

MALTA

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|----------------------------------------|----------------------------------------------------------------|----------------------------------------------------|
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AT A GLANCE

| | |
|--------------------------|----------------------------------------------------------------------------|
| Name of the tax | Value Added Tax |
| Local name | Taxxa fuq il-Valur Mizjud |
| Date introduced | 1 January 1999 |
| Date of membership in EU | 1 May 2004 |
| Administered by | Ministry of Finance (www.vat.gov.mt) |

VAT rates

| | |
|-----------------------------------------------|-----------------------------------------------------------------------------------|
| Standard | 18% |
| Reduced | 5% and 7% |
| Other | Exempt with and without credit supplies |
| VAT Number format | MT 12345678 |
| VAT return periods | Quarterly but VAT department may authorize a period of more or less than 3 months |
| Thresholds registration | None |
| Recovery of VAT by non-established businesses | Yes |

HISTORY OF VAT

The Maltese Value Added Tax Act was introduced with effect from 01 January 1995. It was briefly replaced by the Customs and Excise Tax in 1997 to be re-introduced in January 1999. Upon Malta's entry into the EU on 01 May 2004 the EU VAT directive was adopted and transposed into the VAT Act amending it to comply with EU legislation. Changes in the EU directive result in changes in the local VAT Act.

SCOPE OF VAT

Every supply of goods and services for consideration by a taxable person, taking place in Malta, is subject to VAT subject to exemptions determined under the Fifth Schedule to the VAT Act.

VAT is a consumption tax charged at every stage of the supply chain with businesses being allowed the possibility to recover VAT incurred on purchases or expenses so that the final burden of VAT falls on the end customer. The recovery of such VAT through the supply chain is regulated through the VAT Act. All suppliers along the chain are responsible to ensure that VAT is duly charged, collected and passed on to the VAT Department in compliance with the legislation.

There are three kinds of VAT registration in Malta namely Article 10 which would be the main VAT registration for general business, Article 11 for small businesses which will be considered exempt persons or Article 12 for those businesses or persons which would only require registration in order to pay VAT.

REGISTRATION

VAT registration in Malta is obligatory when a taxable person carries out an economic activity which does not fall to be exempt with no registration threshold meaning that anyone carrying out an economic activity falling within the scope of VAT must be VAT registered.

A person may register to be exempt under Article 11 should his annual supplies fall below established annual thresholds (table below) for which Article 10 registration is obligatory. In such cases no VAT will be charged to customers however input VAT incurred cannot be reclaimed. VAT compliance would require a simple annual VAT return to be completed.

| Category | Entry Threshold € | Exit Threshold € |
|--------------------------------------------------------------------------------------------------------|----------------------|---------------------|
| Economic activities consisting principally in the supply of goods | 35,000 | 28,000 |
| Economic activities consisting principally in the supply of services with a relatively low value added | 24,000 | 19,000 |
| Other economic activities | 14,000 | 12,000 |

Registration under Article 10 requires VAT to be charged to clients as determined by the place of supply rules established in the legislation. There are different VAT implications depending on the nature of the economic activity, on the type of customer whether a taxable or non-taxable person, and also on whether the supply is local, intra-community or international.

Intra-community trade carries with it VAT implications and requirements to declare purchases or sales in particular VAT declarations. VAT compliance would generally require 4 quarterly returns which are due for submission within 45 days of the end of the previous quarter together with any payment. Monthly or annual returns are possibly either imposed by the Department depending on the case or by the registered person's request subject to acceptance by the VAT Department. Should the business provide supplies of goods or services to taxable persons in other EU member states then a quarterly (or in certain cases monthly) Recapitulative Statement declaring the EU sales to each taxable customer is required to be submitted electronically within 15 days following the end of the quarter or month in question.

Unregistered persons may also be required to register for VAT under Article 12 in order to pay VAT due on the acquisition of goods from the EU brought into Malta exceeding a particular threshold. This registration would also apply to taxable persons acquiring services from outside Malta, whether from the EU or non-EU, when such service would be deemed to be supplied in Malta according to the place of supply rules. In such cases, should such services be taxable, then these services will need to be declared on a monthly return and submitted to the VAT Department together with the payment.

VAT RATES

The general VAT rate in Malta is by default 18% for all goods and services falling within the scope of VAT and which do not qualify for reduced rates of 5% or 7% or are zero-rated.

The 5% reduced rate is applied to the following:

- The supply of electricity;
- Confectionary and similar items (as per HS codes listed in the 8th Schedule to the VAT Act);
- Medical accessories (as per HS codes listed in the 8th Schedule to the VAT Act);
- Printed matter (as per HS codes listed in the 8th Schedule to the VAT Act);
- Items for the exclusive use of the disabled (as per HS codes listed in the 8th Schedule to the VAT Act);
- The importation of works of art, collectors' items and antiques;
- Minor repairs of bicycles, shoes, leather goods, clothing, and household linen;
- Domestic care services such as home help and care of the young, elderly, sick or disabled; and
- Admission to museums, art exhibitions, concerts and theatres.

The 7% reduced rate is applicable on the letting of or the provision of accommodation of premises requiring a licence as stipulated in the Malta Travel and Tourism Services Act.

PLACE OF SUPPLY RULES

The place of supply rules enforced in the Maltese VAT Act are transposed from the VAT Directive. Different rules apply for goods and services respectively.

The place of supply of goods

The table below summarises the general rule and exceptions to the rule determining where VAT arises in respect of such supplies:

| Generally in the case of a supply of goods: | The place of supply is: |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (a) Without transport | where the goods are placed at the disposal of the person acquiring the goods |
| (b) With transport | where the goods are when the transport begins |
| (c) when transport begins outside the EU and ends in a Member state | the member state of importation |
| Exceptions to the rule: | |
| (1) Goods installed or assembled | Where goods are installed or assembled |
| (2) Goods supplied on board ships, aircraft or trains during part of a transport of passengers effected in the EU | The point of departure of the transport of passengers |
| (3) Distance sales | Generally the member state where the transport ends however subject to not exceeding the annual threshold and as long as not excise goods, the place of supply would be the place where the transport of goods begins. In Malta the annual threshold is Eur35,000. |
| (4) Supply of gas through a natural gas system within the EU (or any network connected to such system), of electricity and of heat or cooling energy through heating or cooling networks: (a) supply to a taxable dealer meaning that his principal activity is reselling gas, electricity, heat or cooling energy and his own consumption of such goods is negligible (b) supplies not covered by (a) | Where the taxable dealer is established/has a fixed establishment / in the absence of such, the place where he has a permanent address or usually resides Where the customer effectively uses and consumes the goods however should all or part of the supply not be consumed by the customer the place of supply of such goods is deemed to be where the customer is established/ has a fixed establishment / in the absence of such, the place where he has a permanent address or usually resides |

The place of supply of services

The table below summarises the general rule and exceptions to the rule determining where VAT arises in respect of such supplies:

| Generally*: | The place of supply of the service is: |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|
| (1) Business to business (taxable persons) supplies | Where the customer is established |
| (i) If services is provided to fixed establishment of the customer located in a place other than that where his business is established | The place where the fixed establishment is located |
| (ii) In the absence of a fixed establishment | The place where the recipient has his permanent address / usually resides |
| (2) Business to customer (non-taxable persons) supplies | Where the supplier is established |
| (i) If services is provided from a fixed establishment of the supplier located in a place other than that where his business is established | The place where the fixed establishment is located |
| (ii) In the absence of a fixed establishment | The place where the supplier has his permanent address / usually resides |
| Exceptions: | |
| Intermediaries acting on behalf of a third party rendering a service to a non-taxable person | The place where the underlying transaction takes place |
| Services connected to immovable property | Where the property is located |
| Passenger transport | Where transport takes place in proportion to the distance covered |
| Transport of goods to non-taxable persons other than intra-Community transport of goods. | Where transport takes place in proportion to the distance covered |
| Intra-Community transport of goods to non-taxable persons | Where the transport of goods begins |
| Restaurant and catering services | Where the services are physically carried out |
| Admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events | Where the events took place |
| Services and ancillary services, relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities supplied to a non-taxable person | Where those activities take place |
| Ancillary transport activities supplied to non-taxable services | Where the services are physically carried out |
| Valuations of and work on movable tangible property supplied to non-taxable persons | Where the services are physically carried out |
| Short-term (vessels <90 days; other <30 days) hiring of a means of transport* | Where the means of transport has been placed at the disposal of the customer |
| Hiring, other than short-term hiring, of a | Where the customer is established, has his |

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| means of transport to a non-taxable person* | permanent address or usually resides |
| In the case of a pleasure boat* | Where the pleasure boat is placed at the disposal of the customer, where this service is actually provided by the supplier from his place of business or a fixed establishment situated in that place |
| Supply of restaurant and catering services for consumption on board ships, aircraft or trains during the section of a passenger transport operation effected within the Community (ie without a stopover outside the EU) | The point of departure of departure of the transport operation. Return trips are treated as separate journeys. |
| Electronically supplied services, broadcasting and telecommunications services supplied to a non-taxable person* | Where the person is established, resides or has his permanent address |
| Services supplied to non-taxable persons resident outside the EU*: | Where the customer is established |
| Transfers / assignments of copyrights, patents, licences, trade marks | |
| Advertising services | |
| Services of consultants, engineers, consultancy firms, lawyers, accountants and similar services, data processing, provision of information | |
| Obligations to refrain from a business activity or a right | |
| Banking, financial, insurance, reinsurance excluding the hire of safes | |
| Supply of staff | |
| Hiring out of movable tangible property except for means of transport | |
| Provision of access to a natural gas system, or any network connected to such system, situated within the EU, or to an electricity system or to heating or cooling networks or transmission or distribution through these systems or networks and the provision of other directly linked services | |

*The effective use and enjoyment of these services may be considered as the basis for determining the place of supply in order to prevent double taxation, non-taxation or distortion of competition. In so doing, Malta may be deemed to be the place of supply of the services in question when services the place of supply of which is outside the EU are effectively used and enjoyed in Malta. Conversely, services deemed to take place in Malta will be considered to be rendered outside the EU if their use and enjoyment are outside the Community.

The place of intra-community acquisitions

| | The place of acquisition is: |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|
| General rule for intra-community acquisitions | Where the goods are when the transport of the goods to the person acquiring them ends |
| If acquisition is made using a Maltese VAT number issued under Article 10 (valid under VIES) | Malta. |
| If acquisition is made using a Maltese VAT number issued under Article 10 (valid under VIES) and the below conditions apply: <ol style="list-style-type: none"> (1) The acquisition is made for a subsequent supply of such goods in that member-state; (2) The subsequent supply is made to a VAT-identified person in the member state of destination; (3) The person to whom the subsequent supply is made is the person liable to settle the VAT on such supply; (4) The person registered under Article 10 in Malta reports the supply in the recapitulative statement | The member state where the transport of the goods ends |

The place of supply of imports

When goods are imported, the place of supply of such importation is the place where the goods are at the time of the chargeable event which would therefore be the member state in which the goods are released into free circulation.

TIME OF SUPPLY RULES

The time of supply of goods and services takes into consideration the date the chargeable event takes place, the date of payment and the invoice date.

The following table summarises the rules for determining the date of the chargeable event:

| Goods: | Date of chargeable event: |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|
| (1) Goods – general rule | When the goods are delivered |
| (2) Continuous supplies of goods (except for those in item 4 below) giving rise to successive statements of account or payments, up to the value covered by those statements | On the last day of each period to which such statements or payments refer |
| (3) Continuous supplies of goods (except for those in item 4 below) not giving rise to successive statements or payments | At least at intervals of one year |
| (4) Goods delivered under hire-purchase or lease | Payment of the final instalment |
| (5) Continuous supplies of goods dispatched over a period exceeding one month to a | The expiry of each calendar month until the supply ends |

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| member state other than Malta, supplied VAT-exempt or transferred VAT-exempt to another member state by a taxable person in the course of business | |
| | |
| Services: | |
| (1) Services – general rule | When the services are performed |
| (2) Continuous supplies of services giving rise to successive statements of account or payments, up to the value covered by those statements | On the last day of each period to which such statements or payments refer |
| (3) Continuous supplies of services not giving rise to successive statements or payments | At least at intervals of one year |
| (4) Continuous supplies of services over a period exceeding one year and not giving rise to statements or payments, made by a person not established and not VAT registered under Article 10 in Malta to a taxable person or a non-taxable legal person identified for VAT purposes | On the expiry of each calendar year until the supply ends |
| | |
| Intra-community acquisitions | The date of the chargeable event that would apply should those goods have been supplied in the member state of those acquisition |
| | |
| Importations | |
| - When goods are placed under customs duty suspension regime | When the goods are no longer subject to the regime |
| - When goods are subject to customs duties, agricultural levies, charges having equivalent effect established under common policy | The date the chargeable event for the imposition of such duties takes place |
| - Goods not subject to EU duties | The date the chargeable event for the imposition of such duties takes place had those goods been subject to EU duties |

Date when tax becomes chargeable

Except in the case of exempt intra-community supplies, the tax on supplies becomes chargeable as follows:

- 1) The earlier of the date of the chargeable event or the date of payment for the supply in proportion to the payment effected;
- 2) If the invoice is issued by the 15th of the month following the date determined in (1) above, the tax will be chargeable on the invoice date.

In the case of exempt intra-community supplies however tax is chargeable on the earlier of :

- (1) the 15th of the month following that in which the chargeable event takes place;
- (2) the tax invoice date for such supply

The payment for such supplies will be disregarded. When determining the date of the chargeable event for continuous supplies over more than one year there will be no deemed delivery at intervals of at least 1 year should no successive statements be issued or no payments made.

The date when tax becomes chargeable on an intra-community acquisition is the earlier of

- (1) the 15th of the month following that in which the chargeable event takes place;
- (2) the date when the tax invoice is issued to the person acquiring the goods.

In the case of importations, tax becomes chargeable on the same date as the chargeable event as determined in the table above.

EXEMPTIONS

VAT exemptions would fall under two categories namely "exempt without credit", whereby the supply would not give rise to VAT being charged however the supplier would not be entitled to recover input VAT incurred in the operations attributable to such supplies, and "exempt with credit" whereby the supply would not give rise to VAT being charged however the supplier would still be entitled to recover input VAT incurred in the operations attributable to such supplies. Exemptions may not necessarily be outright and in certain instances an approval by the Minister or the Commissioner of VAT would be required in order for an exemption to apply.

The VAT Act lists the following **exempt without credit** supplies.

- § Transfers of immovable property, and certain letting of immovable property;
- § Insurance services;
- § Credit, banking and financial services, including the granting and management of loans and share brokerage activities and investment management services;
- § Cultural and religious services;
- § Approved sports and recreational services provided by non-profit organisations;
- § Certain services by non-profit organisations to their members, such as certain trade union or philanthropic organisations;
- § Lotteries;
- § Public postal services;
- § Health and welfare services, including, generally, medical or surgical treatment;
- § Educational services;
- § Supplies of goods in respect of which the supplier had not qualified for input tax credits;
- § Non-commercial broadcasting services; and
- § Supply of water services by a public authority.

The VAT Act lists the following **exempt with credit** supplies which would be the equivalent of zero-rated supplies.

- Exports and similar transactions
 - (a) Goods dispatched or transported to a destination outside the Community by or on behalf of the seller;
 - (b) Goods supplied to a destination outside the Community by or on behalf of the purchaser not established in Malta, with the exception of goods transported by the purchaser directly for the equipping, fuelling and provisioning of pleasure boat and private aircraft or any other means of transport for private use;
 - (c) Services consisting of work on movable goods acquired or imported for the purpose of undergoing such work within Malta, and transported outside the Community by or on behalf the performer of the services or a customer if not established within Malta; and
- International Goods Traffic
 - Work on movable goods that are intended to be placed or while they are placed under a customs duty suspension regime;
- Intra-Community supplies of goods to persons taxable in a Member State for VAT purposes, or of a new means of transport to non-taxable person;
- International transport of persons and goods, and ancillary services;
- Certain commercial, rescue or military sea vessels and commercial aircraft, and services supplied thereto;
- Investment gold (including gold supplied to the Central Bank of Malta);
- Food, other than restaurant catering (as per HS codes listed in the 5th Schedule to the VAT Act);
- Pharmaceutical goods (as per HS codes listed in the 5th Schedule to the VAT Act);
- Certain transport services
- Supplies of goods on board cruise liners.

RECOVERY OF INPUT VAT

Deduction and recovery of input tax

Input Tax eligible for a deduction/credit

Persons registered under Article 10 and who provide taxable or exempt with credit supplies may claim back input tax on expenditure which is directly and exclusively linked to their activities.

Where any goods or services are or will be used only in part in the course or furtherance of an economic activity, the taxpayer may only treat as input tax the proportion of the VAT equal to the proportion of the use of those goods or services in the course or furtherance of the economic activity to their total use. It is the responsibility of the taxpayer to use a reasonable method for this proportion.

In order to be able to claim a credit for input VAT, a taxable person must prove that the input tax being claimed was chargeable on supplies of goods and services, on intra-Community acquisitions or on importations of goods which have been or which will be used by him in the course or furtherance of his economic activity. In particular, a claim for input VAT must be supported by a tax invoice in respect of the tax relating to goods or services supplied to him and in respect of intra-Community acquisitions

made by him. In the case of importations, a pre-condition to making a claim for input VAT is a document of importation showing the taxable person as the importer in respect of the tax on the importation.

VAT incurred on the following supplies is generally not allowed as a credit:

- Tobacco or tobacco products unless purchased for resale;
- Alcoholic beverages, unless purchased for resale;
- Works of art and antiques unless purchased for resale;
- Motor vehicles, vessels or aircraft, excluding vessels and aircraft acquired for the purpose of being provided under a charter or hire agreement, unless purchased for resale or unless acquired and used for the purpose of the carriage of goods or passengers for a consideration;
- Goods and services for the purpose of repairing, maintaining and keeping motor vehicles, vessels or aircraft and fuel used therein;
- Car leasing by a lessee, including VAT incurred on fuel;
- Goods and services used in the provision of receptions, entertainment or hospitality except where that supply is made in the normal course of an economic activity; and
- Goods and services used in the provision by a person to his employees of transport or entertainment, except where the transport is provided on vehicles with a seating capacity of not less than seven.

Deduction rules relating to the provision of mixed supplies (Partial Attribution)

In general, input VAT is allowed as a credit against output VAT to the extent it is attributable to “credit-eligible” supplies, meaning supplies that are:

- Taxable;
- Exempt with credit;
- Outside Malta and would, if made in Malta, be treated as taxable or exempt with credit; or
- Certain exempt financial services provided to persons established outside of the Community, or related to exports

A taxable person who makes both credit-eligible supplies and ineligible (i.e. exempt without credit) supplies must apply the partial attribution method in order to calculate the allowable input VAT. Under the applicable rules, in any given taxable period:

- Any input tax exclusively attributable to the credit-eligible supplies is creditable;
- Any input tax exclusively attributable to ineligible supplies is not creditable;
- Any input tax for a tax period which is attributable both to eligible and ineligible supplies is creditable in part, using a ratio that is calculated annually by dividing the value of credit-eligible supplies by the value of the total supplies. The ratio obtained is the definitive ratio for that year and the provisional ratio for the following year. The input tax credit for each tax period of the following year is calculated using the provisional ratio and an adjustment is then made at the end of the year, based on the definitive ratio; and
- If the partial attribution method does not yield a fair and reasonable result, an alternative method of calculating the ratio may either be mandated by the Department or requested by the taxpayer.

Timing of the deduction or credit

The input tax credit should generally be claimed in the period in which the relevant supply takes place. Furthermore, the Maltese VAT Act provides that in order for a taxable person to exercise the right to deduction, he/she must be in possession of a valid tax invoice.

Deductions for input tax on capital goods or assets

For Maltese VAT purposes, capital goods are all tangible fixed assets which can be used on a long-term basis as working tools or other means used for the carrying on of an economic activity, but does not include small equipment, working tools and office furniture, with a price, or open market value of less than Eur1160, or reusable packaging materials.

A taxable person is entitled to deduct immediately any input tax suffered on acquisition of capital goods, subject to the rules mentioned above regarding supplies only partially attributable to economic activities or to credit-eligible supplies.

Special adjustment rules for capital goods apply, providing for cases where a change in the use of an asset occurs, thereby effecting a change in the deductible portion of input VAT.

The period over which an adjustment for input VAT should be made is:

- 5 years for all capital goods with the exception of immovable property, and
- 20 years in the case of immovable property.

The adjustment is made with respect to 1/20th or 1/5th of the input tax initially deducted (with respect to immovable property or other capital goods, respectively), for each year during which a change in the use occurs.

The taxpayer must maintain a list of goods subject to the capital goods scheme in accordance with the record keeping requirements.

Taxable persons not established in the EU Member State of Refund but established in another EU Member State

A claim for a refund under the 8th Directive is made by a taxable person not established in the Member State of VAT refund but established in another Member State, through the website of the tax administration of the Member State where he is established.

The refund application is submitted to the Member state of establishment at the latest on 30th September of the calendar year following the refund period. The applicant is immediately informed, by electronic means, of the date on which the application is received by the local tax authorities. The tax authorities will notify the applicant of the decision to approve or refuse the refund application within 4 months from the date of receipt.

Approved refunds will be paid at the latest within 10 working days of the expiry of the above mentioned applicable deadline.

Taxable persons not registered in the territory of the EU Community

A claim for a refund under the 13th Directive is made by a taxable person established outside the European Community, and not registered for VAT in Malta, on the prescribed form, which includes notes on how to complete the application,. The claim shall be submitted to the VAT department in Malta, within 6 months from the end of the calendar year in which the tax became chargeable.

Decisions concerning applications for refund shall be given within 6 months from the date when the applications, accompanied by all the necessary documents required under these regulations for the examination of the application, are received by the Maltese tax authorities.

COMPLIANCE OBLIGATIONS

Invoices

Invoicing requirements

A tax invoice must be issued when a person registered under Article 10 of the Maltese Legislation, makes a supply, other than an exempt without credit supply, to another taxable person registered under Article 10 or Article 12. In all other cases a fiscal receipt must be issued. In case of a self-supply, a person registered under Article 10 must issue a tax invoice indicating itself as both the person that made the supply and as the recipient.

A tax invoice must be issued by not later than the earlier of the 15th day of the month following that in which the chargeable event takes place, or the date on which a payment is received. This does not apply to payments on account which precede an intra-Community supply of goods.

Form and information

A valid VAT invoice must include the following information:

- The date of issue;
- A sequential number to uniquely identify the invoice;
- The name, address and VAT identification number of the supplier;
- The name, address and VAT identification number (if applicable) of the person to whom the supply is made;
- The quantity and nature of goods supplied or a description of the services rendered;
- The date on which the supply was made or completed or the date on which a payment on account was made;
- The unit price exclusive of VAT, discounts or rebates and the currency used;

- The applicable VAT rate;
- The VAT amount payable;
- Where the VAT becomes chargeable at the time when the payment is received in accordance with Part 1 and Part 3 of the VAT Schedule, the invoice should include the phrase “Cash Accounting”;
- Where the customer is issuing an invoice to itself, the invoice should include the phrase “Self billing”;
- Where the customer is liable to pay VAT, the invoice should include “Reverse Charge”; and
- Where the invoice refers to supplies on which tax is not chargeable, it should indicate a brief reference to the relevant provisions of the Maltese Vat Act or any other grounds (such as EU law) on the basis of which not tax is chargeable.

Additional information must be provided if the taxpayer applies a special scheme such as a margin scheme, or if the invoice is for the intra-Community supply of a “New Means of Transport”.

A simplified VAT invoice is permitted if the amount of the invoice inclusive of the tax is not higher than Eur100 but is generally not available for cross-border supplies, or suppliers not established in Malta and should include, as a minimum, the following information:

- The date of issue;
- A sequential number, based on one or more series, which uniquely identifies the invoice;
- The name, address and the Value Added Tax identification number of the supplier;
- The Value Added Tax identification number of the person to whom the supply is made;
- A description sufficient to identify the goods and services supplied; and
- The total amount of VAT payable or the information needed to calculate it.

Amounts which appear on the invoice may be expressed in any currency, provided that the tax payable or to be adjusted, must be converted into Euro using the latest exchange rates published by the European Central Bank. The Department may require invoices to be translated into Maltese or English.

Electronic invoices may be issued, subject to acceptance by the recipient, and provided that the parties can ensure the authenticity of the origin, the integrity of the content and the legibility thereof.

Returns

Timing for filing

A tax period is generally quarterly, though, in certain circumstances, the Department may authorise a taxpayer to submit its VAT returns on an annual basis. VAT returns together with the payment (if applicable) payable to the Commissioner of VAT must be submitted no later than the 15th day of the second month following the month during which that tax period ends. The Department encourages taxable persons to submit VAT returns online via the Department’s electronic portal by providing a seven-day extension for online filers.

Electronic filing

Taxpayers are encouraged to submit their VAT returns electronically via the Department's electronic portal, and a seven-day extension is provided to online filers.

The portal may be accessed at: <http://www.vat.gov.mt/en/Online-Services/Pages/VAT-Online-Services.aspx>

Timing of payments or deposit

Payment is due to the VAT Department no later than the date on which taxpayers are required to submit their VAT return for a tax period, in an amount equal to the excess, if any, of the output VAT for that period over the allowable input VAT deductions. Any excess tax credit brought forward from a previous tax period that has not yet been refunded shall be allowed as a credit against the VAT due.

Methods of payment or deposit

Payments can be made either by cash, cheque or bank transfer. Payment can be made through the Department's electronic portal at: <http://www.vat.gov.mt/en/Online-Services/Pages/VAT-Online-Services.aspx>

Recordkeeping (what records, retention period)

The following records must be retained by persons registered under Article 10:

- Proper accounts and records of economic activity;
- A VAT account and an annual VAT account;
- A register of goods transported (to/by him) within the EU, and of goods transported to him from another Member State by or on behalf of a taxable person identified for VAT purposes in that other State;
- All tax invoices issued;
- All tax invoices received;
- Customs and excise documentation (imports and exports);
- Fiscal receipts issued;
- All credit notes, debit notes issued or received which evidence a change in the consideration for any supplies, intra-Community acquisitions or importation; and
- A list of capital goods subject to the Capital Goods Scheme.

Accounts must be kept in such a way so as to ascertain:

- The total value of supplies made and total value of inputs claimed during each tax period (excluding tax);
- The output tax and other tax payable for each tax period;
- The input tax credits, deductions, excess tax credit and tax refundable for each tax period;
- Partial attribution calculations; and
- All relevant workings/notes to readily identify the source of the information in the VAT Account.

Records and invoices must be retained for a period of at least six years from the end of the year to which they relate.

However, records of goods subject to the capital goods scheme, including a list of the capital goods subject to an adjustment are required to be kept for 11 years in the case of movable property, and 26 years in the case of immovable property from the end of the year in which the right to deduct input VAT arises.

If invoices are stored electronically, the Department may require that the data guaranteeing the authenticity of the origin of the invoices and the integrity of their content also be stored electronically.

Interest and penalties

Interest (on underpayments)

Interest is due on any VAT which is not paid by the date on which it becomes payable at the rate of 0.54 percent for each month or part thereof during which that VAT remains unpaid.

Penalties

If a taxable person does not register or furnish a VAT return within the prescribed time period, he/she shall be liable to an administrative penalty of an amount equivalent to the higher of:

- (i) 1 percent of the excess, if any, of the output tax over the deductions, disregarding any excess credit brought forward from a previous tax period, as declared in the return; or
- (ii) Eur20.

The VAT penalties apply for every month or part thereof that elapses from the date by which the VAT return should have been furnished in accordance with the Maltese VAT Act and the date when it is submitted to the VAT department, subject to a cap of Eur250.

If a tax return contains an understatement of the output tax or an overstatement of the deductions for that period, the taxpayer further becomes liable to an administrative penalty equal to 20 percent of the total of the excess of the correct amount of output tax over the output tax as declared in the return; and the excess of the deductions as declared in the return over the correct amount of the deductions. The percentage is reduced to 10 percent if the taxpayer corrects the mistake before being served with a provisional assessment. A 20 percent penalty also applies to understatements of tax payable by persons registered under Article 12 of the Malta VAT Act. Certain additional penalties apply for offences such as failure to register for VAT.

Penalties may be reduced or mitigated if the taxpayer shows reasonable cause for a default, or cooperates with the Department with respect to its assessment.

SPECIAL CASES

The Maltese VAT Legislation provides for special rules and regimes for a number of sectors namely:

- Professional services
- Second-hand goods, works of art, collectors' items and antiques;
- Supplies by retailers and by civil, mechanical and electrical engineering contractors
- Travel agents;
- Investment gold

Professional services

Cash accounting option

This option allows persons who hold a warrant issued under any law in force in Malta to declare their supplies in the VAT return according to when the payment is received. This results as beneficial for cash flow purposes since the supplier would first get paid for the services provided before actually passing on the VAT to the authorities.

Specific regulations have been drawn up establishing how invoices and receipts are to be issued under the cash accounting option in order for it to work.

Second-hand goods, works of art, collectors' items and antiques;

Second hand goods can be considered to be goods which are suitable for further use as they are or after repair.

Option available to second hand good dealers

While the general rule in the VAT Act dictates that VAT is to be imposed on the consideration charged by the taxable person this scheme allows a second-hand goods dealer who supplies second-hand goods, works of art, collectors' items or antiques, charges and collects tax on the profit margin (exclusive of the VAT element).

It is important to note that if second hand dealers deal both in goods referred to above and other types of supplies, they are required to keep separate accounts to distinguish between the two types of supplies.

A restriction has been placed to limit the application of the margin scheme to specific goods acquired by the supplier, generally being goods on which the supplier was not charged VAT either because the seller is not VAT registered or the supply was an exempt without credit (but not an exempt with credit) supply. The Commissioner of VAT may also approve the application of the margin scheme with regards to imported goods and works of art purchased from their creators.

With the exception of second hand goods, VAT is charged at the reduced rate of 5% on supplies of works of art, collector's items and antiques. Therefore if the option is taken the VAT would be charged as follows:-

| | |
|----------------------------------------------|--------------------------------------|
| Works of art, collector's items and antiques | 5% x (selling price-purchase price) |
| Second hand goods | 18% x (selling price-purchase price) |

If the option is not taken, a second hand goods dealer may opt out of the special provisions, in which case VAT is chargeable on the consideration receivable rather than on the profit margin. In such a case, the other usual provisions would apply and in particular, the second hand goods dealer would have a right to claim a credit for input VAT on imports, purchases and services.

Supplies by retailers and by civil, mechanical and electrical engineering contractors

This part applies to retailers, civil, mechanical and electrical engineering contractors whose annual turnover does not exceed €2,000,000, exclusive of the tax.

Cash accounting option

Once again these suppliers are provided with an option whereby the time of supply shall be that point in time when a payment is effected or received. Therefore if such an option is taken the taxable person is to account for VAT on a cash rather than an accruals basis. If the cash basis accounting for VAT is adopted, the taxable value of these supplies is determined by reference to the value of the payment made or received. This option is intended to reduce the administrative burden on retailers and not to reduce the amount of VAT payable.

Travel agents

The Maltese VAT legislation provides special treatment for travel agents including tour operators.

Under this scheme the travel agent acts in his name and deals directly with customer using supplies & services of other parties providing travel facilities.

All services provided by the agent to the traveller relating to the journey in question are considered one transaction. The place of supply is considered to be where the travel agent is established.

The special scheme applicable to travel agents, provides that VAT is to be charged by the travel agent on the profit margin. Therefore the services provided to the traveller are taxed where they are actually consumed, whilst the service rendered by the travel agent is taxed in the country where such travel agent is established.

The taxable value is calculated as the price charged to the traveller (excluding VAT) less cost of supplies (inclusive of VAT) where such supplies are for the direct benefit of the traveller. Upon arriving at this

amount, one can only take into account those supplies supported by a tax invoice in cases where the Maltese legislation requires a tax invoice to be provided.

This scheme restricts the application of the tour operator margin scheme to travel agents who deal with travellers in their own name. Therefore in order for the special scheme to operate, the tour operator must acquire the supplies and services from the various providers and sell the various services as a single whole package.

The margin scheme is also excluded in the cases where the tour operator uses his own means to provide the service to the traveller.

A tour operator is not permitted to claim a credit for input VAT charged to him. Thus any VAT charged to the tour operator is a cost, which cost however is deductible in determining the profit margin on which VAT is to be charged to the traveller. This provision ensures that VAT for the various services bought by the travel agent on behalf of the traveller is payable in the country from where the respective services are being used and enjoyed.

Tax in danger

This is a special administrative arrangement whereby the Commissioner of VAT is empowered to issue written guidance to a taxable person, who is in receipt of supply in terms of a contract of supply, providing for such party to be deemed to have made that supply to himself. Under such instructions the recipient of the supply is required to account for and pay tax on the supply received.

Such instructions result in the application of a domestic reverse charge system, whereby the supplier does not charge VAT to the recipient whilst the recipient self-assesses VAT and at the same time claims a credit for the VAT which he charges to himself. In practice, the tax in danger arrangement is generally applied to the construction industry and ancillary activities and its application has been extended to other sectors in remote cases.

Investment gold

The option for taxation in the trade of investment gold applies to taxable persons who produce investment gold or transform any gold into investment gold as well as agents acting on behalf of such persons. In the absence of such option, the supply of gold would be exempt (with credit).

Investment gold is defined in the VAT Act as follows:

(a) gold, in the form of a bar or a wafer of weights accepted by the bullion markets, of a purity equal to or greater than 995 thousandths, whether or not represented by securities. Member States may exclude from the scheme small bars or wafers of a weight of 1g or less;

(b) gold coins which:

- (i) are of a purity equal to or greater than 900 thousandths,
- (ii) re-minted after 1800,
- (iii) are or have been legal tender in the country of origin, and
- (iv) are normally sold at a price which does not exceed the open market value of the gold contained in the coins by more than 80%.

Coins referred to in the above list shall not be considered to be sold for numismatic interest.

Special scheme for telecommunications, broadcasting or electronic services supplied by taxable persons not established within the Community (Non-EU scheme)

Under the Non-Union scheme, a taxable person is a business (be it a company, a partnership or a sole proprietor) which has not established its business in the EU, nor has a fixed establishment there, and it is not registered or otherwise required to be identified for VAT in the EU. Such taxable person is free to choose its Member State of identification.

In the Non-Union scheme the member state of identification can also be the Member State of consumption- i.e. the taxable person uses the Mini One Stop Shop to account for and pay the VAT on supplies of telecommunications, broadcasting or electronically supplied services to customers in the Member state of identification.

The information which the taxable person not established within the Community must provide to the Commissioner upon commencement of a taxable activity shall include the following details:

- (a) name;
- (b) postal address;
- (c) electronic addresses, including websites;
- (d) national tax number, if any;
- (e) a statement that the person is not identified for VAT purposes within the Community

The taxable person not established within the Community will be assigned an individual VAT identification number which will be communicated to him by the Commissioner electronically. On the basis of the information used for that identification, Member States of consumption may have recourse to their own identification systems.

Such taxable person can be struck off from the identification register only in the following cases:-

- (a) if he notifies the Commissioner that he no longer supplies telecommunications, broadcasting or electronic services;
- (b) if it may otherwise be assumed that his taxable activities have ceased;
- (c) if he no longer meets the conditions necessary for use of this special scheme;
- (d) if he persistently fails to comply with the rules relating to this special scheme.

This taxable person would need to electronically submit to the Commissioner a VAT return for each calendar quarter, whether or not telecommunications, broadcasting or electronic services have been supplied. The VAT return shall be submitted within 20 days following the end of the tax period covered by the return.

Special scheme for telecommunications, broadcasting or electronic services supplied by taxable persons established within the Community but not in the Member State of consumption

Under the Union scheme, a taxable person is a business (be it a company, a partnership or a sole proprietor) which has established its business or has a fixed establishment in the territory of the EU. The taxable person cannot use the Mini One Stop Shop for supplies made in any Member State in which it has a fixed establishment.

Under the Union Scheme, the Member State of identification has to be the Member State in which the taxable person has established his business-i.e. where a company has its head office, or a sole proprietor has his place of business.

With reference to the taxable transactions applicable to this scheme, a taxable person making use of this special scheme would be identified for VAT purposes in Malta only. For that purpose the Commissioner shall use the individual VAT identification number already allocated to the taxable person in respect of his obligations under the internal system. On the basis of the information used for that identification, Member States of consumption may have recourse to their own identification systems.

The Commissioner shall exclude the taxable person not established in the Member State of consumption from this special scheme in any of the following cases:-

- (a) if he notifies that he no longer supplies telecommunications, broadcasting or electronic services;
- (b) if it may otherwise be assumed that his taxable activities covered by this special scheme have ceased;
- (c) if he no longer meets the conditions necessary for use of this special scheme;
- (d) if he persistently fails to comply with the rules relating to this special scheme.

This taxable person which is not established in the Member State of consumption is required to submit a VAT return for each calendar quarter electronically, whether or not telecommunications, broadcasting or electronic services have been supplied. The VAT return shall be submitted within 20 days following the end of the tax period covered by the return.

The VAT return is required to show the identification number mentioned above for each Member State of consumption in which VAT is due, the total value, exclusive of VAT, of supplies of telecommunications, broadcasting or electronic services carried out during the tax period and the total amount per rate of the corresponding VAT. The applicable rates of VAT and the total VAT due must also be indicated on the return. Where the taxable person has one or more fixed establishments, other than that in Malta, from which the services are supplied, the VAT return shall in addition to the information referred to in the first paragraph include the total value of supplies of telecommunications, broadcasting or electronic services covered by this special scheme, for each Member State in which he has an establishment, together with the individual VAT identification number or the tax reference number of this establishment, broken down by Member State of consumption.

RIGHTS OF THE TAX PAYER AND THE VAT AUTHORITIES

To ensure compliance and to combat tax evasion and fraud, the VAT Department regularly carries out inspections through a team of VAT inspectors answerable to the Commissioner of VAT. The incidence or frequency of such audits is entirely at the discretion of the Commissioner. During such inspections the Commissioner may access premises where the business is being carried on, inspect books and request information.

Assessments

An assessment to determine the output tax due may be made by the Commissioner when a VAT return has not been submitted at any time between the expiration of the due date for submission of such return and the six years following the end of the tax period in question. The taxpayer is nevertheless still obliged to submit the VAT return and penalties will still apply for non-submission. The assessment may be cancelled by the Commissioner following the taxpayer's submission of the VAT return further to receiving an assessment. Nevertheless the Commissioner retains the right to assess further in terms of other provisions of the VAT Act.

A provisional assessment may be made by the Commissioner when a VAT return has been submitted by the tax payer when he has reason to believe that the return is incorrectly stated or incomplete. Such assessment may be issued any time generally until six years from the later of the date when the tax return was submitted or the end of the tax period in question. The taxpayer will have the right to confirm or contest such provisional assessment requesting adjustment.

At any time between one and six months from the date the provisional assessment has been served, the Commissioner will issue the assessment determining the output tax, deductions and the administrative penalty due and may not vary from the provisional assessment except for the requested amendments by the taxpayer or to adjust the provisional assessment figures closer to the amounts declared in the original VAT return submitted.

The Commissioner may cancel a provisional assessment and issue a new provisional assessment to replace it as long as this is done within the original time-frame for issuing provisional assessments.

Assessments may also be furnished to other persons should the Commissioner have reason to believe that an administrative penalty or tax is due.

The Commissioner may make additional or revised assessments within the established time limits except in respect of cases that have already been decided on appeal.

Appeal against an assessment

Any person may appeal to the Tribunal against an assessment issued. The Administrative Review Tribunal will hear and decide on the case and such decision may be challenged within 30 days from its notification. At this stage the appeal may only be on a point of law and an application must be filed with the Court of Appeal (Inferior Jurisdiction) or the Court of Appeal depending on the total value of the tax, administrative penalty and interest in question.

EU DECLARATIONS

Intrastat returns

The submission of such returns helps with the maintaining of records regarding information that covers arrivals and dispatches of goods to and from Malta and the Member States of the European Union only.

An annual supplementary information threshold for the arrivals and dispatches of goods to and from Malta and the Member States of the European Union is to be established in respect of each calendar year. Traders and enterprises whose value of annual gross merchandise arrivals and dispatches of goods to and from Malta, falls below this threshold, will be exempt from providing supplementary information about their transactions. On the other hand, traders and enterprises whose value of annual gross merchandise arrivals and dispatches of goods to and from Malta, exceeds the said established threshold, will have to provide regular information about their transactions.

The information in respect of arrivals and dispatches must be submitted to the Supplementary Information Collection Offices at the Customs Department on the appropriate forms which can be procured either from the Department of VAT itself or from the Supplementary Information Collection Offices at Customs Department, Valletta or at Customs Section at the Malta International Airport.

Traders using Courier service or Postal service are obliged to fill in the Supplementary Declaration within 24 hours of receipt of the goods.

Information on merchandise arrivals and dispatches are required to be submitted either by the trader, the enterprise, or by an authorised agent acting on behalf of traders and enterprises. In the latter case, traders and enterprises are required to inform the Commissioner of VAT through the Supplementary Information Collection Offices at the Customs Department, of their appointed authorised agent.

Recapitulative Statements

Taxable persons who are registered under Article 10 must also submit a Recapitulative Declaration listing all the sales made to taxable persons registered in other EU Member States in possession of a valid VAT registration number. Recapitulative declarations are filed only when sales are made by a Maltese tax registered person to a taxable person VAT registered in another EU member state (intra-community supply). Generally, the Recapitulative Statement is made on a quarterly basis but there are instances where these are required to be submitted on a monthly basis. The Recapitulative Declaration must include the aggregate value, in Euro, of the supplies made to each customer in the applicable taxable period.