

Guidelines for the VAT treatment of Health Care Services

Date: 5th September 2023

Purpose and Background

The purpose of this document is for the Commissioner for Tax and Customs ('CfTC') to provide guidance, in conformity with article 75(2) of the VAT Act (Chapter 406, Laws of Malta), on the application of the VAT exemptions contained under sub-items (1) and (2) of item 11 of Part Two of the Fifth Schedule to the VAT Act based on the provisions of the EU VAT Directive (2006/112/EC)¹ and jurisprudence of the Court of Justice of the European Union² applicable at the time of issuance this Guideline.

The VAT exemption contained under the first sub-item (item 11(1)) applies to the supply of medical care by a person in the exercise of any profession regulated by the Health Care Professions Act (Chapter 464, Laws of Malta) or the Psychology Act (Chapter 471, Laws of Malta).

The VAT exemption contained under the second sub-item (item 11(2)) applies to the supply 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 purpose of said exemption.

Interpretation

Item 11(1) – Medical Care Supplied by Professionals

For this exemption to be applied, two conditions must be **cumulatively** satisfied:

1. The supply must be a supply of “*medical care*”; and
2. The supply must be provided by a person in the exercise of any profession regulated by the Health Care Professions Act or the Psychology Act (hereinafter referred to collectively as “Health Care Professionals”).

Therefore, not all supplies by Health Care Professionals automatically qualify for the VAT exemption – such supplies must also be “*medical care*” in order for the exemption to apply.

¹ Article 132(1), points (b) and (c)

² Peter d'Ambrumenil (C-307/01); L.u.p GmbH (C-106/05); PFC Clinic (C-91/12); Termas Sulfurosas (C-513/20); I GMBH (C-228/20); CIG (C-458/21); amongst others.

For the purpose of the application of this exemption, the term “*medical care*” shall mean any services that have as their purpose the protection (including maintaining and restoring) of human health and the diagnosis, treatment and, in so far as possible, cure of diseases or health disorders in humans. “Health” includes the mental health of a patient.

Item 11(2) – Care or medical or surgical treatment in hospitals/clinics

For this exemption to be applied, two conditions must be **cumulatively** satisfied:

1. The supply must be a supply of “*care or medical or surgical treatment*”; and
2. The supply must be provided by a government hospital or institution or in any other hospital or institution approved by the Minister for the purpose of this exemption.

For the purpose of the application of this exemption, the following shall apply:

- I. “*care or medical or surgical treatment*” shall mean:
 - a. “*medical care*” which is delivered by a “*Health Care Professional*”; and
 - b. Shall also include any activities which are closely related and essential to the supply of such medical care. An activity is closely related and essential to the supply of medical care where, without such activities, it is not possible to achieve the objectives pursued by the related supply of medical care, i.e. to protect, diagnose, treat, and in so far as possible, cure diseases or health disorders in humans.
- II. “*other hospital or institution approved by the Minister*” for the purpose of this exemption shall be an entity that is aligned with the legal requirements determined by the relevant competent authorities to render supplies of care or medical or surgical treatment as defined in this Guideline.

For the avoidance of doubt, any terms defined for the purpose of the exemption under item 11(1) shall be equally applicable for the purpose of applying the exemption under item 11(2).

Other matters relating to both exemptions under items 11(1) and 11(2)

1. For the avoidance of doubt, supplies not primarily for the benefit of the patient shall not be considered as supplies of medical care. By way of example, services cannot be regarded as supplies of medical care if they are provided by a Health Care Professional whereby such services are effected primarily in order to enable a third party to take a decision which has legal consequences for the person concerned or other persons, with any medical care implications being merely indirect.

2. Supplies of an aesthetic or cosmetic nature (i.e. supplies whose purpose is to alter, change, improve, or modify, in any way, the appearance of the human body) provided or delivered by Health Care Professionals, subject to the other applicable conditions as detailed within the preceding sections to this Guideline, may also qualify for an exemption without credit in so far as they qualify as supplies of “*medical care*”.

Records to be Kept

In order to substantiate the application of the respective exemption on the supply of medical care, particularly for supplies of an aesthetic or cosmetic nature, the following records may be requested by the CfTC for each such supply:

- a) Type of service provided;
- b) Brief medical justification for exempting any supplies of an aesthetic or cosmetic nature;
- c) Details and warrant number of the Health Care Professional providing the justification in (b) above;
- d) Unique identification number linking the supply to a specific patient;
- e) Value of the service;
- f) Date(s) the service was provided.

Such records may be stored electronically in any format and should be retained for a period of at least 6 years from the end of the year to which they relate.

Disclaimer

This Guideline shall not prejudice in any way any of the powers of the Commissioner in terms of the VAT Act.

This Guideline shall replace and supersede any previously applicable Guidelines on the same matter.

The Commissioner reserves the right to substitute, alter or withdraw these guidelines as necessary at any time.