

INTRODUCTION

Value Added Tax may be defined as a consumption-based tax that is levied in the supply chain at each point where value is added to a good or service. Since it is consumption based, the primary legal way of avoiding VAT is by not consuming any goods or services that are standard rated. The other is by consuming only zero-rated or exempt supplies.

WHO PAYS VAT

By its nature, Value Added Tax is incurred by the final person in the chain of supply who is not registered for VAT. Persons registered for VAT will claim back, through the return, the input VAT incurred in the course of their business, and remit to Zambia Revenue Authority, the Output VAT collected in excess of their input VAT. Therefore, registered suppliers do not pay VAT.

STANDARD RATED SUPPLIES: These are supplies that attract VAT at the prescribed standard rate 20 % (17.5%).

ZERO RATED SUPPLIES: These are supplies that attract VAT at 0%.

EXEMPT SUPPLIES: These are supplies that do not attract any VAT at all.

THE SOURCES OF THE VAT LAW

The VAT Law is premised on five (5) broad areas. These are:

1. The Value Added Tax Act—The Principal Act.
2. The Value Added Tax General Regulations—The Principal Regulations/ Minister's Regulations
3. The VAT General Rules—The Principal Rules/ Commissioner General's Rules.
4. The Case Law—The Precedence
5. Common Practice—Practice Notes.

HOW DOES EACH CATEGORY OF THE LAW COME INTO BEING AND HOW IS IT AMENDED?

- An Act of Parliament enacted the VAT Act in 1995. Therefore, any Section in the Act can only be amended through an Amendment Act. This is initially written in layman's language. The legal experts at the Ministry of Justice will then translate it into legal language in order to seal off all the loopholes for ambiguity. The resultant document will be called A Draft Amendment Bill. This will then be introduced to parliament. After introduction the Bill will go into committee stage. Thereafter Parliament will debate bill. The Amendment Bill will then go to the President for consent or veto. Once signed, it now becomes an Amendment Act.
- The Minister in charge of Finance makes the VAT Regulations by way of issuing a Statutory Instrument. Section 51 of the VAT Act empowers the minister to

formulate regulations with respect to any matter that is permitted to be prescribed or is expedient for carrying out the functions set out under the VAT Act.

- The VAT Rules are formulated by the Commissioner General through publication in the **Government Gazette**, and any other media as he/she may think fit for purposes of communicating the rules to the public. The CG is empowered by Section 52 of the Act to formulate rules pertaining to the keeping of accounts, the making of returns, accounting for tax, and any matter he/she is authorized to regulate or prescribe by the Act or Regulations.
- The courts of law help to interpret written law according to its *intention and spirit*. Once the competent court has decided a case, the interpretation of the law as set out in the *Ratio Decidendi* becomes binding on all future cases with the same facts. In the courts ruling, it is important, therefore, to distinguish between *Obita Dicta* (a statement said in passing) and *Ratio Decidendi* (reason for deciding). The job of a control officer is to compare and contrast the case at hand with the decided case (precedence). Precedence set by a lower court of law can be superceded by a higher court's decision, the opposite cannot happen.
- By common practice and behaviour, norms and standards evolve. Subsequently these standards become law. In deciding some peculiar cases, the courts of law will consider common practice in a certain sector or area. Once the courts decide a case on reason of common practice, such law becomes as binding as any other piece of law.

(ii)THE VALUE ADDED TAX

For Value Added Tax to be charged, the following must exist. **(Section 8)**

- The goods or services must be supplied
- The goods or services supplied must be taxable
- The supply of goods or services must take place in Zambia
- In case of imported goods, the goods must be destined for Zambia.

1-SUPPLY OF GOODS AND SERVICES:(Section 2)

Supply of **goods** means:

- A sale of goods
- A gift of goods
- Drawing of goods for own use, for use by employees or partners

- Any other dealing with the goods, which the minister declares to be a supply of goods. **(Regulation No. 3)**

Supply of **service includes**:

- The provision of goods on hire, lease or loan
- Treatment of any goods
- Any other activity which the minister declares to be a supply of service,

Supply of service does not include;

- The provision of any service without consideration (except in so far as the minister otherwise determines)
- Any other activity, which the minister declares not to be a supply of a service.

2-TAXABLE SUPPLIES (SECTION 7)

If goods and/or services are supplied within Zambia, and they are not exempt supplies, then they are taxable supplies (either standard or zero rated).

This supply should be in the course *or* furtherance of a business.

Section 15 of the VAT Act; read with the schedules to the Act; classifies exempt, and zero-rated supplies. (Refer to the VAT Liability Guide for details).

- The proof of zero rating for goods/services supplied to privileged persons is the VAT 273 (Rule No. 20).
- Proof of zero rating for goods/services supplied to Donors and other approved organisations is the L.P.O. or VAT 273 whichever is the case. **(Rule No. 20)**
- The proof of supplies to or importation of goods or services by a technical aid programme or project is the L.P.O. prepared by the Ministry of Finance.
 - a) There must be a written agreement with the Republic of Zambia
 - b) Payment should be through donor funding;
 - c) And the payment should be by the donor, or by a contractor of the donor.
- The proof of zero-rating by reason of exportation should be **(Rule No. 18 (1))**;
 - a) Commercial invoice for the goods,
 - b) Certificate of shipment provided and stamped by the Zambian Customs department,
 - c) Certificate of importation into the country of destination provided by the Customs Authority of that country,
 - d) Proof of payment by the customer for the goods, *and*
 - e) Any other documentary evidence that the authorized officer may require.
- For exports-auxiliary services to be zero rated, there must be **(Rule No. 18 (2))**

- a) Commercial invoice for the services
- b) Certificate of shipment provided and stamped by the Zambian Customs department,
- c) Certificate of importation into the country of destination provided by the Customs Authority of that country,
- d) Proof of payment by the customer for the goods and the services concerned,
- e) Such other documentary evidence as the authorized officer may reasonably require, *and*

- f) If so required by the authorized officer the certificate of importation into the country of destination provided by the Customs Authority of that country, *and*

A tour operator registered with The Zambia Tourist Board will zero rate supplies on an **inclusive tour package**. The tour package should be marked at a VAT free price.

3- PLACE OF SUPPLY: (Sections 11 and 12)

Only goods/services whose place of supply is in Zambia can be subjected to the Value Added Tax.

Goods are supplied in Zambia if

- They are exported from Zambia.
- Installation or assembly is at a place in Zambia.
- Goods leave and re-enter Zambia.
- The location of the goods, when allocated to the customer's order, is in Zambia.

Services are supplied in Zambia if

- The lease, hire or loan of goods does not involve removing them from or to Zambia.
- The services are performed in Zambia. **(Rule No. 24 (2))**
- It is a radio, television, telephone or other communication services, where the signal or service originates outside Zambia, shall be treated as being supplied at the place where the recipient receives the signal or service, *provided that consideration is payable for receiving the signal or service.* **(Rule No. 24(3))**

Note that the Commissioner General is empowered to formulate rules pertaining to the place of supply for doubtful cases. **(Sections 11 (4) and 12(4))**

CREATION OF THE TAX POINT—TIME OF SUPPLY.

For goods the tax point is said to be reached at the earliest of **(Section 13(2))**:

- a) Removal of the goods

- b) Goods made available to the person to whom they are supplied
- c) The time of payment
- d) The time of tax invoice issuance

In the case of part payment or part invoicing only the part so paid or invoiced reaches the tax point. **(Section 13(3))**

In the case of metered supplies the tax point is reached at the earliest of **(Section 13(4))**

- a) The time when the meter is next read, except
- b) If payment is made sooner
- c) Or the invoice is sooner issued.

For goods supplied on a sale or return consignment the time of supply is the earliest of (Rule No. 22):

- a) the time when the goods are adopted
- b) the time when payment for the goods is received
- c) the time when the tax invoice is issued

The tax point for supplies where the correct quantity will only be determined after further processing (e.g. Copper concentrates, sugar canes etc) the tax point is created when the correct quantity has been established.

For services the time of supply is the earliest of

- a) Payment
- b) Invoice issuance
- c) The time they are actually rendered.

TAXABLE VALUE OF SUPPLIES AND IMPORTATIONS: (Section 10)

- If supplies are made for monetary consideration, the amount by which that consideration exceeds the tax payable is the taxable value.

For instance;

Total price inclusive VAT	11,750-00
VAT @ 7/47	<u>1,750-00</u>
TAXABLE VALUE	<u>10,000-00</u>

- The taxable value of imported goods is taken to include the amount of any duty payable in respect of the importation;

Cost of a car in Dubai (\$500-00)	2,500,000-00
Radio and CD changer (\$200-00)	1,000,000-00
Insurance (\$1,200-00)	6,000,000-00
Freight (\$800-00)	<u>4,000,000-00</u>
Landed cost at port	<u>13,500,000-00</u>
Import duty @ 25%	3,375,000-00
TAXABLE VALUE	<u>16,875,000-00</u>
VAT @ 17.5%	2,953,125-00
TOTAL PRICE	<u>19,828,125-00</u>

- Where there is no monetary consideration, or consideration consists partly of money, or the consideration is less than the open market value, the taxable value is the amount by which the open market value exceeds the tax payable.
- It is important for the control officer to have an inquisitive mind when conducting an inspection. It is rare nowadays that assessments can be raised by mere examination of documents, or the performance of control checks. The traders and their consultants have studied the Law and know what is required of them. It is important that control emphasis shifts from the examination of documents to the examination of transactions, whether documented.
- There is need to improve the knowledge of the VAT Law if quality assessments are to be raised.
- Of late, there has been an increase in the supply of goods/services for other forms of consideration other than money. This is intended to dodge tax. The control officer is tasked to examine such transactions and determine if truly there was no consideration at all.

THE CLAIMING OF INPUT TAX (Section 18)

Input VAT may be deducted provided **(Section 18 (1))**

- a) The supplier so claiming the input VAT is registered.
- b) It is incurred by the trader claiming it
- c) It is incurred for the purposes of a business carried on or to be carried
- d) It has never been claimed before
- e) It is import VAT incurred on the importation of goods used or to be used for purposes of a business carried on or to be carried on
- f) The supplier is in possession of import documents

For details pertaining to the issuance of and the features of a tax invoice refer to

- a) Features (Rule No. 3)

- b) Issue of tax invoices (Rule No. 4)
- c) Tax credit notes (Rule No. 5)
- d) Import documents (Rule No. 15 (1))
- e) Schedule of input tax (Rule No. 15 (4))

Input VAT can only be claimed (**Section 18 (2)**)

- a) Wholly if all the outputs effected by the inputs are taxable (Cannot be split)
- b) By proper attribution (Rule No. 10)

Input VAT *cannot* be claimed

- a) After a period of one year (**Section 18 (4)**)
- b) Unless the supplier is in possession of a tax invoice (at the time of lodging in the return) (**Section 18 (3)**)
- c) On motor cars (except by traders who deal in the sale of motor vehicles or car hire) (Regulation No. 7)
- d) On business entertainment (Regulation No. 8)
- e) On telephones (Regulation No. 8A)
- f) On computer net work services (**Statutory Instrument No. 24 of 2004**)

ASSESSMENT OF TAX (Section 21)

The Commissioner General is given powers to assess the tax due and any interest thereon where:

1. The supplier fails to keep proper books of accounts
2. The supplier keeps incorrect books of accounts
3. The supplier keeps inadequate books of account
4. The supplier fails to submit a return (Estimated assessments—systems generated)
5. The supplier makes incorrect returns
6. The supplier makes inadequate returns.

The notice of assessment must be sent to the trader (VAT 31A) (**Section 21 (2)**)

- It must inform the supplier of the right to appeal
- The appeal period is 30 days from the date of assessment notice
- On sufficient cause, the CG may cause a revised assessment to be made within the appeal period.

CONFIRMATION OF ASSESSMENT:

This is an internal document designed to help the easy flow of cases. It is not always necessary that a confirmation of assessment must be signed before a case can be

concluded and a report be written. When there is overwhelming evidence that the correct amount of tax was not declared, a confirmation from the trader might not be necessary. What is important is to secure the evidence; photocopies of the documents may be made or removed from the trader.

EVIDENCE BY CERTIFICATION (Section 49 (b))

An assessment made under the Act shall be sufficient evidence of that fact until the contrary is proven.

INTEREST ON OVERDUE TAX (Section 20)

- Interest must be charged on all overdue amounts of tax **(Section 20 (1))**
- This should be simple interest calculated at the ruling Bank Of Bank rate plus a 2% uplift **(Section 20 (2))**
 - The CG may remit (cancel) part or all of the interest. **(Section 20 (4))**

This interest must be distinguished from the penalties charged under Section 17 for late return submission.

GENERAL TAX ISSUES

It is also very important to note some parts of Law that affect accounting for VAT by suppliers. The following are, but just a few of them:

1. CASH REGISTER ACCEPTABLE TO THE COMMISSIONER GENERAL

A cash register acceptable to the CG should have the following functions:

- Print sales slips for the customer
- Have a back-up master audit roll
- Store in a permanent manner all entries in Arabic numerals
- Provision for memory battery in case of power failure
- Read display and print the sales for the day as and when required and store details of such details of such readings
- The final daily readings of sales should include previous readings of the day done
- Categorise readings as standard rated, zero rated and exempt
- Visual display to the customer of entries being made
- Produce till slips with the following details
 - a) Date and time of transaction
 - b) Name and VAT No. of the supplier
 - c) Total values of standard rated, zero rated and exempt

- d) Separate VAT computation for standard rated sales
- e) Gross sales value
- f) Amount received from customer
- g) Change, if any, given to the customer.

2. Adjustment of output tax (Rule No. 9 (1))
3. Adjustment of input tax (Rule No. 11)
4. Correction of errors (Rule No. 14)
5. Transaction records to be kept (Section 42) Rule No. 12

2. SERVING OF NOTICE: (Regulation 14)

Any correspondence made under the VAT Act can be served by:

- Leaving it with the person to whom it is directed
- Leaving it at the usual or last known place of abode of that person
- Posting it to the usual or last known postal address (either business or residential)
- In case of a company, by leaving it with, or posting it to the company secretary.
- Where the notice is to be given to a person whose name or address cannot be ascertained, but who has some interest in some land, the notice can be serviced by leaving it with a person on the premises, or if there is no person, by affixing it, or a copy of it, to some conspicuous part of the premises.

(iii)THE VAT MECHANISM

Part 5 of the VAT guide gives an elaborate presentation of VAT mechanism. (Extract added below):

PART 5

5.0 Explanation Of Value Added Tax (VAT)

This part explains how VAT works. It explains the basic mechanisms and how VAT is collected.

5.1 The Mechanisms Of VAT

The VAT system includes all businesses in the production chain from manufacture through to retail. VAT is collected at each stage in the chain when value is added to goods or services. Hence the name "Value Added" tax.

The essential mechanism of VAT is as follows: (**terminologies**)

- For VAT purposes the sale or disposal of goods, or the rendering of services is called **supplies**.
- When a business that is registered for VAT (see Part 6) supplies goods or services, VAT is charged and collected by the business, the VAT on these supplies is called **output tax**.
- When a business that is registered for VAT purchases goods or services, the VAT incurred on these **supplies received** is called **input tax**.
- At the end of each tax period, (which for most businesses is at the end of each month) the VAT due is arrived at by deducting the total **input tax** on **supplies received**, from the total **output tax** on supplies made.
- Where the **output tax** exceeds the **input tax** for the period, the difference must be paid to the ZRA.
- If the **input tax** exceeds the **output tax** a VAT refund is due. VAT refunds will normally be made within thirty (30) days. However, if a business in its previous VAT return has a credit with us and it has been cleared, the business may offset this amount in the next return.
This is conditional upon receiving a written notification from ZRA. The taxable supplier declares both payments and refunds on a VAT return form VAT 100.

5.2 How Value Is Added And The VAT Collected

The following example shows how VAT works through the chain from Manufacturer to retailer. A manufacturer makes copper trays which are sold through a wholesaler to a retail supermarket and then on to the consumer. The VAT rate is 17.5%:

The Manufacturer sells the copper tray to the Wholesaler for K2, 937.50 VAT inclusive, being K2, 500 for the item and K437.50 VAT. He uses his own labour both to mine the copper and make the tray so he makes no purchases. The tax position of the manufacturer is therefore:

Manufacturer:

Sales (supplies made)	K2, 500	Output VAT	437.50
Purchases (Supplies received)	Nil	Input VAT	Nil
Value Added	K2, 500		
VAT payable to the ZRA (output tax minus input tax)			K437.50

The Wholesaler sells the copper tray to the supermarket for K4, 700 VAT inclusive (K4, 000 for the item and K700.00 VAT). The VAT on purchases was K437.50. The net VAT paid to ZRA by the wholesaler is (output tax minus input tax) K700.00- K437.50=K262.50

Wholesaler:

Sales (supplies made)	K4, 000	Output VAT	K700.00
Purchases (Supplies received)	K2, 500	Input VAT	K437.50
Value Added	K1, 500		K262.50
VAT payable to the ZRA (output tax minus input tax)			<u>K262.50</u>

The retailer puts a mark up of K1, 000 and sells to the final consumer at a VAT inclusive price of K5, 875. Since he suffered K700 VAT on his purchase, he only pays K175 to ZRA.

Retailer:

Sales (supplies made)	K5, 000	Output VAT	K875.00
Purchases (Supplies received)	K4, 000	Input VAT	K700.00
Value Added	K1, 000		K175.00
VAT payable to the ZRA (output tax minus input tax)			<u>K175.00</u>

So ZRA finally collects the K875 on a VAT inclusive total sales value of K5, 875 in 3 stages, i.e. K175.00 from the supermarket on a value added amount of K1, 000; K262.50 from the wholesaler on a value added amount of K1, 500; and K437.50 from the manufacturer on a value added amount of K2, 500.00.

This example illustrates that although VAT is collected in stages, by a VAT registered business, it is a tax on consumer expenditure.

The final consumer has paid the full tax of K875 in the retail price. VAT is collected from the first person that is not registered for VAT in the chain that begins with the manufacturer or importer and goes through the distribution and retail stages to the final consumer.

Another way of looking at the example given by the guide is shown in the table below

Agent in chain of distribution	Sales	Price inclusive of VAT	Output tax	Input tax	VAT Due	Amount payable to ZRA
Manufacturer	10,000.00	11,750.00	1,750.00	0.00	1,750.00	1,750.00
Wholesaler	14,500.00	17,037.50	2,537.50	1,750.00	787.50	787.50
Retailer	21,025.00	24,704.38	3,679.38	2,537.50	1,141.88	1,141.88
						<u>3,679.38</u>

Notes: Mark up used is 45%. The Authority at three different points collects the tax paid by the final consumer. In theory therefore if we could know the total VAT to be collected given output level of the nation (GDP). However in reality not all output is subject to VAT because of many reasons and also not all VAT is collect due to “leakages”(fraudulent traders, unregistered trader, etc).

5.3 Supplies For VAT Purposes

VAT is a tax charged on taxable supplies of goods and services (see paragraph 5.4). The example above shows VAT being charged and collected on a chain of supplies on the sale of a tray. However there are many business transactions in addition to a straight sale, which are also viewed as supplies under VAT Law, e.g.

- Gifts of goods
- Business goods taken for own use
- Business goods taken for own consumption
- Lease or Hire services
- The service of carrying out a treatment of any goods
- Imported goods (see paragraph 5.5),
- Imported services.

5.4 Liability To VAT: Taxable & Exempt Supplies

Not all supplies are liable to VAT; the VAT law separates supplies between taxable supplies and exempt supplies.

- Taxable Supplies, which are liable to VAT.
- Exempt supplies, which are specifically exempted from VAT under the Law

5.4.1 Taxable Supplier

A taxable supplier is a person who is registered or is required by this Act to be registered (see Part 6). Included in the definition of ‘taxable supplier’ is a recipient of imported services and a tax agent.

5.4.2 Taxable Supplies

A taxable supply is a supply of goods or services made by a taxable supplier, in the course or furtherance of a business (other than an exempt supply -see paragraph 5.4.4), This means that supplies made by persons who are not required to be registered for VAT, are not taxable supplies. For example, if the copper tray given in the example above was sold by the supermarket, which was registered for VAT, to a small trader who was not required to be VAT registered, the supply by the supermarket would be a taxable supply, but the onward sale by the small trader to a consumer would not be a taxable supply for VAT purposes.

5.4.3 Rates Of Taxable Supplies

Taxable supplies are subject to VAT at one of two rates:

Standard-rate: i.e. 17.5%. Applies on most supplies of goods and services.

Zero-rate: i.e. 0%. Applies on exports of standard rated goods and some specified goods and services. These are listed in schedule 2 of the VAT Act.

5.4.4 Examples Of Taxable Supplies

- The sale of new or second-hand goods.
- Business samples or business gifts for promotional or publicity purposes (of a value above K25,000).
- The transfer of ownership or possession of goods, or the provision of services to persons involved with a business (employees, directors, partners, etc).
- The sale of business assets, for example by companies in liquidation and receivership.
- The hiring, leasing or loan of goods within Zambia. Hiring, leasing or loan of goods into or out of Zambia is not subject to VAT in Zambia.
- Delivery, packing and postage charges.
- Treatments applied to any goods.
- The rendering of services (including building services; professional services; service charges; management)
- Charges, club membership fees and subscriptions).
- The granting of a right.

5.4.5 Exempt Supplies

These are items specifically excluded from liability to VAT such that even when a taxable supplier supplies them, no VAT is charged. These items are listed in schedule 1 to the VAT Act.

5.4.6 Difference Between Zero-Rated And Exempt Supplies

Both mean that there is no VAT charged on the supply. So what is the difference? Dealing in taxable supplies, including zero rated supplies, allows a business to reclaim input tax, which is not the case with exempt supplies. For instance;

- **A business making only zero-rated supplies:** Because zero-rated supplies are taxable supplies, a VAT registered business dealing in them is still entitled to reclaim input tax on purchases made (supplies received). This means that most suppliers dealing in only zero-rated supplies will have input tax, which exceeds their output tax, if any, and they will be making claims for refund from ZRA. A good example is a pharmaceutical

company whose produce is all zero-rated but whose purchases (supplies received) include items with VAT on them.

- **A business making only exempt supplies:** Because exempt supplies are not taxable supplies, a business dealing only in them **is not** entitled to register for VAT. This means that this business will have no opportunity to reclaim input tax on purchases (supplies received).
- **A business making both taxable and exempt supplies:** Such a business is described as "**partially exempt**". There are special rules that govern how a partially supplier may reclaim input tax (see paragraph 7.1.5)

5.5 Imported Goods

Imported goods are liable to VAT. This is to ensure that manufacturers in Zambia are not placed at a disadvantage as compared to foreign suppliers. Like customs duty, VAT is chargeable on all importations of taxable items whether by private persons or by businesses (and whether or not they are registered for VAT).

5.6 Export of Goods

Subject to certain conditions, the export of taxable goods is zero-rated for VAT. To zero-rate at exportation, the goods must be supplied (i.e. sold) direct to a business abroad and the exportation of the goods made by or on behalf of the supplier. To be satisfied that the zero rating is correct, proof of exportation will be required to be produced e.g.

- Commercial invoices
- Certified copies of the documents presented to Zambian customs at exportation.
- Certified copies of customs import documents at the country of destination.
- Proof of payment (settlement) if applicable.

5.7 Liability To VAT - Further Information

The law that determines which supplies are exempt and which are Zero-rated is contained in Schedules 1 and 2 of the VAT Act. The ZRA also produces a leaflet to assist businesses to decide what is liable to VAT and what is not. This is called the "VAT Liability Guide Leaflet 2" and is available from the ZRA Advice Centre.

5.8 Place Of Supply

To be within the Zambian VAT system a supply must be made in Zambia. Supplies made outside Zambia are outside the scope of Zambian VAT. The place

of supply is not always obvious (especially where supplies of services are concerned. There are rules to help businesses work out the place of supply for goods and services. These are set out below:

5.8.1 Place of Supply of Goods

The place of supply is the location of the goods when you allocate them to a customer's order. If the goods are in Zambia when you allocate them, the supply is in Zambia. This applies to goods supplied for export as well as goods supplied to customers in Zambia. If the goods are not in Zambia when you allocate them the supply is normally outside the scope of Zambian VAT.

If you supply goods that are assembled or built for the first time on site, then the place of supply is the place where the assembly or building takes place.

5.8.2 Place of Supply of Services

You supply services in the place where you belong. You belong where you have a business or some other fixed establishment, including a branch or agency. If you have no such establishment you belong where you usually live. In the case of a company this is where it is legally constituted. If you have establishments in more than one country, the supply takes place at the location of the establishment most directly concerned with the supply.

Where services are supplied wholly or partly in Zambia, but on or near the border between Zambia and another country and whether or not the services are paid for in Zambia, the Commissioner-General may, by notice, determine that they shall be regarded as supplied in Zambia where:

- The business supplying the services is registered in Zambia; or
- The business operates on a *de facto* basis in Zambia;
- The services are imported. Services are imported when they are performed, undertaken or utilized in Zambia or when the benefit of their supply is for a recipient in Zambia; or
- Other circumstances, as the Commissioner-General considers relevant, exist.

The place of supply of radio, television, telephone or other communication services, where the signal or service originates outside Zambia, shall be treated as being supplied at the place where the recipient receives the signal or service, provided that a consideration is payable for receiving the service or signal.

5.8.3 Reverse charge on services supplied to registered suppliers in Zambia by non-resident suppliers

- The supply of services, including consultancy, research, advertising, management fees, royalties, etc, which are provided by non-resident suppliers, who do not have business establishments in Zambia were not taxed because such suppliers were not registerable for VAT in Zambia. But similar services provided by local suppliers were and continue to be subject to VAT. This state of affairs created an unfavourable competition for local suppliers and did not level the playing field.

Reverse charge levels the playing ground. However, it is only applicable in cases where the non-resident supplier has not appointed a local tax agent. **Refer to leaflet No. 29 for more details.**

5.9 Tax Point - The Time When Taxable Supplies Are Made

It is important to establish when a taxable supply is made because that is the point at which 'tax becomes payable to ZRA; hence it is called the **tax point**. It is the **earliest** of:

- **For goods**, the time when they are removed from the supplier's premises; or made available to the person to whom they are supplied; or the time when a payment is received; or the time when a tax invoice is issued.
- **For services**, the time when a payment is received; or the time when a tax invoice issued; or the time when they are actually rendered or performed.

5.9.1 Tax Points for Particular Transactions

Deposits

Most deposits serve primarily as advance payments and will create tax points when you receive them. However, certain deposits are not a consideration for a supply and their receipt does not create a tax point, e.g. when a deposit is taken as security to ensure the safe return of goods hired out and the deposit is refunded when the goods are returned safely.

Continuous Supplies of Service

If you supply services on a continuous basis and receive payments regularly or from time to time the tax point is the earliest of the conditions in paragraph 5.9 being met. Examples here are supplies of water, gas or any form of power, heat, refrigeration or ventilation, etc.

Services Supplied In Units At Frequent Intervals, Such As Metered Supplies.

If you cannot determine the time when each unit was supplied, the tax point is taken as the time when you issue an invoice or receive a payment for services

performed up to a specified date, or the time when the meter is read, whichever happens first.

Sale or Return consignments

When you supply goods on “sale or return” agreements, they have not been sold and you still own them until such a time as your customer adopts them. Adoption means your customer pays for them or otherwise indicates his wish to keep them. Until he does so, your customer has an unqualified right to return them at any time, or unless you have agreed a time limit with him. The tax point for these consignments is the earliest of the date of adoption, payment or invoicing.

Goods Taken For Personal Or Other Non - Business Use.

If you take goods out of your business, for personal use or for non-business use, the tax point is the time when goods are taken or set aside for this purpose.

Staged Payments And Part Payments

Staged payments or part payments, such as are common in the construction industry, create a tax point at the time the payment is due or is made; whichever occurs first.

Property and leasehold

If you receive periodic payments of commercial rent, the tax point is that prescribed by the contract, i.e. when the service is performed, or the date you receive a payment, or the date of issue of a tax invoice, whichever happens first.

5.10 Taxable Value

The taxable value is the price that is charged for goods and services onto which VAT at 17.5% is added. For goods and services, which attract Excise Duty, it is the net selling price plus Excise Duty. Below is an example illustrating the taxable value concept where item 1 does not attract Excise Duty and item 2 attracts Excise Duty at 10%.

	<u>Item 1</u>	<u>Item 2</u>
Net Selling Price	K2, 000	K2, 000
Excise Duty [at 10%]	nil	K 200
Taxable Value	K2, 000	K2, 200
VAT	K 350	K 385
Total Selling Price	K2, 350	K2, 585

For imported goods the taxable value is the **value for customs purposes** with the addition of any duties and other charges. On duty free goods on which VAT is applicable, the taxable value is the value for customs purposes.

There are some circumstances where the taxable value is calculated differently. For instances;

- When goods are supplied as a gift.
- In barter or part exchange transactions.
- Where goods or services are supplied at a reduced price to employees and others associated with a business.

In such cases, **the open market value** must be used. The open market value is the price at which the goods or services concerned would have been supplied in the ordinary course of business, to a person independent of him.

5.11 Minimum Taxable Values

For some products such as carbonated and non-carbonated soft drinks, beers, cigarettes and cement a Minimum Taxable Value (MTV) is imposed by law. The effect is that if these items are sold for a price less than the MTV, VAT due is based on the MTV. If they are sold for more than the MTV, VAT is due on the actual selling price. Leaflet 18 explains about MTVs.