

Introduction (L.N. 96 of 1994).

**VALUE ADDED TAX ACT, 1994
(ACT NO. XII OF 1994)
Value Added Tax (Supplies of Goods and Services) Regulations, 1994**

IN EXERCISE of the powers conferred by subsection (2) of section 7, subsection (5) of section 9 and paragraph (d) of section 61 of the Value Added Tax Act, 1994 hereinafter referred to as "the Act", the Minister of Finance has made the following regulations:-

1. Citation and Commencement.

- (1) These regulations may be cited as the Value Added Tax (Supplies of Goods and Services) Regulations, 1994.
- (2) These regulations shall be deemed to have come into force on the 1st September, 1994.

2. Interpretation.

Terms used in these regulations shall, unless the context otherwise requires, have the meaning assigned to them in the Act.

3. Supplies by Independent Agents.

When goods or services are supplied through an agent who act in his own name that supply shall be treated as both a supply to that agent and a supply by that agent.

4. Supplies by Intermediaries.

When a supply is made through an intermediary who acts in the name and for the account of another person and to the extent that the Commissioner is satisfied that the supply is made as aforesaid, that supply shall be treated as a supply made by that other person.

5. Exchange.

In a contract of exchange each of the parties shall be deemed to make a supply of any goods and any services he gives pursuant to that contract.

6. Delivery on Deferred terms.

The delivery of the possession of goods pursuant to an agreement for the sale of those goods on deferred terms shall be treated as a supply of those goods.

7. Hire Purchase.

The delivery of the possession of goods pursuant to an agreement for the hire of those goods for a certain period which expressly contemplates that the ownership of those goods will be transferred at a time not later than the date on which an agreed price had been paid in full shall be treated as a supply of those goods.

8. Supply of Electricity, etc.

The supply of electric current, gas, heat and refrigeration shall be treated as a supply of goods.

9. Contract of Works.

The delivery of goods pursuant to a contract of works, whether or not the materials have been provided in full or in part by the customer, shall be treated as a supply of those goods.

10. Judicial Auction.

- (1) Where any goods forming part of the business assets of a business carried on by a person are sold by judicial auction pursuant to any proceedings exercised by a creditor or by creditors of that person, those assets shall be deemed to have been supplied by the debtor in the course or furtherance of that business.
- (2) The Registrar of the court under the authority of which a sale to which paragraph (1) of this regulation applies shall, after notifying the person or persons appearing to be interested therein, remit to the Commissioner from the proceeds lodged in court, with preference over any other person not having a prior claim to that of the Commissioner as provided for in section 51 of the Act, the tax chargeable, if any, on the supply deemed to have been made in terms of the said paragraph.
- (3) Any interested person may oppose the remittance referred to in paragraph (2) of this regulation by means of writ of summons filed against the Commissioner within six working days from the date of the notification referred to in the said paragraph.
- (4) No bid *animo compensandi* shall be approved for the purposes of section 331 of the Code of Organization and Civil Procedure unless the tax chargeable, if any, on the supply deemed to have been made in terms of paragraph (1) of this regulation has been lodged in court and remitted by the Registrar in accordance with paragraph (2).

11. Expropriation.

The transfer by order made by or in the name of a public authority or in pursuance of the law, of the ownership of goods against payment of compensation shall be treated as a supply of those goods.

12. Self Supply and Free Supply.

- (1) Subject to regulation 14 of these regulations, the transfer or disposal of assets forming part of the assets of an economic activity by or under the directions of the person carrying on that activity, whether or not a consideration is paid or payable, and including the transfer or disposal of such assets by that person to himself, shall be treated as a supply of those assets made for a consideration in the course or furtherance of that activity.
- (2) Paragraph (1) of this regulation shall not apply -

- (a) to a gift of goods made in the course or furtherance of that activity, otherwise than as one forming part of a series of gifts made to the same person, where the cost to the donor is not more than twenty liri;
- (b) to a gift of an industrial sample in a form not ordinarily available for sale to the public.

13. Private Use.

Subject to regulation 14 of these regulations, when goods forming part of the assets of an economic activity carried on by a person are used by that person himself or by any other person for any purpose other than for the purpose of that economic activity, whether or not a consideration is paid or payable, the person carrying on that activity shall be treated as having made a supply of services for a consideration in the course or furtherance of that activity.

14. Limitation of Applicability of Regulations 12 and 13.

Where no consideration is paid or payable for a transfer, disposal or use of goods referred to in regulation 12 or 13 of these regulations, that transfer, disposal or use shall not be treated as a taxable supply made by a person unless that person was entitled to a credit in terms of section 25 of the Act in respect of the whole or part of the tax paid by him on the acquisition or importation of the said goods or anything comprised in them.

15. Cessation of Business.

- (1) When a person ceases to carry on an economic activity any assets then forming part of that activity shall be treated as having been supplied for a consideration to himself before the cessation of that activity and in the course or furtherance of that activity and the provisions of paragraph (1) of regulation 12, as subject to the provisions of regulation 14 of these regulations shall apply accordingly.
- (2) Paragraph (1) of this regulation shall not apply where the said activity is transferred as a going concern and the said transfer is, in terms of regulation 16 of these regulations, treated as neither a supply of goods nor a supply of services.

16. Transfer of Going Concern.

The transfer by a taxable person of assets of his economic activity shall be treated as neither a supply of goods nor a supply of services if -

- (a) the assets are supplied to a registered person to whom he transfers his economic activity, or a part of that activity which is capable of separate operation, as a going concern, and
- (b) the said assets are to be used by the transferee in carrying on the same kind of activity, whether or not as part of an existing economic activity, as that carried on by the transferor, and
- (c) the said transfer is recorded in the records of the transferor indicating the registration number of the transferee.

17. Supplies of Goods where the tax on the Acquisition was not treated as input tax.

- (1) Subject to the provisions of paragraph (2) of this regulation, when goods are supplied to or imported by a taxable person and the tax on that supply or importation is, pursuant to the provisions of regulations made for the purposes of paragraph (a) of subsection (3) of section 25 of the Act, not treated as input tax of that person, the supply by that person of the said goods shall be treated as neither a supply of goods nor a supply of services.
- (2) This regulation shall apply only to goods which are supplied by a taxable person in the same state they were in, saving only wear and tear, when they had been supplied to or imported by that person.

18. Intangible property.

- (1) The transfer of the perpetual *utile dominium* or of the temporary *utile dominium* where the period remaining for the expiration of the emphyteusis at the time of the transfer exceeds fifty years, and a grant of perpetual emphyteusis or of emphyteusis for a period exceeding fifty years is a supply of goods.
- (2) The transfer of, the temporary *directum dominium* where the period remaining for the expiration of the emphyteusis does not exceed fifty years is a supply of goods.
- (3) Subject to the other provisions of this paragraph, an assignment of any rights over property of any intangible property whether or not it is the subject of a document establishing title is a supply of services.

19. Obligation to refrain from an act or to tolerate an act.

An obligation to refrain from an act or to tolerate an act or situation is a supply of services.

20. Incidental Supplies.

- (1) The provision by a person of services for the purpose and in the course of a supply by that person of food purveyed at a catering establishment or at any other premises purveying prepared food, including any service for which a service charge or a cover charge is paid or payable, shall be treated as part of the supply of food.
- (2) The provision by a person of goods for the purpose and in the course of maintenance or repair services supplied by that person shall be treated as part of the supply of those services.
- (3) Save as otherwise provided in the Act or any regulations, including these regulations, made under the Act, where a supply includes the provision of both goods and services and the consideration for that supply does not distinguish between the consideration for the goods and the consideration for the services, the supply shall be treated as a supply of goods or as a supply of services according to the principal nature of that supply.

