

Questions & Answers
Cases and Solutions

NEW MEANS OF TRANSPORT
EXCISE GOODS

Preliminary Remarks:

- ▶ The following are a series of situations that could occur in day to day practice. The answers given are in accordance with the amended VAT Act, as applicable from the 1st of May 2004. **However, while the VAT Department has made every effort to ensure that the content of this document is as legally accurate as possible, it should not be used as a substitute for the provisions of the VAT Act 1998, of the Act No X of 2003, of any other Act and of the relevant Legal Notices as published in the Malta Government Gazette, which are the only ones that have legal value.**
- ▶ Any reference in the examples/cases/situations described in this document to a particular European Union member state, to a specific country outside the European Union or to a specific product brand name is by way of example only. Answers remain valid when the name of the member state mentioned is substituted by the name of any other member state, when any outside country is substituted by any other outside country and when any brand name is substituted by any other brand name.
- ▶ As from the 1st of May 2004, European Union member states (besides Malta) are Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom.

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Q. *A, a Maltese private individual, buys a Mercedes in Germany from a German small undertaking. Two years ago the Mercedes was entered into service for the first time. The car already travelled 4.500 km. A has the car dispatched to his residence in Malta. What VAT is applicable to the purchase of the car?*

A. Maltese VAT, since the transport related to the acquisition ends in Malta

Q. *A, a Maltese small undertaking registered under art. 11, buys a car (Ford Focus) in the UK from a UK private individual. The car was entered into service for the first time four months ago. The car already travelled 10.250 km. A has the car dispatched to Malta and will use it for private purposes. What VAT is applicable to the purchase of the car?*

A. Maltese VAT, since the transport related to the acquisition ends in Malta

Q. *A, a Maltese bank registered under art. 12, buys a car (Peugeot 605) in France from a French bank, member of the same group. The car was entered into service for the first time seven months ago and French VAT has not been deducted by the French bank. The car already travelled 5.250 km. A has the car dispatched to Malta and will use it for business purposes (company car for one of the directors). Is there any Maltese VAT due on the purchase of the car?*

A. Yes since the transport ends in Malta

Q. *A, a Maltese bank registered under art. 12, buys a car (Alfa Romeo) in Italy from an Italian small undertaking. One year ago the car was entered into service for the first time. The car already travelled 5.500 km. A has the car dispatched to Malta. Is any VAT applicable to the acquisition of the car?*

A. Yes, Maltese VAT since the transport related to the acquisition ends in Malta

Important preliminary remark concerning the answers to the Cases: The answers only look at the cases from the Maltese point of view

CASE 1 - DATA

An Italian person supplies a car to a Maltese customer. The car is transported from Italy to Malta by the Maltese customer.

Case 1 - Question

Determine the VAT treatment of the above operation and elaborate on the requirements to be fulfilled by each party involved with respect to the VAT compliance, according to the following distinctions:

- *the customer is a private individual*
- *the customer is a small undertaking registered under art.11*
- *the customer is a taxable person registered under art.10*

CASE 1 - SOLUTION

Assumption 1: The customer is a private individual and the car is a new means of transport

- Qualifying person? The private individual
- Operation in the scope of VAT? YES (intra-Community acquisition)
- Place of operation? In Malta (where transport ends)
- Is there any exemption? No
- Who is liable to pay VAT? The private individual
- **Compliance** The private individual must:
 - present the car to the competent office, with the invoice as well as all the documents necessary to check if the information reported on the invoice is correct, that is to say order forms, contract, transport and payment documents related to the car, not later than the fifteenth day of the month following that during which the ICA occurs
 - submit a special return furnished by the competent office pay to the competent office, not later than the fifteenth day of the month following that during which the ICA occurs, the VAT due on the ICA. A copy of this special return as well as the proof of payment, if any, must be submitted to the competent registration office at the same time as the application for registration of the car

Assumption 2: The customer is a small undertaking registered art.11 and the car is a new means of transport

- Qualifying person? The small undertaking
- Operation in the scope of VAT? YES (intra-Community acquisition)
- Place of operation? In Malta (where transport ends)
- Is there any exemption? No
- Who is liable to pay VAT? The small undertaking
- **Compliance:**

Assumption 2.1: The car will be registered in the name of the small undertaking

The small undertaking must:

- present the car to the competent office, with the invoice as well as all the documents necessary to check if the information reported on the invoice is correct, that is to say order forms, contract, transport and payment documents related to the car, not later than the fifteenth day of the month following that during which the ICA occurs
- submit a special return furnished by the competent office pay to the competent office, not later than the fifteenth day of the month following that during which the ICA occurs, the VAT due on the ICA

A copy of this special return as well as the proof of payment, if any, must be submitted to the competent registration office at the same time as the application for registration of the car

Assumption 2.2: The car will not be registered at the name of the small undertaking (purchase for resale)

The small undertaking must:

- present the car to the competent office, with the invoice as well as all the documents necessary to check if the information reported on the invoice is correct, that is to say order forms, contract, transport and payment documents related to the car, not later than the fifteenth day of the month following that during which the ICA occurs
- submit a special return furnished by the competent office pay to the competent office, not later than the fifteenth day of the month following that during which the ICA occurs, the VAT due on the ICA

A copy of this special return as well as the proof of payment, if any, must be submitted to the competent registration office at the same time as the application for registration of the car

Assumption 3: The customer is a taxable person registered art.10 and the car is a new means of transport that will be used by the taxable person in the framework of his economic activity

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|----------------------------------|-----------------------------------|
| - Qualifying person? | The taxable person |
| - Operation in the scope of VAT? | YES (intra-Community acquisition) |
| - Place of operation? | In Malta (where transport ends) |
| - Is there any exemption? | No |
| - Who is liable to pay VAT? | The taxable person |
| - <u>Compliance:</u> | |

Assumption 3.1: The car will be registered in the name of the taxable person

The taxable person must:

- submit a special return furnished by the competent office
- prove to this competent office that he is registered under article 10 of the VAT Act and is liable to pay VAT according to article 21(1) of the VAT Act through his VAT return. A copy of this special return as well as the proof of payment, if any, must be submitted to the competent registration office at the same time as the application for registration of the car

Assumption 3.2: The car will not be registered in the name of the taxable person (purchase for resale)

The taxable person must pay VAT on the ICA in his VAT return as for any other goods

Note that solutions presented above are applicable whatever is the quality of the person supplying the car in Italy. If this person is for example a private individual, this person will become a taxable person for the supply of the car in Italy. Note also that the profit-margin scheme is not applicable to new means of transport.

Assumption 4: The customer is a private individual, the car is not a new means of transport and the supplier is a private individual

The ICA is not subject to VAT as the supplier is not a taxable person acting as such and as the customer is not a taxable person acting as such

Compliance The private individual must:

- present the car to the competent office, with the invoice as well as all the documents necessary to check if the information reported on the invoice is correct, that is to say order forms, contract, transport and payment documents related to the car
- submit a special return furnished by the competent office

A copy of this special return must be submitted to the competent registration office at the same time as the application for registration of the car

Assumption 5: The customer is a private individual, the car is not a new means of transport and the supplier is a small undertaking in Italy

The ICA is not subject to VAT as the supplier is a small undertaking in Italy and as the customer is not a taxable person acting as such

Compliance The private individual must:

- present the car to the competent office, with the invoice as well as all the documents necessary to check if the information reported on the invoice is correct, that is to say order forms, contract, transport and payment documents related to the car
- submit a special return furnished by the competent office

A copy of this special return must be submitted to the competent registration office at the same time as the application for registration of the car

Assumption 6: The customer is a private individual, the car is not a new means of transport and the supplier is a taxable person supplying the car under the profit-margin scheme in Italy (second-hand car dealer)

The ICA is not subject to VAT as the customer is not a taxable person acting as such

Compliance The private individual must:

- present the car to the competent office, with the invoice as well as all the documents necessary to check if the information reported on the invoice is correct, that is to say order forms, contract, transport and payment documents related to the car
- submit a special return furnished by the competent office

A copy of this special return must be submitted to the competent registration office at the same time as the application for registration of the car

Assumption 7: The customer is a private individual, the car is not a new means of transport and the supplier is a regular taxable person (equivalent of registration art.10 in Malta) not supplying the car under the profit-margin scheme in Italy

The ICA is not subject to VAT as the customer is not a taxable person acting as such

Compliance The private individual must:

- present the car to the competent office, with the invoice as well as all the documents necessary to check if the information reported on the invoice is correct, that is to say order forms, contract, transport and payment documents related to the car
- submit a special return furnished by the competent office

A copy of this special return must be submitted to the competent registration office at the same time as the application for registration of the car

Assumption 8: The customer is a small undertaking acting as such, the car is not a new means of transport and the supplier is a private individual

The ICA is not subject to VAT as the supplier is not a taxable person acting as such in Italy

Compliance The small undertaking must (if it wants to register the car in its name = not for the purpose of resale):

- present the car to the competent office, with the invoice as well as all the documents necessary to check if the information reported on the invoice is correct, that is to say order forms, contract, transport and payment documents related to the car
- submit a special return furnished by the competent office

A copy of this special return must be submitted to the competent registration office at the same time as the application for registration of the car

Assumption 9: The customer is a small undertaking acting as such, the car is not a new means of transport and the supplier is a small undertaking in Italy

The ICA is not subject to VAT as the supplier is a small undertaking in Italy

Compliance The small undertaking must (if it wants to register the car in its name = not for the purpose of resale):

- present the car to the competent office, with the invoice as well as all the documents necessary to check if the information reported on the invoice is correct, that is to say order forms, contract, transport and payment documents related to the car
- submit a special return furnished by the competent office

A copy of this special return must be submitted to the competent registration office at the same time as the application for registration of the car

Assumption 10: The customer is a small undertaking acting as such, the car is not a new means of transport and the supplier is a taxable person supplying the car under the profit-margin scheme in Italy (second-hand car dealer)

- Qualifying person? The small undertaking
- Operation in the scope of VAT? YES (intra-Community acquisition)
- Place of operation? In Malta (where transport ends)
- Is there any exemption: Yes (Item 2 Part Three Fifth Schedule)
- Person liable to pay VAT: N/A

Compliance The small undertaking must (if it wants to register the car in its name = not for the purpose of resale):

- present the car to the competent office, with the invoice as well as all the documents necessary to check if the information reported on the invoice is correct, that is to say order forms, contract, transport and payment documents related to the car
- submit a special return furnished by the competent office

A copy of this special return must be submitted to the competent registration office at the same time as the application for registration of the car

Assumption 11: The customer is a small undertaking acting as such not having exceeded the acquisition threshold and not having opted, the car is not a new means of transport and the supplier is a regular taxable person (equivalent of registration art.10 in Malta) not supplying the car under the profit-margin scheme in Italy (not a second-hand car dealer)

- Qualifying person? The small undertaking
- Operation in the scope of VAT? YES (intra-Community acquisition)
- Place of operation? In Malta (where transport ends)

The ICA is not subject to VAT

Compliance The small undertaking must (if it wants to register the car in its name = not for the purpose of resale):

- present the car to the competent office, with the invoice as well as all the documents necessary to check if the information reported on the invoice is correct, that is to say order forms, contract, transport and payment documents related to the car
- submit a special return furnished by the competent office proves that he has not exceed the threshold for intra-Community acquisitions

A copy of this special return must be submitted to the competent registration office at the same time as the application for registration of the car

Assumption 12: The customer is a small undertaking acting as such having exceeded the acquisition threshold or having opted, the car is not a new means of transport and the supplier is a regular taxable person (equivalent of registration art.10 in Malta) not supplying the car under the profit-margin scheme in Italy (second-hand car dealer)

- Qualifying person? The small undertaking
- Operation in the scope of VAT? YES (intra-Community acquisition)
- Place of operation? In Malta (where transport ends)
- Is there any exemption: No
- Person liable to pay VAT: The small undertaking

Compliance The small undertaking must (if it wants to register the car in its name = not for the purpose of resale):

- present the car to the competent office, with the invoice as well as all the documents necessary to check if the information reported on the invoice is

correct, that is to say order forms, contract, transport and payment documents related to the car

- submit a special return (art. 30(2) VAT Act) furnished by the competent office proves that he is registered art.12 and that VAT will be paid to the VAT authorities (art. 21(2) VAT Act)

A copy of this special return must be submitted to the competent registration office at the same time as the application for registration of the car

Assumption 13: The customer is a taxable person art.10 acting as such, the car is not a new means of transport and the supplier is a private individual

The ICA is not subject to VAT as the supplier is not a taxable person acting as such in Italy

Compliance The taxable person must (if he wants to register the car at his name = not for the purpose of resale):

- present the car to the competent office, with the invoice as well as all the documents necessary to check if the information reported on the invoice is correct, that is to say order forms, contract, transport and payment documents related to the car
- submit a special return furnished by the competent office

A copy of this special return must be submitted to the competent registration office at the same time as the application for registration of the car

Assumption 14: The customer is a taxable person art.10 acting as such, the car is not a new means of transport and the supplier is a small undertaking in Italy

The ICA is not subject to VAT as the supplier is a small undertaking in Italy

Compliance The taxable person must (if he wants to register the car at his name = not for the purpose of resale):

- present the car to the competent office, with the invoice as well as all the documents necessary to check if the information reported on the invoice is correct, that is to say order forms, contract, transport and payment documents related to the car
- submit a special return furnished by the competent office

A copy of this special return must be submitted to the competent registration office at the same time as the application for registration of the car

Assumption 15: The customer is a taxable person art.10 acting as such, the car is not a new means of transport and the supplier is a taxable person supplying the car under the profit-margin scheme in Italy (second-hand car dealer)

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|----------------------------------|--|
| - Qualifying person? | The customer |
| - Operation in the scope of VAT? | YES (intra-Community acquisition) |
| - Place of operation? | In Malta (where transport ends) |
| - Is there any exemption: | Yes (Item 2 Part Three Fifth Schedule) |
| - Person liable to pay VAT: | N/A |

Compliance The taxable person must (if he wants to register the car at his name = not for the purpose of resale):

- present the car to the competent office, with the invoice as well as all the documents necessary to check if the information reported on the invoice is

correct, that is to say order forms, contract, transport and payment documents related to the car

- submit a special return furnished by the competent office

A copy of this special return must be submitted to the competent registration office at the same time as the application for registration of the car

Assumption 16: The customer is a taxable person art.10 acting as such, the car is not a new means of transport and the supplier is a regular taxable person (equivalent of registration art.10 in Malta) not supplying the car under the profit-margin scheme in Italy (second-hand car dealer)

- | | |
|----------------------------------|-----------------------------------|
| – Qualifying person? | The taxable person |
| – Operation in the scope of VAT? | YES (intra-Community acquisition) |
| – Place of operation? | In Malta (where transport ends) |
| – Is there any exemption: | No |
| – Person liable to pay VAT: | The taxable person |

Compliance The taxable person must (if he wants to register the car at his name = not for the purpose of resale):

- submit a special return furnished by the competent office
- prove to this competent office that he is registered under article 10 of the VAT Act and is liable to pay VAT according to article 21(1) of the VAT Act through his VAT return

A copy of this special return as well as the proof of payment, if any, must be submitted to the competent registration office at the same time as the application for registration of the car

- VAT return: boxes 3 and 6 as well as 10 and 14 (if deduction allowed)

Note that solutions presented above are applicable to the most frequent situations (taking into account the facts provided) but that other very specific situations can also occur and were not treated as solutions. Moreover, solutions given for the small undertaking are in most of the cases also applicable to other members of the « Group of 3 » taking into account the quality of the non-taxable legal person.

CASE 2 - DATA

An Italian taxable person provides 120 bottles of wine to a Maltese customer. Bottles of wine are transported from Italy to Malta.

Case 2 - Question

Determine the VAT treatment of the above operation and elaborate on the requirements to be fulfilled by each party involved with respect to the VAT compliance, according to the following distinctions:

- the customer is a private individual*
- the customer is a hospital not registered under art.10*
- the customer is a taxable person registered under art.10*

CASE 2 - SOLUTION

Assumption 1: The customer is a private individual, the supplier is a regular taxable person (equivalent art.10 in Malta) and goods are transported by the private individual

- | | |
|----------------------------------|-----------------------------------|
| - Qualifying person? | The private individual |
| - Operation in the scope of VAT? | YES (intra-Community acquisition) |
| - Place of operation? | In Malta (where transport ends) |

The ICA is not subject to VAT

Assumption 2: The customer is a private individual, the supplier is a regular taxable person (equivalent art.10 in Malta) and goods are transported by the Italian supplier

- | | |
|----------------------------------|---|
| - Taxable person? | YES (the Italian supplier) |
| - Operation in the scope of VAT? | YES (supply of goods) |
| - Place of operation? | In Malta (where transport ends) |
| - Is there any exemption? | No |
| - Person liable to pay VAT? | The Italian supplier (who must register for VAT purposes under art.10 in Malta) |

Assumption 3: The customer is a private individual, the supplier is a small undertaking (equivalent art.11 in Malta) and goods are transported by the private individual

- | | |
|----------------------------------|-----------------------------------|
| - Qualifying person? | The private individual |
| - Operation in the scope of VAT? | YES (intra-Community acquisition) |
| - Place of operation? | In Malta (where transport ends) |

The ICA is not subject to VAT

Assumption 4: The customer is a private individual, the supplier is a small undertaking (equivalent art.11 in Malta) and goods are transported by the Italian supplier

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|----------------------------------|---------------------------------|
| - Taxable person? | YES (the Italian supplier) |
| - Operation in the scope of VAT? | YES (supply of goods) |
| - Place of operation? | In Malta (where transport ends) |

- Is there any exemption? No
- Person liable to pay VAT? The Italian supplier (who must register for VAT purposes under art.10 in Malta even if he is a small undertaking in Italy)

Assumption 5: The customer is a hospital not registered under art.10, the supplier is a regular taxable person (equivalent art.10 in Malta) and goods are transported by the hospital

- Qualifying person? The hospital
- Operation in the scope of VAT? YES (intra-Community acquisition)
- Place of operation? In Malta (where transport ends)
- Is there any exemption? No
- Person liable to pay VAT? The hospital (payment of VAT will be made to the competent excise office at the same time as excise duties)

Please note that no acquisition threshold or option is applicable

Assumption 6: The customer is a hospital not registered under art.10, the supplier is a regular taxable person (equivalent art.10 in Malta) and goods are transported by Italian supplier

- Qualifying person? The hospital
- Operation in the scope of VAT? YES (intra-Community acquisition)
- Place of operation? In Malta (where transport ends)
- Is there any exemption? No
- Person liable to pay VAT? The hospital (payment of VAT will be made to the competent excise office at the same time as excise duties)

Please note that no acquisition threshold or option is applicable

Assumption 7: The customer is a hospital not registered under art.10, the supplier is a small undertaking (equivalent art.11 in Malta) and goods are transported by the hospital

- Qualifying person? The hospital
- Operation in the scope of VAT? YES (intra-Community acquisition)
- Place of operation? In Malta (where transport ends)
- Is there any exemption? No
- Person liable to pay VAT? The hospital (payment of VAT will be made to the competent excise office at the same time as excise duties)

Please note that no acquisition threshold or option is applicable

Assumption 8: The customer is a hospital not registered under art.10, the supplier is a small undertaking (equivalent art.11 in Malta) and goods are transported by the Italian supplier

- Qualifying person? The hospital
- Operation in the scope of VAT? YES (intra-Community acquisition)
- Place of operation? In Malta (where transport ends)
- Is there any exemption? No

- Person liable to pay VAT? The hospital (payment of VAT will be made to the competent excise office at the same time as excise duties)

Please note that no acquisition threshold or option is applicable

Assumption 9: The customer is a taxable person registered under art.10 acting as such, the supplier is a regular taxable person (equivalent art.10 in Malta) and goods are transported by the customer

- Qualifying person? The customer
- Operation in the scope of VAT? YES (intra-Community acquisition)
- Place of operation? In Malta (where transport ends)
- Is there any exemption? No
- Person liable to pay VAT? The customer (through his VAT return)

Assumption 10: The customer is a taxable person registered under art.10 acting as such, the supplier is a small undertaking (equivalent art.11 in Malta) and goods are transported by the customer

- Qualifying person? The customer
- Operation in the scope of VAT? YES (intra-Community acquisition)
- Place of operation? In Malta (where transport ends)
- Is there any exemption? No
- Person liable to pay VAT? The customer (through his VAT return)

Assumption 11: The customer is a taxable person registered under art.10 acting as such, the supplier is a regular taxable person (equivalent art.10 in Malta) and goods are transported by the Italian supplier

- Qualifying person? The customer
- Operation in the scope of VAT? YES (intra-Community acquisition)
- Place of operation? In Malta (where transport ends)
- Is there any exemption? No
- Person liable to pay VAT? The customer (through his VAT return)

Assumption 12: The customer is a taxable person registered under art.10 acting as such, the supplier is a small undertaking (equivalent art.11 in Malta) and goods are transported by the Italian supplier

- Qualifying person? The customer
- Operation in the scope of VAT? YES (intra-Community acquisition)
- Place of operation? In Malta (where transport ends)
- Is there any exemption? No
- Person liable to pay VAT? The customer (through his VAT return)

CASE 2 – SOLUTION - NOTE

Note that the solutions presented above are not taking into account the issue of the taxable value upon the intra-Community acquisitions made. Note that this will depend - amongst others elements - on whether or not excise duties have been paid or not either in Italy or in Malta. In other words the taxable value might have to be adjusted afterwards through an additional payment or a refund.