

## Implementing Guidelines for the Increase in the Administrative Penalty for late filing of Recapitulative Statements

4<sup>th</sup> May 2023

### Purpose and Background

The purpose of this document is for the Commissioner for Revenue ('CfR') to provide an explanation, in conformity with article 75(2) of the VAT Act (Chapter 406, Laws of Malta), on the implementation of the increase in the administrative penalty imposed upon the late filing of recapitulative statements required to be made in terms of Article 30(3) of the VAT Act and on such form and at such intervals as laid down under Subsidiary Legislation 406.14, The Value Added Tax (Recapitulative Statement Of Intra-Community Transactions) Regulations, pursuant to the coming into force of the Budget Measures Implementation Act, 2023 (Act XII of 2023) on 4<sup>th</sup> April 2023.

The CfR wishes to remind taxable persons that the obligation to file a recapitulative statement in a timely manner is of utmost importance to ensure the proper functioning of the EU VAT system and to ensure the timely intervention by Member States' tax authorities in tackling VAT fraud and evasion. It should further be noted that in terms of the proviso to item 3(1) of Part One of the Fifth Schedule to the VAT Act, the exemption applying to intra-community supplies of goods shall not apply where a taxable person fails to comply with the obligation to submit a recapitulative statement in a timely manner, or where the recapitulative statement submitted by him does not set out the correct information, unless that person can duly justify his shortcoming to the satisfaction of the CfR.

For the avoidance of doubt, a recapitulative statement for a reporting period should not be filed if the taxable person does not make any supplies listed under Article 30(3) of the VAT Act during said reporting period.

### Explanation

With effect from 4<sup>th</sup> April 2023, and in terms of the new Article 38(2)(b) of the VAT Act, any taxable person who:

*"being required to furnish a recapitulative statement in terms of sub-article (3) of article 30, does not furnish that statement within the time laid down in the relevant provisions of this Act shall be liable to an administrative penalty of fifty euro (€50) for every month or part thereof that elapses from the date by which the 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 six hundred euro (€600) for each such statement".*

With a view to encouraging voluntary compliance with the provisions of the VAT Act and in good faith, the CfR shall allow a one-time concession on the imposition of administrative penalties on the late filing of recapitulative statements in so far as any recapitulative statements due to be filed by or before **15<sup>th</sup> September 2023** are filed by that date. Any late submissions of recapitulative statements after the lapse of that date shall incur administrative penalties as follows:

i. Recapitulative Statements due to be filed after 4<sup>th</sup> April 2023

Recapitulative statements due to be filed after 4<sup>th</sup> April 2023 shall attract the new penalty of €50 for every month or part thereof that elapses from the date by which any such statements should have been furnished in accordance with this Act and the date when the respective statement is furnished to the Commissioner. Such penalties shall be capped to a maximum of €600.

ii. Recapitulative Statements which were due to be filed before 4<sup>th</sup> April 2023

Recapitulative statements which were due to be filed before 4<sup>th</sup> April 2023, shall attract the previously applicable administrative penalty of €10 for every month or part thereof that elapses from the date by which any such statements should have been furnished in accordance with the VAT Act, until 15<sup>th</sup> April 2023. The penalties computed as aforesaid in terms of the previously applicable law shall not exceed €120.

Where any taxable person continues to be in default of filing any recapitulative statements which were required to be filed before 4<sup>th</sup> April 2023, such person shall be liable to pay the administrative penalties of €50 for every month or part thereof that elapses from 15<sup>th</sup> April 2023 until the date when the respective statement is furnished to the Commissioner. Such administrative penalty shall in all cases not exceed €600 (including any penalties incurred under the preceding paragraph) for each such declaration or statement.

### **Disclaimer**

This Guideline shall not prejudice in any way any of the powers of the Commissioner in terms of the VAT Act, particularly the right to take criminal action in terms of Article 76(d) of the VAT Act against any persons who continue to fail to furnish a recapitulative statement as may be required.

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