

GUIDELINES REGARDING ITEM 12 OF PART TWO OF THE THIRD SCHEDULE TO THE VALUE ADDED TAX ACT

1. General

The Commissioner for Revenue recognises that lessors of means of transport which are pleasure boats will not be able to assess, at the date of each chargeable event, the extent to which the pleasure boat is effectively used and enjoyed by the lessee within and outside EU territorial waters in those situations where lease payments are payable in advance by the lessee to the lessor.

Accordingly, and for the purposes of Item 12 of Part Two of the Third Schedule to the VAT Act, the Commissioner shall only consider the place of supply of the hiring of pleasure boats, if situated within Malta, as being situated outside EU territorial waters if the actual effective use and enjoyment of the services, in whole or in part, takes place outside EU territorial waters and as long as the conditions referred to in this Guideline are satisfied. This Guideline is the only guideline of the Commissioner which shall apply to leases commencing on or after the 1 November, 2018.

2. Commencement of Lease

Upon the commencement of a new lease of a pleasure boat which is intended to be effectively used and enjoyed outside EU territorial waters, the lessor shall not take into account the expected effective use and enjoyment of the pleasure boat by the lessee and shall apply VAT as follows:

- (a) Where the lease commences at least 30 days prior to the end of the tax period in which the lease commencement date falls (“the first tax period”), the lessor shall charge the full VAT due on the consideration payable by the lessee for the said first tax period; and
- (b) Where the lease commences less than 30 days prior to the end of the first tax period, the lessor shall charge the full VAT on the consideration payable by the lessee for the first tax period and the subsequent tax period (“the second tax period”).

3. Determination of Preliminary Ratio based on Actual Effective Use and Enjoyment

Upon the lapse of the tax periods as referred to in Section 2(a) and 2(b) above, the lessor shall procure from the lessee such reasonable documentary and / or technological data to determine the actual effective use and enjoyment by the lessee of the pleasure boat within and outside EU territorial waters during the afore-said tax period or tax periods as applicable.

Based on such documentary and / or technological data, the lessor shall obtain a “Preliminary Ratio” of actual effective use and enjoyment in EU territorial waters by dividing the actual effective use and enjoyment of the pleasure boat in EU territorial waters by the total effective use and enjoyment in and outside EU territorial waters during the said tax period or tax periods as applicable.

4. Use of the Preliminary Ratio

The “Preliminary Ratio” referred to in section 3 shall be used by the lessor to provisionally determine the portion of the lease payments attributable to effective use and enjoyment in EU territorial waters for the subsequent tax periods after the ones referred to in Section 2(a) and 2(b) above. This “Preliminary Ratio” shall only be utilised up to the end of the tax periods in which the first twelve months of the lease

fall, inclusive of the first tax period or first and second tax periods mentioned above (the “First Annual Period”). Where the duration of a lease is shorter, then the “Preliminary Ratio” would apply for the duration of the lease period.

A “Provisional Output Tax” shall be calculated by multiplying the taxable value of each supply by the “Preliminary Ratio” by the standard rate of VAT.

5. *Tax adjustment allowed for the first and, if applicable, second tax period/s*

Any difference that would result between the full output tax charged in accordance with section 2 above during the first and, if applicable, the second tax periods and the calculation of the “Provisional Output Tax” for those tax periods utilising the “Preliminary Ratio” in accordance with section 4 above shall represent tax overpaid by the lessor, which overpaid tax shall be adjusted for in the tax return for the tax period immediately following the first or the second tax period referred to in section 2, as applicable.

6. *Adjustment of output tax for Leases whose duration does not exceed the First Annual Period*

Where a lease (whose duration does not exceed the First Annual Period) terminates after the second tax period, the difference between the total output tax charged for the lease term calculated provisionally in terms of sections 2, 3, 4 and 5 above and the definitive calculation of the output tax for the lease term on the basis of the actual effective use and enjoyment during the full lease term, shall be adjusted for in the tax return for the tax period subsequent to that in which the lease terminates.

7. *Calculation of Output Tax of leases with a longer term than the First Annual Period*

For leases whose duration exceeds the First Annual Period, the chargeable output tax on the hiring of a pleasure boat which is covered by this Guideline shall be calculated as laid down hereunder. The term “Subsequent Annual Period” refers to every number of tax periods covering 12 months subsequent to the First Annual Period. The First Annual Period and the Subsequent Annual Periods are referred to individually as an “Annual Period” and collectively as the “Annual Periods”.

- (a) After the end of the First Annual Period and after each Subsequent Annual Period, the lessor shall procure from the lessee such reasonable documentary and / or technological data to determine the ratio between actual effective use and enjoyment by the lessee of the pleasure boat within and outside EU territorial waters during the preceding Annual Period as applicable;
- (b) The actual effective use and enjoyment of the pleasure boat in EU territorial waters is divided by the total effective use and enjoyment of the pleasure boat in and outside EU territorial waters during the preceding Annual Period;
- (c) The result obtained under paragraph (b) shall be used as the “Actual Ratio” of effective use and enjoyment in EU territorial waters for the preceding Annual Period as referred to in that paragraph. It will also serve as a “Temporary Ratio” for determining the provisional effective use and enjoyment in EU territorial waters on which a “Provisional Output Tax” payment is to be made for the subsequent Annual Period/s or part thereof;
- (d) The output tax shall be calculated definitively for each previous Annual Period by multiplying the taxable value of the supplies by the Actual Ratio by the standard rate of VAT;

- (e) The Provisional Output Tax shall be calculated provisionally for each subsequent Annual Period by multiplying the taxable value of the supplies by the Actual Ratio by the standard rate of VAT;
- (f) Any difference between (i) the Provisional Output Tax for any Annual Period, or part thereof and calculated in accordance with paragraph (e) above or Section 4, and (ii) the total output tax calculated on the basis of the “Actual Ratio” for the Annual Period or part thereof in accordance with paragraph (d) above, shall represent tax due by that person or tax over paid by that person, as the case may be, which tax shall be accounted for in the tax return for the tax period following the end of the relevant Annual Period or in the tax return for the tax period following that in which the lease period terminates, whichever is the earlier.

28th February, 2019