



SUPPLEMENT No. 2
TO
THE SOVEREIGN BASE AREAS GAZETTE
No. 1511 of 4th August 2008
LEGISLATION

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VALUE ADDED TAX ORDINANCE 2008

An Ordinance to make provision for the application in the Sovereign Base Areas of certain legislation made by the Republic of Cyprus in relation to Value Added Tax and related matters

R. H. LACEY
ADMINISTRATOR

28th July 2008.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

1. Short title

This Ordinance may be cited as the Value Added Tax Ordinance 2008.

2. Interpretation

(1) In this Ordinance—

“VAT” has the same meaning as value added tax in a VAT law;

“sutlers”, “authorised service organisations”, “United Kingdom authorities”, “United Kingdom personnel” and “dependent” all have the same meaning as in Annex B Part I of the Treaty of Establishment;

“VAT law” means a law of the Republic which is listed in Schedule 1;

“officer of the Republic” means –

- (a) a person who, whether or not a member of the public service of the Republic, or
- (b) any body of persons which, whether or not it is an official body and whether or not it is incorporated,

has any powers conferred, or any duties imposed upon them, of a public nature by or under any VAT law;

“officer of the areas” means a person, other than an officer of the Republic, authorised by the Fiscal Officer to exercise any powers or perform any duties under section 5(5).

- (2) Any reference to a VAT law includes-
 - (a) any amendment made to such a law (whether enacted before or after this Ordinance);
 - (b) any public instrument made under such a law (whether made before or after this Ordinance);
 - (c) any public instrument made under a public instrument described in paragraph (b) (whether made before or after this Ordinance).
- (3) Any reference to a provision of the Areas and a provision of the Republic corresponding one to the other is to be construed as a reference to provisions of the Areas and of the Republic respectively whose effects are similar or substantially similar.

3. General Application

- (1) Subject to subsections (3) and (5), all rights, powers, liabilities, obligations and restrictions from time to time created or arising in the Republic by or under any VAT law and all remedies and procedures from time to time provided for by or under such a law are, subject to necessary adaptation and so far as possible, to be applied and have effect in law in the Areas.
- (2) Except as provided for in subsection (4) or if the Chief Officer by Order to be published in the Gazette otherwise directs, a VAT law only takes effect in the Areas in accordance with subsection (1) after the expiry of 60 days from the date on which that law or any provision of that law came into force in the Republic.
- (3) Subsection (1) does not apply to any power conferred or duty imposed by a VAT law which permits or requires a person or body to make a public instrument of any kind.
- (4) Any provision of a VAT law that affects liability to VAT takes effect in the Areas in accordance with subsection (1) on the date on which that provision came into force in the Republic.
- (5) The Value Added Tax (Special Reliefs) Regulations 2004^(a) of the Republic and any public instrument that may amend or replace them do not apply to the importation of goods by, or the supply of goods and services to United Kingdom authorities and United Kingdom personnel and Schedule 2 applies instead.
- (6) A VAT law which is given effect to in the Areas by virtue of subsection (1) is to be treated for all purposes as if it is subordinate legislation made under this Ordinance.

4. Modifications and adaptations

- (1) The application of a VAT law in the Areas is, unless the context otherwise requires, subject to the following –
 - (a) where a VAT law is repealed or revoked but is not replaced by the Republic it ceases to have effect in the Areas;
 - (b) where a VAT law is repealed and replaced by the Republic with another law, the VAT law included in Schedule 1 continues to have effect in the Areas;
 - (c) where a provision of a VAT law contains a reference to any other Republican legislation, then –
 - (i) if there is a provision of the Areas (including a provision which has effect in accordance with section 3) corresponding to that other Republican provision, the reference is to be construed as a reference to the corresponding provision of the Areas;
 - (ii) in any other case, the provision of the VAT law containing that reference does not have effect in the Areas;
 - (d) where a provision of a VAT law refers to the import or export of any item, this does not apply to any movement of that item between the Republic and the Areas.
- (2) The application of a VAT law in the Areas is, unless the context otherwise requires, subject to the following interpretations notwithstanding anything to the contrary contained in a VAT law-

- (a) a reference to a Court is to be construed as the Resident Judge's Court or the Senior Judges' Court as appropriate;
 - (b) a reference to the Republic is to be construed as a reference to the Areas;
 - (c) a reference to a member State is to be construed as a reference to a member State of the European Union excluding the Republic of Cyprus;
 - (d) a reference to a third country is to be construed as a country or territory other than the Areas, the Republic or a member State of the European Union, but includes any other part of the Island of Cyprus not under the effective control of the Republic or the Administration.
 - (e) a reference to a foreign company is to be construed as not including a company that is registered in the Republic or in the Areas.
- (3) The Administrator may by order to be published in the Gazette provide for the application of a VAT law in the Areas to be subject to such additional exceptions, adaptations or modifications, from such date as may be specified in the order, as the Administrator may consider expedient in the circumstances.
 - (4) Without prejudice to the generality of subsection (3), the Administrator may by order provide for a VAT law to cease to have effect in the Areas from such date as may be specified in the order.

5. Powers and Duties

- (1) Any power conferred or duty imposed on an officer of the Republic under a VAT law is deemed to be conferred or, as the case may be, imposed on the Fiscal Officer save that any power conferred or duty imposed on the Minister of Finance is deemed to be conferred or, as the case may be, imposed on the Chief Officer.
- (2) Any power conferred or duty imposed on the Fiscal Officer or the Chief Officer by virtue of subsection (1) is a modified delegated function for the purposes of the Delegation of Functions to the Republic Ordinance 2007**(b)** and these are the modifications:
 - (a) section 20 (Establishment of bodies) of the Delegation of Functions to the Republic Ordinance 2007 does not apply;
 - (b) section 18(c) (prohibition on compounding any offence) of the Delegation of Functions to the Republic Ordinance 2007 does not apply;
 - (c) section 17 (Police and customs officers) of the Delegation of Functions to the Republic Ordinance 2007 does not apply so far as members of any customs department of the Republic are concerned.
- (3) The functions delegated in accordance with subsection (2) are general delegated functions for the purposes of the Delegation of Functions to the Republic Ordinance 2007 except for the following which are qualified delegated functions-
 - (a) Any power of entry, search or seizure;
 - (b) Any power conferred or duty imposed in relation to the compounding of offences.
- (4) Subsection (2) does not apply to any function carried out in relation to sutlers, authorised service organisations or any business owned by the United Kingdom authorities or by a dependent of United Kingdom personnel.
- (5) Without prejudice to subsection (2), the Fiscal Officer may authorise any officer of the Areas to perform any duty imposed or exercise any power conferred by a VAT law subject to such restrictions or conditions as the Fiscal Officer may specify.

6. Legal Proceedings

A court of the Areas may take judicial notice of a law of the Republic and of any other Republican document of any description granted or otherwise made under a law of the Republic in which case section 23(2) to (4) of the Delegation of Functions to the Republic Ordinance 2007 applies to such a law or document.

7. Application to the Crown

- (1) This Ordinance does not bind the Crown or a person employed by or in the service of the

Crown while discharging duties except insofar as its provisions expressly impose duties or confer powers on the Fiscal Officer or the Chief Officer.

- (2) For the purposes of this section, “the Crown” means Her Majesty in right of Her Government in the United Kingdom and in right of Her Administration in the Areas.

8. Repeal

- (1) The Value Added Tax Ordinance 2001(c), and all public instruments made under it or under the Ordinance repealed by it are repealed or, as the case may be, revoked.
- (2) Any licence or certificate, of whatever nature, issued in accordance with the repealed Ordinance and the revoked public instruments are to be treated for all purposes as if they were issued under the corresponding VAT law or under Schedule 2 as appropriate.

9. Commencement

This Ordinance comes into force on the day it is published in the Gazette.

SCHEDULE 1

(section 2)

Value Added Tax Law 2000 (No.95(I)/2000).

SCHEDULE 2

(section 3)

1. The importation of goods by, or the supply of goods or services to, United Kingdom authorities and United Kingdom personnel is to be treated as if it were a zero-rated supply in respect of the following descriptions of transactions and accordingly VAT is not payable (if it otherwise would be)—

- (a) the importation of goods by, or the supply of goods or services to, United Kingdom authorities, being goods or services intended for use by them, or for supplying their canteens or messes;
- (b) a supply by a person taxable in another member State of the European Union of goods or services to United Kingdom authorities, being goods or services intended for use by them, or for supplying their canteens or messes;
- (c) the importation of goods by United Kingdom personnel at the time of first arrival to take up service in the Areas or in the Republic;
- (d) the importation of a private motor vehicle by United Kingdom personnel for the personal use of themselves and their dependents.

2. (1) Relief from the payment of VAT is subject to the following conditions—

- (a) there must be a written authorisation from the Fiscal Officer before the delivery of any goods in respect of whose supply payment of VAT will be relieved;
- (b) if the Fiscal Officer authorises the supply of goods as provided for in paragraph (a), but subsequently revokes the relief, the person for whose benefit relief was given must immediately pay the VAT, at the rate then in force, or if a lower rate of VAT was in force when the relief was given, the amount payable must be determined by reference to that lower rate;
- (c) if relief is given and subsequently the Fiscal Officer is not satisfied that any condition (whether or not imposed under this Schedule) attaching to such relief has been complied with, then unless the Fiscal Officer has permitted the non-compliance in writing, the VAT whose payment had been relieved is due and payable immediately and any goods in relation to which the relief was afforded are liable to forfeiture.

(2) If relief is given, but an amount subsequently becomes payable under paragraph (1)(c), the following persons are jointly and severally liable to pay that amount—

- (a) the person for whose benefit the relief was given;
- (b) any person who, at or after the time of non-compliance with the condition which caused the VAT to become payable, has the goods in his possession or is using the services.

3. (1) Relief from the payment of VAT may be allowed in respect of goods subject to excise duty in a transaction described in paragraph 1(b) only if the supplier of the goods holds an excise duty exemption certificate as provided for in Commission Regulation (EC) No 31/96 of 10 January 1996^(d) stamped by the Fiscal Officer.

(2) Relief from the payment of VAT in respect of a transaction described in paragraph 1(a) may be given only if the recipient of the supply of goods or services holds a document issued by the Fiscal Officer authorising the relief and describing the purpose for which the goods or services concerned are to be used.

4. The Fiscal Officer may by notice published in the Gazette specify further details or impose further conditions on, or in respect of the procedure and method for, relief from payment of VAT under this Schedule.

Notes

(a) PI No 370/04, Republic of Cyprus.

(b) Ordinance 17/07.

(c) Ordinance 10/01.

(d) Commission Regulation (EC) No 31/96 of 10 January 1996 on the excise duty exemption certificate.

EXPLANATORY NOTE

(This note does not form part of the Ordinance)

Introduction

1. This note relates to the Value Added Tax Ordinance 2008. The note has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.

2. The note should be read in conjunction with the Ordinance. It is not, and is not meant to be, a comprehensive description of the Ordinance. So when a section or part of a section does not seem to require any explanation or comment, none is given.

The Ordinance

3. The Ordinance adopts the law referred to in Schedule 1 of the Ordinance, that is the Value Added Tax Law 2000 of the Republic of Cyprus (No.95(I)/2000). In other words, it provides for the VAT Law of the Republic as amended at the time this Ordinance enters into force, plus any future amendments to it or public instruments made or to be made under it, to have effect in the Sovereign Base Areas as if they had been made by the Administrator.

4. If the Republic enacts a new law on VAT, Schedule 1 can be amended so as to adopt the new law in the Areas. These adopted instruments have effect in the Areas in their original Republican format, and all rights, powers, liabilities and restrictions arising under them are recognised and available as law in the Areas. They take effect in the Areas 60 days after entering into force in the Republic except for provisions in amending laws and public instruments that affect liability to pay VAT which take effect at the same time as they enter into force in the Republic (section 3(2) and (4)).

5. Adoption of laws and public instruments in this way is subject to certain exceptions and restrictions. First, the Ordinance does not enable a Republican person or body to make public instruments in respect of the Areas. Rather, any Republican public instrument made under the Republican VAT Law stands to be adopted in the Areas under section 3. Secondly, the Republican public instrument dealing with the exemption from VAT for the UK armed forces and other UK personnel is not adopted and instead Schedule 2 applies (section 3(5)). Thirdly, section 4 makes a set of adaptations and modifications to the way the Republican law applies in the Areas to ensure that it works properly in the Areas. For example, it provides that companies registered in the Republic are not to be treated as foreign companies for the purpose of the legislation. It also gives the Administrator a power to make any further modifications or exceptions to the way the Republican law applies in the Areas.

6. Section 5 provides for delegation of the powers and duties arising under the laws. In the first place, they are all conferred and imposed on the Fiscal Officer of the Areas except powers and duties of the Minister of Finance which are conferred and imposed on the Chief Officer of the Areas. This ensures that, for example, administrative appeals are referred to the Chief Officer rather than being re-considered by the Fiscal Officer. Subsection (2) then provides that the Delegation of Functions to the Republic Ordinance 2007 ("the 2007 Ordinance") applies to these powers and duties. The 2007 Ordinance provides for the effects and limits of delegations. For example, it covers such matters as the place where an officer of the Republic may carry out a delegated function and exempted property and entry rights.

7. Delegation under the 2007 Ordinance is subject to a number of modifications. The Ordinance modifies the effect of the 2007 Ordinance so that statutory bodies established under a Republican law are also established in the Areas (s.5(2)(a)). Also, s.17 of the 2007 Ordinance precludes the conferral of powers on a customs department of the Republic. As VAT is administered by the same department as customs matters, this has been modified so that Republican customs officers have powers and duties in the Areas (s.5(2)(c)).

8. Responsibility for handling the affairs of certain specified taxpayers is not delegated to the Republic. These are authorised service organisations, businesses owned by the UK armed forces, other UK personnel and their dependents as well as sutlers (who are not nationals of the Republic and provide services to the armed forces) (s.5(4)).

9. Most powers and duties under the delegation can be exercised without consent but any powers of entry, search and seizure are qualified delegations which means prior consent of the Fiscal Officer is required (s.5(3)(a)). The 2007 Ordinance is also modified so as to allow Republican VAT officers to compound offences (i.e. accept a monetary settlement) (s.5(2)(b)) but a decision to do so is also a qualified delegation (s.5(3)(b)).

10. Section 8 repeals the Value Added Tax Ordinance 2001 and revokes all public instruments made under it and its predecessor Ordinance (which have not otherwise been revoked). This does not, however, affect any rights, liabilities or obligations incurred under that legislation.

(SBA/AG/2/VAT/460)

Printed by the Sovereign Base Areas Administration Printing Press.