

VAT Newsletter Q.1

2024

DECLARAZIONE
1. Identificare l'operazione
VAT-8

Local news

Malta Tax and Customs Administration News

By means of Legal Notice 231 of 2023, published on 6th October 2023 a new 12% VAT reduced rate regime was introduced, applicable on supplies taking place in Malta as from 1st January 2024. Pursuant to the publication, the Malta Tax and Customs Administration issued a number of guidelines in sequence to illustrate how the new rates were to be applied in practice:



1. Guidelines for the Application of the 12% VAT rate on the Hiring of Pleasure Boats – 31/01/2024

These guidelines mainly set out some scenarios in which the 12% reduced rate on the hiring of pleasure boats may be applied. The reduced rate is applicable to the hiring of pleasure boats to the same person for a period not exceeding five weeks occurring during the preceding twelve months. The twelve-month period is to be calculated from the beginning of the hiring and if the five-week threshold is exceeded, the supply of charter would then become liable to the standard VAT rate of 18%.

[Guidelines >](#)

2. Guidelines on the Application of the 12% VAT rate on the care of the Human Body – 05/02/2024

According to Items 11(1) and (2) of Part Two of the Fifth Schedule of the Malta VAT Act, for an exemption to apply on the supply of medical care, it needs to be provided by either a person in the exercise of any profession regulated by the Health Care Professions Act or the Psychology Act, or provided in a hospital or institution approved by the Minister for this purpose. In cases where the medical care exemption does not apply, such as when the supply is not of direct benefit for the patient or when it consists of the care of the human body, then the new reduced rate of 12% may be applied. The applicability of the reduced rate, however, is subject to such a supply being provided by persons in the exercise of a profession regulated by the Health Care Professions Act, otherwise the standard rate shall apply.

[Guidelines >](#)

3. Guidelines on the Application of the 12% VAT Rate on the Supply of Management of Credit and Credit Guarantees – 08/02/2024

The introduction of a 12% reduced VAT rate in this area is without prejudice to the application of the exemptions laid down in Item 3(1) and (2) of Part Two of the Fifth Schedule of the Malta VAT Act which limit the exemption on the management of credit and the management of credit guarantees to when these services are provided by the same person who granted the credit. As such where the credit or credit guarantee was managed by a person other than the one who granted the credit, the services were subject to the standard VAT rate of 18%. By application of the new reduced rate regime, as from 1st January 2024, such services will be eligible for a reduced rate of VAT of 12%.

[Guidelines >](#)

4. Guidelines on the Application of the 12% VAT rate on the Supply of Management of Securities – 12/03/2024

With effect from 01 January 2024 a reduced 12% VAT rate shall apply to the management of securities consisting in portfolio management services whether on a discretionary or advisory basis. For the avoidance of doubt the reduced rates shall not apply to services consisting of the provision of advice to persons such as that relating to capital structure, corporate strategy and related matters; advice or other similar services relating to mergers, and the purchase of undertakings and other similar matters. Nonetheless, the reduced rate is not intended to prejudice the application of the exemption laid down in Item 3(5) of Part Two of the Fifth Schedule to the Malta VAT Act.

[Guidelines >](#)

5. Guidelines on the application of the 0% VAT rate on devices and aids, including related goods, which are essential to compensate or overcome disability in humans. –05/03/2024

The guidelines outline the parameters in which the exemption introduced in Legal Notice 12 of 2024 can be applied to supplies, intra-community acquisitions, and importations made by non-profit making organisations specifically recognised as such by the CfTC for the purpose of the said exemption s on or after the 1st of January 2024 on devices and aids, included related goods, which are essential to compensate or overcome disabilities in humans For the avoidance of doubt, the exemption does not apply, under any circumstances, to supplies made by non-profit making organisations.

[Guidelines >](#)

Legal Notices

LN 12 of 2024

By publication of Legal Notice 12 of 2024, which transpose the provisions of Article 98(2) of Council Directive 2006/112/EC Malta introduced an exemption with deductibility of the VAT paid at the preceding stage, effective as from 01/01/2024 on supplies, acquisitions and importations by non-profit making organisations recognised as such by the CfTC for the purpose of the exemption, on devices and aids, including related goods, which are essential to compensate or overcome disability in humans. The Fifth Schedule to the VAT Act was duly amended by the introduction of Item 15 in Part One; Item 8 in Part Three; and Item 10 in Part Four.

Court of Appeal (Civil and Superior Jurisdiction)

Francis Grima pro et noe vs Il-Kummissarju tat-Taxxi – 829/2016/2 –

Decided on the 13th of February 2024

The Appellant had filed an appeal in the Court of Appeal (Civil and Superior Jurisdiction) to contest the decision of the Civil Court (First Hall) of 5th of February 2021 which established that the executive title instituted by the Commissioner against plaintiff was legally correct. In his application, appellant claimed that the first instance decision by the Civil Court (First Hall) was extra petita in nature, given that it not only considered the pleas raised by the Commissioner but included also pleas which were not raised. However, the Court of Appeal did not consider the grounds for appeal acceptable and proceeded to reject the appeal including the second point of appeal, namely regarding the competence of the Civil Court to refer the case back to the Administrative Review Tribunal for hearing. Additionally, the Court of Appeal confirmed the executive title instituted by the Commissioner against the appellant.

Steward Malta Management Limited vs il-Kummissarju tat-Taxxi – 1207/2021/1

Decided on the 11th of March 2024

Steward Malta Management Limited (“the Company”) had received a notification on the 8th of November 2021, from the Malta Tax and Customs administration to settle an outstanding VAT balance (including administrative penalties and interest) of €36,816,847.54 which was due for the periods covering May 2016 to June 2021.

On the 7th of December 2021 the Company filed a case to appeal this assessment in front of the Civil Court (First Hall) based on the reasoning that the Company was bought over by the current owners in 2018 and therefore a portion of the tax assessment under review was not related to the time when the current owners owned the Company but related to previous ownership.

During the first case, the MTCA raised a preliminary plea that the Civil Court (First Hall) did not have the competence to hear and decide such case, but rather the appeal should have been filed by the Company in front of the Administrative Review Tribunal as is established through articles 43 and 44 of the Malta VAT Act. Whilst it was acknowledged that the Civil Court (First Hall) has competence to determine cases of a civil nature, should the case at hand, however, be of a specific nature of which a dedicated tribunal is set up for, then it is that tribunal who has competence to hear and decide such case.

The Company filed an appeal as it believed the Civil Court (First Hall) should have not decided the case itself, but rather referred the case itself, to the Administrative Review Tribunal. The Court of Appeal in its Civil and Superior jurisdiction accepted the appeal brought forward by the Company and ordered that the case to be heard in front of the competent tribunal, i.e. the Administrative Review Tribunal.

Administrative Review

Tribunal

No VAT appeals decisions were published during this calendar quarter.



EU news

VAT Committee Meetings

No meetings were held during this calendar quarter.

VAT Expert Group Meetings

No meetings were held during this calendar quarter.

Group on the Future of VAT Meetings

No meetings were held during this calendar quarter.

CJEU decisions – latest selection update

C-676/22 – B2 Energy s.r.o. vs Odvolaci finacni reditelstvi

This ruling from the Court of Justice of the European Union deals with the interpretation of the intra-Community supply (“ICS”) exemption when goods are delivered to a buyer different from the one specified in tax documents according to the legal framework in place until December 31, 2019.

B2 Energy conducted deliveries of rapeseed oil from the Czech Republic to Poland, claiming such VAT exemption for these supplies. However, the tax authority contested this, arguing that the company failed to demonstrate that the goods were delivered to the designated recipients mentioned in the tax documents.

The national court seeking guidance wanted to clarify whether the ICS exemption could be contested when the supplier could not verify delivery to the specified consignee in the tax documents but could provide evidence of the actual recipients' identity as the owners of the goods.

The Court stipulated that rejection of the ICS exemption should not occur solely because goods physically reached a recipient different from the one mentioned in the tax documents. It stated that a taxpayer should not have to prove the recipient's taxable status if it's evident from the facts that the recipient held that status.

This judgment holds significance within the legal framework preceding the enactment of the Quick Fixes package. Currently, under this package, identifying the recipient of goods is imperative for applying the ICS exemption, necessitating the buyer's VAT identification number to be supplied by the buyer and noted by the supplier in the recapitulative statement.

C-733/22 – Direktor na Direktsia ‘Obzhalvane i danachno-osiguritelna praktika’ – Sofia pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite vs ‘Valentina Heights’ EOOD,

A Bulgarian company owned a block of holiday accommodations name “Valentina Heights”, with such accommodation licensed under the Bulgarian Tourism authority as a “guest house”. The company enjoyed a reduced VAT rate for the provision of such accommodation. However, when the company changed the licensing category of the “Valentina Heights” accommodation, the tax authorities took the view that the reduced rate could no longer apply as the accommodation lacked a valid categorisation.

The company objected to this and brought a case in front of the national court, who in turn referred the case to the European Court of Justice. The referring court essentially asked whether Article 98(2) of Council Directive 2006/112/EC precludes national legislation which makes the applicability of the reduced VAT rate contingent on the holding of a categorisation certificate?

The European Court of Justice held that should a Member State choose to attach a criterion or a specific for the application of a reduced rate, the Member State must ascertain that, such a selective application for a reduced rate to apply, should be concrete, specific and comply with fiscal neutrality. Since the company's supplies did not change in their nature the dependence of the reduced rate to apply dependant on a categorisation certificate, failed to abide to the principle of fiscal neutrality.

Should you require further information please contact:

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Disclaimer

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The information contained in the newsletter is intended to serve solely as guidance and any content of a legal nature therein does not constitute or should be interpreted as constituting legal advice. Consulting your tax practitioner is recommended in case you wish to take any decision connected to content of this newsletter.

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