

1 December 2016

TAX GUIDELINE – articles 42(1) and 47 of the Duty on Documents and Transfers Act (hereinafter referred as to “the Act”)

Business Interests outside Malta

For the purposes of sub-article (1) of article 42 of the Act and of article 47 of the Act, the Commissioner hereby clarifies that the following shall NOT be considered to constitute business interests outside Malta whether they are carried on by the applicant company or by any company or partnership of which it holds at least 25% of the capital, voting rights and rights to profits available for distribution to shareholders or partners as the case may be:

(a) turnover derived from any activities carried on with customers/clients who are resident in Malta and who do not fall within the purport of sub-article (3) of article 47 of the Act;

(b) turnover derived from any activities carried on directly or indirectly with customers/ clients who are not resident in Malta but who operate in Malta through a permanent establishment situated in Malta, where the particular business activities are effectively connected with such permanent establishment and where such persons do not fall within the purport of sub-article (3) of article 47 of the Act;

(c) turnover derived from any retail, catering, on-land entertainment, manufacturing and other related productive activities, transport, agricultural or fishing activities which are carried on in Malta or any activities the income derived from which is referred to in paragraph (3) of Rule 5 of the Tax Accounts (Income Tax) Rules, irrespective of the residence status of the particular customer/ client.

The above are without prejudice to the powers of the Commissioner to determine other activities not to constitute business interests outside Malta whether on a general basis or on the basis of the circumstances of any specific fact pattern.

Applicants for determinations in terms of sub-article (9) of article 47 of the Act shall disclose to the Commissioner in a clear manner the nature of the activities of the applicant company so as to enable the Commissioner to determine the location of the particular business interests.

Validity period relating to determinations issued in terms of articles 47 (3)(d) or (e) of the Act

Any determinations made by the Commissioner in terms of paragraphs (d) or (e) of sub-article 3 of article 47 of the Act before 1 December 2016 shall continue to be valid for a further period of three years from the date of publication of these guidelines on the Inland Revenue Department website.

Determinations made on or after 1 December 2016 shall be valid for a period of three years from the date of the determination.

A determination made by the Commissioner may, at the option of the applicant, be renewed for further periods of three years.