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Some of practical questions In the VAT Laws.

1. A person including governmental and non-governmental institutions may dispose used properties. The properties that are disposed by the person may or may not be business assets. However, the properties that are disposed by the person may be purchased, as usually is the case, for commercial purposes.
 - What is the tax treatment of disposal of used properties which are:
 - Business assets?
 - Not business assets?
 - Purchased to be used for business (Commercial) purposes?
 - Purchased to be used for purposes other than business?
 - If the disposals of used properties or business assets, as the case may be, are subject to VAT, what would the tax credit system look like?
2. When construction, installation or assembly works take place for business undertakings, how and when can the taxpayer credit input tax, as marketable products or services are realized after several months or years from the time the input tax is paid?
 - Can the taxpayer add up the input tax to the capital cost and deduct it in the form of depreciation together with the capital costs? Or;
 - Can the taxpayer credit the input tax paid at the time of constructing, installing or assembling the business undertaking to the tax to be collected in the years coming after marketable production or service is began?
 - These problems are also related to real estates.
3. A contract price shall generally include VAT payable for the transaction or series of transactions, and if the contract document does not expressly state that the contract price includes the tax payable on the transaction, the


contract price agreed upon by the contracting parties shall be presumed to include the tax payable on that transaction. Even though this presumption has the effect of reducing the actual prices (Value) of the goods or services sold and therefore reduces the amount of the tax that should have been payable on the transaction, the provision is already stipulated under the VAT regulation article 18(12) as a transitional provision which of course must be brought to the proclamation as part of the basic rules of taxation.

- Is this assumption/presumption/ appropriate in light of international practices?
 - Does the effect of the presumption that the contract price is inclusive of the tax not reduce the value of the goods or services, and also the amount of the tax payable on the goods or services which are subjects of the contract?
4. ERCA dispose forfeited, abandoned, and seized goods and properties in the course of enforcing customs and tax laws. The Authority does not charge VAT to the auction price. Goods and properties are sold either for business, personal or household purposes. Most of the buyers use the goods or properties sold by ERCA for commercial purposes. There is a wide range of complaints from the business community that the goods and properties ERCA sold by auction without VAT are distorting the market to the prejudice of genuine importers, producers and even retail businesses by causing price fall and reducing demand on their products, merchandizing commodities or services.
- Can ERCA charge and collect VAT on goods and properties sold by auction?
 - Can we have exceptional provisions that exempt ERCA and other government institutions of similar nature from the duty of VAT registration and other compliance requirements, but authorize to

collect VAT on the goods and properties sold at public auctions together with a duty to issue VAT Receipts, of course?

5. Can a tax payer having two business licenses for example one an import license and the other construction license, use the trading stock of one business (import trade) as an input of the other business (construction business) without any transaction is taking place between the two business, as the owner of the stock and the construction business is all one person? Can the "related party" rules resolve the problems arising out of such kinds of relations?

- What would be the tax treatment of the tax payer with respect to the two businesses?
 - When the two businesses are sole businesses?
 - When the two businesses are corporate businesses?
 - When one is sole and the other is corporate?

6. When is a tax payer who supplies goods or services on credit basis expected by the law to tile and pay his tax? Shall he collect the tax prior to the payment of the price? What would be the effect of accrual basis accounting and a "bad debt" rule regarding VAT? Supplies made on part payment are also at issue. 

7. A tax payer who should have been registered for VAT and not actually registered at the time when he had met the annual registration threshold is provided a retroactive registration certificate dating back to the first day of the month when he should have been applying for registration. The effect of retroactive registration for VAT is that it obliges the tax payer to pay VAT for the transactions he carried out from the day at which he should have been registered for VAT to the day of his actual registration whether he transacted with or without VAT.

- If he, without being registered for VAT, transacted with VAT that would be an offence, as well. But would it be fair to get him liable for VAT on the transactions he made without VAT or with TOT only? The Tax Administration proclamation provided an administrative penalty for non or late registration for VAT. If that is the case, shall we maintain the retroactive registration with all its effects?
 - Our tax laws do not expressly recognize "a penalty tax". Shall the law recognize such kind of tax?
8. Are rented buildings (houses) on which rental income tax or casual rental income tax are paid subject to VAT?
- When they are rented for business?
 - When they are rented for dwelling /residence/?
 - When they are rented for non business organizations like NGOS, Civic association, diplomatic institutions, international nongovernmental organizations?
 - Directive No 24/2002 is being condemned as having violated the Vienna convention by putting extra legal restrictions or limitations on the unconditional rights granted to diplomatic institutions by the Vienna convention free of any restriction or condition.
 - The new VAT proclamation need to resolve this problem by clearly defining what concept is represented by the word "tax refund" and by stipulating an appropriate scheme in place.
 - According to the directive tax payers who let their houses for Embassy offices are forced to pay the VAT even though the Embassies refused to pay the tax invoking the Vienna convention.
9. Clear and separate provisions are required for each type of refund. There is no clarity in the treatment of refund as to the type of refund, date and form

of application for refund and time of refund. There must be clear provisions for:-

- Refund of tax made to those who are exempt the tax at the very beginning.
 - Refund made to tax payes who paid VAT in excess of what should have been paid;
 - Refund made to taxpayers who paid VAT on inputs used in producing export products or services not covered with duty draw back schemes.
 - Refund made to taxpayers who cannot credit input tax because they provide tax free services or produce tax free products (deductible?)
 - Other types of refunds.
10. When shall a taxpayer provide a VAT receipt to the buyer when he supplies goods or services?
- At the time when payment is effected?
 - At the time when delivery of goods or rendering of services is effected?
 - How can the law compromise the taxpayers' risk of issuing a tax receipt before payment is actually effected and accrual basis accounting principles during credit transactions?
 - The law says nothing about "Credit invoice". It has to be stipulated with all its effects under the tax law that credit transition may have a different effect with respect to issuance of receipt. What is the effect of "credit invoice" with regard to VAT?
11. Place and time of transition need to be defined under the law being clear and simple and taking the nature of different kinds of transactions into account.
- When delivery of goods or rendering of services is made simultaneously with the payment of the price (Sales on cash) time and place of transaction may be easily determined. When payment is

made through banks or when delivery is undertaken before or after payment of the price determining the time and place of the transaction may be some how difficult.

- The law is not clear enough with this regard.
12. Finally, as every offence (Criminal or administrative) is a violation of a legal provision, substantive duties and obligations that gave rise to administrative or criminal liabilities need to be clearly provided under the VAT proclamation as liabilities are already provided in advance in the Tax Administration Proclamation.

Good Luck!