

Guidelines: VAT Import One-Stop-Shop (IOSS) Intermediary Conditions

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1. Background

As part of the new E-Commerce package coming into effect on 1st July 2021 through the transposition of Council Directives 2017/2455 and 2019/1995 (transposed into local legislation through L.Ns 219/2020 to 226/220), a special scheme is being created which covers distance sales of goods imported from third countries or third territories to customers in the EU in consignments of an intrinsic value not exceeding €150 (i.e. the IOSS scheme). In terms of this scheme, where taxable persons who are not established in the EU carry out distance sales of goods imported from third countries or third territories (hereinafter referred to as a “non-EU supplier”), such non-EU suppliers must be represented by an intermediary established in the EU (subject to specific exceptions where the non-EU supplier is established in a country with which the EU has concluded an agreement on mutual assistance).

An intermediary is defined as a “*a person established in the Community appointed by the taxable person carrying out distance sales of goods imported from third territories or third countries as **the person liable for payment of the VAT** and to fulfil the obligations laid down in this special scheme in the name and on behalf of the taxable person*”.

A taxable person can only register as an intermediary with the Member State of establishment.

Moreover, as confirmed by the Explanatory Notes issued by the EU Commission on VAT e-commerce rules: “*Member States may lay down rules or conditions to be imposed on taxable persons who want to act as intermediary in the IOSS (e.g. guarantees).*”

Given the responsibility borne by such taxable persons who opt to act as intermediaries (**jointly and severally liable for the payment of VAT attributable to the different EU Member States in relation to distance sales of goods imported from third countries/territories in consignments of an intrinsic value not exceeding €150 made by persons not established in the EU**), the setting of specific conditions to ensure the correct and straightforward application of the IOSS scheme and in order to prevent any possible evasion, avoidance or abuse would be a proportionate measure.

2. Scope

The purpose of these Guidelines is to establish the criteria applicable to taxable persons who wish to act as intermediaries in terms of the IOSS scheme. These Guidelines are without prejudice to any of the provisions contained under Section 4 of Part 7 of the 14th Schedule to the VAT Act.

3. Conditions

In order for approval to be granted by the Office of the Commissioner for Revenue (“OCfR”) in connection with a taxable person’s request to act as an intermediary under the IOSS scheme, that taxable person must satisfy the following conditions:

- A. The applicant must be established in Malta, carrying out business activities in Malta and has a valid Maltese VAT identification number;

- B. The applicant must operate using a bank licensed and regulated by the Malta Financial Services Authority and must have in place a “client account” with said bank, being a bank account specifically designated for all importers for whom the applicant will be acting as Intermediary. Any funds contained in such client account pertaining to the payment of VAT due under the IOSS scheme must be segregated from any other funds held by the applicant;
- C. The applicant must be a qualifying person, i.e. either:
- i. A person who holds a warrant to practise the profession of accountant under the Accountancy Profession Act or any equivalent EU/EEA legislation;
 - ii. A person who is a member of the Malta Institution of Taxation;
 - iii. A person who is in possession of a warrant to practise as an advocate under the Code of Organisation and Civil Procedure or any equivalent EU/EEA legislation;
 - iv. A person holding a warrant to practise as a notary in Malta;
 - v. A person holding a warrant to practise as a legal procurator;
 - vi. A person licensed and regulated by the Malta Financial Services Authority; or
 - vii. Any legal person recognised by the Commissioner for Revenue for this purpose.

A legal person shall be recognised by the Commissioner for Revenue for this purpose if that person satisfies the following conditions:

- a) The legal person is physically established in Malta having its significant people functions, pertaining to its role as Intermediary, being carried out in Malta;
 - b) The individuals responsible for the essential decisions concerning the general management of the business must be persons listed under part C(i) to C(vi) above;
 - c) The legal person must employ an individual having access to a Maltese e-ID.
- D. The applicant is, by the date of his application, in full compliance with the provisions of the VAT Act, Income Tax Act and Income Tax Management Act and has, throughout the period in which he has been so registered for VAT, in the majority of cases submitted, by the respective deadlines, any returns or notices due under articles 27 and 30 of the VAT Act, and returns of income due in terms of the Income Tax Management Act, and has in the majority of cases settled, in full and by the respective deadlines, any and all amounts due by way of tax declared in the aforementioned returns and notices, as well as any interest and administrative penalties due pursuant to the VAT Act, Income Tax Act and Income Tax Management Act.

Provided that, when a valid objection or appeal has been made against an assessment issued to the applicant by the OCfR, leading to any tax and, or administrative penalty, being kept in abeyance as a result of said objection or appeal, the Commissioner may, at his discretion, disregard for the purpose of this part such tax, administrative penalty and any interest accruing thereon, related to that assessment.

Applicants being legal persons who have been incorporated for less than 12 months would be deemed to have submitted, in the majority of cases, any returns and notices and settled any and all amounts due by the respective deadlines if at least 90% of such returns, notices and settlements of amounts due have been submitted within the time limit prescribed by the relevant legislation. Any other applicants would be deemed to have submitted, in the

majority of cases, any returns and notices and settled any and all amounts due by the respective deadlines if at least 80% of such returns, notices and settlements of amounts due have been submitted within the time limit prescribed by the relevant legislation.

The fulfilment of the abovementioned conditions will not automatically entitle a taxable person to act as an intermediary in terms of the IOSS. All applications shall be screened and are subject to the approval of the OCfR before any intermediary services can be provided. The OCfR may impose any further conditions as it may deem necessary to ensure the correct and straightforward application of the IOSS scheme and in order to prevent any possible evasion, avoidance or abuse.

The OCfR may refuse any application made by taxable persons to act as an Intermediary. In such case, the respective applicant will be informed in writing within 30 working days from the date a valid application has been submitted or from the date all additional information/documents requested after the submission of the application have been submitted, whichever is the latest.

4. Ongoing Monitoring

Without prejudice to the provisions of sub-item 8(2) of Section 4 of Part 7 to the 14th Schedule of the VAT Act, where any person, at any time, acting as an intermediary in terms of the IOSS, fails to meet any of the conditions set out in Part 3 of this Guideline, he shall be liable to inform the OCfR within 15 days from failing to meet said conditions or otherwise be guilty of a criminal offense in terms of the provisions of the VAT Act. Upon such notification by that person to the OCfR, that person shall be removed from the Intermediary identification register, have his Intermediary Identification number revoked and notified accordingly.

5. Disclaimer

The OCfR may substitute, alter or withdraw these guidelines at any time.