

## VAT RECORD KEEPING REQUIREMENTS

VAT Office Policy Statement [VP012]

Issued June 2001

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### Introduction

This policy statement discusses the various record keeping requirements contained in the Value Added Tax Act 1998. Specifically, the following provisions are addressed:

- s. 54 - Requirement to Keep Records
- s. 57 - Director's Power to Inspect Records
- s. 51 - Offences.

All legislative references contained in this paper are references to the Value Added Tax Act 1998.

### Requirement to Keep Records

Section 54 sets out the record-keeping requirements for VAT. The section requires every registered person who supplies goods and services in Vanuatu, to keep in Vanuatu sufficient records in English, French or Bislama to enable the Director to readily ascertain the person's liability to tax.

### What Constitutes Records?

The term "records" is defined in section 2 as including:

- books of account (whether manual, mechanical or electronic);
- a record of all goods and services supplied by or to the registered person identifying the goods and services, the suppliers or their agents;
- all invoices, tax invoices, credit notes and debit notes relating to the supplies made or received;
- other documents as are necessary to verify the entries in the books of account;
- the system and programme documentation that describes the accounting system used.

### Ready Ascertainment of Liability

Section 54 requires that a registered person keeps sufficient records "to enable ready ascertainment by the Director of the registered person's liability to tax". This means that registered persons are required to keep their business records in an ordered manner that would allow the Director to assess their VAT liability for any specified period without delay or difficulty.

### **Records Must Be Kept for 6 Years**

All records must be kept for a period of at least 6 years after the end of the return period to which they relate. In addition, the Director may, by notice in writing before the expiry of the 6 year period, require a registered person to retain specific records for a further period of up to 3 years where the Director is investigating, or intends to investigate, the VAT affairs of the registered person.

### **Destruction of Records Within 6 Years**

A registered person may destroy their records within the 6 year period if:

- (i) the Director has advised the registered person in writing that retention of the books and supporting documents is not required; or
- (ii) the registered person is a company that has been liquidated.

### **Records Kept Outside of Vanuatu**

In certain circumstances a registered person may be authorised to keep their records outside of Vanuatu. Applications for such authorisation must be made to the VAT Compliance Manager in writing.

### **Director's Power to Inspect Records**

Registered persons make their VAT payments on the basis of their own calculations that are entered on their VAT returns. The Director accepts these self-calculations on the understanding that the registered person's records will be reviewed at a later date to verify that the calculations are correct.

Section 57 provides the Director with the authority to inspect any records that he considers necessary or relevant for the purpose of establishing a registered person's correct VAT liability. Such records will include all business records and in some cases may extend to personal records such as statements from private bank accounts.

Specifically, section 57 provides that:

- (i) the Director will at all times have full and free access to all records whether they are in the custody of the registered person or any other person (including an organisation such as a bank).
- (ii) the Director is authorised to make extracts from, or copies of, any records without making payment of any fee to any person.
- (iii) the Director may remove and retain any records he considers necessary or relevant.

### **Requests for VAT Records**

Although there is no legislative requirement to do so, the VAT Office (on behalf of the Director) will generally make requests for records in writing. Requests are most commonly made when a registered person has been selected for an audit. In this situation the VAT Office advises the registered person in writing that a specific period has been selected for audit and requests the relevant records for that period. As the audit progresses, additional records may be requested verbally or in writing.

Information obtained from a registered person's records is treated with the utmost confidentiality and is used only for the purposes of establishing their correct VAT liability.

### **Offences against the Act**

Subsection 51(1) sets out the various offences a person can be prosecuted for under the Act. Subsections 51(2) to 51(5) record the penalties for committing an offence against the Act.

#### Offences Relating to VAT Records

In respect of the Act's requirements to maintain suitable business records and to produce these to the Director on demand, subsection 51(1) provides that the following actions by any person are offences against the Act:

- “(b) Refuses or fails to furnish any return or information as and when required by this Act, or any regulations made under this Act or by the Director;”
- “(h) Obstructs any officer of the Department acting in discharge of that officer's duties or the exercise of that officer's powers under this Act;”
- “(i) Fails to keep or properly maintain records of a taxable activity carried on by the person as required under this Act;”

#### Penalties for Offences Relating to VAT Records

The table on the following page sets out the various fines that a person is liable to under the Act if they are prosecuted for committing an offence related to record keeping under subsection 51(1):

<b>Offence</b>	<b>Liable Fine</b>
Failure by a registered person to maintain proper records	<ul style="list-style-type: none"><li>▪ Up to 49,000 vatu for a first conviction</li><li>▪ Up to 75,000 vatu for a second conviction</li><li>▪ Up to 300,000 vatu for each subsequent conviction</li></ul>
Failure or refusal by any person to provide any information to the Director as required by the Act	<ul style="list-style-type: none"><li>▪ Up to 40,000 vatu for each month of default for a first conviction</li><li>▪ Up to 75,000 vatu for each month of default for each subsequent conviction</li></ul>
Obstruction by any person of any officer of the Department from acting in discharge of their duties	<ul style="list-style-type: none"><li>▪ Up to 700,000 vatu and/or 3 months imprisonment for a first conviction</li><li>▪ Up to 1,500,000 vatu and/or 12 months imprisonment for each subsequent conviction</li><li>▪ The Director will publish in the Gazette a list of names of persons convicted of this offence.</li></ul>

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### **Officers and Employees of Corporate Bodies**

Section 52 of the Act provides that any person, being a director, secretary, statutory officer, receiver, manager of any property of or liquidator of a corporate body who is responsible for furnishing to the Director anything required by the Act, commits an offence if the information, statement, or return required to be furnished is not done so within the time specified.

The purpose of this provision is to fix accountability to the persons responsible for the making of decisions in a company or other incorporated body.

The responsible officer or employee who commits an offence against section 52 will be personally liable, upon conviction, to the same fines as those applying to a person who is convicted of obstructing an officer of the Department from carrying out their duties.

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