

TOURIST SERVICES SUPPLIED THROUGH OVERSEAS AGENTS

VAT Office Policy Statement [VP013]

Issued August 2001

Introduction

This paper discusses the VAT treatment of tourist services supplied through an overseas agent.

Specifically the paper addresses the legislative change to the zero-rating provisions contained in the VAT Act together with the VAT Office policy developed to support this change.

All legislative references in this paper are to be taken as references to the Value Added Tax Act of 1998 unless otherwise stated.

Background

Prior to the recent amendment of clause 5 of the Third Schedule, the VAT legislation inadvertently zero-rated the supply of tourist services where they were supplied through overseas agents even though visiting tourists eventually consumed the services in Vanuatu.

It is clear that the original legislation was at odds with one of the fundamental principles of the VAT regime i.e. that goods and services consumed in Vanuatu are subject to VAT, regardless of whether they are purchased by a non-resident.

To correct this anomaly, part 1 of the VAT (Amendment) Act No. 45 of 2000 amended clause 5 of the Third Schedule of the principal Act.

The amended clause 5 now provides zero-rating on certain supplies as follows:

Any supply of services to a person who is not a resident of Vanuatu and who is outside Vanuatu at the time the services are performed. However this clause does not apply to services if:

- (a) *the services are supplied directly in connection with tangible property situated in Vanuatu at the time the services are performed; or*
- (b) another person who is not a registered person receives the performance of those services in Vanuatu.

The amendment inserts a new paragraph (b), which provides that the zero-rating provision does not apply to services supplied to a non-resident if another person receives the performance of those services in Vanuatu.

As the previous legislation did not reflect the Government's original policy intention and created a significant risk to government revenue, the amendment to clause 5 was enacted retrospectively with effect from 1 August 1998.

However, the retrospective application of the amendment raises some questions as to how the legislation should apply in certain circumstances. The VAT Office policy for the various circumstances arising due to the amended legislation is set out in the following paragraphs.

Supplies Made After the Legislation Change

The amendment to clause 5 of the Third Schedule was enacted on 29 January 2001. This means that the VAT legislation now supports the original policy intention, i.e. that registered persons are liable to account for 12.5% VAT on all tourist services

Whether supplied directly to the person who will consume the services or through an overseas agent.

Supplies Never Zero-Rated

Registered persons who have never zero-rated supplies of tourist services made through overseas agents are not affected by the amended legislation.

Supplies Zero-Rated at the Time They Were Made

Although the amended legislation provides for retrospective application, registered persons who zero-rated supplies made through overseas agents at the time the services were supplied will not be subject to reassessment.

It was not intended to use the retrospective nature of the amendment to reassess those persons who had zero-rated supplies correctly under the law existing at that time. These persons were unaware of the Government's intention to amend the legislation retrospectively and were not in a position to recover the VAT from the consumer of the services.

Reassessments Requested to Zero-Rate Supplies Made in Earlier Returns

During the period leading up to the amended legislation being passed, some registered persons became aware of the anomaly in the legislation and requested reassessments of their VAT returns to allow zero-rating of supplies previously made through overseas agents. Prior to undertaking any of these reassessments, the VAT Office advised the registered person that the legislation was to be amended, with effective from 1 August 1998 and therefore any reassessment would be reversed once the amendment was enacted.

This meant that registered persons who chose to go ahead with reassessments of their earlier VAT returns did so in the knowledge that the legislation was to be amended retrospectively and that any refunds arising from the reassessments would have to be repaid to the VAT Office.

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Bookings Made Prior to 29 January 2001 But Paid For After That Date

Prior to 29 January 2001, some registered persons, who were unaware that the legislation was to be amended, made bookings for later in the year through their overseas agents on the basis that the supplies were zero-rated.

In these cases the VAT Office considers that the 'time of supply' occurred at the time that the confirmed booking was made. This means that these supplies were zero-rated in accordance with the legislation at that time even though payment and delivery of the services may be after 29 January 2001. The VAT Office will accept these supplies as zero-rated if the registered person can provide documentary evidence that the supplies were zero-rated and that the booking was confirmed before 29 January 2001.
