CHAPTER 406

VALUE ADDED TAX ACT

To make provision for the imposition of a value added tax in place of an excise tax system on imports, products and services.

1st January, 1999

ACT XXIII of 1998, as amended by Legal Notices 17, 21, 22, 28, 29, 30, 60, 89, 116, 142, 198, 199, 200, 201, 217, 223 of 1999, 11, 271, 272, 273 and 274 of 2000, and 23, 24, 25, 93 and 94 of 2001; Act VI of 2001; Legal Notices 149, 171, 233, 234 and 235 of 2001, 180, 205, 387, 388 and 389 of 2002, and 39, 375 and 384 of 2003, and 149 of 2004; Acts X of 2003, and II and III of 2004; Legal Notices 250, 376, 436, 489 and 520 of 2004; Act XIII of 2005; Legal Notices 171, 181, 186 and 334 of 2006; Acts IV, XIX and XXXII of 2007; Legal Notices 121, 122, 123, 124, 426, 443, 444, 445, 446, 447 and 448 of 2007, 105 and 335 of 2008, and 34, 86, 132, 133, 137, 234 and 235 of 2009; Acts II of 2009 and I of 2010; Legal Notices 71, 72, 73, 286, 425, 444, 499, 523, 532, 533, 534, 535 and 536 of 2010, and 61, 234, 379, 380, 381, 382, 499 and 500 of 2011; Acts IV, V and XXII of 2011; Legal Notices 38, 39, 89, 185, 418, 419, 420, 421, 422, 423, 424, 425 and 426 of 2012; Act V of 2012; Legal Notices 64, 140, 141 and 142 of 2013; Acts III and XIV of 2013; Legal Notices 236, 345 and 422 of 2013, Acts XII and XLIII of 2014; Legal Notices 480 of 2014, and 64 and 65 of 2015; and Act XIII of 2015.

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PART I

Preliminary

1. The short title of this Act is the Value Added Tax Act.

Short title.

2. (1) In this Act, unless the context otherwise requires -

Interpretation.
Substituted by: X. 2003.3.
Amended by: XXII 2011.5; L.N. 89 of 2012; XII. 2014.77.

"accession date" means the 1st May 2004;

"accommodation", when provided on a bed and breakfast, half board or full board basis, includes the provision of any services normally falling within the meaning of accommodation on such a basis and included in the price therefor;

"acquisitions threshold" means the threshold determined in accordance with Part Two of the Sixth Schedule;

"administrative penalty" means a penalty imposed in virtue of the provisions of Part V;

"assessment" means an assessment that may be made in virtue of the provisions of Part V but does not include a provisional assessment;

"Commissioner" means the Commissioner for Revenue appointed in terms of the provisions of article 3(1) or any public officer or other person to whom a delegation has been made in accordance with subarticle (2) or (3) of that article while he is acting within the terms of that delegation;

"Community" means the territories of the Member States as defined in the Fifteenth Schedule;

"customs duty suspension regime" has the meaning assigned to it in the Fourth Schedule;

"distance sale" has the meaning assigned to it in the Third Schedule;

"economic activity" has the meaning assigned to it in article 5;

"established" shall be construed in accordance with the provisions of subarticles (2) and (3) of this article;

"excise goods" means the goods defined in the Sixteenth Schedule;

"exempt supply", "exempt acquisition" or "exempt importation" means a supply, an intra-community acquisition or an importation which is exempt in terms of article 9;

"exempt with credit supply" is a supply to which Part One of the Fifth Schedule applies;

"exempt without credit supply" is a supply to which Part Two of the Fifth Schedule applies;

"goods" means any asset the supply of which is treated as a supply of goods in terms of the Second Schedule;

"goods forming part of an economic activity" means goods, including fixed assets, used by a taxable person for the purpose of his economic activity;

"importation" has the meaning assigned to it in the Second Schedule, and "imported" shall be construed accordingly;

"importer" with respect to imported goods means the person in whose name the goods are at the time when tax on the importation becomes chargeable in accordance with the Fourth Schedule;

"input tax" has the meaning assigned to it in article 22(2) and "input tax credit" has the meaning assigned to it in article 22(3);

"intra-community acquisition" has the meaning assigned to it in the Second Schedule;

"intra-community supply" means a supply of goods that are transported by or on behalf of the supplier or the person to whom the supply is made from a Member State to another Member State;

"Malta" has the meaning assigned to it by the Constitution and includes the continental shelf thereof;

"Member State" has the meaning assigned to it in the Fifteenth Schedule;

"Minister" means the Minister responsible for finance;

"new means of transport" means a means of transport to which paragraph (*a*) hereof applies and which meets the conditions of paragraph (*b*) hereof -

(*a*) this paragraph applies to a vessel exceeding 7.5 metres in length, an aircraft the takeoff weight of which exceeds 1,550 kilograms or a motorised land vehicle the capacity of which exceeds 48 cubic centimetres or the power of which exceeds 7.2 kilowatts, intended for the transport of passengers or goods except for:

(i) a sea-going vessel which is used for navigation on the high seas and carrying passengers for reward, or for the purpose of commercial, industrial or fishing activities, or for rescue or assistance at sea, or for inshore fishing but does not include ships' provisions; and

(ii) aircraft used by airlines operating for reward chiefly on international routes;

(*b*) the conditions that must be met for the purpose of this definition are:

(i) in the case of a land vehicle, that it was supplied not more than six months after the date of first entry into service or has not travelled more than 6,000 kilometres;

(ii) in the case of sea vessels, that it was supplied not more than three months after the date of first entry into service or has not sailed for more than 100 hours;

(iii) in the case of an aircraft, that it was supplied not more than three months after the date of first entry into service or has not flown for more than 40 hours;

"non-taxable legal person" means a person, other than a physical person, who is not a taxable person;

"non-taxable person" means a person who is not a taxable person;

"notice of payment" means the notice required to be furnished in terms of article 30(2);

"output tax" has the meaning assigned to it in article 22(1);

"person" includes a physical person, a body of persons, a public authority and any entity capable of carrying on an economic activity;

"provisional assessment" means a provisional assessment made in terms of article 32;

"public authority" means the Government of Malta, a department or division of the Government of Malta, a local council set up in accordance with the Local Councils Act, an authority vested with distinct personality set up by an Act of Parliament or a corporation constituted by an Act of Parliament; Cap. 363.

"self-supply" means the use or application of goods forming part of the economic activity of a person that does not consist of the delivery of goods to or the performance of services for another person but which is treated as a supply of goods or a supply of services in terms of the Second Schedule;

"supply" means an operation which is treated as a supply of goods or a supply of services in terms of the Second Schedule;

"tax" means the value added tax chargeable under this Act but does not include an administrative penalty or interest;

"tax invoice" means an invoice or a document serving as invoice that contains the information required by the Twelfth Schedule;

"tax period" means a period determined in accordance with article 17;

"tax return" means the return required to be furnished in terms of article 27;

"taxable acquisition" means an intra-community acquisition on which tax is chargeable in terms of article 4 and which is not exempt from tax in terms of article 9;

"taxable importation" means an importation on which tax is chargeable in terms of article 4 and which is not exempt from tax in terms of article 9;

"taxable person" has the meaning assigned to it in article 5;

"taxable supply" means a supply on which tax is chargeable in terms of article 4 and which is not exempt from tax in terms of article 9;

"taxable value" means the value of a supply, of an intra-community acquisition or of an importation determined in accordance with the Seventh Schedule;

"third territory" means any territory which is not a Member

State;

"transport" and "transported" include dispatch and dispatched;

Cap. 490.

"Tribunal" means the Administrative Review Tribunal established by article 5 of the Administrative Justice Act;

"value added tax identification number" means an individual number assigned by the competent authority of a Member State that has a prefix in accordance with ISO International Standard 3166 - alpha 2, and "a person identified for value added tax purposes in a Member State" means a person to whom such an individual number has been assigned and who, for the purpose of a supply, communicates that number to the supplier.

(2) The provisions of this subarticle and of subarticle (3) shall apply for the purpose of determining the place where a person is established:

(*a*) a taxable person is established in a country if he has established his economic activity or has a fixed place of establishment from which he carries on that economic activity in that country or, being a physical person who has not fixed his economic activity or who does not have a fixed place of establishment in any country, has a permanent address or usually resides in that country;

(*b*) a non-taxable legal person is established in a country if it is constituted under the law of that country or if it has a fixed place in that country from which it carries on its activities;

(*c*) a non-taxable physical person is established in the country where he has a permanent address or usually resides.

(3) Where, in terms of subarticle (2), a taxable person falls to be treated as established in Malta and in another country with respect to the same transaction, and where it is necessary for the proper application of any provision of this Act that he should be treated as established only in one of those two countries, he shall, to the extent that it is so necessary, be treated as established only in the country with which that transaction is more closely connected.

Administration. *Amended by: XXII 2011.5.*

3. (1) The administration of the Act is vested in the Commissioner for Revenue, hereinafter in this Act referred to as "the Commissioner", who shall be a public officer appointed as such by the Prime Minister.

(2) The Commissioner may delegate to any public officer any of the rights, duties, powers and other functions vested in him, conferred to him or imposed upon him by this Act.

(3) The Commissioner may delegate to any other person such of the rights, duties, powers and other functions vested in him, conferred to him or imposed upon him by this Act as the Minister may direct in writing:

Provided that the Commissioner may not delegate those

rights, duties, powers and other functions vested in him if that person is not considered by the Commissioner as a fit and proper person to exercise those rights, duties, powers and other functions and that such person shall be subject to the obligations imposed by article 56.

PART II

Scope of the Tax

Charge to tax. *Substituted by: X. 2003.4. Amended by: IV. 2011.73.*

4. Subject to the other provisions of this Act there shall be charged, levied and collected on account of the Government a value added tax -

(*a*) on every supply of goods or of services that takes place in Malta made on or after 1 January 1999 for consideration by a taxable person acting as such other than a supply made by a person registered under article 11 or by a person who is exempted from registration under article 11, as the Minister may by regulations prescribe;

(*b*) on every intra-community acquisition made for consideration on or after the accession date in Malta where -

(i) it is an acquisition of goods, other than new means of transport and excise goods, made by a taxable person acting as such who is registered under article 10 or 12 or a non-taxable legal person who is registered under article 12 pursuant to an intra-community supply that -

(A) takes place outside Malta; and

(B) is made by a taxable person acting as such who is not eligible, with respect to that supply, for an exemption under a special scheme for small undertakings in force in a Member State; or

(ii) it is an acquisition of new means of transport made by any person; or

(iii) it is an acquisition of excise goods made by a taxable person or a non-taxable legal person;

(*c*) on every importation that takes place in Malta on or after 1 January 1999.

Taxable person and economic activity. *Amended by: X. 2003.5; III. 2013.72.*

5. (1) "Taxable person" means a person who carries on an economic activity, whatever the purpose or result of that activity.

(2) Saving the provisions of subarticle (3) an economic activity means an activity carried on by a person, other than an employee acting as such, and consisting of any one or more of the following -

(*a*) any trade or business;

(*b*) any profession or vocation and the provision of any personal services;

(*c*) the exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis;

(*d*) the provision by a club, association or organisation (for a subscription or other consideration) of the facilities or advantages available to its members;

(*e*) the admission, for a consideration, of persons to any premises.

(3) The activities of a public authority acting in the exercise of the functions assigned to it by law shall not be deemed to be an economic activity except as and to the extent provided in the First Schedule and except where such treatment as non-taxable persons would lead to significant distortions in competition.

(4) A person who does not carry on an economic activity within the meaning of the foregoing provisions but who, from time to time, makes an intra-community supply of new means of transport shall, for the purpose of any such supply, be treated as a taxable person.

(5) For the purpose of this article "employee" means an individual bound to an employer by a contract of employment or by other legal ties creating the relationship of employer and employee as regards working conditions, remuneration and the employee's liability and includes the holder of an office.

(6) After consultation with the VAT Committee set up in accordance with Article 398 of Council Directive 2006/112/EC, the Minister may make regulations to regard as a single taxable person any persons established in Malta who, while legally independent, are closely bound to one another by financial, economic and organisational links.

Operations constituting supplies, intra-community acquisitions and importations. *Substituted by: X. 2003.6.*

6. The provisions of the Second Schedule shall apply for the purpose of determining any question as to whether an operation is to be treated as:

(*a*) a supply of goods, a supply of services, an intra-community acquisition or an importation;

(*b*) made for consideration;

(*c*) made by a taxable person acting as such.

Place of supplies, intra-community acquisitions and importations. *Substituted by: X. 2003.7.*

7. The provisions of the Third Schedule shall apply for the purpose of determining the place where a supply or an intra-community acquisition or an importation takes place.

Date of the chargeable event and date when tax becomes chargeable. *Substituted by: X. 2003.8.*

8. The date when a chargeable event takes place and the date when tax thereon becomes chargeable shall be determined in accordance with the provisions of the Fourth Schedule.

Exemptions. *Substituted by: X. 2003.9.*

9. (1) There shall be exempt from tax -

(*a*) the supplies to which Part One or Part Two of the Fifth Schedule applies;

(*b*) the intra-community acquisitions to which Part Three of the Fifth Schedule applies;

(*c*) the importations to which Part Four of the Fifth Schedule applies.

(2) Any provision contained in or under any law empowering the Minister to grant an exemption from import duties on the importation of goods chargeable under the Import Duties Act shall be construed as empowering the Minister to grant, in the same circumstances, in the same manner, and subject to the same conditions and limitations provided for in any such provision, an exemption from tax chargeable under this Act on the importation of the said goods.

Cap. 337.

PART III

Registration and Tax Period

Registration of taxable persons. *Substituted by: X. 2003.10. Amended by: II. 2009.37; V. 21012.59.*

10.(1)(*a*) A taxable person established in Malta who is not registered under this article or under article 11 shall apply to be registered under this article by not later than thirty days from the date on which he makes a supply for consideration in Malta other than an exempt without credit supply.

(*b*) A taxable person established in Malta who is not registered under this article or under article 11 and who supplies services within the territory of another Member State for which the tax is payable solely by the recipient shall apply to be registered under this article by not later than thirty days from the date on which he makes a supply for consideration.

(2) Paragraph (a) of subarticle (1) does not apply to a person who is treated as a taxable person only by reason of the fact that he makes, from time to time, an intra-community supply of new means of transport.

(3) A taxable person established in Malta who is not registered under this article shall, if so requested by the Commissioner, apply to be registered under this article within thirty days from the date on which he is served with a notice containing such a request.

(4) A taxable person who is not established in Malta, who is not registered under this article and who is liable for the payment of the tax on a supply in terms of article 20 shall apply to be registered under this article by not later than thirty days from the date of that supply.

(5) Any person who is not a person registered under this article and who carries on or intends to carry on an economic activity may apply to be registered under this article.

(6) The Commissioner shall register under this article:

(*a*) every person who in his opinion is liable to apply for registration in terms of subarticles (1), (3) or (4);

(*b*) any person who has made an application in terms of subarticle (5) if the Commissioner is satisfied that that person carries on or intends to carry on an economic activity and -

(i) is likely to be entitled, if he becomes so registered, to claim input tax credits under the provisions of article 22; or

(ii) has made or is likely to make an intra-community acquisition in Malta for the purpose of operations carried out outside Malta;

(*c*) any person whose registration under article 11 is cancelled in accordance with subarticle (5) thereof.

(7) (*Deleted by Act V. 2012.59*).

(8) Without prejudice to article 11(3), the Commissioner may at any time cancel the registration of a person under this article if he has reason to believe that that person would not, if he were not so registered, be required to apply for registration or entitled to be registered under this article.

(9) Nothing in this article shall prevent or shall be deemed to prevent the Commissioner from enforcing any of the provisions of Council Regulation (EU) No. 904/2010 of the 7th October 2010, or of any other Council Regulation (EU) which substitutes or amends the said Council Regulation (EU).

Registration of taxable persons carrying on a small undertaking. *Substituted by: X. 2003.10.*

11. (1) When a taxable person established in Malta who is not registered under this article carries on an economic activity which qualifies as a small undertaking in terms of the provisions of the Part One of the Sixth Schedule he may apply to the Commissioner to be registered under this article.

(2) The Commissioner shall register under this article any person who has made an application under subarticle (1) if he is satisfied that that person is eligible for such registration.

(3) When a person is, immediately before his registration under this article, registered under article 10 the Commissioner shall, upon the registration of that person under this article, cancel the registration under article 10.

(4) A person registered under this article -

(*a*) may, at any time, apply to the Commissioner for the cancellation of his registration under this article;

(*b*) shall, within thirty days from the date on which his economic activity does no longer qualify as a small undertaking in terms of the relevant provisions of Part One of the Sixth Schedule, apply to the Commissioner for the cancellation of that registration.

(5) When a taxable person makes an application for the cancellation of his registration under this article or where the Commissioner has reason to believe that the economic activity of a

person does no longer qualify as a small undertaking in terms of the relevant provisions of Part One of the Sixth Schedule, the Commissioner shall cancel the registration of that person under this article and register that person under article 10.

(6) Without prejudice to subarticle (5), the Commissioner may at any time cancel the registration of a person under this article if he has reason to believe that that person does not carry on or has ceased to carry on an economic activity or that it is not likely that his economic activity will include any activities other than exempt without credit supplies.

Registration of persons who make intra-community acquisitions. *Substituted by: X. 2003.10. Amended by: II. 2009.38.*

12. (1) When a taxable person who is not registered under article 10 or a non-taxable legal person intends to make an intra-community acquisition in Malta and, on account of that acquisition, the value of his intra-community acquisitions in Malta during the calendar year in which he makes that acquisition exceeds the acquisitions threshold he shall apply to be registered under this article, unless he is already so registered, by not later than the date of that acquisition.

(2) For the purpose of subarticle (1), a taxable person who is not registered or liable to be registered under article 10 or a non-taxable legal person may, unless he is registered under this article, at any time apply to be registered under this article.

(3) A taxable person established in Malta, other than a taxable person registered under article 10, who receives services for which he is liable to pay the tax pursuant to article 20(2), shall apply to be registered under this article by not later than the date on which he receives a service.

(4) The Commissioner shall register under this article any person who in his opinion is liable to apply for such registration in terms of subarticles (1) or (3) or who makes an application for registration when he is so entitled in terms of subarticle (2).

(5) When a person is liable to apply for registration in terms of subarticle (1) on account of an intra-community acquisition, the registration of that person under this article shall be deemed to be effective as from the date of that acquisition.

(6) A person registered under this article in the circumstances mentioned in subarticle (1) may apply for the cancellation of his registration at any time after the expiration of the calendar year following that in which he was so registered if the value of his intra-community acquisitions has not exceeded the acquisitions threshold in the year in which he makes such an application or in the preceding calendar year.

(7) A person registered under this article upon an application in accordance with subarticle (2) may apply for the cancellation of his registration at any time after the expiration of two consecutive calendar years following the year in which he was so registered if the value of his intra-community acquisitions has not exceeded the acquisitions threshold in the year in which he makes such an application or in the preceding calendar year.

(8) A person registered under this article in the circumstances mentioned in subarticle (3) may apply for the cancellation of his registration at any time if he no longer receives supplies of services for which he is liable to pay the tax pursuant to article 20(2).

(9) The value of intra-community acquisitions for the purpose of this article shall be determined in accordance with Part Two of the Sixth Schedule.

(10) The Commissioner shall cancel the registration of a person under this article -

(*a*) if that person is registered under article 10, in which case the cancellation shall take effect from the effective date of the said registration:

Provided that if that person ceases to be registered under article 10 on a date when he would not have been entitled to apply for the cancellation of his registration under this article had he remained registered under this article, the Commissioner shall, on that date, register that person again under this article; or

(*b*) if that person is entitled to have his registration under this article cancelled and applies for such a cancellation in accordance with subarticle (6) or (7) or (8), in which case the cancellation shall take effect on 1 January of the year in which the application is made.

General provisions with respect to registrations. *Substituted by: X. 2003.10. Amended by: V. 2012.60; III. 2013.73.*

13. (1) An application for registration or for the cancellation of a registration under this Part shall be made on such form as the Minister may by regulations prescribe and shall contain the particulars specified in that form.

(2) The Commissioner shall allocate a registration number to every person registered under article 10, 11 or 12 and shall deliver a registration certificate to every such person containing the registration number, the article under which the registration was made, the effective date of the registration and such other particulars as the Commissioner may deem appropriate. The Commissioner may change the registration number of any person as he may consider necessary and shall notify that person of any such change.

(3) A registration number allocated under article 10 or 12 shall have the prefix "MT" in accordance with ISO International Standard 3166 - alpha 2. A registration number allocated under article 11 shall not have such a prefix and shall not be treated for any purposes of this Act as a value added tax identification number.

(4) When the registration of a person under article 10, 11 or 12 is cancelled the Commissioner shall serve a notice on that person indicating the effective date of the cancellation.

(5) The cancellation of the registration of a person shall not relieve that person from any liability incurred under this Act in virtue of anything done before the date of the cancellation or from the obligation to make an application for a fresh registration in any

of the circumstances under which he is required to apply for registration in terms of any provision of this Part.

(6) A number of persons regarded as a single taxable person in terms of article 5(6) in accordance with regulations as may be prescribed shall be registered as one person.

(7) The Minister may by regulations exempt any person or class of persons from any of the provisions of this Part and may by such regulations make such an exemption subject to such conditions and limitations as may be prescribed.

(8) Every person registered under articles 10, 11 or 12 shall, within fifteen days from the happening of any of the following events, notify that event in writing to the Commissioner:

(*a*) a change in circumstances that affects the particulars declared in the application for his registration under articles 10, 11 or 12 or otherwise furnished to the Commissioner in connection with his registration or appearing in the registration certificate;

(*b*) the cessation or transfer of his economic activity or part thereof;

(*c*) such other event as may be prescribed.

Further classification of registered persons. *Substituted by: X. 2003.10.*

14. Without prejudice to the other provisions of this Part the Commissioner may classify persons registered under this Part by reference to the description or sector of their activities and such other matters as he may deem necessary or appropriate and any classification so made shall unless the contrary is proved be deemed to be a correct classification for the purpose of determining the applicability or otherwise of any provision of this Act to which the classification may be relevant.

Notice relating to certain operations. *Substituted by: X. 2003.10. Amended by: III. 2004. I14; XIII. 2005.41.*

15. (1) Any person who is not registered under article 10 or 12 and who intends to make an intra-community acquisition of a new means of transport shall give notice thereof to the Commissioner by not later than the date of that acquisition.

(2) Any person who is not registered under article 10 and who intends to make an intra-community supply of a new means of transport shall give notice thereof to the Commissioner by not later than the date of that supply.

(3) Any taxable person or non-taxable legal person who is not registered under article 10 or 12 and who intends to make an intra-community acquisition of excise goods shall give notice thereof to the Commissioner by not later than the date of that acquisition.

(4) A notice to the Commissioner under this article shall be given with respect to each transaction to which this article applies on such form as the Minister may by regulations prescribe.

Information by persons who are not registered under this Part. *Substituted by: X. 2003.10.*

16. Every taxable person or non-taxable legal person who is not registered under this Part shall supply any such information relating to the date of the commencement or cessation of his activity, the nature of that activity and the transactions made in the course or furtherance thereof as may be prescribed.

Tax period.
Substituted by: X. 2003.10.

17. (1) The Commissioner shall allocate a tax period to every person registered under article 10.

(2) Except as otherwise provided in this article a tax period means a period of three calendar months commencing on the first day immediately following the end of the preceding tax period.

(3) The Minister may by regulations prescribe in respect of such class or classes of persons as may be specified in the said regulations a tax period of more or less than three months.

(4) The first tax period for a person shall commence on the date that person is registered under article 10 and end on such date as may be determined by the Commissioner.

(5) When, during a tax period of a person, his registration under article 10 is cancelled, that period shall end on the last day of the month in which that cancellation is made and shall be the last tax period of that person, saving the allocation of a new tax period to that person should he be subsequently registered again under article 10.

(6) The Commissioner may by means of a notice served on a person registered under article 10 in any particular case vary any tax period for that person in such manner as may be specified in that notice.

PART IV

Determination and Payment of the Tax

Taxable value.
Substituted by: X. 2003.10.

18. The taxable value of supplies, intra-community acquisitions and importations shall be established in the manner laid down in the Seventh Schedule.

Rate of tax.
Substituted by: X. 2003.10. Amended by: II. 2004.66; III. 2004.114.

19. (1) The tax chargeable on every taxable supply, other than a supply referred to in subarticle (2), shall be at the rate of eighteen per cent of the taxable value of the supply.

(2) The tax chargeable on every taxable supply specified in the Eighth Schedule shall be at such rate or rates, not being higher than eighteen per cent or lower than five per cent of the taxable value of the supply, as specified in that Schedule.

(3) The tax chargeable on every taxable intra-community acquisition of goods shall be that applicable to the supply of like goods in terms of the foregoing provisions of this article.

(4) The tax chargeable on every taxable importation, other than an importation referred to in subarticle (5), shall be at the rate of eighteen per cent of the taxable value of the importation.

(5) The tax chargeable on every taxable importation as may be specified in the Eighth Schedule shall be at such rate or rates, not being higher than eighteen per cent or lower than five per cent of the taxable value of the importation, as may specified in that Schedule.

Persons liable for the payment of the tax.
Substituted by: X. 2003.10.
Amended by: II. 2009.39.

20. (1) Saving the other provisions of this article -

(*a*) the payment of the tax on a taxable supply shall be a liability of the person who makes the supply;

(*b*) the payment of the tax on a taxable acquisition shall be a liability of the person who makes the acquisition;

(*c*) the payment of the tax on a taxable importation shall be a liability of the importer.

(2) The payment of the tax on a taxable supply made by a person who is not established in Malta and who is not registered under article 10 to a person established in Malta shall be a liability of the person to whom the supply is made if the supply is -

(*a*) a supply of goods made to a taxable person registered under article 10 or 12 or to a non-taxable legal person registered under article 12 who is identified as such on a tax invoice for that supply, where:

(i) the person who supplies the goods is identified for value added tax purposes in another Member State and has made an exempt intra-community acquisition of those goods in Malta for the purpose of that supply; and

(ii) the goods acquired under the said intra-community acquisition were transported from a Member State, other than the State where the taxable person who made the supply is so identified, to the person to whom the supply is made; and

(iii) the supplier designates the person to whom the supply is made as the person liable to pay the tax on that supply; or

(*b*) a supply of services made to a taxable person or a non-taxable legal person identified for purposes of Value Added Tax in terms of item 2(1) in Part Two of the Third Schedule; or

(*c*) a supply of goods or of services, other than a supply to which paragraph (a) or (b) refers, made to a taxable person registered under article 10 or article 12, or to a non-taxable legal person identified for purposes of Value Added Tax:

Provided that, for the purposes of this subarticle, a taxable person who has a fixed establishment within Malta shall be regarded as a taxable person who is not established within Malta when the following conditions are met:

(i) he makes a taxable supply of goods or of services within Malta;

(ii) an establishment which the supplier has within Malta does not intervene in that supply.

(3) When a person mentions the tax on an invoice or a document serving as an invoice for a supply he shall, unless he is the person liable for the tax in terms of the foregoing provisions of

this article, be jointly and severally liable for the tax on that supply together with that person.

(4) A person who is a representative of another person in terms of article 66 shall, within the limits set out in that article, be jointly and severally liable for the tax together with the person of whom he is a representative.

Payment of the tax.
Substituted by: X. 2003.10. Amended by: XIII. 2005.42; II. 2009.40; V. 2011.28; L.N. 89 of 2012; V. 2012.61; XIV. 2013.2.

21. (1) Every person registered under article 10 shall pay to the Commissioner by not later than the date on which he is required to furnish a tax return for a tax period an amount equivalent to the excess, if any, of the output tax for that period over the deductions that he has a right to make in accordance with article 23: Provided that that person may set off any excess tax credit for a previous tax period, that has not been refunded or become refundable in terms of article 24, against any tax payable in accordance with this sub-article.

(2) Every person liable for the payment of the tax in accordance with article 20(1) or (3), other than tax payable in accordance with subarticle (1) of this article, shall pay that tax to the Commissioner by not later than the fifteenth day of the month following that during which it becomes chargeable.

(3) Every person liable for the payment of the tax in accordance with article 20(2), other than tax payable in accordance with subarticle (1) of this article, shall pay that tax to the Commissioner by not later than the fifteenth day of the second month next following either the date of invoice or of the month during which the consignment or the supply of services is received, as the case may be, whichever is the earlier.

(4) Interest shall be due on any tax which is not paid by the date on which it becomes payable at a rate which the Minister shall, from time to time, by regulations prescribe for each month or part thereof during which that tax remains unpaid or at such other rate as may be prescribed:

Provided that the running of interest on any amount of tax due which is the merit of an appeal before the Tribunal, shall be suspended for the period that exceeds two months from the date of the last sitting of the Tribunal relating to such appeal and the date when a decision is given by the Tribunal or a final judgement is delivered by the Court of Appeal (Inferior Jurisdiction), as the case may be:

Provided further that the Minister may by regulations prescribe conditions under which part or all the interest incurred under this subarticle may be remitted. Such regulations may also make provision for the remission of any interest due under the Value Added Tax Act, 1994, and under the Customs and Excise Tax Act.

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(4A) Notwithstanding the other provisions of this article, no interest shall be due where a return required to be furnished under article 27 is furnished in an electronic format through the established web portal designated for the purpose by the Commissioner, together with payment of the tax due on the return,

not later than seven days following the date on which the tax becomes payable under the provisions of this Act.

(4B) Notwithstanding the other provisions of this article, interest in a particular tax period shall cease to accrue where the total amount of payments appropriated to that tax period in terms of article 67 is equivalent to or exceeds the amount of tax payable for that tax period.

(5) The payment of the tax shall be accompanied by the delivery to the Commissioner of the respective form as the Minister may by regulations prescribe: Provided that tax on importations shall be payable to the Comptroller of Customs on behalf of the Commissioner and shall be made at such place and be accompanied by such forms as the Comptroller may direct.

Output tax, input tax and credit for input tax. *Substituted by: X. 2003.10. Amended by: XLIII. 2014.2.*

22. (1) The output tax of a person registered under article 10 is the tax on supplies and on intra-community acquisitions that becomes chargeable during that period and for which that person is liable in terms of article 20(1) and (2).

(2) The input tax of a taxable person is the tax that becomes chargeable on -

(*a*) supplies made to him,

(*b*) intra-community acquisitions made by him, and

(*c*) importations made by him,

to the extent that the supplies so made and the goods so acquired or imported have been or are intended to be wholly used by him in the course or furtherance of his economic activity.

(3) Subject to subarticle (5) -

(*a*) the input tax credit for a tax period of a person registered under article 10 is an amount equivalent to so much of the input tax of that person that becomes chargeable during that period as is attributable to supplies made or intended to be made by him, being supplies to which subarticle (4) applies;

(*b*) the input tax credit for the last tax period of a person whose registration under article 10 has been cancelled is an amount equivalent to so much of the input tax of that person that becomes chargeable during that period as is attributable to supplies made by him up to the end of that period, being supplies to which subarticle (4) applies.

(4) This subarticle applies to:

(*a*) taxable supplies;

(*b*) exempt with credit supplies;

(*c*) supplies which take place outside Malta which would, if made in Malta, be treated under the provisions of this Act as taxable supplies or as exempt with credit supplies or supplies taxed outside Malta which if made in Malta would have been treated as exempt without

credit supplies;

(*d*) operations exempt from VAT, relating to:

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(i) supplies by persons licensed under the Insurance Business Act or the Insurance Intermediaries Act, of insurance and reinsurance services, including related transactions, in respect of which they are so licensed;

(ii) the granting and negotiation of credit and the management of credit by the person granting it;

(iii) the negotiation of or any dealings in credit guarantees or any other security for money and the management of credit guarantees by the person who is granting the credit;

(iv) transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collecting and factoring;

(v) transactions, including negotiation, concerning currency, bank notes and coins normally used as legal tender;

(vi) transactions, including negotiation, excluding management and safekeeping, in shares, interest in companies or associations, debentures and other securities, excluding documents establishing title to goods,

when the customer is established outside the Community or when those operations are directly linked with goods to be exported to a country outside the Community.

(5) The right to an input tax credit, the amount of the credit and the manner in which input tax is attributable to supplies are subject to the conditions, limitations, revisions and adjustments set out in the Tenth Schedule.

Deductions.
Substituted by: X. 2003.10.

23. Every person registered under article 10 who furnishes a tax return for a tax period shall have the right to deduct from the output tax for that period -

(*a*) the input tax credit for that period;

(*b*) any other deductions to which he may be entitled for that period in accordance with the Tenth Schedule.

Refund of excess credit to persons registered under article 10.
Substituted by: X. 2003.10. Amended by: XIII. 2005.43; I. 2010.67.

24. (1) Saving the other provisions of this Act, when the deductions allowable to a person registered under article 10 for a tax period exceed the output tax of that person for that period the excess shall be an excess credit of that person for that period.

(2) The amount of excess credit of a person registered under article 10 for a tax period shall, to the extent that it is not set off against any amount due by that person to the Commissioner in accordance with article 21(1), be a refund payable to that person by not later than five months from the expiration of the time allowed

for the furnishing of the tax return for that tax period or from the day on which the said return has been furnished to the Commissioner, whichever is the later:

Provided that where a person to whom a refund is payable in terms of this subarticle has, by the date the refund claim is made, failed to submit a return of income in respect of the year of assessment 1999 or any subsequent years of assessment by the date required to be submitted in terms of the provisions of the Income Tax Management Act and such failure persists until the date such refund becomes payable, any such refund shall not be paid to such person and shall be withheld by the Commissioner until such time as the said return of income is submitted; and provided further that notwithstanding any other provisions of this Act, no interest shall be due by the Commissioner in respect of the period during which the said refund was withheld on account of failure to submit a return of income for the purposes of the Income Tax Management Act.

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(3) Interest shall be due to a person to whom a refund is due in accordance with this article at the rate specified in or prescribed in terms of article 21(4) from the date by which the refund is payable in accordance with this article until the date when it is paid or when a cheque or draft for the payment thereof is given or posted to that person by the Commissioner:

Provided that no interest shall be due for any period during which such person fails to produce information and, or documentation as may be requested by the Commissioner, for the verification of the amount claimed.

(4) For the purpose of any such verifications as he may consider necessary to ascertain the amount refundable, the Commissioner may, by notice in writing to the person to whom a refund is due, extend the time limit referred to in subarticle (2) by not more than twelve months: Provided that the running of interest on the said refund shall not be meanwhile suspended.

Refunds to persons not registered under article 10. *Substituted by: X. 2003.10.*

25. (1) A person who is not registered or liable to be registered under article 10 but who is treated as a taxable person by reason of the fact that he makes an exempt supply of new means of transport may claim a refund of the tax charged on the supply to him or the intra-community acquisition or importation by him of that new means of transport: Provided that the refund shall not exceed the tax that would be chargeable if the supply by him of the new means of transport in question were a taxable supply.

(2) A taxable person who is not registered or liable to be registered under article 10 and who is not established in Malta but is established in another Member State may claim a refund of his input tax.

(3) A taxable person who is not registered or liable to be registered under article 10 and who is not established in the Community may claim a refund of his input tax if, in terms of the laws of the country in which he is established, a taxable person established in Malta would be entitled to a comparable benefit with

respect to value added tax or similar taxes levied in that country.

(4) When goods transported from a third territory are imported into Malta by a non-taxable legal person, and when the place of arrival of the goods transported is a Member State other than Malta, the importer may claim a refund of the tax on the importation of those goods if he establishes that his acquisition of those goods was subject to value added tax in that other Member State.

Claim for refund under article 25. *Substituted by: X. 2003.10.*

26. A claim for a refund referred to in article 25 shall be made on such form as the Minister may by regulations prescribe and shall be made within such time, be accompanied by such documents and information and be subject to such limitations and conditions as may be prescribed.

PART V

Returns, Assessments, Penalties and Appeals

Tax returns. *Amended by: X. 2003.11; V. 2012.62; XII. 2014.78.*

27. (1) Every person registered under article 10 shall furnish the Commissioner with a tax return for every tax period by not later than the fifteenth day of the second month following the month during which that tax period ends.

(2) Every person whose registration under article 10 is cancelled shall furnish the Commissioner with a tax return relating to the last tax period within thirty days from the date on which he is served with a notice referred to in article 13(4) or within such longer period as may be specified in the said notice: Provided that this subarticle does not apply when the registration under article 10 is cancelled in the circumstances mentioned in article 11(3).

(3) A tax return furnished by a person registered under article 10 shall contain a declaration of the output tax, the input tax and any other declarations and particulars for that tax period that are required under this Act and shall be furnished either on such form as the Minister may by regulations prescribe or in an electronic format through the established web portal designated for the purpose by the Commissioner:

Provided that the Minister may by regulations prescribe conditions whereby a tax return shall only be furnished in an electronic format.

(4) A tax return shall not be deemed to have been furnished unless it is full and complete in all material aspects.

Adjustments to tax returns. *Substituted by: X. 2003.12.*

28. (1) Subject to subarticle (2), a person registered under article 10 who has made an incorrect declaration in a tax return furnished to the Commissioner for a tax period may correct the declaration by the delivery of such form as the Minister may by regulations prescribe. The provisions of article 27(4) with respect to tax returns shall apply *mutatis mutandis* to the delivery of the said form.

(2) An incorrect declaration in a tax return may be corrected by means of an adjustment in a subsequent tax return without the need for the delivery of a form as required by subarticle (1) to the extent

allowed by and in the manner provided in the Eleventh Schedule, and when a correction has been so made the tax return shall not be deemed, with respect to the matters so corrected, to have contained any understatement or overstatement for the purpose of article 37(2).

Presumption as to declarations in tax returns. *Amended by: X. 2003.13.*

29. When a person registered under article 10 has furnished the Commissioner with a tax return for a tax period, the output tax and the deductions of that person for that period shall, except as provided in article 36, be deemed to be the output tax and the deductions declared in that return as adjusted by any adjustment made in accordance with article 28: Provided that any such adjustment shall not give rise to any reduction in the tax liability or a tax credit or refund with respect to that tax period if it is made after the expiration of six years from the end of the year in which that tax period ends.

Further declarations and statements. *Substituted by: X. 2003.14. Amended by: II. 2009.41; I. 2010.68; V. 2012.63.*

30. (1) Every person registered under article 11 shall furnish the Commissioner with periodical declarations relating to his economic activity on such form and at such intervals as the Minister may by regulations prescribe.

(2) A person registered under article 12 shall furnish the Commissioner with a notice of payment in terms of article 21(5) and declarations of his intra-community acquisitions and purchases made for which the customer is liable for the payment of the tax pursuant to articles 20(2)(*b*) and 20(2)(*c*) on such form as the Minister may be regulations prescribe. The provisions of article 27(4) with respect to tax returns shall apply *mutatis mutandis* to the delivery of the said form.

(3) Every taxable person shall make a recapitulative statement on such form and at such intervals as the Minister may by regulations prescribe for the following supplies:

(*a*) exempt intra-Community supplies of goods;

(*b*) services, other than services that are exempted from the tax in the Member State where the transaction is taxable, and for which the recipient is liable to pay the tax;

made to taxable persons and non-taxable legal persons identified for purposes of Value Added Tax.

(4) Every taxable person and non-taxable legal person shall make such statements and shall produce such information and documents as may be reasonably required by the Commissioner for any purpose of this Act or as may be prescribed.

Power to make assessments where a return has not been furnished. *Amended by: X. 2003.15.*

31. (1) When a person liable to furnish a tax return under article 27 for a tax period does not furnish that return the Commissioner may make an assessment of the output tax and the deductions of that person for that period and of the administrative penalty to which that person became liable and serve that assessment on that person at any time after the expiration of the time allowed in terms of this Act for the furnishing of that return and by not later than six years from the end of the said tax period.

(2) An assessment made for a tax period of a person in virtue of this article shall not relieve that person from his obligation to furnish a tax return for that period and from his liability to any or to further administrative penalties in accordance with the relevant provisions of this Act.

(3) When a tax return for a tax period is furnished after an assessment has been made in accordance with subarticle (1) the Commissioner may cancel that assessment without prejudice to his power to make further assessments in terms of the other provisions of this Act.

(4) The cancellation of an assessment as aforesaid shall not relieve the person who has been in default from his liability to an administrative penalty in accordance with the other provisions of this Act.

Power to make assessments when a return has been furnished.
Amended by: X. 2003.16; XIII. 2005.44; IV. 2011.74.

32. (1) When the Commissioner has reason to believe that a tax return furnished by a person registered under article 10 for a tax period does not contain a full and correct statement of the matters required to be declared in that return he may make a provisional assessment and serve that provisional assessment on that person by not later than six years from the end of the said tax period or from the date in which the tax return for that tax period is submitted, whichever date is the later:

Provided that where the provisional assessment refers to the adjustment relating to input tax on capital goods mentioned in the Tenth Schedule, it shall be served by not later than six years from the end of the adjustment period mentioned in the said schedule.

(2) A provisional assessment shall indicate clearly that it is a provisional assessment and that it may be followed by an assessment within the time limits specified in subarticle (3). Save as aforesaid a provisional assessment shall contain all the particulars that are required to be given in an assessment and such further particulars as the Commissioner may deem appropriate.

(3) After the expiration of a period of not less than thirty days and not more than six months from the service on a person of a provisional assessment in respect of a tax period the Commissioner may make an assessment of the output tax and the deductions of that person for that period and of the administrative penalty to which that person became liable and serve that assessment on that person.

(4) The assessment made in virtue of subarticle (3) may not contain any variations to the amounts specified in the relative provisional assessment except for -

(*a*) variations requested by or agreed to by the said person;

(*b*) variations consisting in the substitution for amounts shown in the provisional assessment of amounts that are equal or closer to those declared in the relative tax return.

(5) The Commissioner may, for the purposes of this Act, cancel any provisional assessment raised by him, and issue a fresh

provisional assessment, and such cancellation shall be without prejudice to the raising of a fresh provisional assessment required to be raised under this Act in replacement of the provisional assessment so cancelled which shall be deemed not to have been raised.

Such fresh provisional assessment has to be raised within the time limit specified in subarticle (1).

Power to make assessments on other persons. *Amended by: X. 2003.17.*

33. (1) When the Commissioner has reason to believe that a person has become liable to an administrative penalty with respect to anything made by him during any period in which he was registered under article 11 he may make an assessment of that penalty and serve that assessment on that person within six years from the end of that period.

(2) When a person who is not registered under article 10 and who is liable to pay tax under this Act does not pay the tax within the time allowed in terms of this Act for the said payment, the Commissioner may make an assessment of the tax payable by that person.

(3) When a person who is not registered under article 10 or 11 becomes liable to an administrative penalty under this Act the Commissioner may make an assessment of the administrative penalty to which that person became liable and serve that assessment on that person at any time within six years from the date on which that administrative penalty was payable.

Assessments. *Amended by: X. 2003.18.*

34. (1) An assessment made in virtue of article 31, article 32 or article 33 shall be made on such form and contain such further particulars as the Commissioner may deem appropriate or as may be prescribed.

(2) An assessment may be made by reference to such information, estimations or criteria as the Commissioner may, in his judgement, deem appropriate, and the Commissioner may also attribute the taxable value of taxable supplies, the output tax, the deductions allowable and the tax payable or excess credit resulting in respect of a number of tax periods to a particular tax period, provided that the person subject to the said aggregated assessment shall not be made liable to more tax, administrative penalty or interest than he would have been liable to had the amounts been attributed to particular tax periods.

Additional and revised assessments.

35. The power to make an assessment includes the power to make an additional or a revised assessment within the same time limits and subject to the same provisions applicable to an original assessment: provided that the Commissioner may not reopen any matter that has been decided on appeal.

Presumption as to amounts shown in assessments. *Substituted by: X. 2003.19.*

36. Where an assessment is made on any person any amount of tax, deductions or administrative penalty assessed in that assessment shall, except if and to the extent that the assessment is cancelled or revised, be deemed for any of the purposes of this Act to be and to have always been the tax, the deductions and the administrative penalty properly due and allowable with respect to

the tax period or the transactions to which that assessment refers.

Administrative penalty for incorrect tax return.
Amended by: X. 2003.20; XIII. 2005.45; L.N. 426 of 2007; L.N. 105 of 2008; II. 2009.42.

37. (1) Saving the provisions of subarticle (2), when a tax return furnished by a person registered under article 10 for a tax period contains an understatement of the output tax or an overstatement of the deductions for that period, that person becomes liable to an administrative penalty in an amount equivalent to twenty per cent of the total of -

(*a*) the excess, if any, of the correct amount of output tax over the output tax as declared in the return; and

(*b*) the excess, if any, of the deductions as declared in the return over the correct amount of the deductions.

(2) Where a person corrects an understatement or overstatement as is referred to in subarticle (1) in accordance with the provisions of article 28(1) before he is served with a provisional assessment for that period, that person becomes liable to an administrative penalty in an amount equivalent to ten per cent of the total of -

(*a*) the excess, if any, of the correct amount of output tax over the output tax as declared in the return; and

(*b*) the excess, if any, of the deductions as declared in the return over the correct amount of the deductions.

(3) Where a tax return for a tax period furnished to the Commissioner by a person registered under article 10 who only supplies goods or services listed under Part One of the Fifth Schedule to this Act, does not contain a full and correct statement of the matters required to be declared by that person in that return and to the extent that that person does not correct such an understatement or overstatement in accordance with the provisions of article 28 before he is served with an assessment for that period he shall, unless that person has in virtue of that default become liable to a higher administrative penalty under the other provisions of this article, be liable to an administrative penalty of one hundred and fifty euro (€150).

(4) Where, during the course of an investigation, a person co-operates with the Commissioner, accepts an agreement and within one month from the signing of the agreement pays the amount of tax due, the agreed administrative penalty and the interest due, that person shall be liable to an administrative penalty in an amount equivalent to 10 per cent of the amount of tax due.

Administrative penalty for understated or assessed tax under article 12.
Added by: V. 2012.64.

37A. Where a notice of payment furnished by a person registered under article 12 contains an understatement of the tax payable in accordance with articles 21(2) and 21(3) or where the Commissioner makes an assessment of the tax payable by that person in terms of article 33(2), that person shall become liable to an administrative penalty in an amount equivalent to twenty per cent of the understated tax payable or the assessed tax.

Administrative penalty for default in the furnishing of a tax return or other declarations and statements.
Amended by: X. 2003.21; XIII. 2005.46; L.N. 426 of 2007; L.N. 105 of 2008; II. 2009.43.

38. (1) Any person registered under article 10 who, being required to furnish a tax return for a tax period, does not furnish that return within the time laid down in the relevant provisions of this Act shall be liable to an administrative penalty in an amount equivalent to the higher of -

(*a*) one per cent 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; and

(*b*) twenty euro (€20),

for every month or part thereof that elapses from the date by which the tax return should have been furnished in accordance with this Act and the date when it is furnished to the Commissioner:

Provided that where the tax payable is less than two hundred and fifty euro (€250), such administrative penalty shall not exceed the equivalent of the tax payable to the nearest euro or fifty euro (€50), whichever is the greater, and it shall not exceed two hundred and fifty euro (€250) in all other cases.

(2) Any person who, being required to furnish a declaration or statement in terms of article 30, does not furnish that declaration or statement within the time laid down in the relevant provisions of this Act shall be liable to an administrative penalty of ten euro (€10) for every month or part thereof that elapses from the date by which the declaration or statement should have been furnished in accordance with this Act and the date when it is furnished to the Commissioner:

Provided that such administrative penalty shall in no case exceed one hundred and twenty euro (€120) for each such declaration or statement.

Administrative penalty for default in applying for registration or giving a notice.
Amended by: X. 2003.22; XIII. 2005.47; L.N. 426 of 2007; L.N. 105 of 2008; II. 2009.44; XIV. 2013.3.

39. (1) Any person who, being required to apply for registration under article 10, does not make such an application within the time laid down in the relevant provisions of this Act shall be liable to an administrative penalty in an amount equivalent to the higher of -

(*a*) one per cent of the excess, if any, of the output tax over the deductions for the first tax period following the registration; and

(*b*) twenty euro (€20),

for every month or part thereof that elapses from the date on which the application should have been made and the earlier of the date on which the application registration is furnished to the Commissioner and the date when that person is registered by the Commissioner:

Provided that where the excess, if any, of the output tax over the deductions for the first tax period following registration is two thousand euro (€2,000) or less, such administrative penalty shall not exceed two hundred and fifty euro (€250), and where the excess of the output tax over the deductions for the first tax period following registration is more than two thousand euro (€2,000) such administrative penalty shall not exceed twenty per cent of such excess.

(2) Any person who, being required to apply for registration under article 12, does not make such an application within the time laid down in the relevant provisions of this Act shall be liable to an administrative penalty of the higher of -

(*a*) one per cent of the tax chargeable on the intra-community acquisitions or the services received or both such intra-community acquisitions and services received, in respect of which he is required to make such application; and

(*b*) twenty euro (€20),

for every month or part thereof that elapses from the date on which the application should have been made and the earlier of the date on which the application is furnished to the Commissioner and the date when that person is registered by the Commissioner:

Provided that where the tax chargeable on the intra-community acquisitions or the services received or both such intra-community acquisitions and services received, in respect of which that person is required to make such application is two thousand euro (€2,000) or less, such administrative penalty shall not exceed two hundred and fifty euro (€250), and where the tax chargeable on the intra-community acquisitions or the services received or both such intra-community acquisitions and services received, in respect of which that person is required to make such application is more than two thousand euro (€2,000) such administrative penalty shall not exceed twenty per cent of such tax chargeable.

(3) Any person who, being required to give a notice under article 15, does not give that notice within the time laid down in the relevant provisions of this Act shall be liable to an administrative penalty of twenty euro (€20) for every month or part thereof that elapses from the date on which the notice should have been given and the date when that notice is given to the Commissioner:

Provided that such administrative penalty shall in no case exceed two hundred and fifty euro (€250) for each such notice.

Administrative penalty for default by person registered under article 11. *Amended by: X. 2003.23; XIII. 2005.48; L.N. 426 of 2007; L.N. 105 of 2008; II. 2009.45.*

40. Any person registered under article 11 who does not remain eligible to be so registered and who does not apply for the cancellation of his registration under article 11 within the time laid down in the relevant provisions of this Act shall be liable to an administrative penalty in an amount equivalent to the higher of -

(*a*) ten per cent of the excess, if any, of the output tax over the deductions for the first tax period following the cancellation of his registration under article 11; and

(*b*) one hundred euro (€100),

for every month or part thereof that elapses from the date on which the application should have been made in terms of the said provisions and the earlier of the date on which the application is furnished to the Commissioner and the date when the registration under article 11 is cancelled by the Commissioner:

Provided that such administrative penalty shall in no case

exceed five hundred euro (€500).

Liability to administrative penalties.

41. Any administrative penalty to which a person becomes liable in terms of this Act shall be due and payable by that person without the need of any assessment to be made with respect thereof, and any amount of any administrative penalty due by a person shall not relieve that person from a higher or from a further penalty to which he may have become or may become liable in terms of the relevant provisions of this Act.

Reasonable excuse.
Amended by: XIII. 2005.49. Substituted by: II. 2009.46. Amended by: V. 2011.29; L.N. 89 of 2012.

42. (1) Notwithstanding the provisions of articles 37 to 41, both inclusive -

(*a*) no administrative penalty shall be due by a person for any default if that person proves that there is a reasonable excuse for the default;

(*b*) if a person does not prove that there is a reasonable excuse for a default, but the Commissioner is of the view that the default resulted from particular circumstances that merit a mitigation of the administrative penalty, he may, in his discretion, remit part of the administrative penalty for that default;

(*c*) if the Commissioner is of the view that the default resulted from a genuine mistake he may remit in whole or in part the administrative penalty for that default;

(*d*) no administrative penalty under article 38 shall be due where a return required to be made in terms of article 27 or a declaration required to be made in terms of article 30(1) is furnished in an electronic format through the established web portal designated for the purpose by the Commissioner, together with payment of the tax due on the return, not later than seven days from the date on which the said return or declaration should have been submitted under the provisions of this Act.

(2) For the purposes of subarticle (1)(a) and (b) -

(*a*) an insufficiency of funds to pay any tax due; or

(*b*) when reliance is placed on any other person to perform any task, the fact of that reliance or any dilatoriness or inaccuracies on the part of the person relied upon,

shall not constitute a reasonable excuse.

(3) Notwithstanding the provisions of articles 43 and 44, the use of the Commissioner's discretion for the purpose of subarticle (1)(*b*) and (*c*) shall not be questioned in any appeal or in any reference made to the Tribunal.

(4) The Minister may by regulations prescribe other conditions under which part of, or all, the administrative penalty incurred under articles 37 to 41 may be remitted. Such regulations may also make provision for the remission of any administrative penalties due under the Value Added Tax Act, 1994, and under the Customs and Excise Tax Act.

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Appeal against an assessment. Amended by: *L.N. 89 of 2012.*

43. Any person aggrieved by an assessment served upon him may appeal against that assessment to the Tribunal.

Other matters that may be referred to Appeal. *Amended by: X. 2003.24; II. 2009.47; L.N. 89 of 2012.*

44. If any question arises, other than on an assessment, relating to -

(*a*) the registration of a person under this Act or the cancellation of such a registration;

(*b*) any tax chargeable on a supply or an acquisition other than tax assessed in an assessment and any deductions that may be claimed against such tax;

(*c*) whether a transaction made or to be made by a person is a taxable supply or a taxable acquisition or not or whether an importation of goods made or to be made by a person is a taxable importation or not;

(*d*) any tax chargeable on the importation of goods;

(*e*) the place, the time or the taxable value of a supply or of an acquisition;

(*f*) the amount of deductions allowable to a person registered under article 10 for any tax period;

(*g*) any security required by the Commissioner under this Act;

(*h*) whether any refund of tax claimed by any person is due or payable to that person or not;

(*i*) any question of law not falling within the foregoing provisions of this article;

(*j*) any matter which, in terms of any provision of this Act, or of any regulations made under this Act, may be referred to appeal;

(*k*) the imposition of any administrative penalty except where it is imposed as a result of an assessment,

that question may be referred to the Tribunal by any person who shows to the satisfaction of the Tribunal that he has a direct interest in that question or by the Commissioner.

The Administrative Review Tribunal. *Amended by: L.N. 89 of 2012.*

45. There shall be an Administrative Review Tribunal for the purpose of hearing and determining appeals and references made in accordance with articles 43 and 44.

Matters regulated by the Ninth Schedule. *Amended by: L.N. 89 of 2012.*

46. The Ninth Schedule to this Act shall apply with respect to any appeal made or any question referred to the Tribunal, the composition and competence of the Tribunal, and the regulation of the procedures of the Tribunal.

Appeal to the Court of Appeal. *Amended by: VI. 2001.30; IV. 2007.36; L.N. 426 of 2007; L.N. 105 of 2008; L.N. 89 of 2012.*

47. (1) Any of the parties to an appeal or a reference to the Tribunal who feels aggrieved by the decision of that Tribunal may, by means of an application to be filed within thirty days from the date on which the decision appealed from is notified to him, appeal against that decision on a question of law only -

(i) where the total amount of tax, administrative penalty,

and interest for the tax period or periods under appeal up to the date of receipt of the appeal by the Tribunal is less than one million and one hundred and fifty thousand euro (€1,150,000), to the Court of Appeal (Inferior Jurisdiction); and

(ii) where the total amount of tax, administrative penalty, and interest for the tax period or periods under appeal up to the date of receipt of the appeal by the Tribunal is of one million and one hundred and fifty thousand euro (€1,150,000) or more, to the Court of Appeal.

(2) The board established under article 29 of the Code of Organization and Civil Procedure may make regulations governing appeals under this article. Cap. 12.

(3) The Minister responsible for justice may by regulations under this subarticle establish the fees payable in the registry of the court in relation to the filing of judicial acts in connection with appeals to the Court of Appeal or to the Court of Appeal (Inferior Jurisdiction), as the case may be, under this Act:

Provided that until fees are so established by the Minister, the fees contained in Schedule A to the Code of Organization and Civil Procedure shall apply. Cap. 12.

The Administrative Review Tribunal. *Added by: L.N. 89 of 2012. Re-numbered by: L.N. 236 of 2013.* Cap. 490.

47A. (1) The Tribunal shall be competent to hear and determine appeals in accordance with the provisions of article 46.

(2) The provisions of the Administrative Justice Act, in so far as they apply to the Tribunal, shall apply to any proceedings before the said Tribunal and the words "public administration" in the said enactment shall be construed as a reference to the Commissioner of Value Added Tax.

(3) The provisions of article 25 of the Administrative Justice Act shall apply to any proceedings pending before the Value Added Tax Appeals Board, arising out of appeals made under the Value Added Tax Act, 1994, the Customs and Excise Tax Act, 1997 and this Act, and any such proceedings shall be assigned to the Tribunal in terms of the aforesaid article 25 with effect from 1st April, 2012. Cap. 490.

(4) Any pending appeal before the Value Added Tax Appeals Board constituted under this Act prior to its abolition shall continue to be heard before the Tribunal and any appeal which under this Act could be made before the Value Added Tax Appeals Board shall be made before the Tribunal.

(5) Any appeal pending on 1st April, 2012 before the Court of Appeal from a decision of the Value Added Tax Appeals Board shall continue to be heard by that Court:

Provided that if the said Court were to annul a decision of the said Board and remit it back to the said Board, the remittance shall instead be made to the Tribunal which shall hear and decide that case accordingly.

(6) The Commissioner shall publish all decisions given by the Tribunal on points of law.

PART VI

Records and Information

Records to be kept.
Substituted by: X. 2003.25.
Amended by: IV. 2007.37; L.N. 89 of 2012.

48. (1) Every registered taxable person established in Malta shall keep full and proper records of all transactions carried out in the course or furtherance of his economic activity.

(2) Every person who is liable to tax on any transaction or who identifies himself as a person registered under this Act for the purpose of any transaction shall keep full and proper records of any such transaction.

(3) Every taxable person and every non-taxable legal person shall keep full and proper records of all intra-community acquisitions made by him.

(4) The records referred to in subarticles (1), (2) and (3) shall be kept and stored in such manner, contain such details and be supported by such information, documents and accounts as set out in the Eleventh Schedule and such records, information, documents and accounts shall be retained for a period of at least six years from the end of the year to which they relate, or such other period or periods as the Minister may, in special cases, by regulations prescribe.

(5) The Commissioner may, at any time within the period specified in subarticle (4), request any person to produce, or may remove from any person, including a third party, the records, documents, accounts and electronic data required to be kept by him in virtue of this article and to make copies thereof:

Provided that, if there is evidence that after being requested by the Commissioner by means of a notice in writing, that such person failed to produce without any reasonable excuse any records, documents, accounts and electronic data within thirty days from the date of service of such notice, such person shall not be allowed to produce such records, documents, accounts and electronic data at a later stage after the issue of the provisional assessment or assessments or before the Tribunal or in any Court of law:

Provided further that when reliance is placed on any other person to perform any task, the fact of that reliance or any delay or inaccuracy on the part of the person relied upon shall not constitute a reasonable excuse for the purposes of this subarticle.

Inclusion of tax in the price for supplies.
Amended by: X. 2003.26.

49. (1) Where any registered person indicates the price of goods offered for sale by retail, such price shall be indicated in such a manner as to be inclusive of the tax chargeable under this Act, if any, on the supply of the said goods.

(2) Where the amount of tax chargeable under this Act is not identified in a payment for a taxable supply or in a price charged, otherwise than in an invoice or a document serving as invoice issued by a taxable person to another taxable person, for a taxable supply that payment or price shall be deemed to be inclusive of tax.

(3) Where the amount of tax chargeable under this Act is not

identified in the price charged for a supply on an invoice or a document serving as invoice issued by a taxable person to another taxable person that price shall be deemed to be exclusive of tax.

Tax invoice. *Substituted by: X. 2003.27. Amended by: IV. 2011.75; V. 2012.65.*

50. (1) Every person registered under article 10 who makes a supply, other than an exempt without credit supply, to another person who identifies himself for the purpose of that supply by means of a value added tax identification number shall provide that other person a tax invoice within the time determined in accordance with the provisions of the Twelfth Schedule.

(2) When there is an application, disposal, transport or use of goods for which no consideration is charged or paid but which is deemed in terms of the Second Schedule to be a supply made by a person for consideration, that person shall, if he is a person registered under article 10, issue a tax invoice in which he indicates himself both as the person who made the supply and as the person to whom the supply is made.

(3) Every taxable person shall issue a tax invoice within the time stated in subarticle (1) in respect of every distance sale made by him.

(4) Where a person provides a document to himself which purports to be a tax invoice in respect of a taxable supply made to him by a person registered under article 10, that document may, subject to the provisions of the Twelfth Schedule, be treated as the tax invoice required to be issued and delivered by the supplier in terms of this article.

(5) A tax invoice shall be issued in the form and in the manner and shall contain the particulars set out in the Twelfth Schedule.

Documents to be provided in other cases. *Substituted by: X. 2003.27.*

51. Any person who makes any supply, other than an exempt without credit supply or other than a supply in respect of which a tax invoice is required to be issued in terms of article 50, shall provide to the person to whom the supply is made an invoice, receipt or other document which shall be issued in the form and in the manner and shall contain the particulars set out in the Thirteenth Schedule.

Production of invoices by persons to whom a supply is made. *Amended by: XIX. 2007.2.*

52. (1) A person to whom any tax invoice or other invoice, receipt or document is provided as required by article 50 or 51 shall, if so requested in accordance with the other provisions of this Act, produce the said invoice, receipt or other document to the Commissioner or to any officer authorised by the Commissioner.

(2) Any person who transports goods in the course of an economic activity, on his own behalf or on behalf of or to third parties, shall be in possession at any time of an identification document and a tax invoice or a delivery note or a transport document showing a description of all the goods being transported, the value of the goods, the unit quantity, the date of the delivery, the destination address, the name and address and value added tax registration number of the supplier and the name and address and value added tax registration number of the person to whom the supply is made. In the course of an inspection of the means which

is transporting the goods, a copy of the aforementioned documents shall upon demand be produced to the Commissioner or to any other officer authorised by the Commissioner. A person who fails to produce the documents as required in accordance with the provisions of this sub-article or whose goods are not found to be in agreement with the said document, shall be guilty of an offence against this Act.

Inspections.
Amended by: X. 2003.28; III. 2004.115; XIX. 2007.3; L.N. 426 of 2012.

53. The Commissioner shall, for the purpose of ensuring compliance with the provisions of this Act, have the power -

(*a*) to enter and inspect any premises where an economic activity is carried on or suspected to be carried on or where any goods, assets, books, records or documents relating to such activity are kept or suspected to be kept, and to stop, enter and inspect any means which is transporting goods or any means for the transport of goods, to direct the delivery of the said means to another location and to open the said goods to verify the quantity and value of goods with invoices, books, records or documents relating to such goods to determine whether or not value added tax has been accounted for under the provisions of this Act;

(*b*) to inspect and to require the production of any books, records or documents, including machine readable information, or a copy or extract thereof relating to the economic activity of any person;

(*c*) subject to the provisions of article 55, to require any person to give such information as may be requested for the purpose of determining whether any taxable or exempt with credit supplies have been made by or to that person or whether any intra-community acquisitions or importations have been made by that person or the value of any such supplies, acquisitions or importations and to request the attendance of any person at the office of the Commissioner for the purpose of providing such information;

(*d*) to request the particulars including the name, surname, address and the production of a legally valid identification document of any person suspected to be in breach of any of the provisions of this Act or of any regulations made under this Act; and

(*e*) when a taxable person established in Malta stores invoices which he issues or receives by an electronic means guaranteeing on-line access to the data and when the place of storage is in a Member State other than that in which he is established, the Commissioner shall have the right to access by electronic means, download, and use such invoices for the purpose of ensuring compliance with the provisions of this Act.

Access to places of habitation.

54. If access is required for the purposes of article 53(*a*) to any premises occupied in whole or in part for the purpose of habitation,

such access shall require the prior warrant signed by a Magistrate and shall not take place between seven o'clock in the evening and seven o'clock in the morning.

Information held by certain licensed persons.

55. (1) Without prejudice to the provisions relating to the duty of professional secrecy, no information shall be requested by the Commissioner by virtue of this Act from any persons to whom subarticle (2) refers except solely for the purpose of determining the tax payable by and the deductions allowable to such person under this Act or of ensuring compliance by such person with the provisions of this Act.

(2) This subarticle refers to -

(*a*) a bank licensed under the Banking Act; Cap. 371.

(*b*) an insurance company in respect of long term insurance business which is carried on pursuant to a licence granted under the Insurance Business Act; Cap. 403.

(*c*) any person licensed to carry on investment business under the Investment Services Act; Cap. 370.

(*d*) a collective investment scheme licensed under the Investment Services Act; Cap. 370.

(*e*) a stockbroker licensed under the Malta Stock Exchange Act. Cap. 345.

Official secrecy. *Amended by: X. 2003.29; IV. 2007.38.*

56. (1) Except as may be necessary for the purposes of this Act, or where the Prime Minister otherwise directs, every person having any official duty or being employed in the administration of this Act shall regard and deal with all documents and information relating to this Act as secret and confidential.

(2) No person appointed under or employed in carrying out the provisions of this Act shall be required to produce in any court, tribunal, board or committee of inquiry any document or to divulge an matter coming under his notice in the performance of his duties under this Act except as may be lawfully required for the purpose of carrying into effect the provisions of this Act, or for the purpose or in the course of any appeal made in accordance with this Act or a prosecution for any offence against any of the provisions of this Act.

(3) Notwithstanding the other provisions of this article, the Commissioner may permit the Auditor General or any officer authorised by the Auditor General to have access to any records or documents as may be necessary for the performance of his official duties and for this purpose the Auditor General and any such authorised officer shall be deemed to be a person employed in the administration of this Act.

(4) Notwithstanding the provisions of the other subarticles of this article or of any other law, the Commissioner shall furnish to the Commissioner of Inland Revenue, to the competent authority designated under the Eco-Contribution Act and to the Comptroller of Customs such information, being information obtained by the Commissioner for any of the purposes of this Act, as may be directed by the Minister.

(5) Nothing contained in this article shall, after the accession date, prevent the disclosure by the Commissioner, of any information that is required to be disclosed in terms of Council Regulation (EEC) No 218/92 of 27 January 1992 on administrative cooperation in the field of indirect taxation (VAT) or of any such other Council Regulation as may be prescribed.

(6) For the purposes of this article, any information disclosed to the Commissioner by the fiscal authorities of another Member State in terms of any Council Regulation referred to in subarticle (5) shall be treated as information relating to and obtained for the purposes of this Act.

PART VII

Special Cases

Special cases. *Substituted by: X. 2003.30. Amended by: II. 2009.48.*

57. (1) The provisions of the Fourteenth Schedule shall apply with respect to the following operations, as defined in the said Schedule:

(*a*) operations of tour operators and travel agents and of other persons acting as principals or intermediaries and carrying out operations commonly carried out by tour operators and travel agents;

(*b*) operations relating to second hand goods, works of art, collectors' items, and antiques;

(*c*) operations carried out by retailers;

(*d*) professional services;

(*e*) operations relating to civil, mechanical and electrical engineering contracts;

(*f*) operations relating to investment gold;

(*g*) the supply of telecommunications, broadcasting or electronic services supplied by taxable persons not established within the Community;

(*h*) the supply of telecommunications, broadcasting or electronic services supplied by taxable persons established within the Community but not in the Member State of consumption;

(*i*) such other operations as may be designated by an order as may be made, amended, substituted or replaced by the Minister and published in the Gazette.

(2) With respect to operations to which the Fourteenth Schedule applies and the obligations of persons involved in such operations that Schedule shall have effect notwithstanding anything to the contrary contained in the other provisions of this Act: provided that the other provisions of this Act shall apply to the said operations and obligations insofar as they are not inconsistent with anything contained in the said Schedule.

PART VIII

Collection, Security and Refunds

Suit by the Commissioner. *Amended by: IV. 2007.39; XII. 2014.80; XIII. 2015.152.*

58. (1) Tax and administrative penalties due under this Act may be sued for and recovered, as the case may require in the competent court of civil jurisdiction.

(2) Subject to the provisions of subarticle (3), action for the payment of tax and administrative penalties may be taken by the Commissioner at any time within six years from the date on which such tax or administrative penalty becomes payable.

(3) The running of the period referred to in sub-article (2) shall be interrupted by a demand note served through registered post or by publication of a notice in the Gazette and in one or more daily newspapers by the Commissioner stating that a demand note has been made or by any judicial act filed by the Commissioner before the expiration of such period demanding the payment of the amount claimed.

Executive title. *Amended by: XIII. 2005.50.*

59. (1) Any notice issued by the Commissioner showing any amount of tax and administrative penalty due by a person shall, unless the contrary is proved, be sufficient evidence that that amount is due to the Commissioner by that person and shall constitute an executive title within the meaning and for the purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure. Cap. 12.

(2) The Commissioner may request the payment of any tax and administrative penalty payable by any person in terms of this Act by means of a demand note, and if the payment requested is not made within thirty days from the date when the said demand note is served on that person, the Commissioner may proceed to enforce payment in virtue of the executive title referred to in subarticle (1) after two days from the service on that person of an intimation for payment made by means of a judicial act. Upon the lapse of the period of two days mentioned in this sub-article the Commissioner shall be entitled to register in the public registry or land registry, as the case may be, a note of privilege for the amount demanded in the judicial act which note of privilege shall be registered by any advocate or notary.

(3) The provisions of article 468 of the Code of Organization and Civil Procedure shall apply with respect to any warrant issued on the strength of an executive title mentioned in this article and to the paying out of the proceeds of the sale by auction of the property seized, and no opposition or reservation in the schedule of deposit shall stay the paying of any sum deposited in court following any such warrant as aforesaid. Cap. 12.

Restrictions on the release of imported goods.

60. (1) No goods imported into Malta shall be delivered for use in Malta or taken out, cleared or delivered from any customs bond except -

(*a*) where the importation of those goods is an exempt importation; or

(*b*) where the tax on the said importation has been paid in accordance with this Act; or

(*c*) with the authorisation of the Commissioner.

(2) An authorisation for the purpose of paragraph (*c*) of subarticle (1) may be given under such conditions and against the granting of such security as the Commissioner may establish.

Powers relating to imported goods.

61. (1) The Comptroller of Customs shall, for the purpose of ascertaining, collecting and protecting on behalf of the Commissioner the tax chargeable under this Act on taxable importations have the same powers and shall follow the same procedures as are in accordance with any other law exercisable and followed by him for the purpose of ascertaining, collecting and protecting import duties.

Cap. 37.
Cap. 337.

(2) Any provision in the Customs Ordinance or in the Import Duties Act or in any regulations made thereunder relating to the application of the proceeds from a sale of imported goods towards the payment of import duties due on those goods shall be construed as providing for the application of the said proceeds towards the payment of import duties and of any tax due under this Act on the importation of those goods.

Special privilege.

62. The Commissioner shall have a special privilege over the assets forming part of the economic activity of a person in respect of any tax due by that person under this Act and the said tax shall, notwithstanding anything contained in any other law, be paid in preference to a debt having any other privilege, excepting a debt having a general privilege and a debt mentioned in article 2009(*a*) or (*b*) of the Civil Code.

Cap. 16.

Security for tax due on supplies.
Amended by: X. 2003.31; IV. 2007.40.

63. (1) If, in any particular case, the Commissioner has reason to believe that tax due by a person might not be recoverable at the time when that tax becomes payable in terms of this Act, he may by a notice served on that person, demand the payment of the tax within such time as may be specified in that notice and the tax shall thereupon become payable within that time notwithstanding any other provision of this Act.

(2) When a payment has been demanded from a person in accordance with subarticle (1), that person may, instead of making the said payment, furnish such security for the tax payable as may be acceptable to the Commissioner.

(3) The co-contracting party of the person liable to pay the tax shall be held jointly and severally liable for the payment of the tax.

(4) The provisions of subarticle (3) shall not apply to an operation referred to in article 20(1) when and to the extent that the co-contracting party proves that he has paid the price and the related tax due to the supplier.

(5) Where it appears to the Commissioner that it is necessary for the protection of Government revenue, he may, at any time, under conditions approved by the Minister, require a taxable person, as a condition for that person to supply goods or services,

to give such security, or further security, for that amount and in such manner as the Commissioner may determine, for the payment of any tax that is or may become due by him under this Act.

Shorter period for the delivery of a return.
Amended by: X. 2003.32.

64. If, in any particular case, the Commissioner has reason to believe that the tax due by a person registered under article 10 could otherwise be prejudiced, he may, by means of a notice in writing, require that person to furnish a tax return for a tax period before the time allowed in terms of the other provisions of this Act, and in respect of that tax return any reference in this Act to the time allowed in terms of any provision of this Act shall thereupon be construed as a reference to the period specified in the said notice.

Judicial auction.
Substituted by: X. 2003.33.
Amended by: L.N. 181 of 2006; L.N. 186 of 2006.

65. (1) Where any assets belonging to an economic activity of a person are sold by judicial auction pursuant to any proceedings exercised by a creditor or by creditors of that person, and where that sale is treated as a supply of goods in terms of the relevant provisions of the Second Schedule and is subject to tax under this Act, the registrar of the court under the authority of which the sale is made shall, after notifying the person or persons appearing to be interested therein, remit to the Commissioner from the proceeds lodged in court, with preference over any other person not having a prior claim to that of the Commissioner as provided for in article 62, the tax chargeable on that supply.

(2) Any interested person may oppose the remittance referred to in subarticle (1) by means of a sworn application filed against the Commissioner within six working days from the date of the notification referred to in the said subarticle.

(3) No bid *animo compensandi* shall be approved for the purposes of article 331 of the Code of Organization and Civil Procedure unless the tax chargeable, if any, on that supply has been lodged in court and remitted by the Registrar in accordance with subarticle (1).

Cap. 12.

Representatives.
Amended by: X. 2003.34.

66. (1) Any secretary, manager, director, liquidator or other principal officer of an entity or of a body of persons, any heir and any testamentary executor and any curator of the vacant inheritance of a deceased person, and any person who is a tutor, curator, administrator or trustee of any other person or of any trust, fund or other entity shall, for the purposes of this Act, be a representative of that body of persons, deceased person, other person, trust, fund or other entity, as the case may be.

(2) (*a*) When a person who is not established in Malta and is not established in the Community, is or is required to be registered under this Act any person resident in Malta to whom he makes a taxable supply or who is his agent or who otherwise has a business relationship with him shall, if so designated by the Commissioner by means of a notice in writing, and unless another person resident in Malta and acceptable to the Commissioner has been so designated by that first-mentioned person, be a representative of the said person.

(*b*) When a person who is not established in Malta, but is established in the Community, is, or is required to be registered under this Act, he may, by means of a notice in writing to the Commissioner, nominate as his representative, any person resident in Malta who is acceptable to the Commissioner.

(*c*) For the purpose of this subarticle, the Minister may by regulations prescribe the conditions regulating such appointment.

(3) (*a*) Subject to the provisions of subarticle (5) a representative of a person shall be liable in the same manner and to the same extent as the person of whom he is a representative for all the obligations imposed by or under this Act.

(*b*) Anything done or omitted to be done by a representative acting as such shall for the purposes of this Act be deemed to have been done or omitted to be done by the person of whom he is a representative.

(*c*) Any notice served on or any refund paid to a representative in his capacity as such under any of the provisions of this Act shall be deemed to have been served on or to have been made to the person of whom he is a representative.

(*d*) The existence of or the designation of a person as a representative of another person shall not relieve the latter person from any obligation or liability under this Act.

(4) A representative who has under his management or control any funds or property belonging to or due to the person of whom he is a representative shall not dispose of such funds or property unless he has made adequate provision for any tax due under this Act.

(5) A representative shall be jointly and severally liable with the person of whom he is a representative for the tax due by that person: provided that where the representative has acted in good faith and is not knowingly in breach of subarticle (4) or of any other obligation under this Act, his liability under this subarticle shall be limited to the funds or to the value of any property under his management or control which belongs or is due to the person of whom he is a representative.

Appropriation of payment. *Substituted by: XII. 2014.81.*

67. (1) When a person furnishes a tax return or notice of payment within the time laid down in the relevant provisions of this Act and such tax return or notice of payment is accompanied by a payment of all or part of the tax declared to be payable therein, such payment shall be deemed to be made on account of the tax payable on that tax return or notice of payment.

(2) When a person furnishes a tax return or notice of payment within the time laid down in the relevant provisions of this Act and such tax return or notice of payment is not accompanied by a payment of all the tax declared to be payable therein, such person

may request, by the furnishing of such form as the Minister may by regulations prescribe, that any payment accompanying such form shall be deemed to be made on account of the tax declared to be payable in such tax return or notice of payment, so however that:

(*a*) such request shall not be valid if it is made later than six months from the time within which the tax return or notice of payment is required to be furnished in terms of the relevant provisions of this Act;

(*b*) the provisions of sub-articles (3) and (4) shall apply to such payment.

(3) Subject to the provisions of sub-articles (1) and (2), when any interest is due by a person on any tax, other than tax the payment of which may be kept in abeyance in terms of the provisions of the Ninth Schedule to this Act, any payment made by that person to the Commissioner shall, notwithstanding any declaration made by that person, be appropriated to that interest before it is appropriated to any tax.

(4) Subject to the provisions of sub-articles (1), (2) and (3), when an administrative penalty is due by a person, other than a penalty the payment of which may be kept in abeyance in terms of the provisions of the Ninth Schedule to this Act, any payment made by that person to the Commissioner shall, notwithstanding any declaration made by that person, be appropriated to such administrative penalty before it is appropriated to any tax.

(5) Subject to the other provisions of this article, when tax due by a person, other than tax the payment of which may be kept in abeyance in terms of the provisions of the Ninth Schedule to this Act, became due on more than one occasion any payment made by that person to the Commissioner shall, notwithstanding any declaration made by that person, be appropriated to that amount of tax that became due at the earliest of those occasions before it is appropriated to the tax that became due on subsequent occasions.

(6) When a payment is made by a person to the Commissioner in circumstances which indicate that that person intended that payment to relate to a tax return or notice of payment, that payment shall be deemed to relate to that tax return or notice of payment for the purposes of this article without prejudice to the power of the Commissioner under any other provision of this Act to appropriate that payment in any other manner.

Refunds. *Amended by: X. 2003.35.*

68. (1) Tax paid shall not be refundable except in the circumstances provided in Part IV or articles 69, 70 and 71.

(2) When any amount is refundable by the Commissioner to a person by whom any interest, administrative penalty or tax is due, the Commissioner may deduct such tax, interest or administrative penalty from that amount to the same extent to which that amount, had it been a payment made by that person, would fall to be appropriated to such interest, penalty or tax in accordance with the provisions of article 67 and in the same order: provided that a deduction under this subarticle may also be made with respect to tax that may be kept in abeyance in terms of the provisions of the

Ninth Schedule to this Act.

(3) A refund due in accordance with any provision of this Act shall be payable without any further appropriation other than this Act by warrant under the hand of the Minister.

Repayment of tax that was paid but not due and of overpaid tax. *Amended by: X. 2003.36.*

69. (1) Subject to the provisions of subarticle (2) where it results that any tax paid by a person was not due or was in excess of the tax due under this Act, the Commissioner shall, on the production of such evidence as he may deem fit to require, repay the tax or that part thereof which was not due to that person or to any other person who may be entitled to that repayment: provided that nothing in this subarticle shall be construed as overriding or replacing the provisions of article 43.

(2) The Minister may by regulations prescribe the manner and the time within which a claim for a repayment under subarticle (1) may be made and such conditions and limitations, including a minimum amount in respect of which a repayment may be claimed, as he may deem fit.

(3) Where it results from a decision given on an appeal made in accordance with this Act, that any amount of tax paid by a person was not due, the Commissioner shall refund such amount to that person within thirty days from the date such decision becomes *res judicata*.

(4) Interest at the rate specified in or prescribed in terms of article 21(4) shall be due on a refund to which subarticle (3) refers for the period ending on the date when the refund is paid or a cheque or draft is posted by the Commissioner to the person to whom the refund is payable, which interest shall run -

(*a*) if and to the extent that the amount refundable had been claimed as excess credit in a tax return furnished to the Commissioner by the appellant, from the date established in accordance with article 24;

(*b*) if and to the extent that the amount refundable was paid by the appellant as a condition for the validity of his appeal in accordance with the provisions of the Ninth Schedule to this Act, from the date on which that amount was paid to the Commissioner;

(*c*) in any other case, from the date the refund is payable in accordance with subarticle (3).

Diplomatic and consular arrangements. *Amended by: X. 2003.37.*

70. Where it results that any tax has been paid on the importation of goods which is exempt from import duties in terms of diplomatic and consular arrangements having effect in virtue of any enactment or that any tax has been paid on any supplies or importations by a person who qualifies for an exemption from tax in terms of such international arrangements as the Minister may, by order in the Gazette, specify, the Commissioner shall, upon a request made within such time and in such manner as may be prescribed, and on the production of such evidence as he may deem necessary, refund the tax so paid to the said person.

Repayment of tax in certain cases. *Substituted by: X. 2003.38.*

71. The Minister may by regulations provide for the repayment by the Government, subject to such limitations, conditions and formalities as may be prescribed in the said regulations, of:

(*a*) an amount not exceeding the tax chargeable on supplies made to non-taxable physical persons of goods exported by them outside Malta;

(*b*) tax paid on the supply of goods that are exported by the persons acquiring them in the framework of their humanitarian, charitable or teaching activities;

(*c*) tax paid on supplies to, or intra-community acquisitions and importations by, persons or classes of persons eligible under such schemes as may be specified in the regulations.

PART IX

Miscellaneous

Validity of notices, etc.

72. (1) Any notice, warrant or other proceeding purporting to be made in accordance with the provisions of this Act shall not be deemed to be void or voidable for want of form or be affected by the reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Act.

(2) In the case of a body of persons it shall be sufficient if only the name of the body of persons appears on any notice, warrant or proceeding, including any proceeding in the Court of Appeal, issued or made under or for the purposes of this Act.

Delivery and service of notices, etc. *Amended by: XII. 2014.82.*

73. (1) Every notice to be given by the Commissioner under this Act shall be signed by the Commissioner or by some person or persons authorised by the Commissioner and every such notice shall be valid if the signature is printed, stamped or written thereon.

(2) Any notice required to be given under this Act by the Commissioner or any other person may be served either personally or by being sent by post. Unless the contrary is proved service of a notice sent by post shall be proved by means of evidence that the notice was properly addressed and posted and shall be deemed to have been effected in the case of an address in Malta not later than the third day following the day when it was posted, and in the case of an address outside Malta the day succeeding that on which the notice would have been received in the ordinary course by post:

Provided that, where such notice is not served on a person because that person could not be found or for other reasons attributable to that person and the Commissioner publishes a notice in the Gazette and in one or more daily newspapers stating that a notice has been made and inviting that person to call for it as and where directed by the Commissioner, then such notice shall also be deemed to have been duly notified on the date of such publication on a daily newspaper:

Provided further that a cheque or draft posted by the Commissioner shall be deemed to be a payment for the amount

thereof made on the date it is posted.

(3) For the purposes of subarticle (2) a notice shall be deemed to have been properly addressed if it has been addressed to a person's business or private address, and an address furnished by a person to the Commissioner shall be deemed to be an address of that person unless and until a notice of a change of address is given by that person to the Commissioner.

(4) The Minister may by notice in the Gazette establish the closing times for the offices of the Commissioner and any period laid down in or under this Act for the furnishing, delivery or service of a return, notice or other document to or on the Commissioner or for any payment to the Commissioner shall be deemed to expire at the closing time of the last day of that period.

(5) When the date on which any return, notice or other document is to be furnished, delivered or served or deemed to be served or on which a payment is to be made in terms of any provision of this Act falls, were it not for the provisions of this subarticle, on a Saturday or a Sunday, or on a national day or a public holiday as established in the National Day and Other Public Holidays Act, that date shall be deemed to fall on the first working day, other than a Saturday, following the said Saturday, Sunday, national day or public holiday.

Cap. 252.

Interest.
Cap. 123.
Cap. 372.

74. For the purposes of the Income Tax Act and the Income Tax Management Act -

(*a*) interest paid or payable under this Act by the Commissioner to any person shall be treated as income of that person;

(*b*) interest paid or payable under this Act by any person to the Commissioner shall be treated as expenses incurred in the production of the income of that person;

(*c*) administrative penalties paid or payable under this Act by any person to the Commissioner shall not be treated as expenses incurred in the production of the income of that person.

Power to make regulations.
Amended by: X. 2003.39; XIII. 2015.153.

75. (1) The Minister may by regulations -

(*a*) amend, cancel or substitute any of the Schedules, except for the Ninth Schedule, to this Act;

(*b*) prescribe any matter which may in any particular case be deemed necessary for the purpose of avoiding significant distortions in competition which might otherwise result from the application of any of the provisions of this Act;

(*c*) make provision for the rounding up or down of any amount in any computation made for any of the purposes of this Act, or for disregarding any small amounts in any such computation;

(*d*) prescribe anything that may be prescribed in virtue of the provisions of this Act;

(*e*) prescribe any conditions and determination that may, in accordance with this Act, be imposed or made by the Commissioner;

(*f*) prescribe any other matter for securing the payment of the tax and generally for giving effect to the provisions of this Act;

(*g*) amend, revoke or substitute any regulations made under this Act.

(2) Any guidelines, explanations or instructions relating to this Act or to any regulations prescribed in terms of sub-article (1) contained in a publication or circular by or under the authority of the Commissioner and distributed or made available to taxable persons in general, shall be read and construed as one with such regulations and shall have the same effect as the regulations to the extent that such guidelines, explanations or instructions are not in conflict with this Act or the said regulations or with guidelines, explanations or instructions published at a later date and to the extent that -

(*a*) they give a definition of any term or an interpretation or any provision contained in this Act or the regulations;

(*b*) they determine the manner in which any provision of this Act or the regulations is to be applied;

(*c*) they determine the manner which, in accordance with this Act or the regulations, may be determined by or subject to the approval or the discretion of the Commissioner.

PART X

Offences and Punishments

Failure to apply for registration, or to keep or deliver records and returns.
Amended by: X. 2003.40; XIII. 2005.51; IV. 2007.41; L.N. 426 of 2007; XXXII. 2007.82; L.N. 105 of 2008; II. 2009.49; XIV. 2013.4.

76. Any person who -

(*a*) fails to apply for registration at the time and in the manner required by article 10 or 12;

(*b*) fails to keep or to store records, documents and accounts for the time and in the manner required by this Act or any regulations made under this Act;

(*c*) fails to furnish a tax return when required to do so in virtue of this Act;

(*d*) fails to furnish any additional return, statement or information or to produce any books, records, documents and accounts, or fails to pay any tax or administrative penalty due when required to do so in virtue of this Act or of any regulations made under this Act;

(*e*) supplies goods or services having failed to provide the security requested by the Commissioner under article 63(5),

shall, on conviction, be liable to a fine (*multa*) of not less than seven hundred euro (€700) and not exceeding three thousand and five hundred euro (€3,500) and, on a request by the prosecution, the court shall, in respect of an offence under paragraph (*c*), order the offender to comply with the law within a time sufficient for the purpose, but

in any case not exceeding three months, and in default the offender shall be liable to the payment of a further fine (*multa*) of five euro (€5) for every day that the default continues after the lapse of the time fixed by the Court:

Provided that the offender may, within thirty days after final judgement, apply to the Court which convicted him, requesting a total or partial remission of the penalty imposed under this article. The Court may grant a total or partial remission of such penalty provided that the prosecution, with the written concurrence of the Commissioner to be filed with any reply to such application, agrees to such request. Any such application shall be served on the prosecution which shall reply within fifteen working days from such notification.

Irregularities in records, etc., and false representations. *Amended by: X. 2003.41; XIII. 2005.52; IV. 2007.42; L.N. 426 of 2007; L.N. 105 of 2008; II. 2009.50; IV. 2011.76; V. 2012.66; XIV. 2013.5.*

77. Any person who -

(*a*) knowingly fails to account for any taxable supply or any intra-community acquisition made by him in the records, documents and accounts required by this Act or any regulations made under this Act;

(*b*) gives any return, statement or information required for any of the purposes of this Act which he knows to be incorrect or misleading in any material respect;

(*c*) falsifies any records, documents or accounts required to be kept under this Act or prepares or draws up or helps in the preparation or drawing up or makes use of any false records or documents;

(*d*) with the intent of concealing any evidence which he knows or is reasonably expected to know to be relevant for any purpose of this Act destroys, erases, damages or conceals any stored information or any records, documents or accounts, or is in possession of or supplies to another person any software application that would erase, destroy, damage or conceal any stored information or any such records, documents or accounts;

(*e*) fails to provide or produce a tax or other invoice or document as and when required by article 50, 51 or 52 or provides any such tax or other invoice or document which is incorrect or misleading in any material respect or fails to provide to the Commissioner, without any valid reason, all copies of any used or unused manual fiscal receipts where required by the Commissioner;

(*f*) is an employee or agent of another person, and whose functions in that capacity include that of providing or producing a tax or other invoice or document which that other person is required to provide or to produce in terms of article 50, 51 or 52, fails to provide or produce such tax or other invoice or document or provides any such tax or other invoice or document which is incorrect or misleading in any material

respect;

(*g*) provides an invoice or other document in respect of a supply showing tax to be chargeable on that supply in a case where he knows that no tax is chargeable or where the tax chargeable is less than that shown or otherwise knowingly adds to or includes in a price for a supply any amount purporting to represent tax which is not due or which is higher than the tax due;

(*h*) applies to be registered under article 11 in circumstances indicating that he knows or could with due diligence have known that he is not entitled to be so classified;

(*i*) being registered under article 11 and not being eligible to remain so registered does not apply for the cancellation of that registration in the manner required and within the time laid down in this Act;

(*j*) being registered under article 11 purports in connection with any transaction not to be so registered for the purpose of obtaining any financial gain;

(*k*) not being registered under article 11 purports in connection with any transaction to be so registered for the purpose of obtaining any financial gain;

(*l*) having added to or included in a price for goods or services supplied by him to another person any amount purporting to represent tax chargeable under this Act, knowingly fails to account for that amount in his records and accounts or to pay that amount to the Commissioner;

(*m*) acquires possession of or deals with any goods, or accepts the supply of any services having reason to believe that the tax on the supply of the said goods or services has been or will be evaded;

(*n*) supplies or offers to supply to another person goods or services the acquisition or dealing with which or the acceptance of which would render that other person guilty of an offence in virtue of paragraph (*m*);

(*o*) supplies or offers to supply to another person and, or puts up for sale goods, without being in possession, at the place where he supplies or offers to supply to another person and, or puts up for sale goods, of a fiscal cash register or manual fiscal receipt books as issued or approved by the Commissioner;

(*p*) being a credit or financial institution which supplies money or grants credit by way of a loan account facility or by means of any other kind of facility to a customer in connection with the supply of goods or services by third parties to that customer for the construction, re-construction, repair, refurbishment or maintenance of immovable property or for fixtures related thereto, and which effects payment for such

goods or services either directly to the vendor or supplier thereof or to a third party or to the customer subject to an understanding or to an express or implied condition that the amount paid will be passed on to the said vendor or supplier, by the debit of the customer's loan account or other facility, on the basis of supporting documents, including contracts, invoices, receipts, architects' or other certificates, or similar documents, submitted by or on behalf of the customer or by or on behalf of suppliers, contractors or other third parties, and which fails to inform the Commissioner of the names and VAT registration numbers of the said suppliers, contractors or other third parties as aforesaid, other than the customer, to whom it has directly or indirectly made payments as specified in this paragraph, in the form required by the Commissioner, as well as of the amounts of such payments, by not later than the end of the calendar quarter immediately following the calendar quarter during which it directly or indirectly made any payment as aforesaid,

shall be guilty of an offence and shall, on conviction, be liable -

(i) to a fine (*multa*) of not less than six thousand euro (€6,000) and not exceeding ten thousand euro (€10,000) for an offence committed under paragraphs (*c*) and (*d*); and

(ii) to a fine (*multa*) of not less than seven hundred euro (€700) and not exceeding three thousand five hundred euro (€3,500) for an offence under the other paragraphs,

and, in addition, for any offence as above referred to in all paragraphs, except for paragraph (*p*), to a further fine (*multa*) equal to ten times the endangered tax or to imprisonment of not more than six months or to both such fines and imprisonment.

In addition, on a request by the prosecution, the court shall order the offender to comply with the law within a time sufficient for the purpose, but in any case not exceeding one month, and, in default, the offender shall be liable to the payment of a further fine (*multa*) of five euro (€5) for every day on which the default continues after the lapse of the time fixed by the Court.

Recurrent offences. *Amended by: XIII. 2005.53; L.N. 426 of 2007; L.N. 105 of 2008; II. 2009.51.*

78. (1) Where a person has been convicted under either article 76 or article 77 and is again convicted of an offence under either of the said articles committed within six months from the date of the previous conviction, the fine (*multa*) shall in no case be less than one thousand and two hundred euro (€1,200).

(2) Where a person has been convicted of four offences committed under either of the articles aforesaid in a period of twenty-four months, the court shall on the latest of the said convictions impose a fine (*multa*) of not less than two thousand and five hundred euro (€2,500) and in addition to the punishment for that

conviction order the suspension for a determinate time of not less than one week and not more than one month of all licences, permits, warrants or other authorisation granted by the Police or by any other authority to carry on the economic activity or activities to which the offences relate.

Obstruction of officials. *Amended by: L.N. 426 of 2007; L.N. 105 of 2008; II. 2009.52.*

79. Any person who -

(*a*) obstructs, hinders, impedes or does anything which is calculated to obstruct, hinder or impede, or molests or assaults the Commissioner or any person duly engaged in the exercise of any power or duty conferred or imposed on him by or under this Act;

(*b*) being a person in charge of any premises which the Commissioner or any person authorised by the Commissioner is empowered to enter in terms of article 53(*a*) fails to allow access to the said premises to the Commissioner or authorised officer or fails to take such measures as may be reasonably required of him for the purpose of any such access or of any inspection of that premises or of any goods, assets, books, records or documents kept therein,

shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not less than five hundred euro (€500) and not more than two thousand and five hundred euro (€2,500), or to imprisonment of not more than six months, or to both such fine and imprisonment.

Offences relating to importations. *Amended by: XIII. 2005.54; L.N. 426 of 2007; L.N. 105 of 2008; II. 2009.53; V. 2012.67.* Cap. 37.

80. (1) The provisions of articles 18, 60 and 62 of the Customs Ordinance shall apply to this Act as if all references to duties contained in those articles were references to tax due under this Act, and any person who is in contravention of the provisions of the said articles construed as aforesaid in relation to any goods whose importation is subject to tax under this Act shall, without prejudice to any liability incurred under the said Ordinance, be guilty of an offence under this Act and shall on conviction, be liable to a fine (*multa*) equivalent to three times the tax payable or to a fine (*multa*) of three hundred and fifty euro (€350), whichever shall be the greater, so however that one third of the said amount shall be deemed as a civil debt due to the Commissioner, or to imprisonment for a term not exceeding two years or to both such fine and imprisonment and the offender may be either detained or proceeded against by summons, in the same manner and form, and subject to all other provisions laid down in the Criminal Code. Cap. 9.

(2) The provisions of article 77 of the Customs Ordinance shall apply in relation to goods whose importation is subject to tax under this Act as if any reference contained therein to the duty therein mentioned were also a reference to the tax chargeable under this Act. Cap. 37.

(3) The importation of goods subject to tax under this Act shall, for all purposes of any law, be deemed as a prohibited importation unless the said tax is duly paid or, where the payment

of the tax has been postponed in accordance with any provisions of this Act, the conditions imposed in connection with such a postponement are duly observed.

General offence. *Amended by: L.N. 426 of 2007; L.N. 105 of 2008; II. 2009.54.*

81. Any person who knowingly contravenes or fails to comply with any of the provisions of this Act or any regulations made under this Act shall be guilty of an offence and shall on conviction, unless the offence is subject to a greater punishment under any other provision of this Act or any other law, be liable to a fine (*multa*) of not less than two hundred and fifty euro (€250) but not exceeding one thousand and two hundred euro (€1,200), or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

Offences by principal officers of bodies of persons and by employers. *Amended by: X. 2003.42.*

82. (1) In addition and without prejudice to any liability of an employee or other person, where any thing is done or omitted to be done by a body of persons, the provisions of this Part shall apply as if such thing were done or omitted to be done by every director, manager or other principal officer of that body of persons: provided that a director, manager or other principal officer of a body of persons shall not be guilty of an offence in virtue of this subarticle if he proves that he was unaware and could not with reasonable diligence be aware of such act or omission and that he did everything within his power to prevent that act or omission.

(2) Where anything is done or omitted to be done by an employee in the course of his employment, or by any person acting on behalf of the registered person, whether such other person is an employee or not, the provisions of this Part shall apply as if such thing were done or omitted to be done both by the said employee or other person and by the employer or registered person: provided that such an employer or registered person shall not be guilty of an offence in virtue of this subarticle if he proves that he was unaware and could not with reasonable diligence be aware of such an act or omission and that he did everything within his power to prevent that act or omission.

Prosecution.

83. (1) No proceedings under this Part shall be taken except at the instance or with the sanction of the Commissioner, and proceedings that have been so taken may, at any time before final judgment, be withdrawn at the request of the Commissioner.

Cap. 9.

(2) Notwithstanding the provisions of the Criminal Code, the Attorney General shall have a right of appeal to the Court of Criminal Appeal from any judgment given by the Court of Magistrates in respect of criminal proceedings under this Part.

(3) The institution of proceedings or the imposition of a penalty for any offence under this Part shall not relieve any person from prosecution under any other law or from liability to the payment of any tax or administrative penalty for which he is or may be liable under this Act, and the institution of proceedings or the imposition of a penalty for any offence under any other law or the payment of any tax or administrative penalty under this Act shall not relieve any person from any prosecution or penalty under this Part.

(4) Article 21 of the Criminal Code and the Probation Act shall not apply with respect to any conviction under this Act.

Cap. 9.
Cap. 446.

(5) In any criminal proceedings under this Part the Commissioner personally or any other officer designated by him may, notwithstanding the provisions of any other law, produce the evidence, plead and otherwise conduct the prosecution instead of or jointly with the police.

(6) Should the evidence of the Commissioner or of the officer designated by him as aforesaid be required as part of the case for the prosecution, he shall be heard before assuming the duties of a prosecuting officer unless the necessity of his giving evidence arises at a later stage: provided that the Commissioner or other officer as aforesaid may state the facts constituting the offence before giving evidence.

Compromise penalty.
Amended by: X. 2003.43; XIII. 2005.55; L.N. 426 of 2007; L.N. 105 of 2008; II. 2009.55; V. 2012.68; XII. 2014.83.

84. (1) Notwithstanding any other provisions of this Act, the Commissioner may, in the case of an offence under this Act, enter into an agreement in writing with the offender whereby the said offender pays a sum equivalent to the fine (*multa*) that may be imposed by way of penalty in accordance with this Act on the conviction of that person for the said offence, sohowever that where a minimum and a maximum amount is provided for in respect of the fine (*multa*) that may be so imposed, the sum payable pursuant to the said agreement shall be a sum equivalent to the said minimum amount increased by one half of the difference between the said minimum and maximum amounts, and upon the signing of any such agreement by the Commissioner and the offender all criminal liability of the offender under this Act with regard to the offences in relation to which the agreement has been entered shall be extinguished.

(2) The provisions of subarticle (1) shall apply also in any case where the offender has been charged before a court in relation to the offence but before final judgment has been given in the case:

Provided that where proceedings before a court have not been commenced, the sum payable in accordance with any agreement as contemplated in subarticle (1) shall be reduced by ten per cent.

(3) Notwithstanding the provisions of subarticle (1) and subarticle (2) the Commissioner may in the case of an offence by any person against the provisions of article 76(*b*) or of article 77(*e*), enter into an agreement with the offender, whereby the said offender pays to the Commissioner two hundred euro (€200) in the case of a first offence, four hundred euro (€400) in the case of a second offence and eight hundred euro (€800) in the case of a third offence, within fifteen days from the receipt of a notice by the Commissioner to this effect, and upon the payment of such fine (*multa*), all criminal liability under this Act with regard to the offences in relation to which the fine (*multa*) has been paid, shall be extinguished.

(4) Any sum due in virtue of an agreement entered into in terms of subarticle (1) or subarticle (3) shall be due to the Government as

a civil debt. The Commissioner shall not enter into an agreement as is referred to in subarticle (1) or subarticle (3) unless such agreement is accompanied b the payment of the sum due or a sufficient security for its payment.

(5) The provisions of this article shall be without prejudice to any proceedings or forfeiture instituted or having effect in virtue of any other law.

(6) The said agreement and the payment of the fine (*multa*) so imposed shall be without prejudice to any tax, interest and administrative penalty due under this Act:

Provided that the Commissioner, as head of the Department of Customs, may impose and collect penalties relating to tax on importation due under this Act, in the case of an agreement having been reached in accordance with the provisions of article 63 of the Customs Ordinance, and may also impose and collect penalties in the case of an agreement having been reached in accordance with the provisions of article 63A of the said Ordinance, so however that any reference to the duty in the fine (*multa*) referred to in article 63A shall be construed as if it were a reference to the tax due under this Act.

Cap. 37.

PART XI

Transitory Provisions

Saving.
Amended by:
X. 2003.44.
Cap. 395.

85.* (1) The provisions of the Customs and Excise Tax Act† shall continue to apply fully with respect to any importation and any provision of services and supply of goods made before 1 January 1999 and with respect to anything required to be done or not to be done under that Act before that date subject to the provisions of the other articles of this Part.

Cap. 341.

(2) The provisions of the Expenditure Levy Act and of the Value Added Tax Act, 1994,‡ shall continue to apply to the extent that they were applicable immediately before the 1 January 1999.

Interpretations of certain contracts.
Amended by:
X. 2003.45, 46.
Substituted by:
II. 2004.67.
Amended by:
IV. 2011.77.
Cap. 395.

86. (1) Where, in the execution of a contract made before the effective date, any goods or services are supplied on or after the effective date and that supply is a taxable supply, that contract shall, for all the purposes of any law be interpreted as if the parties to that contract had agreed to a change in the consideration stipulated therein to reflect the difference, if any, between the system under the Customs and Excise Tax Act and that applicable under this Act.

(2) Where in the execution of a contract made before the date of coming into force of any change made in the rate of tax in terms of article 19, any goods or services are supplied on or after the date of coming into force of such change, and the supply is a taxable supply, that contract shall, for all the purposes of any law, be

*The original subarticle (1) has been omitted under the Statute Law Revision Act, 1980.
†Repealed by this Act.
‡Repealed by Act XII of 1997 (Cap.395).

interpreted as if the parties to that contract had agreed to a change in the consideration stipulated therein to reflect the difference between the rate of tax applicable before the change and the rate of tax applicable after the change.

(3) Subarticle (2), with the application where necessary also of subarticle (1) and of articles 85 and 88, shall apply in the interpretation of contracts made between the 1st January 1995 and the 30th June 1997 and between the 1st July 1997 and the 31st December 1998 where the supply is made on or after the 1st January 2004.

(4) Subarticles (1), (2) and (3) shall not apply -

(*a*) where it results from all the relevant circumstances that the consideration determined in accordance with the contract had already made provision for the said adjustment or that the parties had excluded any adjustment to the consideration on account of such difference;

(*b*) where or to the extent that the supply was, in terms of the said contract due to take place before the effective date or the date of coming into force of any change referred to in subarticle (2), as the case may be, and the delay was due to a fault on the part of the person who makes the supply.

Amended by:
L.N. 198 of 1999;
L.N. 387 of 2002.
Substituted by:
X. 2003.47.
Amended by:
L.N. 489 of 2004.

FIRST SCHEDULE

[Article 5(3)]

Activities of Public Authorities

The activities listed in the second column of the public authorities listed in the first column of this Schedule shall be deemed to be activities performed in the course or furtherance of an economic activity.

First column Public authority	*Second column* Activities
Malta Drydocks Corporation	All activities
Mediterranean Conference Centre	All activities
Any public authority	Sale of leaded petrol, unleaded petrol and diesel (gas) oil, kerosene, bottled gas and the supply of electricity and the supply of steam; The supply of water and gas; Production and sale of numismatic coins and medals; Telecommunications; The transport of goods; Port and airport services; Passenger transport; Supply of new goods manufactured for sale; The transactions of agricultural intervention agencies in respect of agricultural products carried out pursuant to Regulations on the common organisation of the market in these products; The running of trade fairs and exhibitions; Warehousing; The activities of commercial publicity bodies; The activities of travel agencies; The running of staff shops, co-operatives and industrial canteens and similar institutions; Transactions of a commercial nature of radio and television bodies; Private hire of patrol boat, helicopter and equipment; Inspection of ships' hulls by divers; Security duties with banks and similar activities; Provision of meteorological services; Book binding; Sale of bread; Sale of impounded motor vehicles;

	The provision of accommodation facilities to visiting youths, student groups and individuals; Sale of drugs and vaccines; Sale and cleaning of grave sites; Laboratory analysis; Testing for standards and issuing of certificates for exported goods; Giving technical advice in connection with technical problems to private industries; Printing services to government departments and parastatal entities; Sale of other publications; Quarantine services; Sale of milk powder, eggs and dairy produce; Sale of vegetables; Sale of livestock; Sale of decorative trees, fruit trees, vine rootings, fruit plants, shrubs and flowers; Sale of wheat, straw and manure; Sale of fish and fishing equipment; Bowser water services; Services of grafting, pruning and spraying; Rent and provision of cold storage facilities and sale of ice; Services of civil abattoir; Provision of telephonic communications; Acting as contractor for cleaning services; Sale of compost; Repairs to damage; Carpentry works; Hiring of plant and vehicles; Supply of metal trades goods; Repairs to plant and vehicles; Sale of prints; Sale of food prepared by students as part of their daily training.

Substituted by:
X. 2003.47.
Amended by:
L.N. 426 of 2007;
L.N. 443 of 2007;
L.N. 105 of 2008;
L.N. 34 of 2009;
L.N. 532 of 2010;
L.N. 61 of 2011;
L.N. 418 of 2012.

SECOND SCHEDULE

[Article 6]

Supplies, Intra-Community Acquisitions and Importations

Supplies: general rule

1. Except as otherwise provided in this Schedule -

(*a*) a supply of goods is the transfer of the right to dispose of tangible property as owner;

(*b*) a supply of services means a supply that is not a supply of goods.

Energy

2. The supply of electricity, gas, heat or cooling energy and other sources of energy shall be treated as a supply of goods.

Rights over property

3. (1) The transfer of an asset which is immovable property by definition of the law shall be treated as a supply of goods: provided that an emphyteutical grant for a period not exceeding fifty years shall be treated as a supply of a service.

(2) Subject to the other provisions of paragraph (1) of this item an assignment of any rights over property or of any intangible property whether or not it is the subject of a document establishing title is a supply of services.

Delivery on deferred terms

4. The delivery of the possession of goods pursuant to an agreement for the sale of those goods on deferred terms shall be treated as a supply of those goods.

Hire purchase

5. The delivery of the possession of goods pursuant to an agreement for the hire of those goods for a certain period where the agreement expressly contemplates that the ownership of those goods will be transferred at a time not later than the date on which an agreed price has been paid in full shall be treated as a supply of those goods.

Transfer of goods under a contract for commission

6. The transfer of goods pursuant to a contract under which commission is payable on purchase or sale is a supply of those goods.

Contract of works

7. The delivery of goods pursuant to a contract of works, including a construction contract, whether or not the materials have been provided in full or in part by the customer, shall be treated as a supply of services, except in special circumstances as the Minister may, otherwise, by regulations prescribe.

Obligation to refrain from an act or to tolerate an act

8. An obligation to refrain from an act or to tolerate an act or situation is a

supply of services.

Incidental supplies

9. (1) The provision by a person of goods for the purpose and in the course of maintenance or repair services supplied by that person shall be treated as part of the supply of those services.

(2) Save as otherwise provided in the Act or any regulations made under the Act, where a supply includes the provision of both goods and services and the consideration for that supply does not distinguish between the consideration for the goods and the consideration for the services, the supply shall be treated as a supply of goods or as a supply of services according to the principal nature of that supply.

Exchange

10. In a contract of exchange each of the parties shall be deemed to make a supply of any goods and any services he transfers or provides pursuant to that contract.

Supplies by disclosed agents

11. When a supply is made through an intermediary who acts in the name and for the account of another person that supply shall be treated as a supply made by that other person.

Supplies by undisclosed agents

12. When goods or services are supplied through an agent who acts in his own name they shall be deemed to be supplied to that agent and supplied by that agent.

Supply for consideration of goods forming part of an economic activity

13. The transfer or disposal by a taxable person of goods forming part of his economic activity for consideration including:

(*a*) the sale by judicial auction pursuant to any proceedings exercised by a creditor or by creditors of that person;

(*b*) the transfer of such goods by order made by or in the name of a public authority or in pursuance of the law against payment of compensation shall be treated as a supply of goods by that taxable person acting as such.

Application of goods forming part of an economic activity

14. (1) Subject to paragraph (3), the application by a person registered under article 10 of goods forming part of his economic activity for his private use, or that of his staff, or the disposal thereof free of charge or, more generally, their application for purposes other than those of his economic activity, where the value added tax on the said goods or the component parts thereof was wholly or partly deducted shall be treated as a supply of goods for consideration by that taxable person acting as such.

(2) Paragraph (1) also applies with respect to the goods forming part of the economic activity of a person at the time when his registration under article 10 is, for any reason, cancelled:

Provided that the Commissioner may exempt that person from accounting for the supply when he has reason to believe that the taxable value is less than two hundred and fifty euro (€250).

(3) This item does not apply to -

(*a*) a gift of goods made in the course or furtherance of that activity, otherwise than as one forming part of a series of gifts made to the same person, where the cost to the donor is not more than fifty euro (€50);

(*b*) a gift of an industrial sample in a form not ordinarily available for sale to the public.

Private use of goods forming part of an economic activity

15. The use of goods forming part of an economic activity of a taxable person registered under article 10 by that person himself or by any other person for any purpose other than for the purpose of that economic activity, shall be treated as a supply of services for consideration made by that taxable person acting as such.

Transfer of a going concern

16. (1) Notwithstanding the other provisions of this Schedule, the transfer by a person of assets of his economic activity shall be treated as neither a supply of goods nor a supply of services if:

(*a*) the assets are transferred to a person registered under article 10 to whom he transfers his economic activity, or part of that economic activity which is capable of separate operation, as a going concern; and

(*b*) the said assets are to be used by the transferee in carrying on the same kind of activity, whether or not as part of an existing economic activity, as that carried on by the transferor; and

(*c*) the said transfer is recorded in the records of the transferor indicating the registration number of the transferee.

(2) Subject to approval by the Commissioner, the provisions of paragraph (1) shall also apply where the transferee is not registered under article 10, provided that the transferor did not qualify for a credit of the input tax attributable to the acquisition and the accumulation of the assets being transferred.

Transfer of goods to another Member State

17. (1) The transfer by a taxable person of goods forming part of his economic activity to another Member State shall be treated as an intra-community supply of those goods for consideration.

(2) Goods shall be deemed to be transferred by a taxable person to another Member state if they are transported by or on his behalf from Malta to another Member State ("the second State") for the purposes of his economic activity other than for the purposes of any one of the following transactions:

(*a*) the installation or assembly of those goods, with or without a trial run, by or on behalf of the taxable person within the second State;

(*b*) the supply of those goods under a transaction that constitutes a distance sale that takes place in the second State;

(*c*) the supply of those goods by or on behalf of the taxable person on board ships, aircraft or trains during the transport of passengers where the point of departure of that transport is in the second State;

(*d*) the supply of those goods by the taxable person in the second State under a transaction which would be treated as an exempt with credit supply in terms of the provisions of items 1 to 9 of Part One of the Fifth Schedule if made in Malta;

(*e*) the supply of services to the taxable person involving valuations of, or

work on, those goods physically carried out in the second State provided the said goods are returned to that person in Malta on the completion of the said work;

(*f*) the temporary use of those goods in the second State for the purpose of the supply of services by the taxable person if that person is established in Malta;

(*g*) the temporary use of those goods in the second State for a period not exceeding twenty-four months if the importation of those goods into that State for temporary use would qualify for a full exemption from import duties;

(*h*) the supply of gas through a natural gas system situated within the territory of the Community or any network connected to such a system, the supply of electricity or the supply of heat or cooling energy through heating or cooling networks, in accordance with the conditions laid down in item 5 of Part One of the Third Schedule

(3) Where a transport of goods satisfies the conditions of any subparagraph of paragraph (2) and, at a subsequent stage, those conditions are no longer met, the transport shall, at that subsequent stage, be treated as a transfer to which paragraph (1) applies.

(4) The Minister may by regulations prescribe simplification measures for the application of this item and of item 18, in accordance with Article 395 of Council Directive 2006/112/EC or in virtue of any other article in substitution therefor.

Intra-community acquisitions

18. (1) An intra-community acquisition is:

(*a*) the acquisition of the right to dispose as owner of goods which are transported by or on behalf of the supplier or the person acquiring them from a Member State to the person acquiring them in another Member State; or

(*b*) the use in a Member State by a taxable person for the purpose of his economic activity of goods transported by him or on his behalf from another Member State within the territory of which those goods were produced, extracted, purchased, acquired or imported by him for the purpose of his economic activity, where the transport of those goods would, if made from Malta to another Member State, be treated as a transfer of goods to another Member State in accordance with item 17;

(*c*) the acquisition by a non-taxable legal person of goods imported by that person into the Community and transported to a Member State other than the State of importation.

(2) Any transaction which is treated under this Act as a supply of goods or a supply of goods for consideration shall also be treated as involving an acquisition of the right to dispose as owner of those goods or an acquisition of those goods for consideration.

Importation

19. Importation means:

(*a*) the entry into Malta before the accession date of goods transported from any other country;

(*b*) the entry into the Community on or after the accession date of goods

transported from a third territory excluding, however:

(i) goods which fulfil the conditions laid down in Articles 9 and 10 of the Treaty establishing the European Economic Community; and

(ii) goods covered by the Treaty establishing the European Coal and Steel Community that are in free circulation.

Substituted by: X. 2003.47. Amended by: L.N. 124 of 2007; L.N. 444 of 2007. Substituted by: L.N. 133 of 2009. Amended by: L.N. 533 of 2010.

THIRD SCHEDULE

[Article 7]

Place of Supplies, Intra-Community Acquisitions and Importations

Part One

Place of supply of goods

Supply of goods: general rule

1. Except as otherwise provided in this Schedule -

(*a*) a supply of goods that are not transported takes place where the goods are at the time when they are placed at the disposal of the person acquiring those goods;

(*b*) a supply of goods that are transported takes place where the goods are at the time when the transport of those goods begins;

(*c*) when the transport of goods begins outside the Community and ends in a Member State the supply of those goods by the importer and any subsequent supply up to the acquisition of those goods takes place in the Member State where they are imported.

Goods installed or assembled

2. A supply of goods that are installed or assembled, with or without a trial run, by or on behalf of the supplier takes place where the goods are installed or assembled.

Goods supplied on board ships, aircraft or trains

3. A supply of goods on board ships, aircraft or trains during the part of a transport of passengers effected in the Community takes place at the point of departure of the transport of passengers and, for the purpose of this item -

(*a*) "part of the transport of passengers effected in the Community" means the part of the transport effected, without a stop in a third territory, between the point of departure and the point of arrival of the transport of passengers;

(*b*) "the point of departure of the transport of passengers" means the first point of passenger embarkation foreseen within the Community, where

relevant after a leg outside the Community;

(*c*) "the point of arrival of the transport of passengers" means the last point of disembarkation of passengers foreseen within the Community of passengers who embarked in the Community, where relevant before a leg outside the Community;

(*d*) a return trip shall be treated as a separate trip.

Distance sales

4. (1) A distance sale means an intra-community supply of goods transported by or on behalf of the supplier which satisfies all the following conditions:

(*a*) the goods are not:

(i) new means of transport; or

(ii) goods that are installed or assembled by or on behalf of the supplier in the Member State where the transport ends; or

(iii) goods that are supplied under a transaction subject to a margin scheme on second hand goods, works of art, collectors' items and antiques in the Member State where the transport begins;

(*b*) when the transport ends in Malta, the goods are acquired by a person who is not registered under article 10 or article 12;

(*c*) when the goods are transported from Malta the purchaser is not identified on the invoice for that sale by a value added tax identification number assigned by the Member State where the transport ends.

(2) A distance sale takes place in the Member State where the transport of the goods in question ends, provided that a distance sale of goods which are not excise goods shall be treated as taking place in the Member State from where the goods are transported if the following conditions are met:

(*a*) in the case goods transported to Malta -

(i) the total value of supplies of goods transported to Malta by the same supplier during the year in which the distance sale takes place, including the value of the distance sale in question, or during the calendar year immediately preceding that year does not exceed the Distance Sales threshold determined in accordance with Part Three of the Sixth Schedule; and

(ii) the supplier has not made a valid election in the Member State from where the goods are transported in terms of which the distance sale is to be treated as taking place in Malta;

(*b*) in the case of goods transported from Malta -

(i) the total value of supplies of goods transported to the Member State where the transport ends by the supplier of the distance sale in question during the year in which that sale takes place or during the calendar year immediately preceding that year does not exceed the threshold above which, in accordance with the value added tax legislation of that State, distance sales are subject to tax in that State by reason of their value; and

(ii) the supplier has not made a valid election in Malta in terms of which the distance sale is to be treated as taking place in the Member State where the transport ends.

(3) A valid election for the purpose of paragraph (2)(*b*)(ii) shall be made by

means of a notice in writing to the Commissioner on a form acceptable to the Commissioner specifying the date from which it applies, not being earlier than thirty days from the date on which it is furnished, and shall apply to all distance sales made during the calendar year in which the election is made and for the two subsequent calendar years.

Supplies of gas through a natural gas system, of electricity and of heat or cooling energy through heating and cooling networks

5. (1) The place of supply to a taxable dealer of the supply of gas through a natural gas system situated within the territory of the Community or any network connected to such a system, the supply of electricity or the supply of heat or cooling energy through heating or cooling networks shall be deemed to be the place where that taxable dealer has established his business or has a fixed establishment for which the goods are supplied or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides.

For the purposes of this paragraph, "taxable dealer" shall mean a taxable person whose principal activity in respect of purchases of gas, electricity, heat or cooling energy is reselling those products and whose own consumption of those products is negligible.

(2) Where a supply of gas through a natural gas system situated within the territory of the Community or any network connected to such a system, the supply of electricity or the supply of heat or cooling energy through heating or cooling networks is not covered by paragraph (1), the place of supply shall be deemed to be the place where the customer effectively uses and consumes the goods:

Provided that where all or part of the gas, electricity or heat or cooling energy is not effectively consumed by the customer, those non-consumed goods shall be deemed to have been used and consumed at the place where the customer has established his business or has a fixed establishment for which the goods are supplied. In the absence of such a place of business or fixed establishment, the customer shall be deemed to have used and consumed the goods at the place where he has his permanent address or usually resides.

Part Two

Place of supply of services

Definitions

1. For the purpose of applying the rules concerning this Part:

(*a*) a taxable person who also carries out activities or transactions that are not considered to be taxable supplies of goods or services in accordance with article 4 shall be regarded as a taxable person in respect of all services rendered to him;

(*b*) a non-taxable legal person who is identified for VAT purposes shall be regarded as a taxable person.

General rules

2. (1) The place of supply of services to a taxable person acting as such shall be the place where that person has established his business. However, if those services are provided to a fixed establishment of the taxable person located in a place other than the place where he has established his business, the place of supply of those services shall be the place where that fixed establishment is located. In the absence of such place of establishment or fixed establishment, the place of supply of

services shall be the place where the taxable person who receives such services has his permanent address or usually resides.

(2) The place of supply of services to a non-taxable person shall be the place where the supplier has established his business. However, if those services are provided from a fixed establishment of the supplier located in a place other than the place where he has established his business, the place of supply of those services shall be the place where that fixed establishment is located. In the absence of such place of establishment or fixed establishment, the place of supply of services shall be the place where the supplier has his permanent address or usually resides.

Supply of services by intermediaries

3. The place of supply of services rendered to a non-taxable person by an intermediary acting in the name and on behalf of another person shall be the place where the underlying transaction is supplied in accordance with this Act.

Supply of services connected with immovable property

4. The place of supply of services connected with immovable property, including the services of experts and estate agents, the provision of accommodation in the hotel sector or in sectors with a similar function, such as holiday camps or sites developed for use as camping sites, the granting of rights to use immovable property and services for the preparation and coordination of construction work, such as the services of architects and of firms providing on-site supervision, shall be the place where the immovable property is located.

Supply of transport

5. (1) The place of supply of passenger transport shall be the place where the transport takes place, proportionate to the distances covered.

(2) The place of supply of the transport of goods, other than the intra-Community transport of goods, to non-taxable persons shall be the place where the transport takes place, proportionate to the distances covered.

(3) The place of supply of the intra-Community transport of goods to non-taxable persons shall be the place of departure.

For the purpose of this paragraph:

(*a*) "Intra-Community transport of goods" shall mean any transport of goods in respect of which the place of departure and the place of arrival are situated within the territories of two different Member States.

(*b*) "Place of departure" shall mean the place where transport of the goods actually begins, irrespective of distances covered in order to reach the place where the goods are located and "place of arrival" shall mean the place where transport of the goods actually ends.

Supply of cultural, artistic, sporting, scientific, educational, entertainment and similar services, ancillary transport services and valuations of and work on movable property

6. (1) The place of supply of services in respect of admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events, such as fairs and exhibitions, and of ancillary services related to the admissions, supplied to a taxable person, shall be the place where those events actually take place.

(2) (*a*) The place of supply of services and ancillary services, relating to cultural, artistic, sporting, scientific, educational, entertainment or

similar activities, such as fairs and exhibitions, including the supply of services of the organisers of such activities, supplied to a non-taxable person shall be the place where those activities actually take place.

(*b*) The place of supply of the following services to a non-taxable person shall be the place where the services are physically carried out:

(i) ancillary transport activities such as loading, unloading, handling and similar activities;

(ii) valuations of and work on movable tangible property.

Supply of restaurant and catering services

7. The place of supply of restaurant and catering services other than those physically carried out on board ships, aircraft or trains during the section of a passenger transport operation effected within the Community, shall be the place where the services are physically carried out.

Hiring of means of transport

8. (1) The place of short-term hiring of a means of transport shall be the place where the means of transport is actually put at the disposal of the customer.

(2) The place of hiring, other than short-term hiring, of a means of transport to a non-taxable person shall be the place where the customer is established, has his permanent address or usually resides.

However, the place of hiring a pleasure boat to a non-taxable person, other than short-term hiring, shall be the place where the pleasure boat is actually put 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.

(3) For the purposes of paragraphs (1) and (2), "short-term" shall mean the continuous possession or use of the means of transport throughout a period of not more than thirty days and, in the case of vessels, not more than ninety days.

Supply of restaurant and catering services for consumption on board ships, aircraft or trains

9. (1) The place of supply of restaurant and catering services which are physically carried out on board ships, aircraft or trains during the section of a passenger transport operation effected within the Community, shall be at the point of departure of the passenger transport operation.

(2) For the purposes of paragraph (1), "section of a passenger transport operation effected within the Community" shall mean the section of the operation effected, without a stopover outside the Community, between the point of departure and the point of arrival of the passenger transport operation.

"Point of departure of a passenger transport operation" shall mean the first scheduled point of passenger embarkation within the Community, where applicable after a stopover outside the Community.

"Point of arrival of a passenger transport operation" shall mean the last scheduled point of disembarkation within the Community of passengers who embarked in the Community, where applicable before a stopover outside the Community.

In the case of a return trip, the return leg shall be regarded as a separate transport operation.

Supply of telecommunications, broadcasting and electronic services to non-taxable persons

10. (1) The place of supply of the following services to a non-taxable person shall be the place where that person is established, has his permanent address or usually resides:

(*a*) telecommunications services;

(*b*) radio and television broadcasting services;

(*c*) electronically supplied services.

(2) For the purpose of this item, electronically supplied services include services relating to website supply, web-hosting, distance maintenance of programmes and equipment, supply of software and updating thereof, supply of images, text and information, and making available of databases, supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events, and the supply of distance teaching.

Where the supplier of a service and the customer communicate via electronic mail, that shall not of itself mean that the service supplied is an electronically supplied service.

Supply of services to non-taxable persons outside the Community

11. The place of supply of the following services to a non-taxable person who is established or has his permanent address or usually resides outside the Community, shall be the place where that person is established, has his permanent address or usually resides:

(*a*) transfers and assignments of copyrights, patents, licences, trade marks and similar rights;

(*b*) advertising services;

(*c*) the services of consultants, engineers, consultancy firms, lawyers, accountants and other similar services, as well as data processing and the provision of information;

(*d*) obligations to refrain from pursuing or exercising, in whole or in part, a business activity or a right referred to in this item;

(*e*) banking, financial and insurance transactions including reinsurance, with the exception of the hire of safes;

(*f*) the supply of staff;

(*g*) the hiring out of movable tangible property, with the exception of all means of transport;

(*h*) the provision of access to a natural gas system situated within the territory of the Community or to any network connected to such a system, to the electricity system or to heating or cooling networks, or the transmission or distribution through these systems or networks, and the provision of other services directly linked thereto.

Prevention of double taxation or non-taxation

12. In order to prevent double taxation, non-taxation or distortion of competition, the Commissioner may, with regard to services the place of supply of which is governed by Items 2, 8, 10 and 11 of this Part:

(*a*) consider the place of supply of any or all of those services, if situated within Malta, as being situated outside the Community if the effective use and enjoyment of the services takes place outside the Community;

(*b*) consider the place of supply of any or all of those services, if situated outside the Community, as being situated within Malta if the effective use and enjoyment of the services takes place within Malta.

Part Three

Place of Intra-Community Acquisitions

Intra-community acquisitions: general rule

1. An intra-community acquisition takes place where the goods are when the transport of the goods to the person acquiring them ends.

Place of intra-community acquisition under an identification number assigned under this Act

2. (1) Without prejudice to item 1, when a taxable person makes an intra-community acquisition on which he is identified as registered under article 10 the acquisition shall be deemed to take place in Malta unless the person acquiring the goods establishes that the acquisition has been treated as taking place in another Member State and subject to value added tax in that State in terms of provisions in force under the law of that State corresponding to item 1.

(2) For the purpose of paragraph (1) an intra-community acquisition of goods shall be deemed to have been subject to value added tax in a Member State in terms of provisions in force under the law of that State corresponding to item 1 if all the following conditions are fulfilled:

(*a*) it is made for the purpose of a subsequent supply of those goods in that other Member State;

(*b*) the subsequent supply is made to a taxable person or a non-taxable legal person identified for value added tax purposes in the Member State of destination;

(*c*) the person to whom the subsequent supply is made is designated by the supplier as the person liable for the payment of the tax on that supply;

(*d*) the taxable person registered under article 10 reports the subsequent supply in the recapitulative statement required in terms of article 30(3).

Part Four

Place of Importations

Importations

1. An importation of goods takes place where the goods are at the time when the chargeable event takes place.

FOURTH SCHEDULE

[Article 8]

Date when a chargeable event takes place and when tax becomes chargeable

Amended by:
L.N. 17 of 1999;
L.N. 28 of 1999;
L.N. 89 of 1999;
L.N. 116 of 1999;
L.N. 142 of 1999;
L.N. 199 of 1999;
L.N. 11 of 2000;
L.N. 274 of 2000;
L.N. 23 of 2001;
L.N. 171 of 2001;
L.N. 233 of 2001;
L.N. 180 of 2002;
L.N. 205 of 2002;
L.N. 39 of 2003.
Substituted by:
X. 2003.47.
Amended by:
L.N. 71 of 2010;
L.N. 419 of 2012;
L.N. 140 of 2013.

Date of the chargeable event in the case of supplies of goods

1. (1) In the case of a supply of goods the chargeable event takes place on the date when the goods are delivered.

(2) For the purpose of paragraph (1), when the delivery of goods, other than goods referred to in paragraph (3), gives rise to successive statements of account or payments the goods shall be treated as delivered, up to the value covered by those statements, on the last day of each period to which such statements of account or payments refer:

Provided that, when a continuous supply of goods does not give rise to statements of account or payments during a year, it shall be regarded as being delivered at least at intervals of one year.

(3) Paragraph (2) does not apply to the delivery of goods pursuant to a contract for the hire of goods for a certain period or for the sale of goods on deferred terms, which provides that in the normal course of events ownership shall pass at the latest upon payment of the final instalment.

(4) Notwithstanding the provisions of paragraphs (2) and (3), continuous supplies of goods over a period of more than one calendar month which are dispatched or transported to a Member State other than Malta and which are supplied VAT exempt or which are transferred VAT exempt to another Member State by a taxable person for the purposes of his business, in accordance with the conditions laid down in item 3, Part One, Fifth Schedule, shall be regarded as being completed on expiry of each calendar month until such time as the supply comes to an end.

Date of the chargeable event in the case of supplies of services

2. (1) In the case of a supply of services, the chargeable event takes place on the date when the services are performed.

(2) For the purpose of paragraph (1), when the supply of services gives rise to successive statements of account or payments they shall be treated as performed, up to the value covered by those statements, on the last day of each period to which such statements of account or payments refer:

Provided that, when a continuous supply of services does not give rise to statements of account or payments during a year, it shall be regarded as being completed at least at intervals of one year.

(3) Notwithstanding the provisions of paragraph (2), when a supply of services for which VAT is payable pursuant to article 20(2)(*b*) of the Act is supplied continuously over a period of more than one year and it does not give rise to statements of account or payments during that period it shall be regarded as being completed on expiry of each calendar year until such time that the supply comes to an end.

Date when tax on supplies becomes chargeable

3. The tax on a supply which takes place in Malta, other than a supply to which item 4 applies, becomes chargeable on the earlier of the following two dates:

(*a*) the date when the chargeable event takes place;

(*b*) the date when a payment is made for the supply to the extent covered by that payment:

Provided that where a tax invoice is issued by the fifteenth day of the month following the date determined under the foregoing provisions of this subsection the tax becomes chargeable on the date of the invoice.

Date when tax on exempt intra-community supplies becomes chargeable

4. The tax on an exempt intra-community supply becomes chargeable on the earlier of the following two dates -

(*a*) the fifteenth day of the month following the date when the chargeable event takes place;

(*b*) the date on which a tax invoice is issued for that supply:

Provided that, with respect to the supply of goods and the transfer of goods referred to in this item, the provision of paragraph (2) in item 1 and the occurrence of sub-paragraph (b) of item 3 shall not apply.

Date of the chargeable event in the case of intra-community acquisitions

5. In the case of an intra-community acquisition of goods the chargeable event takes place on the date which would be the date of the chargeable event had those goods been supplied in the Member State where the acquisition is made.

Date when tax on intra-community acquisitions becomes chargeable

6. The tax on an intra-community acquisition becomes chargeable on the earlier of the following two dates -

(*a*) the fifteenth day of the month following the date of the acquisition;

(*b*) the date on which a tax invoice is issued to the person making the acquisition for the supply of goods in question.

Date of the chargeable event and when tax becomes chargeable in the case of importations

7. (1) When goods are, on importation, placed under a customs duty suspension regime the chargeable event takes place and the tax becomes chargeable on the date when they cease to remain subject to that regime.

(2) When goods are, on importation, subject to customs duties, to agricultural levies or to charges having equivalent effect established under a common policy, the

chargeable event takes place and tax becomes chargeable when the chargeable event for those Community duties takes place and those duties become chargeable.

(3) In the case of an importation of goods that is not subject to the Community duties referred to in paragraph (2), the chargeable event takes place and tax becomes chargeable when, if the importation were subject to those duties, the chargeable event for those Community duties would take place and those duties would become chargeable.

(4) "Customs duty suspension regime" means any of the following arrangements and procedures to the extent that they provide, under the customs legislation of a Member State, for the temporary exemption from duty chargeable on the entry of goods into that State while the conditions required under those arrangements and procedures are met:

(*a*) the temporary storage of goods;

(*b*) the placing of goods in a free zone or free warehouse;

(*c*) customs warehousing or inward processing;

(*d*) the admittance into territorial waters of goods on drilling and production platforms;

(*e*) the temporary entry of goods into that State;

(*f*) external transit procedures;

(*g*) internal transit procedures.

FIFTH SCHEDULE

[Article 8]

Exemptions

Part One

Exemptions with credit

Amended by:
L.N. 24 of 2001.
Substituted by:
X. 2003.47.
Amended by:
L.N. 250 of 2004;
L.N. 520 of 2004;
L.N. 334 of 2006;
L.N. 121 of 2007;
L.N. 445 of 2007;
L.N. 234 of 2009;
L.N. 286 of 2010;
L.N. 425 of 2010;
L.N. 534 of 2010;
L.N. 379 of 2011;
L.N. 499 of 2011;
L.N. 38 of 2012;
L.N. 345 of 2013;
L.N. 422 of 2013;
L.N. 480 of 2014.

This Part applies to the supplies listed herein subject to the definitions contained in Part Five.

Exports and like transactions

1. (1) The supply of goods dispatched or transported to a destination outside the Community by or on behalf of the seller.

(2) The supply of goods transported to a destination outside the Community by

or on behalf of a purchaser not established within Malta, with the exception of goods transported by the purchaser himself for the equipping, fuelling and provisioning of pleasure boats and private aircraft or any other means of transport for private use.

(3) The supply of services other than those exempted by item 5, consisting of work on movable goods acquired or imported for the purpose of undergoing such work within Malta, and transported outside the Community by the performer of the services or by the customer if not established within Malta, or on behalf of either of them.

International goods traffic

2. (1) The supply of goods intended to be placed or while they are placed under a customs duty suspension regime.

(2) The supply of services other than those exempted by item 6, consisting in work on movable goods that are intended to be placed or while they are placed under a customs duty suspension regime.

Intra-community supplies

3. (1) The intra-community supply of goods to a person who is identified on the relative invoice as a person identified for value added tax purposes by a valid and active value added tax identification number in a Member State other than Malta, excluding:

(*a*) a supply made by a person registered under article 11;

(*b*) a supply that is subject to the special scheme of the profit margin in terms of Part Two of the Fourteenth Schedule.

(2) The intra-community supply of new means of transport to a person who is not identified for the purpose of that supply by a value added tax identification number.

(3) The intra-community supply of excise goods to a person who is not identified for the purpose of that supply by a value added tax identification number where the transport of the goods is carried out in accordance with Article 7 (4) and (5), or Article 16 of Directive 92/12/EEC, excluding:

(*a*) a supply made by a person registered under article 11;

(*b*) a supply that is subject to the special scheme of the profit margin in terms of Part Two of the Fourteenth Schedule.

(4) The intra-community supply of goods referred to in item 17(1) of the Second Schedule which would benefit from the exemption referred to in paragraph (1) of this item if it were made on behalf of another taxable person, excluding a supply that is subject to the special scheme of the profit margin in terms of Part Two of the Fourteenth Schedule.

International transport and ancillary services

4. (1) The international transport of persons; the transport of luggage and motor vehicles accompanying passengers and the supply of services related to the international transport of passengers.

(2) The transport of goods from a third territory and the supply of services ancillary thereto, where the value of these transport and ancillary services are included in the taxable value of the importation of those goods.

(3) The transport of goods which is directly connected with the export of those

goods outside the Community.

(4) The transport of goods that are subject to a customs duty suspension regime.

(5) The supply of services used for the purposes of transport referred to in paragraph (3) and (4) and relating to the loading, unloading, transhipment, handling, stowage, weighing, measuring, control, valuation, storage, supervision or delivery.

(6) The supply of services relating to customs formalities on importation into or exportation outside the Community or on transit.

(7) The intra-community transport of goods effected to or from the islands composing the autonomous regions of Azores or Madera as well as ancillary services thereto.

Brokers or other intermediaries

5. The supply of services of brokers and other intermediaries who act in the name and for the account of another person when these persons take part in operations exempted by items 1, 2, 6, 7, 8, 9 and 10 of this Part of the Schedule.

Sea vessels

6. (1) The supply of vessels:

(*a*) used for navigation on the high seas and carrying passengers for reward or used for the purpose of commercial, industrial or fishing activities;

(*b*) used for rescue or assistance at sea or for coastal fishing;

(*c*) of war.

(2) The supply to constructors, owners or operators of the vessels referred to in (1) of equipment incorporated or used therein.

(3) The supply of services consisting of the modification, maintenance, chartering and hiring of the vessels referred to (1) or equipment referred to in (2).

(4) The supply to the owners or to the operators of vessels referred to in (1) of goods for the fuelling or provisioning thereof: provided that -

(*a*) with respect to vessels used for coastal fishing, this exemption is not applicable for board provisioning, and

(*b*) with respect to war vessels, this exemption is limited to the fuelling and provisioning destined for vessels defined in subheading 89.01 of the Customs Tariff, leaving the country and bound for foreign ports or anchorages.

(5) The supply of services other than those referred to in (3), carried out for the direct needs of vessels referred to in (1), with the exception of war vessels, and for the direct needs of their cargo such as towage, pilotage, mooring, rescue services, valuation, use of the ports, services provided to the ship-owners by the maritime agents acting as such, services necessary for the entrance, departure or stay of the vessels in ports, and assistance provided to the passengers or the crew for the account of the shipowners.

Aircraft

7. (1) The supply of aircraft destined to be used by airline operators for reward chiefly for international transport of passengers and/or goods.

(2) The supply to constructors, owners or operators of aircraft referred to in (1) of equipment incorporated or used therein.

(3) The supply of services consisting of the modification, maintenance, chartering and hiring of aircraft referred to in (1) or equipment referred to in (2).

(4) The supply to the owners or to the operators of aircraft referred to in (1) of goods for the fuelling or provisioning thereof.

(5) The supply of services other than those referred to in (3), carried out for the direct needs of aircraft referred to in (1) and for the direct needs of their cargo such as towage, pilotage, rescue services, valuation, use of the airports, services provided to aircraft operators by their agents acting as such, services necessary for the landing, take off or stay in airports, and assistance provided to the passengers or the crew for the account of the airline operators.

Gold

8. (1) The supply of gold to the Central Bank of Malta.

(2) The supply of investment gold, including investment gold represented by certificates for allocated or unallocated gold or traded on gold accounts and including, in particular, gold loans and swaps, involving a right of ownership or claim in respect of investment gold, as well as transactions concerning investment gold involving futures and forward contracts leading to a transfer of right of ownership or claim in respect of investment gold.

(3) The supply of services of agents who act in the name and for the account of another when they intervene in the supply of investment gold for their principal.

(4) The exemptions in paragraphs (2) and (3) shall be subject to the option for taxation in terms of Part Six of the Fourteenth Schedule.

Food

9. The supply of food for human consumption, excluding food supplied in the course of catering.

Pharmaceutical goods

10. The supply of pharmaceutical goods.

Transport

11. The supply of -

(*a*) transport by scheduled bus service consisting of trips on scheduled routes.

For avoidance of doubt, "scheduled bus service" shall mean public passenger transport services by an operator contracted in terms of the provisions of regulation 68B of the Passenger Transport Services Regulations (S.L. 499.56), or any other regulations replacing those regulations;

(*b*) scheduled inter-island sea transport of passengers by authorised carriers and other scheduled sea transport of passengers recognised as such by the Commissioner.

For avoidance of doubt, "scheduled inter-island sea transport of passengers" shall mean scheduled transport of passengers between the islands of Malta and Gozo;

(*c*) special regular services consisting in the carriage of school pupils and students to and from an educational establishment recognised as such by the Commissioner;

(*d*) special regular services consisting in the carriage of workers to and from their place of work.

In paragraphs (*c*) and (*d*) the term "special regular services" has the meaning assigned to it in the Passenger Transport Services Regulations or any other regulations replacing those regulations.

Supplies of goods on board cruise liners

12. The supply of goods for consumption on board cruise liners where the place of taxation in terms of item 3 of the Third Schedule to the Act is deemed to be in Malta.

Part Two

Exemptions without credit

This Part applies to the supplies listed herein subject to the definitions contained in Part Five. Items 2 and 3 are without prejudice to item 5 of Part One.

Immovable property

1. (1) The letting of immovable property excluding -

(*a*) the letting of or the provision of accommodation in any premises which for the purpose of the said letting or accommodation is required to be licensed in virtue of the Malta Travel and Tourism Services Act, or any Act which may be substituted therefor or in a holiday camp or camping site;

(*b*) the letting of premises and sites for parking vehicles where such premises or sites have been designated by the Commissioner as parking areas or which fall to be treated as such in terms of such regulations as may be prescribed;

(*c*) the letting of permanently installed equipment and machinery and the hire of safes;

(*d*) the letting of property by a limited liability company to a person registered under article 10 for the purpose of the economic activity of that other person;

(*e*) the letting of immovable property for not more than thirty days by a taxable person in the course of an economic activity, except for:

(i) the letting referred to in sub-paragraphs (*a*), (*b*), (*c*) and (*d*);

(ii) the letting of space for artistic and cultural activities;

(iii) the letting for the purposes of habitation of any premises which for the purpose of the said letting, those premises are not required to be licensed in virtue of the Malta Travel and Tourism Services Act, or any other Act which my be substituted therefor;

(iv) the letting of premises used or intended to be used as garages, stores or similar uses.

(2) The transfer of immovable property.

Insurance services

2. The supply by persons licensed under the Insurance Business Act or the Insurance Intermediaries Act, of insurance and reinsurance transactions, including related services, in respect of which they are so licensed, where those services are specific to and essential for the provision of insurance or re-insurance transactions.

Credit, banking and other services

3. (1) The granting and the negotiation of credit and the management of credit by the person granting it.

(2) The negotiation of or any dealings in credit guarantees or any other security for money and the management of credit guarantees by the person who is granting the credit.

(3) Transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection and factoring.

(4) Transactions, including negotiation, concerning currency, bank notes and coins normally used as legal tender.

(5) Transactions, including negotiation, excluding management and safekeeping, in shares, interest in companies or associations, debentures and other securities, excluding:

(*a*) documents establishing title to goods;

(*b*) certain interest in immovable property;

(*c*) rights *in rem* giving the holder thereof a right of user over immovable property;

(*d*) shares or interests equivalent to shares giving the holder thereof *de jure* or *de facto* rights of ownership or possession over immovable property or part thereof.

(6) The supply of services consisting of the management of any investment scheme, provided that these services are limited to those activities that are specific to and essential for the core activity of the scheme:

Provided further that investment schemes shall refer to 'collective investment schemes' as defined under the Investment Services Act and 'retirement schemes' as defined under the Special Funds (Regulation) Act.

Cultural and religious services

4. (1) Religious services.

(2) The supply of such cultural services and goods closely linked thereto as may be approved by the Minister.

Sports

5. The supply by non-profit making organisations of such services related to sport or physical recreation and provided to persons taking part in sport or educational education as may be approved by the Minister.

Services related to certain exempt services

6. (1) The supply of staff by religious and philosophical institutions recognised as such by the Commissioner for the purpose of providing services referred to in paragraph (2) or (4) of item 11 or in paragraph (1) or (2) of item 12 of this Part with a view to spiritual welfare.

(2) The supply of goods and services by a non-profit making organisation in the course of an activity designed to raise funds to be used for the provision of goods and services which are exempt in terms of paragraph (2) or (4) of item 11 or of paragraph (1) or (2) of item 12 of this Part: provided the activity is recognised by the

Commissioner as being exclusively designed for the said purpose and provided that this exemption is not likely to cause distortion of competition.

Services supplied by independent groups

7. Services supplied by independent groups of persons whose activities are exempt from or not subject to value added tax, for the purpose of rendering to their members the services directly necessary for the exercise of their activity, where these groups merely claim from their members exact reimbursements of their share of the joint expenses, provided that such exemption is not likely to produce distortion of competition.

Services by non-profit making organisations to their members

8. The supply of services for the benefit of their members in return for a subscription fixed in accordance with their rules by non-profit making organisations with aims of a political, trade union, religious, patriotic, philosophical, philanthropic or civic nature or whose main purpose is to represent and promote the common business or professional interests of their members: provided that in any case where, in the opinion of the Minister, this exemption is likely to cause distortion of competition, this exemption shall be subject to such exceptions or limitations as the Minister may by order in writing determine.

Lotteries

9. Government lotto and lotteries, the supply of agency services related thereto, and such other supplies related to gambling as may be approved by the Minister.

Postal Services

10. The supply of public postal services, other than passenger transport and telecommunication services, and of goods, including postage stamps, incidental thereto.

Health and Welfare

11. (1) The supply of services by a person in the exercise of any profession regulated by the Health Care Professions Act or any Act which may be substituted therefor.

(2) The provision of care or medical or surgical treatment in any government hospital or institution or in any other hospital or institution approved by the Minister for the purposes of this paragraph.

(3) The supply of human organs, blood and milk.

(4) The supply of welfare services, including services supplied by homes for the elderly, and services for the protection and care of children and young people, supplied by any government institution or by any institution or organisation recognised by the Commissioner as a non-profit making institution or approved by the Minister for the purpose of this paragraph as any institution whose activities fall within the social and welfare policy of the government.

(5) The supply of transport services for sick, injured or disabled persons in vehicles specially designed for that purpose.

(6) The supply of goods where the said supply is connected with and essential for the supply of services referred to in paragraphs (2) and (4) of this item by the hospital, institution or home, as the case may be, supplying the said services.

Education

12. (1) The provision of education or educational research, including distance learning, by a government school or institution, by the University of Malta, by a school or institution registered under the Education Act, or by any educational establishment recognised as such by the Commissioner.

(2) The provision of education or educational research, including distance learning, of a kind provided by a school or university, or of religious instruction, by a non-profit making institution recognised as such by the Commissioner.

(3) Tuition given privately by teachers acting in an independent capacity in subjects which are normally taught in the course of education provided by a school or university but excluding tuition in recreational, physical or sporting activities or disciplines.

(4) Any training in the arts which is provided by an organisation accredited by the Register for the Accreditation in the Training of the Arts.

(5) The supply of goods where the said supply is connected with and essential for the supply of services referred to in paragraphs (1), (2), (3) and (4) by the school, institution, university, teacher or organisation, as the case may be, supplying the said services.

Supplies of goods in respect of which the supplier had not qualified for input tax credits

13. The supply of goods which were acquired by that person or which were manufactured or produced from components acquired by that person under a supply in respect of which that person did not qualify for any input tax credit.

Broadcasting

14. The activities of public radio and television bodies other than those of a commercial nature.

Water

15. The supply of water services by a public authority.

Part Three

Exempt intra-community acquisitions

This Part applies to the intra-community acquisitions listed herein subject to the definitions contained in Part Five.

Intra-community acquisitions made for the purpose of a subsequent supply

1. The intra-community acquisition of goods by a taxable person not established in Malta and who is identified for value added tax purposes in another Member State if all the following conditions are fulfilled:

(*a*) the acquisition of the goods is made for the purpose of a subsequent supply of those goods in Malta by that person;

(*b*) the goods acquired have been directly transported from a Member State other than that where that person is identified for value added tax purposes to the person to whom the subsequent supply is made;

(*c*) the person to whom the subsequent supply is made is a taxable person or a non-taxable legal person registered under article 10 or 12;

(*d*) the person to whom the subsequent supply is made is liable for the payment of the tax on that supply.

Acquisitions of goods whose supply or importation is exempt

2. The intra-community acquisition of goods the supply of which if made by a taxable person in Malta would in all circumstances be an exempt supply or the importation of which if made into Malta would in all circumstances be an exempt importation.

Acquisitions of goods where the tax would be refundable

3. The intra-community acquisition of goods by a person who is not registered or required to be registered under article 10 where that person would in all circumstances be entitled to a refund of the tax that would be due on that acquisition were it not exempt.

Duty suspension regime

4. The intra-community acquisition of goods intended to be placed under a customs duty suspension regime.

Food

5. The intra-Community acquisition of food.

Investment gold

6. The intra-community acquisition of investment gold, saving the option for taxation in terms of Part Six of the Fourteenth Schedule.

Goods subject to the margin scheme

7. The intra-community acquisition of goods that are supplied under a transaction subject to a margin scheme on second hand goods, works of art, collectors' items and antiques in the Member State where the transport begins.

Part Four

Exempt importations

This Part applies to the importations listed herein subject to the definitions contained in Part Five.

Importation of goods whose supply is exempt

1. The importation of goods the supply of which by a taxable person in Malta would in all circumstances be an exempt supply.

Goods exempt from customs duty

2. (*a*) The importation of goods whose definitive importation into Malta is exempt from customs duties other than as provided for in the Import Duties Act.

(*b*) goods that are intended to be placed under a customs duty suspension regime.

Goods transported from a third territory

3. The importation of goods transported from a third territory and imported into Malta where the supply of these goods by the importer is an exempt supply in virtue of paragraph (1) or (4) of item 3 of Part One of this Schedule.

The exemption provided for under this item shall apply in cases when the importation of goods is followed by the supply of goods exempted under paragraph (1) or (4) of item 3 of Part One of this Schedule only if at the time of importation the importer has provided to the Comptroller of Customs the following information:

(*a*) his VAT identification number issued in terms of article 10 of this Act;

(*b*) the VAT identification number of the customer, to whom the goods are supplied in accordance with paragraph (1) of item 3 of Part One of this Schedule, issued in another Member State, or his own VAT identification number issued in the Member State in which the dispatch or transport of the goods ends when the goods are subject to a transfer in accordance with paragraph (4) of item 3 of Part One of this Schedule;

(*c*) the evidence that the imported goods are intended to be transported or dispatched from Malta to another Member State.

In addition, the Comptroller of Customs may impose conditions including the production of further documentation and security.

Catches of fish

4. The importation into ports by sea fishing undertakings of their catches, unprocessed or after undergoing preservation for marketing but before being supplied.

Re-importation

5. The re-importation by the person who exported them outside the Community:

(*a*) of goods in the state in which they were exported outside the Community;

(*b*) of goods which have undergone outside the Community repair, transformation or adaptation, or after having been made-up or reworked abroad: provided that this exemption is limited to the value of the goods at the time they were exported outside the Community.

Food

6. The importation of food.

Investment gold

7. The importation of investment gold, saving the option for taxation in terms of Part Six of the Fourteenth Schedule.

Importation of gas, electricity, heat or cooling energy, through systems or networks

8. The importation of gas through a natural gas system or any network connected to such a system or fed in from a vessel transporting gas into a natural gas system or any upstream pipeline network, of electricity or of heat or cooling energy through heating or cooling networks.

Part Five

Definitions

For the purposes of this Schedule, the following terms shall have the meaning assigned to them in this Part.

Food

1. "Food" means the goods specified in the Customs Tariff contained in the First Schedule to the Import Duties Act under:

(*a*) Chapter 1 but excluding items falling under subheadings 0101.10.10.00; 0106.11.00.00; 0106.12.00.00; 0106.19.90.00; 0106.20.00.00; 0106.31.00.00; 0106.32.00.00; 0106.39.90.00; 0106.90.00.00.

(*b*) Chapters 2 to 4 inclusive, but excluding items falling under subheadings 0206.10.10.00; 0206.29.10.00; 0206.80.10.00 and 0206.90.10.00 in Chapter 2, and 0301.10.10.00 and 0301.10.90.00 in Chapter 3.

(*c*) Items falling under subheadings 0504.00.00.00; 0505.90.00.00; 0506.90.00.00; 0508.00.00.00; 0510.00.00.00; 0511.10.00.00; 0511.91.10.00; 0511.91.90.00; 0511.99.90.00 in Chapter 5.

(*d*) Items falling under subheadings 0601.20.10.00; 0602.10.10.00; 0602.20.10.00; 0602.20.90.00; 0602.90.10.00; 0602.90.20.00; 0602.90.30.00 in Chapter 6.

(*e*) Chapters 7 to 12 inclusive, but excluding items falling under subheadings 1207.30.90; 1207.99.91.00; 1209.30.00.00; 1209.99.10; 1209.99.91.00; 1209.99.99.00; 1211.90.30 in Chapter 12.

(*f*) Chapter 13 excluding items falling under subheadings 1301.10.00.00; 1302.11.00; 1302.14.00; 1302.19.05; 1302.19.30; 1302.19.91; 1302.19.98; 1302.20.10; 1302.20.90.

(*g*) Chapters 15 to 20 inclusive, but excluding items falling under subheadings 1501.00.11.00; 1502.00.10.00; 1503.00.11.00; 1503.00.19; 1503.00.30.00; 1505.00.10.00; 1505.00.90.00; 1507.10.10.00; 1507.90.10.00; 1508.10.10.00; 1508.90.10.00; 1511.10.10.00; 1511.90.91.00; 1512.11.10.00; 1512.19.10.00; 1512.21.10.00; 1512.29.10.00; 1513.11.10.00; 1513.19.30.00; 1513.21.11.00; 1513.21.19.00; 1513.29.30.00; 1514.11.10.00; 1514.19.10.00; 1514.91.10.00; 1514.99.10.00; 1515.11.00.00; 1515.19.10.00; 1515.21.10.00; 1515.29.10.00; 1515.30.10.00; 1515.30.90.00; 1515.40.00.00; 1515.50.11.00; 1515.50.91.00; 1515.90.15.00; 1515.90.15.90; 1515.90.21.00; 1515.90.31.00; 1515.90.40.00; 1515.90.60.00; 1516.20.10.00; 1517.90.93; 1518.00.10.00; 1518.00.31.00; 1518.00.39.00; 1518.00.91.00; 1518.00.95.00; 1518.00.99.00; 1520.00.00; 1521.10.00.10; 1521.10.00.90; 1521.90.10.00; 1522.00.10; 1522.00.31.00; 1522.00.39.00; 1522.00.91.00; in Chapter 15 and 1702.90.10; 1704.10.11.00; 1704.10.19; 1704.10.91; 1704.10.99; 1704.90.10; 1704.90.55; 1704.90.61; 1704.90.65; 1704.90.71; 1704.90.75 and 1704.90.81 in Chapter 17 and 2006.00.10 and heading 2009 in Chapter 20.

(*h*) Chapter 21 but excluding items falling under heading 2105.00 and subheadings 2106.90.20.00; 2106.90.98.33; 2106.90.98.37 and 2106.90.98.39.

(*i*) Subheadings 2202.90.10.10; 2202.90.91.00; 2202.90.95.00; 2202.90.99.00; 2209.00.11.00; 2209.00.19.00; 2209.00.91.00; 2209.00.99.00 in Chapter 22.

(*j*) Chapter 23 but excluding items falling under subheading 2307.00.

(*k*) Subheading 2501.00.91.00 in Chapter 25.

(*l*) Subheadings 3301.90.21.00; 3302.10.29.00; 3302.10.40.00; 3302.10.90.00 in Chapter 33.

Food supplied in the course of catering

2. (1) "Food supplied in the course of catering" means food which is suitable for immediate consumption, whether such food is consumed in the place where it is supplied or not, and consisting of -

(*a*) meals or snacks;

(*b*) milkshake, tea, coffee and chocolate supplied in liquid form;

(*c*) ice cream or products containing ice cream except in family packs;

(*d*) yogurt or similar products.

(2) For the purposes of paragraph (1) hereof -

(*a*) "meals or snacks" means and includes:

(i) hot and cold dishes including antipasto and dessert;

(ii) sandwiches, toast, potato chips, sausage rolls, pizza, *pastizzi*, *qassatat* and similar snacks;

(iii) biscuits, cakes, confectionery and similar items but excluding those sealed in a package by the manufacturer and supplied in that original sealed package and those items which individually weigh 500 grams or more;

(*b*) "family pack" means ice creams consisting of one component of not less than 350 grams in weight.

Pharmaceutical goods

3. "Pharmaceutical goods" means the goods specified in the Customs Tariff contained in the First Schedule to the Import Duties Act under:

(*a*) Chapter 30 except for items falling under sub-headings 3001 and 3002 where the use of items under these sub-headings is not for therapeutic or prophylactic purposes; 3005 and 3006.

(*b*) Subheading 3301.90.30.00 in Chapter 33.

(*c*) Subheading 3507.10.00.00 in Chapter 35.

(*d*) Subheading 3824.90.64.00 in Chapter 38.

(*e*) Subheadings 9619 00 21 and 9619 00 29 in Chapter 96.

(*f*) Subheadings 9619 00 51 and 9619 00 59 in Chapter 96.

(*g*) Heading 9020 excluding items falling under subheading 9020.00.10; heading 9021 excluding items falling under subheadings 9021.21.10 and 9021.21.90; and 9022 in Chapter 90.

Immovable property

4. (1) Saving the provisions of paragraph (2) of this item "immovable property" includes any asset that is immovable property by definition of the law.

(2) "Letting of immovable property" includes -

(*a*) the provision of any accommodation under any title in immovable property and any other form of supply of the use of immovable property;

(*b*) an emphyteutical grant for a period not exceeding 50 years;

(*c*) the letting of space for artistic and cultural activities.

Non-profit making organisations

5. A "non-profit making institution or organisation" means an institution or organisation:

(*a*) whose objects are clearly defined in its statute;

(*b*) whose objects expressly exclude profit making;

(*c*) whose statute provides that no part of its income or property is available directly or indirectly to any member, proprietor or shareholder;

(*d*) which, in the opinion of the Commissioner, is managed and administered in accordance with the provisions of its statute and for the purpose of its stated objects;

(*e*) which does not systematically aim to make a profit.

Investment gold

6. "Investment gold" has the meaning assigned to it in Part Six of the Fourteenth Schedule.

SIXTH SCHEDULE

Thresholds

Part One

[Article 11]

Small undertakings

Amended by:
L.N. 29 of 1999.
Substituted by:
X. 2003.47.
Amended by:
L.N. 122 of 2007;
L.N. 426 of 2007;
L.N. 105 of 2008;
L.N. 137 of 2009.

Threshold at the time of application

1. (1) Subject to paragraph (2), the economic activity of a person who applies for registration under article 11 qualifies as a small undertaking at the time of the application if his turnover for the relevant period is less than the Entry Threshold.

(2) When a taxable person applies for registration under article 11 at the commencement of his economic activity or within thirty days therefrom his economic activity qualifies as a small undertaking at the time of the application and continues to qualify as a small undertaking up to the end of the calendar quarter following that during which he commenced his economic activity if the Commissioner is satisfied that the turnover of that person for the period of twelve months commencing on the date of the commencement of that economic activity will not exceed the Entry Threshold.

Persons registered under article 10

2. (1) Notwithstanding the provisions of item 1, the economic activity of a person registered under article 10 does not qualify as a small undertaking at any time during the first thirty-six full calendar months from the date of the said registration:

Provided that a person who is treated as registered under article 10 in virtue of subarticle (6) of the said article of this Act shall be treated for the purpose of this item as having been registered under that article on the date on which he was first registered under this Act.

(2) Without prejudice to the provisions of paragraph (1) of this item, the economic activity of a person registered under article 10 does not qualify as a small undertaking if the turnover of that person for the relevant period exceeds the Exit Threshold.

Threshold of persons registered under article 11

3. The economic activity of a person registered under article 11 continues to qualify as a small undertaking as long as the turnover of that person for the relevant period does not exceed the Entry Threshold.

Turnover

4. (1) Subject to the other provisions of this item, the turnover of a person for the purposes of this Part is the total taxable value of all supplies made by that person in the course or furtherance of his economic activity during the relevant period, excluding:

(*a*) exempt without credit supplies;

(*b*) a transfer of a business as a going concern;

(*c*) transactions which are treated under this Act as supplies made by a person to himself;

(*d*) the sale or disposal of fixed assets.

(2) Without prejudice to paragraph (1) of this item, where a person registered under article 11 provides both goods and services, the applicable threshold shall be determined in accordance with the principal nature of the supply, taking account of the total value of all the supplies.

(3) When it appears to the Commissioner that the turnover for the relevant period has been negatively affected by specific extraordinary circumstances, including the temporary suspension of the economic activity, the turnover will be the amount obtained after such adjustment as the Commissioner might deem appropriate in the circumstances.

(4) In the case of a company established in Malta that forms part of a group of companies the turnover shall be deemed to be the total of the amounts of the turnover of all companies established in Malta that form part of that group. In this paragraph "group of companies" means two or more companies which are controlled by the same person, and for the purpose of this definition a person shall be deemed to control a company if he owns, directly or indirectly, more than 50% of the shares or the voting rights of that company or of another company which controls, within the said meaning, that company.

(5) For the purpose of computing the turnover for a period that commenced before the 1 January 1999 the taxable value and the description of supplies made before that date and all other terms relevant for that purpose shall be construed according to their meaning under this Act as if those supplies were made after that date.

Relevant period

5. (1) For the purposes of this Part, and subject to paragraph (2), the relevant period on any particular date is a period of twelve months ending on the last day of the calendar quarter preceding that in which that particular date falls.

(2) Where the first day of the twelve-month period referred to in paragraph (1) determined on a particular date precedes the date of the commencement of the economic activity, the relevant period on that particular date is a period commencing on the first day of the calendar quarter following that during which the economic activity was commenced and ending on the last day of the calendar quarter preceding that in which that particular date falls.

Calendar quarter

6. For the purposes of this Part, "calendar quarter" is a period of three calendar months ending on the 31 March, the 30 June, the 30 September and the 31 December, as the case may be.

Entry Threshold and Exit Threshold

7. For the purposes of this Part the Entry Threshold or the Exit Threshold is the amount in the Second or Third Column respectively in the Table in this Part that corresponds to the category in the First Column of that Table within which the economic activity of that person has been classified by the Commissioner:

Provided that the Entry or the Exit Threshold for a relevant period of less than twelve months determined in accordance with paragraph (2) of item 5 is a proportion of the relative threshold calculated by dividing that threshold by four and multiplying the result by the number of calendar quarters included in the relevant period so determined.

Information to be given to the Commissioner

8. A person who applies for registration under article 11 shall give all information that the Commissioner may reasonably request for the purpose of applying the provisions of this Part.

TABLE

First Column		Second Column	Third Column
Category		Entry Threshold €	Exit Threshold €
A	Economic activities consisting principally in the supply of goods	35,000	28,000
B	Economic activities consisting principally in the supply of services with a relatively low value added	24,000	19,000
C	Other economic activities	14,000	12,000

Part Two

[Article 12]

Acquisitions Threshold

The acquisitions threshold

1. The Acquisitions Threshold is the equivalent of Eur 10,000 using the latest conversion rate before 1 January of the year in respect of which that threshold is relevant, last published by the Central Bank of Malta if that year is the year 2008 or previous, and by the European Central Bank if that year is the year 2009 or after.

The value of intra-community acquisitions

2. For the purpose of determining whether the value of intra-community acquisitions in any particular case exceeds the Acquisitions Threshold or not the value of the intra-community acquisitions in question shall be taken to be the taxable value that would be determined in accordance with the relevant provisions of the Seventh Schedule if they were taxable intra-community acquisitions, provided that no account shall be taken of the value of:

(*a*) intra-community acquisitions of new means of transport and of excise goods;

(*b*) value added tax paid or due in a Member State other than Malta on the

intra-community supply of the goods in question.

Part Three

[Item 4 of the Third Schedule]

Distance Sales Thresholds

Distance Sales Threshold

1. The Distance Sales Threshold for any calendar year is the equivalent of Eur 35,000 using the latest conversion rate before 1 January of the year in respect of which that threshold is relevant, last published by the Central Bank of Malta if that year is the year 2008 or previous, and by the European Central Bank if that year is the year 2009 or after.

Value of distance sales

2. For the purpose of determining whether the value of distance sales in any particular case exceeds the Distance Sales Threshold or not the value of the sales of the goods in question shall be taken to be the taxable value that would be determined in accordance with the relevant provisions of the Seventh Schedule if they were taxable supplies, excluding the value of any excise goods.

Substituted by: X. 2003.47. Amended by: L.N. 335 of 2008; L.N. 420 of 2012.

SEVENTH SCHEDULE

[Article 18]

Taxable value

Taxable value of supplies

1. Except as otherwise provided in the other provisions of this Schedule, the taxable value of a supply shall be the total value of the consideration paid or payable to the supplier by the purchaser, the customer or any other person for the supply, including any subsidy directly linked to the provision of that supply, but excluding the value added tax chargeable under this Act on that supply.

2. The taxable value of a supply shall include, insofar as they are not included in the value determined under item 1:

(*a*) taxes, duties, levies, fees and other charges (excluding the value added tax chargeable under this Act) payable by reason of the supply;

(*b*) incidental expenses, such as commissions, packing, transport and insurance costs charged by the supplier to the purchaser or customer even if they are covered by a separate agreement or a separate document.

3. The taxable value of a supply shall not include:

(*a*) price reductions by way of discounts for early payment;

(*b*) rebates and other price reductions allowed directly by the supplier to the customer and accounted for at the time when the tax becomes chargeable;

(*c*) penalties and interests charged for late payment after the time of the supply;

(*d*) disbursements paid in the name and for the account of the person to whom the supply is made, and resulting from documents held by the supplier to have been so paid, which are entered in the records of the supplier in a suspense account;

(*e*) any amount charged to the customer by way of a deposit on returnable packing of goods where the deposit is lower than the cost of the packing.

4. When, after a supply takes place -

(*a*) the consideration for that supply is reduced by way of a price discount or rebate allowed to the customer for *bona fide* commercial reasons;

(*b*) the consideration for that supply is not payable or is repayable to the customer on account of the rescission of the contract for that supply which is declared by means of a definitive judgment or arbitration award or is agreed to by the parties in writing on grounds that would have been sufficient in a court of law for that rescission;

(*c*) the amount due as consideration for that supply becomes a bad debt,

the taxable value of that supply shall be reduced accordingly: provided that no adjustment shall be made to the tax chargeable on that supply by reason of such a reduction except in the manner provided in the Tenth Schedule.

5. (1) When the consideration is paid or payable wholly or partly in kind or where the value of the consideration for a supply cannot be readily determined, the taxable value of that supply shall be, to the extent that the consideration is so paid or cannot be so determined, its open market value.

(2) The open market value of goods or services means the price which they would fetch if sold or provided in the open market on the date and in the state they were in when the said goods are delivered or the said services are performed.

6. (1) The taxable value of a supply consisting of the application or disposal of goods for which no consideration is charged or paid but which is deemed in terms of the Second Schedule to be a supply of goods made for consideration, and the taxable value of a transport of goods that is treated as a supply in terms of item 17 of the Second Schedule (Transfer of goods to another Member State), is the purchase price of those or similar goods or, in the absence of a purchase price, the cost price, determined at the time of the supply.

(2) The taxable value of a self-supply of services is the full cost to the person making the supply of providing those services.

7. The taxable value of a supply consisting in the transfer of goods by order made by or in the name of a public authority or in pursuance of the law against payment of compensation is the compensation for that transfer.

8. (1) Where the factors used to determine the taxable amount on importation are expressed in a currency other than in Euro, the exchange rate shall be determined in accordance with the Community provisions governing the calculation of the value for customs purposes.

(2) Where the factors used to determine the taxable amount of a transaction other than the importation of goods are expressed in a currency other than in Euro, the exchange rate applicable shall be the latest selling rate recorded, at the time the tax becomes chargeable, applied by commercial banks in Malta.

(3) The use of the latest exchange rate published by the European Central Bank at the time the tax becomes chargeable shall also be accepted. Conversion between currencies other than the Euro shall be made by using the Euro exchange rate of each currency.

Taxable value of intra-community acquisitions

9. The taxable value of a taxable intra-community acquisition is the amount which would represent the taxable value in terms of this Schedule of the supply pursuant to which that acquisition is made if that supply were a taxable supply, and shall include any excise duty paid or payable in a Member State by the person making that acquisition on the goods acquired.

10. (1) When the taxable value of an intra-community acquisition includes excise tax paid or payable in a Member State other than Malta and the person who makes the acquisition qualifies for a refund of that excise tax, the value of that acquisition shall be reduced proportionately.

(2) When an intra-community acquisition is treated as taking place in Malta by reason of the fact that it was made by a person identified for the purpose of that acquisition by a value added tax identification number issued by the Commissioner and is subsequently also treated as taking place and subject to tax in another Member State by reason of the fact that the transport of the goods ends in that State, the chargeable value of that acquisition under this Act shall be reduced by the amount subject to tax in that other Member State.

(3) When the value of a supply pursuant to which an intra-community acquisition is made is reduced after that acquisition takes place for any of the reasons mentioned in item 4 the taxable value of the acquisition shall be reduced accordingly.

(4) When the taxable value of an intra-community acquisition is reduced in any of the circumstances mentioned in this item, the tax on that acquisition corresponding to that reduction shall, if paid, be treated as tax paid but not due for the purposes of article 69 of this Act.

Taxable value of importations

11. Subject to the other provisions of this Schedule, the taxable value of an importation of goods shall be the value established in terms of the Import Duties Act for the determination of the value on which duty *ad valorem* is chargeable under that Act, and all the relevant provisions of that Act shall apply *mutatis mutandis*, and for the purpose of this item the references in the said provisions to the Comptroller of Customs shall be construed as references to the Comptroller of Customs acting on behalf of the Commissioner.

12. The value established under item 11 shall be increased, insofar as they are not included in the value determined in accordance with item 11, by:

(*a*) any taxes, levies, duties and other charges due outside Malta, any import duties chargeable on the said importation under the Local Manufactures (Promotion) Act, any excise duty payable under the Excise Duty Act by reason of the importation of those goods;

(*b*) incidental expenses, such as commissions, packing, customs agency costs and transport and insurance costs incurred up to the delivery of the goods to the destination in Malta indicated on the document by means of which the goods are imported or, in the absence of such an indication, the place of the first transfer of the goods in Malta;

(*c*) costs for the transport of the goods to another destination within the Community if that destination is known at the time of the importation.

13. The taxable value of an importation shall not include:

(*a*) rebates and other price reductions allowed directly by the supplier to the customer and accounted for at the time of the importation;

(*b*) price reductions by way of discount for early payment.

EIGHTH SCHEDULE

[Article 19(2)]

Rate of tax

Amended by:
L.N. 273 of 2000;
L.N. 25 of 2001;
L.N. 388 of 2002;
L.N. 375 of 2003;
L.N. 384 of 2003;
L.N. 149 of 2004.
Substituted by:
X. 2003.47.
Amended by:
L.N. 251 of 2004;
L.N. 376 of 2004;
L.N. 436 of 2004;
L.N. 123 of 2007;
L.N. 446 of 2007;
L.N. 235 of 2009;
L.N. 499 of 2010;
L.N. 523 of 2010;
L.N. 381 of 2011;
L.N. 500 of 2011;
L.N. 39 of 2012;
L.N. 64 of 2015.

The tax chargeable under this Act on the taxable value of the supplies or importations in the case of item 7, described in the first column of the Table in this Schedule shall be at the rate specified in the second column of that Table.

TABLE

First Column	Second Column
Description	Rate
1. Accommodation The letting of or the provision of accommodation in any premises which for the purpose of the provision of such accommodation is required to be licensed in virtue of the Malta Travel and Tourism Services Act, or any other Act which may be substituted therefor: Provided that where the price charged for the supply of accommodation includes the supply of goods or services not falling within the meaning of accommodation the taxable value of the supply of accommodation shall be deemed to be eighty percent of the said price and twenty percent of that price shall be deemed to be the taxable value of supplies not described in this Column.	7%

2. The supply of electricity in accordance with Article 102 of Council Directive 2006/112/EC or any other article in substitution therefor.	5%
3. Confectionery and similar items The goods falling under CN code in the Common Customs Tariff: (*a*) 1207.30.90 and 1207.99.91; (*b*) 1302.11.00; 1302.14.00; 1302.19.05; 1302.19.30; 1302.19.91; 1302.19.98; 1302.20.10 and 1302.20.90; (*c*) 1503.00.19; 1517.90.93; 1520.00.00 and 1522.00.10; (*d*) 1702.90.10; 1704.10.11; 1704.10.19; 1704.10.91; 1704.10.99; 1704.90.10; 1704.90.55; 1704.90.61; 1704.90.65; 1704.90.71; 1704.90.75 and 1704.90.81; (*e*) 2006.00.10 and 2009; (*f*) family packs as defined in item 2(*b*) of Part Five of the Fifth Schedule to the Act falling under CN codes 2105.00.10; 2105.00.91 and 2105.00.99; (*g*) 2501.00.10; (*h*) 3302.10.21.	5%
4. Medical accessories The goods falling under CN code in the Common Customs Tariff: (*a*) 2905.45.00; (*b*) 3001 and 3002 except where the use of items under these sub-headings is for therapeutic or prophylactic purposes; 3005 and 3006; (*c*) 3306 and solutions for contact lenses falling under CN code 3307.90.00; (*d*) 3407.00.00; (*e*) 3822.00.00; 3824.90.61 and 3824.90.62; (*f*) 9619 00 31 and 9619 00 39; (*g*) 7015.10.00;	5%
(*h*) 9001.30.00; 9001.40.41; 9001.40.49; 9001.40.80; 9001.50.41; 9001.50.49; 9001.50.80; 9004.90.10; 9004.90.90; 9021.21.10 and 9021.21.90.	
5. Printed matter The goods falling under CN code in the Common Customs Tariff: (*a*) 4820.20.00; (*b*) Chapter 49 but excluding items falling under CN code 4905.10.00; 4906.00.00; 4907.00.10; 4907.00.90.00; 4908.10.00; 4908.90.00; 4909 and 4911.91.00; (*c*) audio books, books and similar printed matter, other than books and similar printed matter referred to in paragraphs (*a*) and (*b*) of this item, supplied on all physical means of support which include, and are not limited to, a CD, DVD, SD-card and USB, but which excludes all electronically supplied services.	5%

6. Items for the exclusive use of the disabled: (*a*) raised toilet seats for use by disabled persons falling under CN code 3924.90.90; (*b*) pressure relief cushions for use by disabled persons falling under CN codes 4014.90; 8714.20.00 and 9404.90; (*c*) padded/inflatable toilet seats for use by disabled persons falling under CN codes 4016.95.00 and 4016.99.98; (*d*) pressure relief mattresses for use by disabled persons falling under CN codes 6306.41.00; 6306.49.00; 9404.21 and 9404.29; (*e*) white sticks for use by disabled persons falling under CN code 6602.00.00; (*f*) walking sticks and ferrules for use by disabled persons falling under CN code 6603.90.00; (*g*) gutter frames for use by disabled persons falling under CN codes 7325.10; 7325.99; 7326.19; 7326.90 and 7907.00; (*h*) hoists for use by disabled persons falling under CN codes 8425.11.90 and 8425.19.91; (*i*) platform lift/swimming pool lifters for use by disabled persons falling under CN codes 8428.10.91 and 8428.20.99; (*j*) chairlifts for use by disabled persons falling under CN code 8428.60.00; (*k*) bath tub lifters for use by disabled persons falling under CN code 8428.90.98; (*l*) braille typewriters for use by disabled persons falling under CN code 8469.12.00; 8469.20.00 and 8469.30.00; (*m*) amplifiers for communication devices for people with impaired hearing for use by disabled persons falling under CN codes 8518.40.91 and 8518.40.99; (*n*) children special walkers, prone standers and wheelchairs (manual) for use by disabled persons falling under CN code 8713.10.00; (*o*) wheelchairs (electrical) for use by disabled persons falling under CN code 8713.90.00;	5%
(*p*) car adaptation-handcontrols, swivel seats for use by disabled persons falling under CN codes 9401.30.10 and 9401.30.90; (*q*) toilets frames/surrounds for use by disabled persons falling under CN code 9401.79.00; (*r*) special feeder chairs for use by disabled persons falling under CN code 9402.90.00; (*s*) lifts to get wheelchair into a car for use by disabled persons falling under CN code 8428.90.98;	

(*t*) mouthsticks for use by disabled persons falling under CN code 9608.39.90; (*u*) special seats/buggies/wheelchairs for use by disabled persons falling under CN code 8713.10.00.	
7. The importation of works of art, collector's items and antiques as defined in paragraphs 1, 2 and 3 of Part Two of the Fourteenth Schedule.	5%
8. Minor repairing of: (*a*) bicycles; (*b*) shoes and leather goods; (*c*) clothing and household linen (including mending and alteration.	5%
9. Domestic care services such as home help and care of the young, elderly, sick or disabled.	5%
10. Admission to museums, art exhibitions, concerts and theatres.	5%

Substituted by:
X. 2003.47.
Amended by:
L.N. 426 of 2007;
L.N. 105 of 2008;
II. 2009.56.
Substituted by:
L.N. 89 of 2012;
L.N. 185 of 2012.
Amended by:
L.N. 64 of 2013.

NINTH SCHEDULE

[Article 46]

Appeals to the Administrative Review Tribunal

Competence of the Tribunal

1. (1) The Tribunal shall be competent to hear any appeal against an assessment and to confirm, reduce or increase any taxable value or credit or tax assessed by the Commissioner, or cancel the assessment or make such other declaration or order as it deems fit.

(2) The Tribunal shall be competent to determine any matter referred to it in accordance with article 44.

(3) The Tribunal may, in any decision, make such order on the costs of the case as it may deem appropriate.

Appeals against assessments

2. (1) An appeal against an assessment shall not be valid if:

(*a*) a return for the tax period to which the assessment refers has not been delivered to the Commissioner before the appeal is entered;

(*b*) all tax payable by the appellant which is not in dispute has not been paid;

(*c*) it is not made within thirty days from the date of the service of the notice against which the appeal is made;

(*d*) it is not made in such form and in such manner as may be prescribed under

the Administrative Justice Act;

(*e*) a payment of such fees for lodging an appeal as may be prescribed under the Administrative Justice Act has not been made.

(2) The onus of proving that any taxable value assessed by the Commissioner is excessive or that any credit assessed by the Commissioner is insufficient shall lie on the appellant.

(3) The Tribunal may refuse to consider any evidence as sufficient for the purpose of paragraph (2) if the appellant has failed to keep the records and documents required to be kept by this Act or fails to produce such records or documents.

(4) The Tribunal shall deliver its decision in writing and shall cause a copy of the decision to be given to the appellant.

Evidence and proof

3. For the purpose of -

(*a*) the examination of evidence and enforcing the attendance of witnesses;

(*b*) the production of books and other documentary evidence,

in any appeal to the Tribunal, the Tribunal shall also have all such powers as are vested by the Code of Organization and Civil Procedure in the Civil Court, First Hall and it shall, *mutatis mutandis*, be regulated by the appropriate rules set out:

Provided that -

(i) the clerk, agent, employee or other person confidentially employed in the affairs of the appellant, and the parents, spouse or children of such appellant, shall not be called to give evidence or to be examined except on the request of the appellant;

(ii) any person, other than the Commissioner, who has or has had any official duty, or is or has been employed, in the administration of the Act, shall not be called to give evidence or to be examined in connection with any official matter concerning the assessment under appeal except on the request of the Commissioner.

Payment of the tax

4. (1) When a valid appeal has been made against an assessment, the payment of so much of the tax assessed which is in dispute may be kept in abeyance until the appeal is finally determined, provided that the running of interest on the said tax shall not be meanwhile suspended.

(2) The running of the period referred to in article 58(2) shall be suspended in respect of any tax or administrative penalty for any time during which the payment thereof may be kept in abeyance in terms of this item.

(3) Where the tax payable as a result of a decision of the Tribunal on an appeal against an assessment exceeds the tax shown to be payable in the said assessment, the excess shall be payable by not later than the end of the month during which the said decision is served on the appellant and interest at the rate specified in article 21(4) shall be due on such excess from the said date for any period during which such excess remains unpaid.

References to the Tribunal

5. (1) A reference to the Tribunal of any matter referred to in article 44 may

not be made unless it has first been raised in correspondence with the Commissioner and shall be made by means of an application in writing which shall state clearly all the facts relevant to that matter and the manner in which, in the opinion of the applicant, that matter should be determined.

(2) A reference to the Tribunal on a question referred to in article 44(*k*) (the imposition of an administrative penalty) shall not be valid unless it is made by not later than two years from the date on which a notice of the imposition of the administrative penalty in question was given to the person on whom it was imposed.

(3) The Tribunal shall, after hearing all parties having an interest in the matter, and obtaining all relevant information, decide the matter and cause its decision to be served on the parties.

Appeals against Assessments

6. (1) An appeal against an assessment shall be made by an application which shall be signed by the appellant or by his agent.

(2) An application to the Tribunal under paragraph (1) shall be drawn up and filed with the Secretary in duplicate, and the Secretary shall cause one copy to be delivered to the Commissioner within five working days from the date it is so filed.

(3) The Tribunal may, at any time, allow any amendment to be made in any application for the purpose of making it clearer.

Reply by the Commissioner

7. When a copy of an application of an appeal against an assessment has been delivered to the Commissioner in accordance with paragraph (2) of item 5 above, the Commissioner shall, within twenty days from the expiration of the time limit laid down in the said paragraph, file with the Secretary a reply in duplicate stating his reasons for contesting the appeal, and the Secretary shall cause one copy of the reply to be served on the appellant.

Reference to the Tribunal

8. (1) An appeal to the Tribunal consisting of a reference of a question to the Tribunal made by a person other than the Commissioner shall be made by application which shall be signed by the appellant or by his agent.

(2) An application to the Tribunal under paragraph (1) shall be drawn up and filed with the Secretary in duplicate, and the Secretary shall cause one copy to be delivered to the Commissioner within five working days from the date it is so filed.

(3) When a copy of an application under paragraph (1) has been delivered to the Commissioner in accordance with paragraph (2), the Commissioner shall within twenty days from the expiration of the time limit laid down in the said paragraph, file with the Secretary a reply in duplicate stating his reasons for contesting the appeal and the Secretary shall cause one copy of the reply to be served on the appellant.

(4) The Tribunal shall refrain from deciding on an appeal referred to in paragraph (1) unless the appellant shows that he had, before making his application, referred the matter to the Commissioner in writing and that:

(*a*) the Commissioner agreed that the question should be referred to the Tribunal,

(*b*) the Commissioner did not give a reply, or

(*c*) the appellant feels aggrieved by the Commissioner's reply.

(5) An appeal to the Tribunal consisting of a reference of a question to the Tribunal made by the Commissioner shall be made by an application which shall indicate the name of a person or the names of persons who, in his opinion, has or have a direct interest in the matter.

Parties to a reference

9. (1) The parties to an appeal consisting of a reference of a question to the Tribunal shall be:

(*a*) the Commissioner;

(*b*) where the appellant is not the Commissioner, the appellant, provided that the Tribunal may at any time, and at the request of the Commissioner, require the appellant to prove his direct interest in the matter;

(*c*) any person indicated in an application made by the Commissioner in accordance with paragraph (3) of item 7.

(2) A decision of the Tribunal shall be binding, with respect to the specific matter referred to it, on the parties to the appeal but not on any other person:

Provided that the decision shall be binding as aforesaid only if the relevant facts have been correctly stated in the application or otherwise recorded in the records of the case and shall remain binding only as long as there have been no material changes to the said facts or to the relevant provisions of the law.

Appointment of date for hearing of reference to the Tribunal

10. (1) After an application has been made in accordance with item 7, the Tribunal shall appoint a day for the hearing of the appeal.

(2) The Secretary shall cause a notice of the day and time appointed for the hearing of the appeal to be served on all parties to the appeal. He shall, moreover, cause a copy of the application to be served on the parties to the appeal, except for the appellant himself.

11. The provisions of article 15 of the Administrative Justice Act shall apply to any appeal or reference made to the Tribunal.

TENTH SCHEDULE

[Articles 22 and 23]

Deductions

Substituted by:
X. 2003.47.
Amended by:
L.N. 426 of 2007;
L.N. 105 of 2008;
L.N. 86 of 2009;
L.N. 535 of 2010;
L.N. 382 of 2011;
L.N. 421 of 2012.

Eligibility for credit for input tax

1. Except as the Commissioner may otherwise allow no credit for input tax for a tax period shall be allowed to a person unless a claim is made in accordance with any relevant provision of this Act.

Evidence of input tax

2. (1) No amount shall be treated as input tax of a person unless that person proves that the tax was chargeable on supplies of goods and services or intra-community acquisitions or importations of goods which have been or which will be used by him in the course or furtherance of his economic activity.

(2) Except as the Commissioner may otherwise allow, no amount shall be treated as input tax of a person unless:

(*a*) it is supported by -

(i) a tax invoice in respect of the tax relating to goods or services supplied to him; or

(ii) a tax invoice in respect of the tax relating to goods acquired by him under an intra-community acquisition; or

(iii) a document of importation indicating him as the importer in respect of the tax on an importation; and

(*b*) with respect to any tax on a supply which in terms of this Act is payable by that person or on an intra-community acquisition, he has reported that tax as due by him in his tax return; and

(*c*) the document referred to in paragraph (*a*) is held by that person and produced, if requested, to the Commissioner; and

(*d*) the amount of the tax is properly accounted for in the records held by that person to the extent required for the purposes of the Act.

Tax which is not to be treated as input tax

3. (1) Subject to paragraph (2) of this item, no amount shall be treated as input tax of a person to the extent to which it represents tax chargeable on:

(*a*) the supply to that person or the intra-community acquisition or importation by that person of:

(i) tobacco or tobacco products;

(ii) alcoholic beverages;

(iii) works of art, collectors' items and antiques;

(iv) motor vehicles, vessels or aircraft including the supply thereof for hire or leasing arrangements;

(v) goods and services for the purpose of repairing, maintaining, fuelling and keeping any item to which item (iv) of this subparagraph applies;

(*b*) the supply of any goods and services or the intra-community acquisition or importation of any goods used in the provision by that person of receptions, entertainment or hospitality except where the said provision is made for consideration in the normal course of that person's economic activity;

(*c*) the supply of any goods and services or the intra-community acquisition or importation of any goods used in the provision by that person to his employees or, in the case of a body of persons, to its officers or employees, of transport or entertainment: provided that this provision shall not apply to transport provided by that person to his employees on vehicles with a seating capacity of not less than seven.

(2) The provisions of sub-paragraphs (i) to (v) of paragraph (1)(*a*) shall not apply to:

(*a*) goods supplied to or acquired under an intra-community acquisition or imported by a person for the purpose of resale, whether in the state in which they were acquired or imported or after treatment or processing or inclusion in other goods supplied by that person, in the normal course of that person's economic activity;

(*b*) motor vehicles, vessels or aircraft supplied to or acquired under an intra-community acquisition or imported by a person and used by him for the purpose of the carriage of goods or passengers for a consideration;

(*c*) vessels and aircraft supplied to or acquired under an intra-community acquisition or imported by a person for the purpose of being provided by him under a charter or hire agreement;

(*d*) motor vehicles supplied to or acquired under an intra-community acquisition or imported by a person for the purpose of being provided by him for hire with a driver or for self-drive hire (excluding fuelling for such self-drive vehicles), or of being used for driving instructions, provided they are so used, in each case, in the normal course of that person's economic activity;

(*e*) motor vehicles designed and manufactured for the carriage of goods and so designed and manufactured with seating accommodation normally adjacent to the driver or with seating accommodation for nine persons or more;

(*f*) vessels or aircraft used for the carriage of goods or personnel in the course of an economic activity or where the use of such vessels or aircraft constitutes a specific and essential element for the performance of the economic activity which would otherwise give rise to a right of deduction in terms of article 22.

(3) In this item, "works of art, collectors items and antiques" shall have the meaning assigned to it by Part B of the Fourteenth Schedule.

(4) Tax paid or payable on any supply to or on any intra-community acquisition or importation by a person in the name and for the account of another person in respect of disbursements that, in terms of the Seventh Schedule, do not form part of the taxable value of supplies made to that other person shall not be treated as input tax of the first mentioned person.

Tax partially treated as input tax

4. (1) Where any goods or services are or will be used but not wholly used in the course or furtherance of an economic activity, there shall be treated as input tax such proportion of the tax chargeable on the supplies, intra-community acquisitions or importations in question, taking into account the proportion of the use of those goods or services in the course or furtherance of the economic activity to their total use.

(2) In the case of immovable property forming part of the business assets of a taxable person and used both for purposes of the taxable person's business and for his private use or that of his staff, or, more generally, for purposes other than those of his business, VAT on expenditure related to this property shall be deductible in accordance with the principles set out in this Schedule only up to the proportion of the property's use for purposes of the taxable person's business which give him the right to deduct.

By way of derogation from item 15 of the Second Schedule, changes in the

proportion of use of immovable property referred to in paragraph (1) shall be taken into account in accordance with the principles provided for in item 7 of this Schedule.

(3) The provisions of paragraph (2) shall also apply in relation to VAT on expenditure related to capital goods other than immovable property forming part of the business assets of a taxable person.

For the purpose of this paragraph "capital goods" shall have the meaning assigned to it in the Value Added Tax (Adjustments relating to Input Tax on Capital Goods) Regulations (S.L.406.12).

Attribution of input tax

5. (1) Any input tax of a person registered under article 10 for a tax period which is exclusively attributable to supplies to which article 22(4) applies shall be allowed as a credit for that period.

(2) Any input tax which is exclusively attributable to supplies other than those referred to in paragraph (1) shall not be allowed as a credit.

(3) Any input tax for a tax period which is attributable both to supplies to which article 22(4) applies and also to other supplies shall be partially allowed as a credit for that tax period, which portion shall be determined in accordance with item 6 or 8.

Partial attribution

6. (1) The portion of input tax allowable as a credit to a person in terms of item 5(3) shall be calculated as follows:

(*a*) the total value of supplies to which article 22(4) applies made by that person during all the tax periods ending during a calendar year is divided by the total value of supplies made by that person during those tax periods;

(*b*) the result obtained under paragraph (*a*) shall be the definitive ratio for the year referred to in that paragraph and the provisional ratio for the following year;

(*c*) the input tax credit of that person for each tax period ending during a calendar year shall be calculated provisionally by multiplying the value of the input tax of that person for that tax period by the provisional ratio for that year;

(*d*) the total input tax credit of that person for all the tax periods ending during a calendar year shall be calculated definitively by multiplying the total input tax for those periods by the definitive ratio for that year;

(*e*) the difference between the total input tax for the tax periods ending during a year calculated provisionally under paragraph (*c*) and the definitive calculation for that year under paragraph (*d*) shall represent tax due by that person or a deduction allowable to that person, as the case may be, which tax or deduction shall be accounted for in the tax return for the first tax period that ends in the year following that for which the provisional calculation was made: provided that the tax or deduction in respect of a year during which the registration of a person under article 10 is cancelled shall be accounted for in his last tax period.

(2) For the purposes of paragraph (1):

(*a*) the value of supplies not subject to tax under this Act shall be

determined in the manner applicable for the determination of the taxable value of taxable supplies;

(*b*) there shall be excluded from the value of the supplies made by that person -

(i) the value of any supply of capital goods used in his economic activity;

(ii) the value of self-supplies;

(iii) the value of any supply which is not made by a taxable person acting as such.

Adjustment relating to input tax on the acquisition of capital goods

7. (1) Where the input tax credit of a person ("the owner") for any tax period during a calendar year ("the year of acquisition") includes tax on the supply to that person or the intra-community acquisition or importation by that person of capital goods, an adjustment should be made to the input tax already allowed, if the input tax for any year during an adjustment period is allowable at a rate which is higher or lower than that already allowed in the year of acquisition.

(2) The Minister may by regulations:

(*a*) define the capital goods to which this item applies;

(*b*) define the period or periods of adjustment applicable to capital goods;

(*c*) prescribe the method in which the adjustment shall be calculated and the manner in which it shall be effected.

Alternative methods of partial attribution

8. Where it appears that the method of attributing input tax laid down in item 6 does not give a fair and reasonable result, the Commissioner may by notice in writing to a registered person direct that the said method shall not apply to the attribution of input tax to the supplies of that person and where such a direction has been given, that person shall adopt such other method of partial attribution as the Minister may by regulations prescribe.

Rounding up

9. (1) A fraction resulting from any computation made in accordance with this Schedule shall be rounded up to the nearest euro.

(2) Where the amount of input tax which results to be not allowable as a credit for a tax period pursuant to an apportionment made in accordance with items 6 or 8 is less than €20 multiplied by the number of months or part thereof included in that tax period that amount shall, notwithstanding the said provisions, be treated as allowable as a credit for input tax.

Bad debt relief

10. (1) Where a person registered under article 10 of this Act shows to the satisfaction of the Commissioner that an amount due to him as consideration for a supply made to another person has, during a tax period, become a bad debt and that output tax has been paid or is payable by the said person in respect of that supply, that person may claim the amount of the output tax corresponding to the bad debt to be allowed as a deduction by way of a bad debt relief in addition to any other deduction allowable to him as an input tax credit in accordance with the other provisions of this Schedule for that tax period or for such subsequent tax period as

the Commissioner may allow.

(2) A claim for a deduction by way of a bad debt relief shall be subject to such directives as the Commissioner may give as to the circumstances in which it may be made and the documents or other evidence that should be produced.

(3) The recovery of a bad debt in respect of which a deduction has been allowed in terms of this item or of a part of such a debt shall, to the extent of the amount recovered, be treated as a taxable supply taking place at the time when the said debt or part thereof is recovered and shall be accounted for accordingly by the person to whom the deduction had been so allowed.

Deductions on account of a reduction in the taxable value of supplies or intra-community acquisitions

11. (1) Where, in terms of the Seventh Schedule, the taxable value of a supply or an intra-community acquisition is reduced after that supply or acquisition takes place any output tax corresponding to that reduction shall be allowable as a deduction to the person by whom that output tax was paid or is payable for the tax period during which the cause for the reduction occurs.

(2) The deduction allowable under this item is subject to the condition that the person claiming it has properly accounted for the output tax on the taxable value in question before the reduction.

(3) A claim for a deduction under this item shall be subject to such directives as the Commissioner may give as to the documents or other evidence that should be produced.

Saving provision

12. The provisions of this Schedule are without prejudice to the provisions of the Fourteenth Schedule and, in particular, to the limitations provided for in that Schedule to the right of input tax credit allowable in the case of supplies subject to a margin scheme.

Input tax on supplies under cash accounting

13. Where a tax invoice indicates the words "Cash Accounting", the right of deduction of input tax, if applicable, shall arise when the payment of the tax is made to the supplier.

ELEVENTH SCHEDULE

[Article 48]

Tax records

Amended by:
L.N. 60 of 1999;
L.N. 200 of 1999;
L.N. 217 of 1999;
L.N. 272 of 2000;
L.N. 93 of 2001;
L.N. 235 of 2001;
L.N. 389 of 2002.
Substituted by:
X. 2003.47.
Amended by:
L.N. 72 of 2010;
L.N. 422 of 2012.

Records to be kept by persons registered under article 10

1. (1) Every person registered under article 10 shall keep the following records and documents:

(*a*) proper accounts and records of his economic activity;

(*b*) a value added tax account;

(*c*) an annual value added tax account;

(*d*) copies of all tax invoices issued by him;

(*e*) all tax invoices received by him;

(*f*) documentation relating to customs and, where applicable, excise procedures with respect to importation and exportation of goods by him;

(*g*) copies of all fiscal receipts issued by him in terms of the Thirteenth Schedule to this Act;

(*h*) all credit notes, debit notes and other documents issued by him or received by him which evidence an increase or a decrease in the consideration for any supplies, intra-community acquisitions or importations;

(*i*) a register of goods transported by him or on his behalf out of Malta but within the Community for the purpose of transactions referred to in item 17 of the Second Schedule (*Transfer of goods to another Member State*), showing:

- a description of the goods;
- their quantity;
- their value;
- their movements;
- a description and the quantity of the goods not transported back; and
- the date and the reference to the documents issued, if any, relating to these operations;

(*j*) a record of movable tangible goods transported to him from another Member State by or on behalf of a taxable person identified for purposes of value added tax in that other State for the purpose of the valuation of or works on those goods showing:

- a sequential number;
- the date of receipt of the goods;
- the name and address of the customer;

- the value added tax identification number of the customer;
- the quantity of the goods received;
- a description of the goods received;
- the date of the transport of the processed goods after valuation to the customer;
- the quantity and the description of the goods that are not transported back to the client;
- the date and a reference to the documents issued relating to the services supplied.

(2) Invoices shall be stored in the original form in which they were sent or made available, whether paper or electronic. Additionally, in the case of invoices stored by electronic means, the Commissioner may require that the data guaranteeing the authenticity of the origin of the invoices and the integrity of their content as provided for in the Twelfth Schedule shall also be stored by electronic means.

(3) Where a taxable person stores by electronic means invoices which he issues or receives, guaranteeing online access to the data concerned to the Commissioner, and where the tax is due in another Member State, the competent authorities of that Member State shall, for control purposes, have the right to access, download and use those invoices.

Matters to be included in the accounts

2. The accounts of the economic activity of every person registered under article 10 shall be kept in such a way as to enable the following matters to be readily ascertained:

(*a*) the total value, exclusive of tax, of the supplies made by him during each tax period;

(*b*) the total value, exclusive of tax claimed as input tax credit, of his inputs for each tax period;

(*c*) the output tax and any other tax payable by that person for each tax period;

(*d*) the input tax credits, the deductions, the excess tax credit and the tax refundable, for each tax period;

(*e*) the calculation, where input tax credit is allowable under a partial attribution method, of the provisional input tax credit for each tax period, of the definitive input tax credit for each year and of the adjustments to the input tax credit;

(*f*) sub-totals, breakdowns and notes to the accounts as are necessary to readily identify the source of the information shown in the value added tax account.

The value added tax account

3. (1) The value added tax account shall be a separate account held for each tax period of the taxable person and shall contain all the information, including all the totals, sub-totals and breakdowns, required to be furnished in the tax return for that period.

(2) The value added tax account shall contain a cross reference to the matters referred to in item 2 that enables the matching and reconciliation of all information contained therein.

Correction of mistakes by means of an adjustment in a subsequent tax return

4. (1) Where a person registered under article 10, in a return for a tax period furnished to the Commissioner -

(*a*) overstates or understates the output tax and the overstatement or understatement does not exceed five per cent of the output tax declared in the said return, and/or

(*b*) overstates or understates the credit for input tax and the overstatement or understatement does not exceed five per cent of the credit for input tax declared in the said return,

he may correct the mistake by making the necessary entries in the value added tax account and in the tax return for the tax period during which the overstatement or understatement is discovered.

(2) No correction may be made in accordance with this item for any tax period which commences later than six months from the expiration of the tax period to which the mistake refers.

(3) When a correction is made in terms of this item the value added tax account shall contain a clear reference to the tax period to which the mistake refers and to all the documents relating to relative transactions.

(4) A mistake in a tax return may not be corrected by means of a correction in a subsequent tax return except to the extent allowed and in the manner provided in this item.

Annual value added tax account

5. The annual value added tax account shall be an account drawn up for every calendar year and shall show the totals of all values entered in the value added tax account for each of the tax periods ending during that calendar year.

Exceptions

6. (1) The Commissioner may, in any particular case or classes of cases, require such additional records or documents to be kept, or allow such variations to the records and documents to be kept in accordance with this Schedule as he may deem appropriate for any of the purposes of the Act.

(2) This Schedule shall be subject to the general requirements of article 48 and without prejudice to any additional records and accounts that may be required under any special provision contained in the Act or in any regulations made under the Act.

Records of intra-community acquisitions

7. Every taxable person who is not registered under article 10 and every non-taxable legal person shall keep records in sufficient detail as to enable the determination of the value of intra-community acquisitions made by him in Malta including:

(*a*) a description of the goods and the consideration paid on each acquisition;

(*b*) the relative invoices;

(*c*) all other information relevant for the purposes of determining the value of intra-community acquisitions for the purposes of Part Two of the Sixth Schedule;

(*d*) all other supporting documents.

Records of distance sales

8. Every taxable person shall keep records in sufficient detail as to enable the determination of the value of distance sales made by him of goods transported from Malta including:

(*a*) a description of the goods and the consideration charged on each sale;

(*b*) a copy of the relative invoices;

(*c*) all other information relevant for the purposes of determining the value of distance sales for the purposes of Part Three of the Sixth Schedule;

(*d*) all other supporting documents.

Records pursuant to tax payable as per article 20(2).

9. Every taxable person who is not registered under article 10 and every non-taxable legal person identified for VAT purposes shall keep records in sufficient detail as to enable the determination of the value of the purchases made by him in Malta pursuant to article 20(2) including:

(*a*) a description of the services and/or goods and the consideration paid;

(*b*) the relative invoices;

(*c*) all other supporting documents.

Substituted by:
X. 2003.47.
Amended by:
L.N. 171 of 2006;
L.N. 426 of 2007;
L.N. 448 of 2007;
L.N. 444 of 2010;
L.N. 423 of 2012;
L.N. 141 of 2013.

TWELFTH SCHEDULE

[Article 50(5)]

Tax invoice

Form of tax invoice

1. (1) A document shall not constitute a tax invoice unless:

(i) all the particulars required by this Schedule are properly and fully stated; or

(ii) the invoicing requirements set out in Directive 2006/112/EC are fully complied with.

(2) Any document or message that amends and refers specifically and unambiguously to the initial invoice shall be treated as an invoice.

(3) A simplified invoice shall be considered as a tax invoice where:

(*a*) the amount of the invoice inclusive of the tax, is not higher than €100;

(*b*) the invoice issued is a document or message treated as an invoice;

(*c*) the invoice contains all the information referred to in item 5.

However, the provisions of this paragraph shall not apply where invoices are required to be issued in case of cross-border supplies or where the taxable supply of goods or services is carried out by a taxable person who is not established in the Member State in which the tax is due or whose establishment in that Member State

does not intervene in the supply within the meaning of the proviso in article 20(2) of the Act, and the person liable for the payment of the tax is the person to whom the goods or services are supplied.

(4) For the purposes of this Schedule:

"electronic invoice" means an invoice that contains the information required in this Schedule, and which has been issued and received in any electronic format.

Issuance of tax invoice

2.(1) (*a*) A tax invoice shall be issued by not later than the fifteenth day of the month following that in which the chargeable event occurs or the date on which a payment is received, whichever is the earlier.

(*b*) Sub-paragraph (*a*) shall not apply to any payment on account which precedes an intra-Community supply of goods.

(2) (*a*) Invoicing shall be subject to the rules applying in the Member State in which the supply of goods or services is deemed to be made, in accordance with the provisions of the Third Schedule.

(*b*) By way of derogation from sub-paragraph (*a*), invoicing shall be subject to the rules applying in the Member State in which the supplier has established his business or has a fixed establishment from which the supply is made or, in the absence of such place of establishment or fixed establishment, the Member State where the supplier has his permanent address or usually resides, where:

(i) the supplier is not established in the Member State in which the supply of goods or services is deemed to be made, in accordance with the provisions of the Third Schedule, or his establishment in that Member State does not intervene in the supply within the meaning of the proviso in article 20(2) of the Act, and the person liable for the payment of the tax is the person to whom the goods or services are supplied.

However where the customer issues the invoice himself (self-billing), the provisions of sub-paragraph (*a*) shall apply;

(ii) the supply of goods or services is deemed not to be made within the Community, in accordance with the provisions of the Third Schedule.

(3) A summary invoice may be issued to detail several supplies of goods or services provided that the tax on the supplies mentioned in the summary invoice becomes chargeable during the same calendar month.

(4) Tax invoices may be drawn up by the customer in respect of supplies of goods or services made to him by a taxable person where there is a prior agreement between the two parties and provided that a procedure exists for the acceptance of each tax invoice by the taxable person supplying the goods or services. The Commissioner may require that such invoices be issued in the name and on behalf of the taxable person.

Contents of a tax invoice

3. Saving the other provisions of this Schedule, a tax invoice shall contain the following particulars:

(*a*) the date of issue;

(*b*) a sequential number, based on one or more series, which uniquely

identifies the invoice;

(*c*) the name and address of the supplier and the Value Added Tax identification number under which he made the supply;

(*d*) the name and address of the person to whom the supply is made and the Value Added Tax identification number under which the customer acquired the goods or services supplied to him;

(*e*) the quantity and nature of the goods supplied or the extent and nature of the services rendered;

(*f*) the date on which the supply was made or completed or the date on which a payment on account of the supply was made insofar as that date can be determined and differs from the date of issue of the invoice;

(*g*) the taxable value per rate or exemption, the unit price exclusive of tax and any discounts or rebates if they are not included in the unit price;

(*h*) the VAT rate applied;

(*i*) the VAT amount payable, except where a special arrangement is applied under which, in accordance with this Act, such a detail is excluded;

(*j*) where the person liable for payment of VAT is a tax representative in another Member State, the VAT identification number of that tax representative, together with his full name and address;

(*k*) where the VAT becomes chargeable at the time when the payment is received in accordance with Parts One and Three of the Fourteenth Schedule, the mention "Cash accounting";

(*l*) where the customer receiving a supply issues the invoice instead of the supplier, the mention "Selfbilling";

(*m*) where a tax invoice refers to supplies on which no tax is chargeable, it shall indicate a brief reference to the relevant provisions of this Act, or the appropriate provisions of Council Directive 2006/112/EC, or any other indication on the grounds of which no tax is chargeable, and may distinguish between:

(i) supplies made outside Malta;

(ii) exempt with credit supplies;

(iii) exempt without credit supplies;

(*n*) where the customer is liable for the payment of the VAT, the mention "Reverse charge";

(*o*) where the margin scheme for travel agents is applied, the mention "Margin scheme - Travel agents";

(*p*) where one of the special arrangements applicable to second-hand goods, works of art, collectors' items and antiques is applied, the mention "Margin scheme - Second-hand goods"; "Margin scheme - Works of art" or "Margin scheme - Collector's items and antiques" respectively;

(*q*) where the invoice is issued by a taxable person, who is not established in the Member State where the tax is due or whose establishment in that Member State does not intervene in the supply within the meaning of the proviso of article 20(2) of the Act, and who is making a supply of goods or services to a customer who is liable for payment of VAT, the taxable person may omit the details referred to in sub-paragraphs (*g*), (*h*) and (*i*) of this item and instead indicate, by reference to the quantity

or extent of the goods or services supplied and their nature, the taxable amount of those goods or services;

(*r*) in an invoice for the intra-Community supply of a new means of transport the description of the goods supplied shall contain the particulars referred to in the definition of "new means of transport" under article 2 of the Act.

Categories of supplies

4. A tax invoice may also contain the type of the supply by reference to the categories as follows:

(*a*) a supply by sale;

(*b*) a supply of goods under a hire-purchase agreement or in terms of which the ownership of the goods is deferred;

(*c*) a supply on hire;

(*d*) a supply under a contract of exchange;

(*e*) a supply consisting in the delivery of goods made from materials provided by the customer;

(*f*) a supply by sale on commission;

(*g*) a supply on sale or return or similar terms;

(*h*) an export;

(*i*) any other supply.

Simplified invoice

5. A simplified invoice referred to in item 1(3) shall contain at least the following particulars:

(*a*) the date of issue;

(*b*) a sequential number, based on one or more series, which uniquely identifies the invoice;

(*c*) the name, address and the Value Added Tax identification number of the supplier;

(*d*) the Value Added Tax identification number of the person to whom the supply is made;

(*e*) a description sufficient to identify the goods and services supplied;

(*f*) the total amount of tax payable or the information needed to calculate it;

(*g*) where the invoice issued is a document or message treated as an invoice pursuant to item 1(2), specific and unambiguous reference to that initial invoice and the specific details which are being amended.

Electronic invoices

6. (1) For the purposes of this Schedule:

"authenticity of the origin" means the assurance of the identity of the supplier or the issuer of the invoice;

"integrity of the content" means that the content required according to this Schedule has not been altered.

(2) The use of an electronic invoice shall be subject to acceptance by the recipient.

(3) The authenticity of the origin, the integrity of the content and the legibility of an invoice, whether on paper or in electronic form, shall be ensured from the point in time of issue until the end of the period for storage of the invoice.

Each taxable person shall determine the way to ensure the authenticity of the origin, the integrity of the content and the legibility of the invoice. This may be achieved by any business controls which create a reliable audit trail between an invoice and a supply of goods or services.

(4) Other than by way of the type of business controls described in paragraph (3), examples of technologies that ensure the authenticity of the origin and the integrity of the content of an electronic invoice are those referred to in article 233 of Council Directive 2006/112/EC.

(5) Where batches containing several electronic invoices are sent or made available to the same recipient, the details common to the individual invoices may be mentioned only once where, for each invoice, all the information is accessible.

Currency

7. The amounts which appear on the invoice may be expressed in any currency, provided that the tax payable or to be adjusted under this Act is expressed in Euro, using the conversion rate mechanism provided for in the Seventh Schedule.

Translation of invoices

8. For control purposes, and as regards invoices in respect of supplies of goods or services supplied in Malta and invoices received by taxable persons established in Malta, the Commissioner may, for certain taxable persons or certain cases, require translation into Maltese or English.

Substituted by:
X. 2003.47.
Amended by:
L.N. 234 of 2011;
L.N. 65 of 2015.

THIRTEENTH SCHEDULE

[Article 51]

Fiscal receipts

Interpretation

1. In this Schedule, unless the context otherwise requires -

"fiscal cash register" means a cash register which conforms with the requirements specified in item 13 of this Schedule;

"fiscal receipt" means a receipt or invoice issued on a form supplied or approved in writing by the Commissioner or issued in a manner as may be approved by the Commissioner and containing all the information and details required to be specified thereon, or a receipt issued by means of a fiscal cash register, or by a fiscal taxi meter;

"fiscal taxi meter" means a meter which conforms with the requirements specified in item 14 of this Schedule.

Obligation to issue receipt

2. Subject to the other provisions of this Schedule, every person who makes a supply, other than an exempt without credit supply shall, except where he is required to issue a tax invoice in respect of that supply, issue a fiscal receipt in accordance

with this Schedule for the consideration paid to him for that supply and such fiscal receipt shall, unless issued before the payment is made, be issued and delivered to the person who effects the payment or to the person to whom the supply is made immediately after payment has been effected, to the extent covered by that payment:

Provided that in respect of a supply for which no consideration is paid but which is deemed to have been made for a consideration in accordance with the Second Schedule to this Act, the fiscal receipt shall be issued on the date of that supply.

Supplies under the Mini One Stop Shop

2A. Persons supplying services under the Mini One Stop Shop, in terms of Articles 359 and 369b of Council Directive 2006/112/EC coming in force as from 1st January 2015, shall not be required to issue fiscal receipts in terms of this Schedule for such services.

Receipt issued by a fiscal cash register

3. (1) Subject to the provisions of items 4, 5, 6 and 7 of this Schedule, a fiscal receipt issued by a person who is a retailer or whose business includes supplies of food referred to in item 2 of Part Five of the Fifth Schedule to the Act shall be issued by means of a fiscal cash register: provided that in respect of any supply made by such person in any period during which he is unable, for a reasonable cause, to issue a fiscal receipt by means of a fiscal cash register, he shall issue a fiscal receipt on a form supplied by the Commissioner:

Provided that, for the purpose of this paragraph, a retailer shall not include a person involved in the delivery of pre-ordered goods.

(2) A fiscal receipt which is required to be issued for the provision of a taxi service shall be issued by means of a fiscal taxi meter: provided that in respect of any supply made by such person in any period during which he is unable, for a reasonable cause, to issue a fiscal receipt by means of a fiscal taxi meter, he shall issue a fiscal receipt on a form supplied by the Commissioner.

(3) For the purposes of paragraphs (1) and (2) of this item, the following shall not be deemed to constitute a reasonable cause:

(*a*) not being in possession of a fiscal cash register or a fiscal taxi meter;

(*b*) not being in possession of stationery or other material required for the functions of the fiscal cash register or a fiscal taxi meter;

(*c*) defects in the functioning of a fiscal cash register or a fiscal taxi meter except where prompt and reasonable measures have been taken to remedy such defects.

Door to door sales of gas, milk or bread

4. (1) A person who makes supplies from a vehicle consisting in door-to-door delivery, or in the delivery to the public on a public road, of gas, milk and milk products or bread shall not be required to issue a fiscal receipt for every such supply if he issues one fiscal receipt (hereinafter in this item referred to as "a daily receipt") which accounts for all the said supplies made on each day in the manner prescribed in the other provisions of this item.

(2) A daily receipt shall be a fiscal receipt which accounts for the difference between the goods loaded on the vehicle from which the said supplies are made and the goods remaining on the vehicle after the said supplies are made for that day as if

such difference represented goods supplied in one supply.

(3) A person who issues daily receipts shall keep the originals therefor together with the other records he is required to keep for the purposes of this Act.

(4) A person who issues daily receipts shall be required to issue fiscal receipts in accordance with the other items of this Schedule in respect of any supplies not referred to in this item.

Supplies of bread by bakers

5. (1) A person who makes supplies of bread from the bakery where that bread has been baked may apply in writing to the Commissioner for authorisation to issue one fiscal receipt (hereinafter in this item referred to as "a daily fiscal receipt"), which daily fiscal receipt shall account for all the said supplies made on each day in the manner prescribed in the other provisions of this item.

(2) A daily fiscal receipt shall be a fiscal receipt which accounts for all the separate supplies of that date as if such goods were supplied in one separate supply.

(3) The Commissioner may, by notice in writing, at any time withdraw such authorisation without giving reasons.

(4) A person who issues daily fiscal receipts shall keep the originals thereof together with the other records he is required to keep for the purposes of this Act.

(5) A person who issues daily fiscal receipts shall be required to issue fiscal receipts in accordance with the other items of this Schedule in respect of any other supplies not referred to in this item, unless such other supplies refer to relatively small amounts.

Supplies from pumps of leaded petrol, unleaded petrol and diesel (gas) oil

6. (1) A person who makes supplies from pumps, other than automated pumps, of leaded petrol, unleaded petrol and diesel (gas) oil, shall not be required to issue a fiscal receipt for every such supply if he issues one fiscal receipt (hereinafter in this item referred to as "a daily receipt") which accounts for all the supplies made on each day in the manner prescribed in the other provisions of this item.

(2) A daily receipt shall be a fiscal receipt which accounts for all the said supplies of that day as if such goods were supplied in one supply.

(3) A person who issues daily receipts shall keep the originals thereof together with the other records he is required to keep for the purposes of this Act.

(4) A person who issues daily receipts shall be required to issue fiscal receipts in accordance with the other items of this Schedule in respect of any supplies not referred to in this item.

Supplies of food and beverages by a canteen situated in a work or study area

7. (1) A person who makes a supply of food and beverages in a canteen situated in a work or study area may apply in writing to the Commissioner for authorisation to issue one fiscal receipt in respect of the supply of food and another fiscal receipt in respect of the supply of beverages (each such receipt hereinafter in this item referred to as "a daily receipt") which daily receipt shall account for the said separate supplies made on each day in the manner prescribed in the other provisions of this item.

(2) The daily receipts shall be the fiscal receipts which account for all the said separate supplies of that day as if such goods were supplied in two separate supplies,

one in respect of food and one in respect of beverages.

(3) The Commissioner may, by notice in writing, at any time withdraw such authorisation without giving reasons.

(4) A person who issues daily receipts shall keep the originals thereof together with the other records he is required to keep for the purposes of this Act.

(5) A person who issued daily receipts shall be required to issue fiscal receipts in accordance with the other items of this Schedule in respect of any supplies not referred to in this item.

Supplies of goods by means of vending machines

8. (1) A fiscal receipt in respect of supplies of goods made by means of a vending machine shall account for the difference in the goods stocked in the machine every time and immediately after goods are loaded therein and the goods stocked in the machine immediately before goods are loaded again therein as if that difference represented goods supplied in one supply: provided that the first receipt to be made in accordance with this item by a person who is a registered person on the 1st January, 1999 shall account for the difference in the goods stocked in the machine on the 1st January 1999 and the goods stocked therein immediately before the first time in 1999 that goods are loaded therein.

(2) A person who makes supplies of goods by means of a vending machine shall take readings of stocks every time goods are loaded into the machine and shall keep a record of such readings and the original of all receipts issued in accordance with this item together with the other records he is required to keep for the purposes of this Act.

Services supplied by means of machines

9. (1) A fiscal receipt in respect of supplies of services made by means of a machine operated by coins shall be issued every time coins are withdrawn from the machine, and shall account for the value of the coins so withdrawn as if that value represented the value of services supplied in one supply.

(2) A person who makes supplies referred to in paragraph (1) of this item shall keep a record of coins withdrawn from and of coins and goods stocked by him (if any) in the machine, and shall keep the original of all receipts issued in accordance with the said paragraph together with the other records he is required to keep for the purposes of this Act.

(3) A fiscal receipt in respect of supplies of services made by means of a machine operated by an electronic card or by any other token shall be issued every time a card or other token is supplied and shall account for the price charged or chargeable for the supply of that card or token as if the supply of the card or other token represented the supply of services that can be supplied by the use of that card or other token.

Accounting for fiscal receipts supplied or approved by the Commissioner

10. (1) Every person who is supplied with forms of fiscal receipts by the Commissioner shall account for all such forms by keeping in his possession, and producing at the request of the Commissioner, all unused forms, and by keeping one copy and producing to the Commissioner another copy of all receipts drawn out on such forms and of all cancelled forms.

(2) Copies of used and cancelled forms of fiscal receipts supplied by the

Commissioner shall be delivered to the Commissioner as soon as possible after the booklet or other form of binding in which the fiscal receipts have been supplied has been fully used or at such other date as the Commissioner may require.

(3) Every person who issues fiscal receipts on forms approved by the Commissioner or in a manner approved by the Commissioner, shall account for all such receipts in such manner as may be directed by the Commissioner, and for this purpose the Commissioner may give such directions regarding the processing, recording and storing of the receipts and of the information to be given therein as he may deem appropriate.

(4) Any person who fails to account for a fiscal receipt in the manner prescribed in this item shall be presumed, unless the contrary is proved, to have failed to account for a taxable supply.

Exemption from obligation to issue fiscal receipt

11. (1) The Commissioner may, by means of a notice in writing, exempt any person, and may by means of a notice published in the Gazette exempt any class of persons from any obligation imposed by this Schedule, and such exemption may be given for such time and with such limitations and subject to such conditions as may be specified in the said notice.

(2) The Commissioner may at any time by means of a notice in writing or by means of a notice published in the Gazette, as the case may be, revoke any exemption given in terms of this item.

Obligation to retain and produce receipt

12. Every person to whom a fiscal receipt is issued shall retain the receipt in his possession for a period of twenty-four hours and shall, upon a request made during the said time by the Commissioner or any officer authorised by the Commissioner, produce the said receipt to the Commissioner or such authorised officer.

Fiscal cash register

13. (1) A fiscal cash register shall -

(*a*) cater for the functions listed in paragraph (2) of this item; and

(*b*) be of a type specifically approved by the Commissioner by means of a notice published in the Gazette or approved for the purposes of and in accordance with the Customs and Excise Tax Act or the Value Added Tax Act.

(2) The functions for which a fiscal cash register must cater for the purpose of subparagraph (*a*) of paragraph (1) of this item are:

(*a*) printing of an itemised receipt for the supplies made in each transaction indicating -

(i) the name and address of the supplier and the Value Added Tax registration number,

(ii) the goods or services supplied,

(iii) the quantity of each item supplied,

(iv) whether each item is taxable or exempt,

(v) the total, inclusive of tax, of the consideration paid for the supplies included in the transaction,

(vi) serial number of transaction,

(vii) the tax logo type as specified by the Commissioner,

(viii) cash register serial number,

(ix) date and time of supply,

(x) and/or such other details as the Commissioner may require;

(*b*) registering of all day-to-day transactions on a printed journal;

(*c*) storing of predefined data in an inaccessible and unalterable memory.

Fiscal taxi meter

14. (1) A fiscal taxi meter shall -

(*a*) cater for the functions listed in paragraph (2) of this item; and

(*b*) be of a type approved by Transport Malta in terms of the Technical Specifications published by Transport Malta according to the Taxi Service Regulations, or any other regulations replacing those Regulations.

(2) The functions for which a fiscal taxi meter must cater for the purpose of paragraph (1)(*a*) of this item are:

(*a*) printing of a receipt for the supply made in each transaction indicating -

(i) the name and the Value Added Tax registration number of the supplier,

(ii) the taxi permit number,

(iii) date and time of supply,

(iv) serial number of transaction,

(v) the service supplied and applicable rate,

(vi) the total, inclusive of tax, of the consideration paid for the supply,

(vii) the tax logo type as specified by the Commissioner,

(viii) fiscal taxi meter serial number,

(ix) and/or such other details as the Commissioner may require;

(*b*) storing of predefined data in an inaccessible and unalterable memory.

Amended by:
L.N. 21 of 1999;
L.N. 201 of 1999;
L.N. 94 of 2001.
Substituted by:
X. 2003.47.
Amended by:
L.N. 426 of 2007;
L.N. 132 of 2009;
L.N. 73 of 2010;
L.N. 424 of 2012;
L.N. 425 of 2012;
L.N. 142 of 2013.

FOURTEENTH SCHEDULE

[Article 57]

Special cases

Part One

Professional Services

Interpretation

1. In this Part -

"professional services" means:

(*a*) services performed by a person holding a warrant issued under any law in force in Malta to practise a profession acting in an independent capacity in the exercise of that profession;

(*b*) services of a group of persons holding a warrant issued under any law in force in Malta to practise a profession whether associated in a partnership or not but excluding a company;

(*c*) services performed by an arbitrator pursuant to a submission for arbitration made in conformity with the Arbitration Act;

(*d*) services performed by a judicial referee or an expert appointed by a court or by a tribunal set up by law.

Cash accounting option

2. (1) Subject to the other provisions of this Part, a person who supplies professional services and whose annual turn-over does not exceed €2,000,000, exclusive of the tax, may opt that the tax becomes chargeable on the earlier of:

(*a*) the date when a tax invoice or a fiscal receipt, as the case may be, is issued for the supply, to the extent covered by that invoice or receipt;

(*b*) the date when a payment is made for that supply, to the extent covered by that payment:

Provided that the right of deduction of input tax of that person shall be postponed until the tax on any goods or services supplied to him has been paid to his supplier.

(2) The provisions of paragraph (1) shall not apply to supplies of services in respect of which the tax is payable by the customer and to supplies or transfers of goods referred to in item 4 of the Fourth Schedule.

Date when certain professional services are performed

3. When, for any purpose of the Act, it is necessary to determine the date when the services referred to in this item are performed, the following provisions shall apply:

(*a*) the services of an advocate or of a legal procurator in assisting any party to judicial proceedings shall be treated as performed on the date when a final decree or judgment in those proceedings is delivered by the court in which the proceedings have been instituted (services relating to proceedings instituted in different courts being treated as supplied

separately) or, when the advocate or legal procurator abandons or is abandoned by his client at an earlier date, on such earlier date;

(*b*) the services of a judicial referee or of an expert appointed by a court or by a tribunal set up by law shall be treated as performed on the date on which the report is filed in or made to the court or tribunal or, when the appointment is terminated on an earlier date, on such earlier date;

(*c*) the services of an arbitrator shall be treated as performed on the date of the award or, when the appointment is terminated on an earlier date, on such earlier date.

Invoices and receipts for professional services

4. (1) Where a tax invoice is required to be issued for a supply of professional services made in terms of item 2, it shall be issued by not later than the fifteenth day of the month following that in which the payment for the said supply of services is made, to the extent covered by that payment.

(2) Where a fiscal receipt is required to be issued for a supply of professional services made in terms of item 2 it shall, unless it has been issued before the payment has been made, be issued and delivered to the person who effects the payment or to whom the services have been supplied, immediately after payment has been effected, to the extent covered by that payment.

Tax on certain professional services where tariffs of fees are established by law

5. (1) The tax chargeable on a supply of professional services shall be an amount over and above the amount resulting to be chargeable for those services in terms of any tariff of fees established under any law in force in Malta.

(2) Nothing in this item shall be construed as requiring any person required by law to assess or declare the fees payable in accordance with any such tariff to declare or assess also the said tax.

(3) In any action for the enforcement of the executive title referred to in article 253(*c*) of the Code of Organization and Civil Procedure, the amount for which payment may be enforced shall be the amount shown in the taxed bill of costs in question increased by any tax chargeable on the supply of professional services to which the taxed bill of costs refers as evidenced by a tax invoice or a fiscal receipt or a certified copy thereof attached to the said bill.

(4) The provisions of paragraph (3) of this item shall be without prejudice to the right of the debtor to request the delivery of the original tax invoice or the fiscal receipt in accordance with item 6 of this Part.

Tax claimed from third parties

6. The provisions of this item shall apply with respect to any action for the payment of fees for professional services brought against any person other than the person to whom the services were supplied:

(*a*) the person against whom the action is brought shall not be bound to pay the amount relating to the tax, if any, chargeable on the supply of the said services unless the original tax invoice or fiscal receipt for those services complying with the provisions of paragraph (*b*) of this item is delivered to him, or, where the action is brought against a number of persons jointly, to any one of them;

(*b*) a tax invoice or fiscal receipt delivered as aforesaid shall, in addition to the information required by the Act, contain -

(i) the following declaration signed by the person to whom the said services were rendered:

"I declare that no credit for input tax has been or will be claimed by me in respect of the professional services referred to in this tax invoice/fiscal receipt.";

(ii) where the person against whom the action or claim is brought is a person registered under article 10, or, where the action is brought against a number of persons jointly, when any one of them is a person registered under article 10, the name and Value Added Tax identification number of the said registered person;

(*c*) when a tax invoice or fiscal receipt for fees for professional services complying with the provisions of paragraph (*b*) of this item is delivered to a taxable person who is bound at law to pay or reimburse the said fees it shall for the purposes of this Act be treated as if it were a tax invoice for professional services supplied to him.

Part Two

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

Interpretation

1. In this Part unless the context otherwise requires:

(1) "works of art" means -

(*a*) pictures, collages and similar decorative plaques, paintings and drawings executed by hand by the artist, other than plans and drawings for architectural, engineering, industrial, commercial, topographical or similar purposes, hand-decorated manufactured articles, theatrical scenery, studio back cloths or the like of painted canvasses;

(*b*) original engravings, prints and lithographs, being impressions produced in limited numbers directly in black and white or in colour of one or of several plates executed entirely by hand by the artist, irrespective of the process or of the material employed by him, but not including any mechanical or photomechanical process;

(*c*) original sculptures and statuary, in any material, provided that they are executed entirely by the artist sculpture casts the production of which is limited to eight copies and supervised by the artist or his successor in title;

(*d*) tapestries and wall textiles made by hand from original designs provided by artists, provided that there are not more than eight copies of each;

(*e*) individual pieces of ceramics executed entirely by the artist and signed by him;

(*f*) enamels on copper, executed entirely by hand, limited to eight numbered copies bearing the signature of the artist or the studio, excluding articles of jewellery and goldsmiths' and silversmiths' wares;

(*g*) photographs taken by the artist, printed by him or under his supervision, signed and numbered and limited to 30 copies, all sizes and mounts included.

(2) "collectors' items" means -

(*a*) postage or revenue stamps, postmarks, first day covers, pre-stamped

stationery and the like, franked, or if unfranked not being of legal tender and not being intended for use as legal tender;

(*b*) collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological, palaeontological, ethnographic or numismatic interest.

(3) "antiques" means objects other than works of art or collectors' items which are more than 100 years old.

(4) "second-hand goods" means tangible movable property that is suitable for further use as it is or after repair, other than works of art, collectors' items or antiques and other than precious metals or precious stones.

(5) "second-hand goods dealer" means a taxable person who, in the course of his economic activity, purchases or acquires for the purposes of his undertaking, or imports with a view to resale, second-hand goods and/or works of art, collectors' items or antiques, whether that person is acting for himself or on behalf of another person pursuant to a contract under which commission is payable on purchase or sale.

(6) "auctioneer" means any taxable person who, in the course of his economic activity, offers goods for sale by public auction with a view to handing them over to the highest bidder.

(7) "principal of an auctioneer" means any person who transmits goods to an auctioneer under a contract under which commission is payable on a sale subject to the following provisions -

(*a*) the auctioneer offers the goods for sale in his own name but on behalf of his principal;

(*b*) the auctioneer hands over the goods, in his own name but on behalf of his principal, to the highest bidder at a public auction.

Second-hand goods dealer

2. A second-hand goods dealer who makes supplies of second-hand goods, works of art, collectors' items and antiques, shall charge and collect tax on the profit margin, in accordance with the other provisions of this Part.

Supplies

3. The supplies of goods referred to in item 2 of this Part shall be supplies of second-hand goods, works of art, collectors' items and antiques, made by a second-hand goods dealer, which had been supplied to him within the Community -

(*a*) by a non-taxable person; or

(*b*) by another taxable person, in so far as the supply of goods by that other person is an exempt without credit supply; or

(*c*) by another taxable person who is registered under article 11, in so far as the supplies involve capital assets; or

(*d*) by another second-hand goods dealer, in so far as the supply of goods by that other second-hand goods dealer was subject to value added tax in accordance with the other provisions of this Part.

Taxable Value

4. (1) The taxable value of the supplies of goods referred to in item 3 of this Part shall be the profit margin made by the second-hand goods dealer less the

amount of value added tax relating to the profit margin. That profit margin shall be equal to the difference between the selling price charged by the second-hand goods dealer for the goods and the purchase price.

(2) For the purposes of paragraph (1) of this item -

(*a*) "selling price" means everything which constitutes the consideration which has been, or is to be, charged by the second-hand goods dealer to the purchaser, including subsidies directly linked to that transaction, taxes, duties, levies and charges and incidental expenses such as commission, packaging, transport and insurance costs charged by the second-hand goods dealer to the purchaser but excluding discounts and repayment for expenses paid out in the name and for the account of the purchaser;

(*b*) "purchase price" means everything which constitutes the consideration as defined in subparagraph (*a*) of this paragraph, paid, or to be paid, by the second-hand goods dealer to his supplier.

Applicable option

5. (1) Second-hand goods dealers shall have the option to apply the provisions of this Part, after having obtained the approval in writing of the Commissioner, in respect of supplies of -

(*a*) works of art, collectors' items or antiques which they have imported themselves;

(*b*) works of art supplied to them by their creators or their successors in title.

(2) Where a second-hand goods dealer exercises the option available under paragraph (1) of this item, such option shall cover, at least, two calendar years.

(3) Where a second-hand goods dealer exercises the option available under paragraph (1) of this item, the taxable value shall be determined in accordance with item 4 of this Part. Where the supplies refer to supplies to which subparagraph (*a*) of paragraph (1) of this item refers, the purchase price to be taken into account in calculating the profit margin shall be equal to the taxable value on importation, plus the value added tax due or paid on importation.

Input Tax

6. (1) Taxable persons shall not be entitled to deduct the value added tax due or paid in respect of goods which have been, or are to be, supplied to them by second-hand goods dealers, where the supply of those goods has been subject to the provisions of this Part.

(2) Where the second-hand goods dealer accounts for value added tax in terms of the provisions of this Part, he shall not be entitled to claim back -

(*a*) value added tax due or paid in respect of works of art, collectors' items or antiques which he has imported himself;

(*b*) value added tax due or paid in respect of works which have been, or are to be supplied, to him by their creators or their successors in title;

(*c*) value added tax due or paid in respect of works of art which have been, or are to be, supplied to him by a taxable person other than a second hand goods dealer.

Separate accounting

7. Where a second-hand goods dealer makes supplies to which this Part refers and other supplies, he must keep separate accounts to distinguish between the supplies made to which this Part refers and those other supplies.

Purchase invoice

8. Where a supply of second-hand goods to a second-hand goods dealer has been made by a person who had not supplied the said goods in the course of an economic activity, such dealer shall issue a purchase invoice at the time when the said goods have been supplied to him, containing the following information -

(*a*) the purchase invoice number;

(*b*) the date of the purchase;

(*c*) the name and address of the seller;

(*d*) the name and address of the purchaser;

(*e*) a description of the goods;

(*f*) the total price paid;

(*g*) a cross reference to the entry of the transaction in the purchaser's account books;

(*h*) the signature of the seller.

Sales invoice

9. A second-hand goods dealer who makes any supply to which this Part refers shall not issue a tax invoice or any other document showing an amount as being tax or as being attributed to tax, but shall issue a sales invoice containing the following information and shall keep a copy thereof -

(*a*) the sales invoice number;

(*b*) the date of the sale;

(*c*) the name, address and value added tax registration number of the seller;

(*d*) the name and address of the purchaser;

(*e*) a description of the goods;

(*f*) the total price inclusive of tax;

(*g*) a cross reference to the entry of the transaction in the seller's account books;

(*h*) the following declaration signed by the seller:

"I declare that no credit for input tax has or will be claimed by me in respect of the goods sold on this invoice.".

Option available for second-hand goods dealers

10. (1) A second-hand goods dealer may account for value added tax in terms of the other provisions of the Act to any supply to which items 2 and 3 of this Part refer, without any reference to this Part.

(2) Where a second-hand goods dealer so opts in respect of -

(*a*) the supply of works of art, collectors' items or antiques which he has imported himself, he shall be entitled to claim back the value added tax due or paid on the importation of those goods;

(*b*) the supply of works of art supplied to him by their creator, he shall be entitled to claim back the value added tax due or paid for the work of art

supplied to him;

(*c*) the supply of works of art supplied to him by a taxable person other than a second-hand goods dealer, he shall be entitled to claim back the value added tax due or paid for the work of art supplied to him.

(3) The right to claim back input tax on supplies to which paragraph (1) of this item refers shall arise at the time of submitting the value added tax return.

Sales by public auction

11. (1) Where an auctioneer makes a supply of second-hand goods, works of art, collectors' items or antiques by public auction, acting in his own name, pursuant to a contract under which commission is payable on the sale of those goods by public auction, on behalf of -

(*a*) a non-taxable person; or

(*b*) another taxable person in so far as the supply of goods by that other registered person is made pursuant to a contract under which commission is payable on purchase or sale and is an exempt supply in terms of Part Two of the Fifth Schedule to the Act; or

(*c*) another taxable person who is registered under article 11 in so far as the supply of goods by that other person involves capital assets and is made pursuant to a contract under which commission is payable on purchase or sale; or

(*d*) another second-hand goods dealer, in so far as the supply of goods by that other second-hand goods dealer is made pursuant to a contract under which commission is payable on purchase or sale and is subject to value added tax in terms of the other provisions of this Part,

the taxable value of each supply of goods shall be that specified in the other paragraphs of this item.

(2) The taxable value of each supply of goods to which paragraph (3) of this item applies is the total amount invoiced to the purchaser by the auctioneer in accordance with paragraph (4) of this item, less -

(*a*) the net amount paid or to be paid by the auctioneer to his principal, determined in accordance with paragraph (3) of this item, and

(*b*) the amount of the tax due by the auctioneer in respect of that supply.

(3) The net amount paid or to be paid by the auctioneer to his principal shall be equal to the difference between -

(*a*) the price of the goods at the public auction, and

(*b*) the amount of the commission obtained or to be obtained by the auctioneer from his principal, under the contract whereby commission is payable on the sale.

(4) An auctioneer must issue to the purchaser a sales invoice containing the following information -

(*a*) the sales invoice number;

(*b*) the date of the sale;

(*c*) the name, address and value added tax registration number of the seller;

(*d*) the name and address of the purchaser;

(*e*) a description of the goods;

(*f*) the auction price of the goods;

(*g*) taxes, dues, levies and charges;

(*h*) incidental expenses such as commission, packing, transport and insurance costs charged by the auctioneer to the purchaser;

(*i*) reference to the entry of the transaction in the seller's account books;

(*j*) the following declaration signed by the seller:

"I declare that no credit for input tax has or will be claimed by me in respect of the goods sold on this invoice.";

and the sales invoice shall not show any amount of value added tax separately.

(5) The auctioneer to whom the goods were transmitted under a contract whereby commission is payable on a public auction sale must issue an invoice to his principal, containing the following information:

(*a*) a consecutive invoice number;

(*b*) the date of the transaction;

(*c*) the name and address of the principal;

(*d*) the name, address and value added tax registration number of the auctioneer;

(*e*) a description of the goods;

(*f*) the amount of the transaction (i.e. the auction price of the goods less the amount of commission obtained or to be obtained from the principal);

(*g*) the signature of the principal:

Provided that where the principal is a taxable person, the invoice so drawn up shall serve as the tax invoice required to be issued in terms of the Twelfth Schedule to the Act.

(6) Auctioneers who supply goods under the conditions laid down in paragraph (1) of this item, must indicate in the suspense account of their accounts -

(*a*) the amounts obtained or to be obtained from the purchaser of the goods;

(*b*) the amount reimbursed or to be reimbursed to the vendor of the goods;

and the above amounts must be substantiated by the relevant documentation.

(7) The supply of goods by an auctioneer shall be deemed to be made at the time when the sale of those goods by public auction is effected.

Repossessed goods

12. Where any goods are repossessed -

(*a*) under the terms of a finance agreement, or

(*b*) by any insurer in the settlement of a claim under an insurance policy, or

(*c*) by a mortgagee in terms of his rights under a mortgage over a ship or aircraft,

and supplied by the person who repossessed them in the same condition as they were in at the time they were repossessed, the said supply by that person shall be treated as neither a supply of goods nor as a supply of services.

Part Three

Supplies by Retailers and by Civil, Mechanical and

Electrical Engineering Contractors

Applicability

1. This Part applies to retailers, civil, mechanical and electrical engineering contractors whose annual turn-over does not exceed €2,000,000, exclusive of the tax.

Cash accounting option

2.(1) (*a*) Subject to the other provisions of this Part, any person referred to in item 1 of this Part may opt that the tax on supplies made by him becomes chargeable on the date when a payment is made for that supply, to the extent covered by that payment.

Provided that the right of deduction of input tax of that person shall be postponed until the tax on the goods or services supplied to him has been paid to his supplier.

(*b*) Where a tax invoice issued in terms of the Twelfth Schedule by a person who has made an option in terms of sub-paragraph (*a*) does not mention the words "cash accounting" the option shall not apply and the tax on that supply shall become chargeable in terms of the other provisions of the Act.

(2) The provisions of paragraph (1) shall not apply to supplies of goods or services in respect of which the tax is payable by the customer and to supplies or transfers of goods referred to in item 4 of the Fourth Schedule.

Part Four

Travel Agents

Interpretation

1. In this Part "travel agent" means and includes any person who, without material alterations, buys in and re-sells travel, hotel, holiday and other related services to travellers, and shall include a tour operator.

Application

2. The provisions of this Part shall apply to the operations of travel agents, where the travel agent deals with the customer in his own name and uses the supplies and services of other persons in the provision of travel facilities:

Provided that this Part shall not apply to a travel agent who acts only as an intermediary and merely makes a repayment of expenses to another person in the name and for the account of the traveller.

Services supplied to be deemed as a single transaction

3. All transactions performed by a travel agent for the benefit of the traveller in connection with the journey shall be treated as a single supply of services supplied by him to the traveller.

Place of supply

4. The place of supply of services to which item 3 applies is the place where the travel agent is established.

Taxable value

5. The taxable value of supplies referred to in item 3 of this Part made by a travel agent shall be the difference between the cost of those supplies to the travel agent inclusive of value added tax and the total price charged to the traveller exclusive of value added tax, where the supplies are for the direct benefit of the

traveller:

Provided that where a supply to a travel agent is required in terms of this Act to be supported by a tax invoice, the cost of that supply shall only be taken into account for the purposes of this item if the travel agent holds such a tax invoice.

Input tax

6. Value added tax charged to the travel agent by other registered persons on supplies made by those registered persons to the travel agent for the purpose of supplies to which item 3 applies and for the direct benefit of the traveller shall not be eligible for deduction or refund.

Supplies outside the Community

7. If transactions entrusted by the travel agent to other taxable persons are performed by such persons outside the Community, the travel agent's service shall be treated as the service of an intermediary which is exempt with credit in terms of item 5 of Part One of the Fifth Schedule. When these transactions are performed both inside and outside the Community, only that part of the travel agent's services relating to transactions outside the Community shall be so treated as exempt with credit.

Powers of the Commissioner

8. The Commissioner may give such directives to, and require such information from, a travel agent as he may deem necessary for the application of this Part.

Records

9. A travel agent shall keep, in addition to the records required to be kept in terms of the other provisions of this Act, such other records as may be necessary to readily ascertain the amount of tax chargeable under this Part.

Part Five

Tax in Danger

1. Where, in any particular contract of supply, and in order to secure the regular payment of the tax in terms of the Act, the Commissioner may, by a notice in writing to the parties to the contract direct that the person to whom the supply is made shall be deemed to have made that supply to himself in the course or furtherance of his economic activity and the provisions of the Act, including the obligation to account for and to pay the tax, shall be read and construed accordingly.

2. When a direction to which item 1 of this Part refers has been given by the Commissioner, the person to whom the supply is made shall keep, in addition to the records required to be kept in terms of the other provisions of the Act, such other records as may be necessary to ascertain the amount of tax payable under this Part.

3. When a direction has been given by the Commissioner in terms of item 1 of this Part, the tax invoice which is required to be issued in terms of the Act by the person who makes the supply shall, in lieu of the information required by item 2(1)(*j*) of the Twelfth Schedule to the Act, indicate the words "direction in terms of the Fourteenth Schedule to the Act".

4. When a direction has been given by the Commissioner in terms of item 1 of this Part, such direction shall not in any way limit the right to claim any input tax to which any of the persons to whom the direction has been given, may still be entitled to claim in accordance with the other provisions of the Act.

Part Six

Investment Gold

Meaning of investment gold

1. (1) "Investment gold" means:

(*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%.

(2) Coins referred to in paragraph (1)(*b*) shall not, for the purpose of this Act, be considered to be sold for numismatic interest.

Option for taxation

2. (1) Taxable persons who produce investment gold or transform any gold into investment gold have a right of option for taxation of supplies of investment gold to another taxable person which would otherwise be exempt in terms of Part One of the Fifth Schedule.

(2) An agent who, acting in the name and for the account of another, intervenes for his principal in a supply in respect of which the supplier has exercised the option referred to in paragraph (1) has a right of option for taxation of the supply of his services.

(3) An option referred to in this item shall be exercised by means of an irrevocable notice in writing delivered to the Commissioner. Such notice:

(*a*) shall specify clearly that it is a notice made pursuant to this item and indicate whether it is an option of the supplier or an option of the agent;

(*b*) shall be made before the supplies to which it refers are made or by not later than thirty days after the date of any such supplies;

(*c*) shall specify the name and value added tax identification number of the taxable person to whom the supplies are made or to be made and their taxable value.

Special obligations for traders in investment gold

3. Traders in investment gold keep account of all substantial transactions in investment gold and keep the documentation to allow identification of the customer in such transactions.

Part Seven

Special scheme for telecommunications, broadcasting or electronic services supplied by taxable persons not established within the Community

Interpretation

1. In this Part, unless the context otherwise requires:

(*a*) "taxable person not established within the Community" means a taxable person who has not established his business in the territory of the Community and who has no fixed establishment there and who is not otherwise required to be identified for VAT purposes under article 10 of this Act;

(*b*) "Member State of consumption" means the Member State in which the supply of the telecommunications, broadcasting or electronic services is deemed to take place according to item 10(1) in Part Two of the Third Schedule to this Act;

(*c*) "telecommunications services" and "broadcasting services" mean the services referred to in points (*a*) and (*b*) of the first paragraph of item 10(1) in Part Two of the Third Schedule to this Act;

(*d*) "electronic services" and "electronically supplied services" mean the services referred to in point (*c*) of the first paragraph of item 10 in Part Two of the Third Schedule to this Act;

(*e*) "VAT return" means the statement containing the information necessary to establish the amount of VAT due in each Member State.

2. The Commissioner shall permit any taxable person not established within the Community supplying telecommunications, broadcasting or electronic services to a non-taxable person who is established in a Member State or has his permanent address or usually resides in a Member State, to use this special scheme. This scheme applies to all those services supplied within the Community.

3. The taxable person not established within the Community shall state to the Commissioner when he commences or ceases his activity as a taxable person, or changes that activity in such a way that he no longer meets the conditions necessary for use of this special scheme. He shall communicate that information electronically.

4. (1) The information which the taxable person not established within the Community must provide to the Commissioner when he commences a taxable activity shall contain 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.

(2) The taxable person not established within in the Community shall notify the Commissioner of any changes in the information provided.

5. The Commissioner shall allocate to the taxable person not established within the Community an individual VAT identification number and shall notify him of that number by electronic means. On the basis of the information used for that identification, Member States of consumption may have recourse to their own identification systems.

6. The Commissioner shall delete the taxable person not established within the Community from the identification register 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.

7. The taxable person not established within the Community shall submit by electronic means 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.

8. The VAT return shall show the identification number and, for each Member State of consumption in which VAT is due, the total value, exclusive of VAT, of supplies of telecommunications, broadcasting and electronic services carried out during the tax period and 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.

9. The value added tax return shall be made out in euro.

If the supplies have been made in other currencies, the taxable person not established within the Community shall, for the purpose of completing the VAT return, use the exchange rate applying on the last day of the tax period. The exchange rates shall be those published by the European Central Bank for that day, or if there is no publication for that day, on the next day of publication.

10. The taxable person not established within the Community shall pay the VAT, making reference to the relevant VAT return, when submitting the VAT return, at the latest, however, at the expiry of the deadline by which the return must be submitted.

Payment shall be made to a bank account denominated in euro, designated by the Commissioner.

11. A taxable person not established within the Community making use of the scheme shall, instead of making the deductions under article 23 of this Act, upon application, be granted a refund, under such conditions and subject to such limitations as the Minister may by regulations prescribe.

12. (1) The taxable person not established within the Community shall keep records of the transactions covered by this special scheme. Those records must be sufficiently detailed to enable the tax authorities of the Member State of consumption to verify that the VAT return is correct.

(2) The records referred to in paragraph (1) must be made available electronically on request to the Commissioner and to the Member State of consumption.

Those records must be kept for a period of ten years from the end of the year during which the transaction was carried out.

Part Eight

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

Interpretation

1. In this Part, unless the context otherwise requires:

(*a*) "taxable person not established in the Member State of consumption"

means a taxable person who has established his business in the territory of the Community or has a fixed establishment there but has not established his business and has no fixed establishment within the territory of the Member State of consumption;

(*b*) "Member State of identification" means the Member State in the territory of which the taxable person has established his business or, if he has not established his business in the Community, where he has a fixed establishment.

Where a taxable person has not established his business in the Community, but has more than one fixed establishment therein, the Member State of identification shall be the Member State with a fixed establishment where that taxable person indicates that he will make use of this special scheme. The taxable person shall be bound by this decision for the calendar year concerned and the two calendar years following;

(*c*) "Member State of consumption" means the Member State in which the supply of the telecommunications, broadcasting or electronic services is deemed to take place according to item 10(1) in Part Two of the Third Schedule to the Act;

(*d*) "telecommunications services" and "broadcasting services" mean the services referred to in points (a) and (b) of the first paragraph of item 10(1) in Part Two of the Third Schedule to the Act;

(*e*) "electronic services" and "electronically supplied services" mean the services referred to in point (*c*) of the first paragraph of item 101) in Part Two of the Third Schedule to the Act;

(*f*) "VAT return" means the statement containing the information necessary to establish the amount of VAT due in each Member State.

2. The Commissioner shall permit any taxable person not established in the Member State of consumption supplying telecommunications, broadcasting or electronic services to a non-taxable person who is established or has his permanent address or usually resides in that Member State, to use this special scheme. This special scheme applies to all those services supplied in the Community.

3. The taxable person not established in the Member State of consumption shall state to the Commissioner when he commences and ceases his taxable activities covered by this special scheme, or changes those activities in such a way that he no longer meets the conditions necessary for use of this special scheme. He shall communicate that information electronically.

4. A taxable person making use of this special scheme shall, for the taxable transactions carried out under this scheme, 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.

5. 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.

6. The taxable person not established in the Member State of consumption shall submit by electronic means 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.

7. The VAT return shall show the identification number referred to in item 4 of this Part and, 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.

8. The value added tax return shall be made out in euro.

If the supplies have been made in other currencies, the taxable person not established in the Member State of consumption shall, for the purpose of completing the VAT return, use the exchange rate applying on the last day of the tax period. The exchange rates shall be those published by the European Central Bank for that day, or if there is no publication for that day, on the next day of publication.

9. The taxable person not established in the Member State of consumption shall pay the VAT, making reference to the relevant VAT return, when submitting the VAT return, at the latest, however, at the expiry of the deadline by which the return must be submitted.

Payment shall be made to a bank account denominated in euro, designated by the Commissioner.

10. The taxable person not established in the Member State of consumption making use of this special scheme may not, in respect of his taxable activities covered by this scheme, deduct VAT pursuant to article 23 of this Act. Notwithstanding this, upon application, the taxable person in question shall be granted a refund under such conditions and subject to such limitations as the Minister may by regulations prescribe.

If the taxable person not established in the Member State of consumption making use of this special scheme also carries out in the Member State of consumption activities not covered by this scheme in respect of which he is obliged to be registered for VAT purposes, he shall deduct VAT in respect of his taxable activities which are covered by this scheme in the VAT return to be submitted in the Member State of consumption.

11. (1) The taxable person not established in the Member State of consumption shall keep records of the transactions covered by this special scheme. Those records must be sufficiently detailed to enable the tax authorities of the Member State of consumption to verify that the VAT return is correct.

(2) The records referred to in paragraph (1) must be made available electronically on request to the Member State of consumption and to the Commissioner.

Those records must be kept for a period of ten years from 31 December of the year during which the transaction was carried out.

FIFTEENTH SCHEDULE

[Article 2]

Territories of the Community

Amended by:
L.N. 22 of 1999;
L.N. 30 of 1999;
L.N. 223 of 1999;
L.N. 271 of 2000;
L.N. 149 of 2001;
L.N. 234 of 2001.
Substituted by:
X. 2003.47.

1. Subject to the other provisions of this Schedule, "Member State" means the area of application of the Treaty establishing the European Economic Community as defined in respect of that State in Article 299 of that Treaty excluding, with respect to the States listed in the Column One of the Table in this item, the territories listed in the Second Column:

Column One	Column Two Excluded Territories
Federal Republic of Germany	The Island of Heligoland The territory of Busingen
Finland	Aland Islands
French Republic	The overseas departments
Hellenic Republic	Mount Athos
Kingdom of Spain	Ceuta Melilla The Canary Islands
Republic of Italy	Livigno Campione d'Italia The Italian waters of Lake Lugano
United Kingdom	Gibraltar The Channel Islands

2. Notwithstanding the foregoing provisions the Isle of Man and the Principality of Monaco shall be treated as territories of Member States and transactions originating in or intended for:

(*a*) the Isle of Man shall be treated as originating in or intended for the United Kingdom of Great Britain and Northern Ireland;

(*b*) the Principality of Monaco shall be treated as originating in or intended for the French Republic.

Added by:
X. 2003.47.
Substituted by:
L.N. 536 of 2010.

SIXTEENTH SCHEDULE

[Article 2]

Excise Goods

"Excise goods" means products under any of the following descriptions in so far as they are subject to excise duty in terms of the Excise Duty Act:

(*a*) energy products including mineral oils;

(*b*) alcohol and alcoholic beverages;

(*c*) manufactured tobacco:

Provided that gas supplied through a natural gas system situated within the territory of the Community or any network connected to such a system shall not fall under the description of excise goods.