

VAT GENERAL INFORMATION FOR BUSINESSES

ELECTRONIC SERVICES PROVIDERS

These notes are intended for persons who provide Electronic Services and who are either established in Malta or established outside the European Union (EU).

Electronic services are defined as 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 databases available, 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 his customer communicates via electronic mail, this shall not in itself mean that the service performed is an electronic service.

Electronic Services supplied to a taxable person by a person established in or outside the European Union

The place of supply of electronic services is in this case always the place where the customer is established. This rule applies no matter where the supplier is established (whether inside or outside the EU).

In the context of this write up, “Taxable person” means a person who carries on an economic activity, whatever the purpose or the result of that activity (economic activity is further defined in article 5 of the VAT Act). For the purpose of establishing whether a customer is a taxable person or not, the supplier may require documentary evidence that his customer is carrying on an economic activity, e.g. his VAT identification number.

Consequently, if you are a supplier of electronic services and you are established and registered in Malta under article 10 then

- you must not charge VAT on these services if your customer is established outside the EU or is a taxable person established in another member state;
- you must charge VAT on these services (unless a specific exemption applies) to any taxable person who is established in Malta.

If on the other hand, being a person registered in Malta under article 10, you are receiving an electronic service from a supplier in another member state or from a supplier established outside the EU, that service is deemed to take place in Malta and therefore Maltese VAT is due on it. In any case, wherever your supplier is established, you are to account for the VAT due in your trade records and pay the amount by declaring it in your next VAT Return under the Reverse Charge Rule (unless a specific exemption applies).

The Reverse Charge Rule means that the customer has to declare the electronic services and the relative output VAT due and then claim the tax back as a deduction thus resulting in a zero balance. The whole amount may only be claimed as a deduction if all these services are acquired for business use and you have a full right

to deduct VAT. Otherwise the customer may claim back as a deduction only that input VAT related to the part of the service that was for business use that opens a right to deduct and has to pay VAT on the remaining part of the service.

If you are a taxable person not registered under article 10 (because you are providing exempt without credit goods or services or because you are a small undertaking falling below the established turnover threshold and registered under article 11) and you receive an electronic service from any supplier established outside Malta, then you have to pay the VAT due to the Commissioner by not later than the fifteenth day of the month following that during which it becomes chargeable.

Electronic Services supplied to a non-taxable person by a person established in the European Union

In the case of a non-EU customer the place of supply of electronic services is the place where the non-EU customer is established. Where the customer is established in the EU, the supply of electronic services is the place where the EU supplier is established.

Consequently, if you are a supplier of electronic services and you are established and registered in Malta under article 10 then

- you must not charge VAT on these services if your customer is established outside the EU;
- you must charge VAT on these services (unless a specific exemption applies) to
 - o Any non-taxable person (including a non-taxable legal person) who is established in Malta
 - o Any non-taxable person (including a non-taxable legal person) established in another member state.

Electronic Services supplied to a non-taxable person by a person established outside the European Union

A person who is established outside the EU who provides electronic services to a *non-taxable person (including a non-taxable legal person) who is established in a member state of the EU*, normally has to register in that member state. However, as this person may supply such services to many customers in different member states, a scheme has been set up to avoid registration for VAT in each Member State.

This scheme allows such a person (known as the Non-Established Taxable Person (NETP)) to register in any Member State of his choice. The Member State of registration is known as the Member State of Identification.

The NETP would then charge VAT according to the rate applicable in the Member State of consumption i.e. where his customer is established. Therefore he may have to charge at the different rates applicable in the different Member States.

A NETP who is established outside the EU and who chooses Malta as his place of Identification has to apply to the Commissioner of Revenue by electronic means

stating when his taxable activity commences. He should also furnish the following information:

- (a) Name
- (b) Postal address
- (c) Electronic addresses, including web sites
- (d) National tax number, if any
- (e) A declaration that he is not identified for value added tax purposes within the Community.

He shall notify the Commissioner electronically within thirty days of any changes in the information submitted or if the activity ceases or changes to the extent that he no longer qualifies for the special scheme.

The Commissioner shall identify the non-established taxable person by means of a VAT registration number notified to him by electronic means.

The non-established taxable person shall submit to the Commissioner by electronic means a value added tax return for each calendar quarter whether or not electronic services have been supplied. The return shall be submitted within 20 days following the end of every calendar quarter.

The value added tax return shall be made out in euro and payment of tax due shall be made to a bank account denominated in euro, designated by the Commissioner.

The non-established taxable person shall keep records in sufficient detail to enable the tax administration of the Member State of consumption to determine correct VAT due. These records shall be made available electronically on request to the Commissioner and to the Member State of consumption and shall be kept for a period of 6 years from the end of the year when the transaction was carried out.

The Commissioner shall cancel the registration of a non-established taxable person if:

- (a) He is notified that the NETP no longer supplies electronic services, or
- (b) It can be otherwise assumed that his taxable activities have ended, or
- (c) He no longer fulfils the requirements necessary to be allowed to use the special scheme, or
- (d) He persistently fails to comply with the provisions related to the special scheme.

The Mini-One Stop Shop

As from 1 January 2015, the present online scheme for the registration and submission of VAT returns connected to electronically supplied services shall be extended to telecommunications services and radio and television broadcasting services (hereinafter “broadcasting services”).

“Telecommunications services” shall mean services relating to the transmission, emission or reception of signals, words, images and sounds or information of any nature by wire, radio, optical or other electromagnetic systems, including the related transfer or assignment of the right to use capacity for such transmission, emission or

reception, with the inclusion of the provision of access to global information networks.

“Radio and television broadcasting services” shall include services consisting in audio and audio-visual content such as programmes which are provided via communications networks by and under the editorial responsibility of a media service provider for simultaneous listening or viewing to the general public on the basis of a programme schedule.

From the same date, the place of supply of telecommunication services and broadcasting services to non-taxable persons shall be the same as for electronically supplied services namely the place where the customer is established, has his permanent address or usually resides.

However, in order to facilitate the practical implementation of this rule and for legal certainty, in special circumstances, European Council Implementing Regulation No 282/2011 provides that the place where the customer is established, has his permanent address or usually resides shall be presumed to be as follows:

- Where such services are supplied from a location such as a telephone box, a telephone kiosk, a wi-fi hot spot, an internet café, a restaurant or a hotel lobby where the physical presence of the recipient of the service at that location is needed for the service to be rendered to him by that supplier, such presumed place shall be the place of that location and the service is effectively used and enjoyed there;
- If location is on board a ship, aircraft or train carrying out a passenger transport operation within the Community, the place shall be the country of departure of the passenger transport operation;
- Where such services are supplied to a non-taxable person via his fixed land line, the presumed place shall be the place of installation of the fixed land line;
- Where such services are supplied through mobile networks, the presumed place shall be the country identified by the mobile country code of the SIM card used when receiving those services;
- Where such services supplied require the use of a decoder or similar device or a viewing card and where a fixed land line is not used, the presumed place shall be the place where that decoder or similar device is located, or if that place is not known, the place to which the viewing card is sent with a view to being used there;
- Where such services are provided by a taxable person acting in his own name together with accommodation in the hotel sector or in sectors with a similar function, such as holiday camps or sites developed for use as camping sites, these services shall be regarded as being supplied at those locations.

However the first five presumptions shown above may be rebutted by the supplier if he has three pieces of non-contradictory evidence from list below, indicating that the customer is established, has his permanent address or usually resides elsewhere:

- (a) the billing address of the customer;
- (b) the Internet Protocol (IP) address of the device used by the customer or any method of geolocation;
- (c) bank details such as the place where the bank account used for payment is and the billing address of the customer held by that bank;
- (d) the Mobile Country Code (MCC) of the International Mobile Subscriber Identity (IMSI) stored on the Subscriber Identity Module (SIM) card used by the customer;
- (e) the location of the customer's fixed land line through which the service is supplied to him;
- (f) other commercially relevant information.

A tax administration may rebut these presumptions where there are indications of misuse or abuse by the supplier.

Disclaimer:

Please be advised that the information in these notes is provided as guidance. The notes are simply guidelines and not legal documents providing legally binding rulings. If you require more precise information on how to implement VAT legislation in specific special situations, kindly contact the VAT Department or consult documents available in the special section for Tax Professionals at the VAT Department's website .

(Updated 20 June 2013)