PRACTICE
STATEMENT No. 46/2017
Issued: 12 October 2017

SUBJECT	Fiji Revenue and Customs Service VAT on Supplies of Residential Accommodation
DATE OF EFFECT	1 August 2016
CONFIDENTIALITY STATUS	May be released to the public
LEGISLATIVE REFERENCE	Value Added Tax Act 1991 Section 15, 22 (4A), 23 (9) – 23 (12), Section 27A, Section 39 (10) First Schedule – Paragraph 2
PRACTICE COORDINATOR	Deputy Director Revenue Management

INDEX

INTRODUCTION

1. The purpose of this practice statement is to explain the tax implications on the supply of residential accommodation for Value Added Tax (VAT) purposes. It is issued with the authority of the Chief Executive Officer (CEO) of the Fiji Revenue and Customs Service (FRCS).

2. The supply of residential accommodation is an exempt supply *except* when the landlord's gross turnover exceeds $100,000 in a 12-month period.

3. A person who expects to make taxable supplies of residential accommodation in the future may register voluntarily however this will only be allowed if approved by the CEO.

4. Separate provisions apply for a person who registers early for the supply of residential accommodation but does not want to charge VAT on the value of other supplies that are below $100,000. The person can apply to be treated as a separate person for residential accommodation purposes. Where all the requirements are met and approved, the person will be treated as a separate registered person for this purpose only.

5. The residential accommodation supplies of a person who has applied for recognition as a separate person, remain exempt until it exceeds $100,000. During the period of exemption, the following will apply:
   (a) the gross turnover from rent will not be taken into account in determining the person's total value of supplies for compulsory registration purposes;
   (b) the person will not be required to charge VAT on other taxable supplies;
   (c) once registered, the person will be entitled to claim the following:
      (i) input tax paid on expenses incurred in the operation of the residential accommodation activity;
      (ii) input tax paid on expenses incurred to construct a residential property.

6. If a person who has registered early in anticipation of exceeding the taxable threshold does not reach that level within 12 months after registration or such extended time, (up to 24 months), the CEO may, if he believes that the person's turnover will not exceed the taxable threshold, cancel the person's residential accommodation registration.

7. If a person's registration is cancelled, the person is deemed to have made a taxable supply and the CEO will recover any input tax claimed or refunded.

LEGISLATIVE BASIS

8. Paragraph 2 of the First Schedule to the Value *Added Tax Act 1991* provides that with effect from 1 August 2016, the supply of accommodation in a residential dwelling is an exempt supply *except* when the person's gross rent turnover exceeds the compulsory registration threshold in Section 22, which is currently $100,000.

9. 'Dwelling' is defined as follows and excludes accommodation in buildings built for commercial purposes such as hotels, the rent of office space etc.

   "*—Dwelling‖ means any building, premises, structure, or other place, or any part thereof, used predominantly as a place of residence or abode of any individual, together with any appurtenances belonging thereto and enjoyed with it; but does not include a commercial dwelling"*

10. Where accommodation is supplied in a building that is rented out for residential and for personal purposes, only the total rent from letting of the residential part will be taken into account. (Paragraph 2A (2) First Schedule). Therefore, where the building is used for some non-taxable purpose, input tax has to be apportioned as provided for under Section 39(2) (b) (iii).

11. If a person's gross annual turnover from residential rent is or will be $100,000 or less in a 12 –month period, the supply is exempt and the person is not required to register. However, Section 22 (4A) allows a person to apply voluntarily for registration if the person expects his/her gross rent turnover to reach more than $100,000 in the future.

12. The CEO may register a person who applies for registration under Section 22 (4A) if the CEO is satisfied that the person's gross rent turnover will exceed $100,000 within 12 months of registration (Section 22 (4B)). Once registered, all the consequences of registration will apply. However, the person will be required to charge VAT on the supply of accommodation only upon exceeding the $100,000 threshold. The person can claim input tax on construction and other expenses (Section 39 (9)) and must comply with other provisions of the VAT Act.

13. A person who wishes to register early for the supply of residential accommodation but does not want to charge VAT on other taxable supplies can apply to be treated as a separate person (Section 27A). If approved, the value of supplies from other taxable activities will not be taken into account for the purpose of determining obligation to register under the general rules in Section 22.

14. Section 23 (9) to 23 (12) sets out the rules for cancellation of registration when a person who has been registered under Section 22 (4B) does not reach the $100,000 threshold within the specified period.

APPLICATION

15. The changes in the VAT Act mean that any supplier of residential accommodation whose gross rental income is above $100,000 on or after 1 August 2016, becomes liable to register.

16. If the person is already registered and his/her gross rent turnover also exceeds $100,000, he/she is required to include VAT in the charge for rent.

17. A person who becomes liable to register must do so within 21 days. If a person does not register within the prescribed time, the person will be deemed to be registered and will be required to pay the VAT that should have been collected.

18. Once registered, a person whose supplies are above $100,000, must include VAT in the amount of rent charged to tenants and is entitled to claim any VAT paid on related purchases and expenses incurred on or after 1 August 2016.

Example1

Raju owns an apartment building with 8 flats of which two is occupied by his family. The rental income for the 12-month period beginning 1 August 2016 is expected to be $100,800.

Raju will be required to register and include VAT on the rent charged to each tenant.

Example for Flat 1
Current rent $1400
New rent effective from 1 August 2016

Current rent	*$1400*
VAT 9%	*126*
New rent plus VAT	*$1526*

Raju can claim input tax on expenses incurred in the maintenance of the six flats.

Example 2

Prema is already registered for a taxable activity for which gross turnover is $300,000. She also leases her residential properties for $120,000 annually. From 1 August 2016, Prema has to charge VAT on all taxable supplies including the residential rent.

19. Where gross annual turnover from residential rent is $100,000 or less, the supply is exempt, however Section 22 (4A) allows a person to register voluntarily if the person expects to make more than $100,000 in the future. The CEO may register the person if the CEO is satisfied that the person's turnover will exceed $100,000 within 12 months of registration (Section 22 (4B).

Example 3

Ben started his residential apartment business in July 2015.

Construction on 10 flats commenced in November 2015 and was completed in February 2017. Ben had a number of potential corporate clients and expected to earn over $100,000 in the first 12 months of VAT registration as follows-

December 2016 – May 2017 $96,000 ($16000 x 6 months)
Turnover will exceed $100,000 in June 2017

He was eligible for early registration as his gross turnover was estimated to exceed $100,000 within 12 months.

20. Once registered voluntarily, a person can claim input tax on construction and other expenses (Section 39 (10)). At this point, no Output VAT is charged on rent.

Example 4

Using the details in Example 3 above and assuming that Ben applied for registration on 24 August 2016, the CEO was required to accept the application if he/she was satisfied that Ben's turnover would exceed $100,000 within 12 months of registration (i.e. by July 2017).

- *Ben can claim input tax on expenses incurred in the construction of the property incurred from 24 August 2016.*
- *Ben was not required to charge VAT when he started deriving rent (from December 2016) but must do so upon exceeding the $100,000 threshold.*

21. Where a person has other supplies and does not wish to charge VAT on those supplies, the person can apply to the CEO to treat the supply of residential accommodation separately from the person's other taxable activities (Section 27A). The value of the person's other supplies will not be taken into account for the purpose of determining liability to register under the general registration rules in Section 22.

Example 5

Pio's gross turnover from business activities is $90,000. He is not registered for VAT.

His annual gross rent turnover is $50,000.

Total turnover is $140,000

Pio is not required to register as his supply of residential accommodation is exempt from VAT.

He can register voluntarily under Section 22 (4A) however registration will only be allowed under Section 22 (4B) if the CEO is satisfied that his rent turnover will exceed $100,000.
If his application is accepted, he can also apply to be treated as a separate person under section 27A. and he will not be required to charge VAT on other business activities.

Example 6

Scenario 1

Mere's annual residential rent gross turnover is $120,000 and turnover from consultancy business is $50,000. Total turnover is $170,000.

Mere had registered voluntarily for her consultancy business and will continue to charge VAT on the consultancy fees.

She will now be required to include VAT in the rent charges.

Scenario 2

Mere is not registered for VAT. Her annual residential rent turnover is $120,000 and gross turnover from her consultancy business is $50,000. Total turnover is $170,000. Mere is required to register and charge VAT on all supplies.

Scenario 3

If Mere's turnover from residential rent falls below $100,000 it becomes an exempt supply. She can remain registered voluntarily if she has informed the CEO of her expected future turnover and her application is approved.

Since she remains registered, she can claim input tax but will not include VAT in the charge for residential rent as the supply is exempt.

22. Where a person who has registered on the basis that gross rent turnover will exceed $100,000 and the person's turnover does not exceed $100,000 within the next 12 months following registration, the person's registration may be cancelled (Section 23 (9)). However, the person may apply to the CEO to extend the time for up to 24 months (Section 23 (10)) and the CEO may extend the time up to 24 months or less.

Example 7

Using the details in Example 3 above.

Scenario 1

Assume that construction on 4 flats were delayed due to a change in the contractor. and the estimate of $100,000 turnover by 24 July 2017 was not met. The CEO can cancel registration in August 2017.

Scenario 2

Despite the delay in construction, Ben is confident that the project will be completed by December 2017. He is also aware that there can be further delays. Ben applies for a 24-month extension on 22 August 2017.

Based on the information provided, the CEO decides that 6 months is sufficient and grants extension up to February 2018.

Scenario 3

Assume that Ben faced a number of problems throughout the project and applies for another 24-month extension in February 2018.

Since the CEO can only extend the time to comply up to a maximum period of 24 months from the initial registration, the final date to comply will be 24 July 2019.

23. Where a person's registration is cancelled because the taxable threshold requirement was not met, any input tax claimed or VAT refunded will be recovered by the CEO (Section 23 (12)).

24. When a person ceases to be a registered person because the person's supply becomes exempt, any retained assets of the residential activity (e.g., furniture, plant, office machines, buildings etc.) are deemed to be supplied at a time immediately prior to the person ceasing to be registered. The person will be required to account for VAT on the deemed supply (Section 3 (4)).

25. Penalties will apply for failure to comply with any of the provisions of the VAT Act.

PROCESS

26. Responsible or accountable persons will be required to make changes to lease agreements, provide information on pricing and issue tax invoices to their tenants. They will also be required to keep records to support the computation of taxable supplies.

27. Rental agreements may be changed or updated from 1 August, 2016 only to include the VAT component.

28. Providers of residential accommodation can write to us directly for clarification on whether their supplies are taxable or not.

29. A person who is not liable to register but wishes to be registered under the provisions of Section 22 (4A) is required to provide the following:
    - approved plan;
    - business plan including information on future turnover;
    - approved loan documents or details of the source of funds;
    - contract details with stages of construction and timelines;
    - details of other taxable activities and evidence of separate accounting if also applying for recognition under Section 27A;
    - any other information required.

30. A site inspection will be conducted to verify the facts. Registration will only be allowed if the CEO is satisfied with the person's estimate of future annual revenues. Once registered, the person may claim any VAT paid on purchases and expenses incurred from the date of registration.

31. For enquiries please contact any of our Custer Service Centers or e-mail: info@frcs.org.fj.

ATTACHMENT

First Schedule

The supplies of goods and services listed in this schedule shall be exempt from tax:

2. *The supply of accommodation in a residential dwelling by way of hire provided it is used predominantly as a place or residence or abode excluding residential dwelling as specified in paragraph (2A)*

(2A).—(1) The supply of accommodation in a residential dwelling by way of hire or rent as a place of residence by a registered person who has an annual gross turnover from such hire or rent that is more than the amount specified in section 22.

(2) For the purpose of paragraph (2A) (1)—
(a) if a residential dwelling is hired or rented wholly as a place of residence, the Value Added Tax will apply to the whole place of residence hired or rented;
(b) if a residential dwelling is hired or rented partly as a place of residence and partly for some other use, the Value Added Tax will only apply to the portion that is hired or rented as a place of residence."

" *'Dwelling' means any building, premises, structure, or other place, or any part thereof, used predominantly as a place of residence or abode of any individual, together with any appurtenances belonging thereto and enjoyed with it; but does not include a commercial dwelling*;"

Section 22 Persons making taxable supplies to be registered

(1) Subject to this Decree, every person (other than a produce supplier) who, on or after the 1st day of July 1992, carries on any taxable activity and is not registered, becomes liable to be registered -

(a) in the case of any person who solely supplies goods –
(i) at the end of any month where the total value of supplies (not being exempt supplies) made in Fiji in that month and the eleven months immediately preceding that month in the course of carrying on all taxable activities has exceeded one hundred thousand dollars in gross turnover or such other amount as the Minister may from time to time, by Legal Notice declare:
Provided that a person does not become liable to be registered by virtue of this paragraph where the Commissioner is satisfied that the value of all those supplies in the twelve month period beginning on the day after the last day of the period referred to in the said paragraph will not exceed that amount:

(ii) at the commencement of any month where there are reasonable grounds for believing that the total value of the supplies (not being exempt supplies) to be made in Fiji in that month and the eleven months immediately following that month will exceed the amount specified in subparagraph (i) of this paragraph:

(b) in the case of any other person –

(i) at the end of any month where the total value of supplies (not being exempt supplies) made in Fiji in that month and the eleven months immediately preceding that month in the course of carrying on all taxable activities has exceeded one hundred thousand dollars in gross turnover or such other amount as the Minister may from time to time, by Legal Notice declare:
Provided that a person does not become liable to be registered by virtue of this paragraph where the Commissioner is satisfied that the value of all those supplies in the twelve onth period beginning on the day after the last day of the period referred to in the said paragraph will not exceed that amount:

(ii) at the commencement of any month where there are reasonable grounds for believing that the total value of the supplies (not being exempt supplies) to be made in Fiji in that month and the eleven months immediately following that month will exceed the amount specified in subparagraph (i) of this paragraph.

(3) Every person who, by virtue of subsection (1) of this Section, becomes liable to be registered shall apply to the Commissioner on the prescribed registration form, as may be approved by the Commissioner, within twenty one days of becoming so liable.

(4) Notwithstanding subsections (1) and (3) of this section, every person who satisfies the Commissioner that on or after the 1st day of July 1992, -
(a) that person is carrying on a taxable activity that involves the making of other than exempt supplies; or
(b) that person intends to carry on any taxable activity, which will involve the making of other than exempt supplies, from a specific date, -
may apply to the Commissioner on the prescribed registration form for registration.

"(4A) Notwithstanding subsection (1), a person engaged in the supply of residential accommodation which is expected to exceed a gross annual turnover of $100,000, may, in the prescribed form, make an application to the Chief Executive Officer to be registered in accordance with subsection (1).

(4B) Upon receipt of an application under subsection (4A), the Chief Executive Officer may approve the application for registration in accordance with subsection (5) where it appears to the Chief Executive Officer that there are reasonable grounds to believe that the total value of the supply of residential accommodation will exceed a gross turnover of $100,000 within 12 months following the registration; and

(5) Where any person -

(a) applies to be registered pursuant to this Section, and the Commissioner is satisfied that that person is eligible to be registered under this Decree, that person shall be a registered person for the purposes of this Decree with effect from such date as the Commissioner may determine; or

(b) has not made application for registration pursuant to subsection (3) of this Section, and the Commissioner is satisfied that that person is liable to be registered under this Decree, that person shall be a registered person for the purposes of this Decree with effect from the date on which that person first became liable to be registered under this Decree:

Provided that the Commissioner may, having regard to the circumstances of the case, determine that person to be a registered person from such later date as the Commissioner considers equitable.

Section 23 amended

4. Section 23 of the Principal Act is amended by inserting the following new subsections after subsection (8)—

"(9) The Chief Executive Officer may cancel a person's registration under subsection (5) if the Chief Executive Officer is satisfied that the total value of the taxable supply of residential accommodation by the registered person has not exceeded a gross turnover of $100,000 in the preceding 12 months.

(10) Prior to cancellation under subsection (9), a registered person whose total value of taxable supply of residential accommodation has not exceeded a gross turnover of $100,000 in the preceding 12 months may write to the Chief Executive Officer requesting for an additional period of up to 24 months to meet the $100,000 gross turnover threshold.

(11) Upon receipt of a written request made under subsection (10), the Chief Executive Officer may, at his or her discretion, extend the turnover period requirement in subsection (1).

(12) Where a person's registration is cancelled in accordance with subsection (9), any input tax credit or VAT refund which had been claimed by the person for any expense including the construction of the residential accommodation from the date of registration to the date of the cancellation of registration, may be recovered by the Chief Executive Officer and section 3(4) of the Act shall apply."

New section 27A "Branches or divisions containing residential accommodation

27A.—(1) Where a registered person carries on a taxable activity in branches or divisions, and a branch or division of that taxable activity is the supply of residential accommodation in which the gross turnover does not exceed $100,000, that registered person may apply in writing to the Chief Executive Officer for that branch or division to be treated as a separate entity for the purpose of this Act.

(2) The Chief Executive Officer may, upon receiving an application made pursuant to subsection (1), treat that branch or division separately to maintain an independent system of accounting, and any taxable activity carried on by the registered person who is a supplier of residential accommodation, shall not be included as part of other divisions or branches which are below the taxable threshold under section 22."

Section 39 amended

Section 39 of the Principal Act is amended by inserting the following new subsection after subsection (9)—

"(10) Notwithstanding anything in this section, a registered person under section 22(4B) and (5) who makes payment for any expenses including the construction of the residential property for rental shall be allowed a deduction from the date of registration."

==========End of Practice Statement==========