact their business.'



FIRM HOLDS DISCUSSION ON VAT

L-R: Partner -Dr. Earl A. Cash; Robert Henry; Deputy Financial Secretary – Simon Wilson; Pauline Peters; Partner – Sterling H. Cooke; Financial Secretary – John Rolle; Managing Partner – Oscar N. Johnson, Jr.; Partner – Surinder Deal; and Marvin Clarke.



The Financial Secretary and his support personnel and Attorneys and management of the firm engaged in an instructive exchange on VAT, its ramifications and impending implementation. The session was described as "intense and tremendously beneficial."

FIRM RANKED BY 2014 EDITIONS OF LEADING LEGAL DIRECTORIES CHAMBERS GLOBAL AND IFLR1000



Higgs & Johnson has been ranked as a Tier 1 law firm by both IFLR1000 and Chambers Global for 2014. The firm was ranked in the Financial/Corporate category by IFLR1000 and in General Business Law by Chambers Global. The firm has maintained its Tier 1 standing in The Bahamas for the past seven years and is continually recognized globally as a leading commercial firm.

Chambers Global stated, "This excellent firm is lauded for the superb strength and depth of its corporate and transactional departments. The team is distinguished by its ability to advise on international mandates and major projects, notably for clients in the financial services sector and the tourism and leisure industries. Its respected disputes practice is active across a wide range of cases including asset recovery, trust litigation and labour matters."

In The Bahamas, Partners Surinder Deal and Christel Sands-Feaste, of the Commercial and Securities practice groups, were listed yet again as leading lawyers in IFLR1000. Senior Partner, Philip C. Dunkley, Q.C. and Partners, Heather L. Thompson, Christel Sands-Feaste and Dr. Earl A. Cash were listed as leading lawyers in Chambers Global. Ms. Thompson, Mrs. Sands-Feaste, and Dr. Cash were recommended in General Business Law and Mr. Dunkley in General Business Law: Dispute Resolution.

In the Cayman Islands, Philip Boni - Partner and John Harris - Associate were recommended in Dispute Resolution by Chambers Global.