

## **FINANCIAL SERVICES**

(INSURANCE COMPANIES)

**For the purposes of the Value Added Tax Act No. 7 of 2012 “Financial Services” means:**

- Granting, negotiation, and dealing with loans, credit, credit guarantees, and any security for money, including management of loans, credit, or credit guarantees by the grantor; or
- Transactions concerning money, deposit and current accounts, payments, transfers, debts, cheques, or negotiable instrument, other than debt collection and factoring; or
- Transactions relating to financial derivatives, forward contracts, options, and similar arrangements; or
- Transactions relating to shares, stocks, bonds, and other securities, other than custody services; or
- **Insurance** and **reinsurance** transactions, including related services performed by insurance brokers and insurance agents; or
- Other financial services provided by banks within the scope of their banking business.

**For an insurance company the services of insurance and reinsurance would be the financial services directly linked to your business. However, some insurance companies also engage in other services such as credit agreements and the repossession of goods.**

In Accordance with VAT Act No. 7 of 2012 section 2, “Credit Agreement” means “a hire-purchase agreement of a finance lease”.

“Finance lease” in relation to goods, means a lease of goods where -

- The lease term exceeds seventy-five per cent of the expected life of the goods; or
- The lease provides for transfer of ownership at the end of the lease term or the lessee has an option to purchase the goods for a fixed or determinable price at the expiration of the lease; or
- The estimated residual value of the goods to the lessor at the expiration of the lease term, including the period of any option to renew, is less than twenty per cent of its fair market value at the commencement of the lease; or
- The leased goods are custom – made for the lessee and at the end of the lease term will not be usable by anyone other than the lessee.

***BAM Insurance Company provides leasing services to ELCO industries. After the lease ELCO has the option to take ownership of the vehicle by paying the difference in the price of the vehicle and the total amount paid during the lease.***

### **Supply**

In the case of the lease being broken and the items under lease being repossessed, this is deemed a taxable supply. Section 4 (7) of the VAT Act No. 7 of 2012 states – “Where goods are repossessed under a credit agreement, the repossession is a supply of the goods by the debtor under the credit agreement to the person exercising the right of repossession, and where such debtor is a registered person the supply is made in the course or furtherance of the debtor’s taxable activity unless such goods did not form part of the assets held or used by the debtor in connection with that activity.”

### **Time of Supply**

Considering that this is a supply, the time when it should be accounted for is important. Section 18 (5) states: “ A supply of goods under section 4(7) occurs when the goods are repossessed, of where the debtor may under any law be reinstated in his or her rights and obligations under the credit agreement, the day after the last day of any period during which the debtor may under such law be so reinstated.”

### **Value of Supply**

The Value to be given to such supply is also important. Section 20 (7) states: “Where a debtor makes a supply of goods from the debtor under a credit agreement, the value of the supply is an amount equal to the balance of the cash value of the supply of those goods to the debtor that has not been recovered at the time of the supply.”

***ELCO industries begin to default on its payment and as a result BAM repossesses the vehicles which were under lease. ELCO will be seen as supplying the vehicle to BAM and the value of the vehicle would be considered sale price and VAT inclusive:***

<b><i>Vehicle cost -</i></b>	<b><i>\$45000.00</i></b>
<b><i>Amount paid -</i></b>	<b><i>\$35000.00</i></b>
<b><i>Value of repossession -</i></b>	<b><i>\$10000.00</i></b>
<b><i>Vat on repossession -</i></b>	<b><i>\$1304.35 (\$10000 * 15/115)</i></b>

***The VAT amount shown here will be an input figure for BAM and is mainly in place to allow BAM to regain a portion of the output it would have paid on the vehicle which was not paid***

**by ELCO. This transaction should be accounted for in the month that the vehicle is repossessed.**

Should your insurance company not engage in credit agreements there is still a possible taxable supply to consider. After claims are paid on write offs or damaged goods and the goods are collected by the company, these goods are sold. The sales of these items are not considered as financial services and as such are taxable at a rate of 15%.

**Another client of BAM Insurance Company called RR Inc. had an accident and was compensated by BAM; however, having been paid the insured value of the vehicle of \$20,000.00 BAM takes possession of the vehicle from RR Inc. BAM then proceeds to sell the vehicle wreck of the vehicle for \$9,000.00. This amount is deemed to be VAT inclusive and thus BAM would have to account for output tax of  $(\$9,000 * 15/115)$  \$1173.91.**

## **Input Tax**

Having outlined the above forms of Taxable activity for insurance companies, the next logical step is to examine the inputs which are allowed. When dealing with financial service providers the Act is very specific. Section 31(4) states: "In the case of a bank or other financial institution making both exempt and taxable supplies for a tax period, subsection (2) does not apply and the amount of the input tax allowed as a deduction under section 30 (1) (a) for that period is the amount of input tax payable in respect of supplies or import received which are directly allocable to the making of taxable supplies."

Though inputs directly allocated to taxable supplies can be claimed, inputs incurred through repossession and insurance claims are treated differently. Section 30 (h) & (i) state the following:

- (h) an amount equal to seventy per cent of the tax fraction of the value of second-hand goods that are repossessed in Saint Lucia during the tax period by a creditor who is a registered person, from a defaulting debtor, whether registered or not, in a transaction not subject to tax if the goods are taxable at a positive rate under this Act and are acquired for the purpose of making taxable supplies, but not more than the tax imposed on the supply of the goods to the defaulting debtor.
- (i) an amount equal to seventy per cent of the tax fraction of the value of second-hand goods that are acquired in Saint Lucia during the tax period by an insurer who is a registered person, from an insured person in a transaction not subject to tax if the good:

- I. Are acquired in settlement of an insurance claim;
- II. Are taxable at a positive rate under this Act; and
- III. Are acquired for re-supply in a taxable transaction, but not more than the tax imposed on the supply of the goods to the insured person.

***Since the Vehicle was repossessed by BAM from ELCO only 70% of \$1304.35 can be claimed as input by BAM.  $\$1304.35 * 70\% = \$913.05$ ; therefore only \$913.05 can be claimed by BAM insurance company as input.***

***Likewise the vehicle which was acquired via the insurance claim settlement with RR Inc. which was acquired for \$20,000.00 would also generate input.  $\$20,000 * 15/115 = \$2608.70 \Rightarrow \$2608.70 * 70\% = 1826.09$ . Therefore \$1826.09 would be claimable as input by BAM insurance company.***

### **Disallowed Input**

All inputs are not allowed, section 31(1) states – A taxable person shall not under section 37 deduct any amount of input tax paid or payable in respect of –

- A. A taxable supply to, or import by, the person of a passenger vehicle, unless the person is in the business of dealing in, or hiring of, such vehicles, and the vehicle was acquired for the purposes of such business;
- B. A taxable supply to, or import by, the person of goods or services acquired for the purposes of entertainment, unless –
  - I. The person is in the business of providing entertainment and the taxable supply of import relates to the provision of taxable supplies of entertainment in the ordinary course of that business; or
  - II. The person is in the business of providing taxable supplies of transportation services and the entertainment is provided to passengers as part of the transportation service;
- C. Any fees or subscriptions paid by the person in respect of membership of any person in a club, association, or society of a sporting, social, or recreational nature; or
- D. A taxable supply to, or import by, the person of goods or services acquired for the repair or maintenance of a passenger vehicle, unless the person is in the business of refurbishing for resale or of hiring of such vehicles, and the repair or maintenance was directly related to the provision of taxable supplies in the ordinary course of that refurbishing or hiring business.

**Banks, Insurance Companies and other Financial Service Providers may also be in the business of providing taxable services whether or not they are rendered in connection with an exempt financial service. These services include, but are not limited to:**

- ▶ Legal, accounting and record package services, actuarial, notary, and tax agency services(including advisory services) when rendered to a supplier of financial services or to a customer of that supplier of financial services;
- ▶ Safe custody of cash, documents or other items;
- ▶ Data processing and payroll services;
- ▶ Debt collection of factoring services;
- ▶ Trustee, financial advisory, and estate planning services;
- ▶ Leases, license, and similar arrangements relating to property other than a financial instrument;
- ▶ Any other explicit fee, including administrative fees;
- ▶ Resale of repossessed items;
- ▶ Rental of commercial property.