

Questions & Answers
Cases and Solutions

SUPPLY OF GOODS

INTRA-COMMUNITY SUPPLY AND ACQUISITION OF 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 Maltese company A, registered under art. 10, supplies goods to a Greek company B. Goods are dispatched by B from Malta to Greece. B provides his IT VAT number to A. Where does the supply by A take place?*
- A.** In Malta, where the transport starts
- Q.** *A Maltese company A, registered under art. 10, sells goods to another Maltese company B, also registered under art. 10. The goods are transported from Malta to Austria, where B has a stock of goods. B provides its MT VAT identification number to A. Is A making an exempt intra-Community supply in Malta?*
- A.** No, since B did not provide another VAT identification than a Maltese VAT identification number

- Q.** *A Maltese company A, registered under art. 10, supplies glasswork to private individuals in the Netherlands. Since A does not want to take the risk of damage to the goods, the customers are taking care of the transport from Malta to the Netherlands. Where does the supply of goods take place?*
- A.** In Malta, where the transport starts
- Q.** *A Maltese company A, registered under art. 11, buys a machine from an Irish company I, not established in Malta. Goods are transported from Ireland to Malta and installed by employees of I at the premises of A. Who is liable to pay VAT in Malta?*
- A.** I, as the supplier (who has to register under art. 10 in Malta)
- Q.** *A Belgian company A supplies goods to an Italian company B, also registered for VAT purposes under art. 10 in Malta. B dispatches the goods from Belgium to Malta. B provides his IT VAT number to A. Where does the intra-Community Acquisition by B take place?*
- A.** In Italy, because B provides A with an Italian VAT identification number; and in Malta where transport ends
- Q.** *A Belgian company A supplies goods to a Maltese company B, registered for VAT purposes under art. 10 in Malta. At the request of B, A dispatches goods from Belgium to Sicily. B provides his MT VAT number to A. Where does an intra-Community acquisition by B take place?*
- A.** In Malta and in Italy except if B proves to the Maltese VAT authorities that an intra-Community acquisition takes place and is subject to VAT in Italy
- Q.** *A Maltese company A, registered under art. 10, sells goods to another Maltese company B, also registered under art. 10. The goods are transported from Malta to Greece, where B has a stock of goods. B provides its Italian VAT identification number to A. Is A making an exempt intra-Community supply in Malta?*
- A.** Yes
- Q.** *A UK company A supplies, under the profit margin scheme, second-hand cars (not considered as new means of transport) to B, a Maltese company registered under art. 10. A is taking care of the transport of the cars from the UK to Malta. Is there a taxable intra-Community acquisition by B in Malta?*
- A.** No, because goods are supplied under the profit margin scheme in the UK

- Q.** *A Maltese company A, registered under art. 11, buys a machine from an Irish company B, not established in Malta. Goods are transported from Ireland to Malta and installed by employees of B at the premises of A. Who is liable to pay VAT in Malta?*
- A.** B, as the supplier
- Q.** *A Maltese company A, registered under art. 10, sells goods to a Swedish company B. The goods are transported from Malta to Norway, where B has a stock of goods. B provides its Swedish VAT identification number to A. Is A making an exempt intra-Community supply in Malta?*
- A.** No
- Q.** *A Maltese company A supplies, under the profit margin scheme, second-hand goods (not considered as new means of transport) to the Greek company B, which provides A with a valid VAT identification number delivered by Cyprus (Greek part). A is taking care of the transport of the goods from Malta to Greece. Is there a taxable intra-Community supply by A in Malta?*
- A.** Yes, because goods are supplied under the profit margin scheme
- Q.** *A Maltese company A supplies, under the profit margin scheme, second-hand goods (not new means of transport) to the Danish company B, which provides A with a valid French VAT identification number. A is taking care of the transport of the goods from Malta to France. Is there a **taxable** intra-Community supply by A in Malta?*
- A.** Yes, because goods are supplied under the profit margin scheme
- Q.** *A, a Maltese company registered under art. 10, takes part in a Trade Fair in Brussels. In order to make some presentations during that Fair, the company's Managing Director takes a company owned portable projector with him from Malta to Brussels. Is there any operation by A that falls under the Maltese VAT legislation?*
- A.** No, A performs a non-transfer (and has to report the goods in its register of non-transfers)

- Q.** *A Maltese company A, registered under art. 10, sells goods to another Maltese company B, also registered under art. 10. The goods are transported from Malta to Switzerland, where B has a stock of goods. B provides its Maltese VAT identification number to A. Is A making an exempt intra-Community supply in Malta?*
- A.** No
- Q.** *A, a company established in Tunisia but having a stock of goods in Malta and registered under art. 10 purchases office furniture from a Maltese company B. Subsequently, A re-sells the furniture to C, another Maltese company registered under art. 10. A asks B to transport the goods from its premises in Rabat to the premises of C in Luqa. In the relation A-C, who is the person liable to pay Maltese VAT (if any)?*
- A.** A, as he is registered under art. 10 in Malta
- Q.** *A Maltese company A, registered under art. 10 supplies goods to a German company B. Goods are dispatched by B from Malta to Poland, where B has a stock. B provides his Spanish VAT number to A. Where does the supply by A take place?*
- A.** In Malta, where the transport starts
- Q.** *A, a Libyan company not established in Malta, purchases goods (chairs) from a Maltese company B. Subsequently, A re-sells the goods to C, another Maltese company registered under art. 10. Goods are transported from the premises of A in Mdina to the premises of C in Valletta. In the relation A-C, who is the person liable to pay Maltese VAT (if any)?*
- A.** C, who will report the VAT as payable in his VAT return
- Q.** *A, a Maltese company registered under art. 10, dispatches part of its stock (fishing equipment) to its stock in France, in order to be able to deliver the goods (when sold) more quickly from its French stock to its French customers. Is there any operation by A that falls under the Maltese VAT legislation?*
- A.** Yes, A performs a transfer of goods (which is exempt if certain conditions are met)
- Q.** *B, an Italian company also registered for VAT purposes under art. 10 in Malta, purchases goods (not exempt from VAT) from a Maltese company A registered under art. 11. Subsequently, B re-sells the goods to C, another Maltese company registered under art. 10. Goods are transported from the premises of A in Birkirkara to the premises of C in Ghadira. Transport of the goods takes place in the relation A-B. In the relation B-C, who is the person liable to pay Maltese VAT (if any)?*

A. B, as he is registered under art.10 in Malta

Q. *A, an Italian company, dispatches part of its stock (computer equipment) from Italy to its stock in Malta, in order to be able to deliver the goods (when sold) more quickly from its stock in Malta to its Maltese customers. Is there any operation by A that falls under the Maltese VAT legislation at the moment goods are moving from Italy to Malta?*

A. Yes, A performs a deemed intra-Community acquisition of goods (and Maltese VAT is applicable since the transport ends in Malta)

Q. *B, a UK company having a stock of goods in Malta and registered under art. 10 purchases goods (not exempt from VAT) from a Maltese company A registered under art. 10. Subsequently, B re-sells the goods to C, an Italian company established and registered under art. 10 in Malta. Goods are transported from the premises of A in Birkirkara to the premises of C in Mdina. Transport of the goods takes place in the relation B-C. In the relation B-C, who is the person liable to pay Maltese VAT (if any)?*

A. B, because he is registered under art. 10 in Malta

Q. *A, director of a Maltese taxable person (hereafter referred to as the company), dispatches his laptop (ownership of the company) from Malta to Cyprus (Greek part). A is providing consultancy services to local customers for the account of the company and is using his computer in this framework. Is there any operation by A that falls under the Maltese VAT legislation at the moment the laptop is moving from Malta to Cyprus?*

A. No, the company performs a non-transfer (and has to report the move of the laptop in its register of non-transfers in Malta)

Q. *A, a Maltese company registered under art. 10, purchases carpets from an Italian company I. A has the carpets transported from Italy to Malta, where A puts them under the Freeport regime in order for these goods to be exported afterwards. Indeed, at that moment, A has already found a subsequent Tunisian customer B. Is Maltese VAT due on the transaction between I and A?*

A. No Maltese VAT is due on the transaction between I and A because:

- The transaction between I and A, seen from Italy is a supply of goods that takes place in Italy where the transport begins. Therefore, no Maltese VAT can be due.
- On the other hand, seen from Malta, the transaction between I and A is an operation in the scope of VAT (Intra-Community Acquisition) performed by a taxable person (A) which takes place in Malta where transport ends, but because the goods are placed under the Freeport regime, which is a customs duty suspension regime, there is an exemption and no Maltese VAT is due.

Q. *A, a Spanish supplier of wine, not established in Malta sells wine to private individuals during a trade fair taking place in Malta. Is this supply subject to VAT in Malta?*

A. Yes, since the supply takes place where goods are put at the disposal of the customers, which is in Malta. The Spanish supplier therefore must charge Maltese VAT on each sale.

Please remark that there is an Intra-Community **ACQUISITION of the wine in Malta by the Spanish supplier** preceding the (taxable) sale to the private individuals and that acquisition is subject to Excise duties and VAT in Malta, because:

- The operation is performed by a taxable person (a supplier of wine)
- The operation is in the scope of VAT (intra-Community acquisition of excise products)
- The place of supply is MALTA, where the transport ends
- There is no exemption
- The person liable to pay VAT is the Spanish supplier, who will have to register for VAT in Malta under Article 10 of the VAT Act.

Q. *A, a Maltese supplier of wine, sells wine to private individuals during a trade fair taking place in Sicily. Is this supply subject to VAT in Malta?*

A. No since the supply takes place where goods are put at the disposal of the customers

Indeed, there is a movement of goods from Malta to Italy (goods are going to Sicily in order to be sold) but:

- Seen from Malta, we have a taxable person (A) who performs an operation in the scope of VAT (a transfer of goods = deemed Intra-Community supply: see article 6 VAT Act and Item 17 Second Schedule) and the place of the operation is Malta, where transport begins, but there is an exemption provided the wine was transported by A or on his behalf from Malta to Sicily and provided A has a valid VAT registration number in Italy.
- Seen from Italy, we have a taxable person (A) who performs an operation in the scope of VAT (a deemed Intra-Community acquisition: see article 6 VAT Act and Items 18 (1)(b) and 18 (2) Second Schedule) but the place of the operation is Italy, where transport ends, so there is no Maltese VAT.

On the other hand, with regard to the supply of the wine to private individuals in Sicily, we have

- An operation performed by a taxable person
 - The operation is in the scope of VAT (supply of goods)
 - The place of the operation is Italy where the goods are at the time of their supply.
- Consequently, no Maltese VAT is due on that supply (Italian VAT will be due).

CASE 1 - DATA

Farrugia Ltd, a Maltese taxable person registered under article 10 (new VAT Act), sells computers to Berlusconi & Co, a taxable person established in Italy. Berlusconi & Co resells these computers to a client established in Malta. These computers are transported directly from the premises of Farrugia Ltd in Birkirkara to the premises of the Maltese client in Sliema.

CASE 1 - Question

Determine the VAT treatment of the above operations. Make the necessary distinctions and elaborate on the requirements to be fulfilled by each party involved with respect to the VAT compliance.

CASE 1 - SOLUTION

First hypothesis: The supply between Farrugia Ltd and Berlusconi & Co is a supply without transport and the supply between Berlusconi Ltd and the subsequent client is a supply with transport

► Supply between Farrugia Ltd and Berlusconi & Co

- Operation by a taxable person? YES (Farrugia Ltd)
- Operation in the scope of VAT? YES (supply of goods)
- Place of operation? In Malta (where goods are placed at the disposal of Berlusconi)
- Is there any exemption? No (goods are not transported in this relation even if Berlusconi provides Farrugia with his IT VAT number)
- Who is liable to pay VAT? Farrugia Ltd

► Supply between Berlusconi & Co and the subsequent client

- Operation by a taxable person? YES (Berlusconi & Co)
- Operation in the scope of VAT? YES (supply of goods)
- Place of operation? In Malta (where transport starts)
- Is there any exemption? No (goods are not transported out of Malta)
- Who is liable to pay VAT?
 - 1) Berlusconi if the client is not registered under art.10 (Berlusconi must register for VAT purposes in Malta under art.10)
 - 2) The client if he is registered under art.10 and Berlusconi is not registered under art.10
 - 3) Berlusconi if he is registered under art.10

Second hypothesis: The supply between Farrugia Ltd and Berlusconi & Co is a supply with transport and the supply between Berlusconi Ltd and the subsequent client is a supply without transport

► Supply between Farrugia Ltd and Berlusconi & Co

- Operation by a taxable person? YES (Farrugia Ltd)
- Operation in the scope of VAT? YES (supply of goods)
- Place of operation? In Malta (where transport starts)
- Is there any exemption? No (goods are not transported out of Malta)
- Who is liable to pay VAT? Farrugia Ltd

► Supply between Berlusconi & Co and the subsequent client

- Operation by a taxable person? YES (Berlusconi & Co)
- Operation in the scope of VAT? YES (supply of goods)
- Place of operation? In Malta (place where goods put at disposal to subsequent client)
- Is there any exemption? No (goods are not transported in this relation)
- Who is liable to pay VAT?
 - 1) Berlusconi if the client is not registered under art.10 (Berlusconi must register for VAT purposes in Malta under art.10)
 - 2) The client if he is registered under art.10 and Berlusconi is not registered under art.10
 - 3) Berlusconi if he is registered under art.10

Note that even if Berlusconi & Co would be considered as a small undertaking registered in Italy under the equivalent of art.11, this regime is never applicable in another MS than the one where the taxable person is established. In this case, VAT is always due in the other MS where the supply takes place, unless another exemption is applicable

CASE 2 - DATA

Sammut & Co, a Maltese taxable person registered under article 10 (new VAT Act), is performing construction works in Sicily for De Benedetti Ltd. For that purpose, Sammut & Co sends raw materials from Malta to Sicily. He also sends a crane to Sicily in order to perform the job. At the end of the construction works, unused raw materials are coming back to Malta and the crane is acquired by a Sicilian taxable person and remains in Sicily.

CASE 2 - Question

Determine the VAT treatment of the above operations. Make the necessary distinctions and elaborate on the requirements to be fulfilled by each party involved with respect to the VAT compliance.

CASE 2 - SOLUTION

- ▶ Movement of the crane from Malta to Sicily:
 - As normally the crane will come back to Malta after the construction works will be finished, this movement is considered to be a non-transfer
 - This movement must be reported in the register of non-transfers of Sammut & Co
- ▶ Movement of the raw materials from Malta to Sicily:

As normally the raw materials will not come back to Malta after the construction works will be finished because they will be consumed, this movement is considered to be a transfer in Malta

- Operation by a taxable person? YES (Sammut & Co)
- Operation in the scope of VAT? YES (deemed supply of goods or transfer)
- Place of operation? In Malta (where transport starts)
- Is there any exemption? Yes as goods are transported from Malta to Italy and as Sammut & Co will provide his IT VAT number to himself
- Who is liable to pay VAT? N/A
- Compliance: This operation must be reported:
 - in box 1 of the VAT return of Sammut & Co
 - in the Recapitulative Statement of Sammut & Co in Malta quoting his IT VAT number

Note that, as normally the raw materials will not come back to Malta after the construction works will be finished because they will be consumed, this movement will in principle be considered to be a deemed intra-Community acquisition in Italy

- Operation by a taxable person? YES (Sammut & Co)
- Operation in the scope of VAT? YES (deemed intra-Community acquisition)
- Place of operation? In Italy (where transport ends)
- Is there any exemption? N/A in Malta (but in principle “No” in Italy)
- Who is liable to pay VAT? N/A in Malta (but in principle Sammut & Co in Italy)

► Movement of the unused raw materials from Sicily to Malta:

This movement will in principle be considered to be:

- a transfer in Italy
 - Operation by a taxable person? YES (Sammut & Co)
 - Operation in the scope of VAT? YES (deemed supply of goods or transfer)
 - Place of operation? In Italy (where transport starts)
 - Is there any exemption? Yes as goods are transported from Italy to Malta and as Sammut & Co will provide his MT VAT number to himself
 - Who is liable to pay VAT? N/A
- a deemed intra-Community acquisition in Malta
 - Operation by a taxable person? YES (Sammut & Co)
 - Operation in the scope of VAT? YES (deemed intra-Community acquisition)
 - Place of operation? In Malta (where transport ends)
 - Is there any exemption? No
 - Who is liable to pay VAT? Sammut & Co

Compliance

This operation must be reported:

- in boxes 3 (taxable value), 6 (VAT due on the ICA), 9 (taxable value) and 13 (VAT deductible) of the VAT return of Sammut & Co
- in the Recapitulative Statement of Sammut & Co in Italy quoting his MT VAT number

► Sale of the crane in Italy

- The movement of the crane which was not considered to be a transfer at the time the crane was transported to Italy becomes a transfer in Malta
 - Operation by a taxable person? YES (Sammut & Co)
 - Operation in the scope of VAT? YES (deemed supply of goods or transfer)
 - Place of operation? In Malta (where transport starts)
 - Is there any exemption? Yes as the crane was transported from Malta to Italy and as Sammut & Co will provide his IT VAT number to himself
 - Who is liable to pay VAT? N/A
- The movement which was not considered to be a deemed intra-Community acquisition in Italy at the time the crane was transported to Italy will in principle become such an operation in Italy
 - Operation by a taxable person? YES (Sammut & Co)
 - Operation in the scope of VAT? YES (deemed intra-Community acquisition)
 - Place of operation? In Italy (where transport ends)
 - Is there any exemption? No
 - Who is liable to pay VAT? Sammut & Co

Compliance

This operation (transfer) must be reported:

- in box 1 of the VAT return of Sammut & Co
- in the Recapitulative Statement of Sammut & Co in Malta quoting his IT VAT number

The register of non-transfers must be completed with this sale

- Actual Sale of the crane in Italy
 - Operation by a taxable person? YES (Sammut & Co)
 - Operation in the scope of VAT? YES (supply of goods)
 - Place of operation? In Italy (where transport starts or where goods are placed at the disposal of the customer)
 - Is there any exemption? N/A
 - Who is liable to pay VAT? N/A

Compliance

This operation (supply of goods) must be reported in box 2 of the Maltese VAT return of Sammut & Co

CASE 3 - DATA

Prodi Ltd established in Napoli sends on sight leather clothes to a client established in Mdina. As the client is satisfied with the clothes in question, he decides to purchase them.

CASE 3 - Question

Determine the VAT treatment of the above operations. Make the necessary distinctions and elaborate on the requirements to be fulfilled by each party involved with respect to the VAT compliance.

CASE 3 - SOLUTION

- ▶ Movement of the goods from Napoli to Malta:
 - As normally it is not sure whether or not the goods will go back to Italy if the client is not satisfied and as these goods would benefit from an exemption of customs duties upon importation, this movement will in principle be considered as a non-transfer in Italy and will be reported in the register of non-transfers of Prodi Ltd in Italy
 - As normally it is not sure whether or not the goods will go back to Italy if the client is not satisfied and as these goods would benefit from an exemption of customs duties upon importation, this movement will not be considered as a deemed intra-Community acquisition in Malta

It is presumed that no simplification is allowed

- ▶ Sale of the goods in Malta:
 - The movement of the goods which was not considered to be a transfer at the time the goods were transported to Malta will in principle become a transfer in Italy
 - Operation by a taxable person? YES (Prodi Ltd)
 - Operation in the scope of VAT? YES (deemed supply of goods or transfer)
 - Place of operation? In Italy (where transport starts)
 - Is there any exemption? Yes as the goods were transported from Italy to Malta and as Prodi Ltd will provide his MT VAT number to himself
 - Who is liable to pay VAT? N/A

Compliance

This operation (transfer) must in principle be reported:

- in the appropriate box of the VAT return of Prodi Ltd in Italy
 - in the Recapitulative Statement of Prodi Ltd in Italy quoting his MT VAT number
- The movement which was not be considered to be a deemed intra-Community acquisition in Malta at the time the goods were transported from Italy to Malta becomes such an operation in Malta
 - Operation by a taxable person? YES (Prodi Ltd)
 - Operation in the scope of VAT? YES (deemed intra-Community acquisition)
 - Place of operation? In Malta (where transport ends)

- Is there any exemption? No
 - Who is liable to pay VAT? Prodi Ltd who must register under art.10 in Malta
- Actual Sale of the goods in Malta
- Operation by a taxable person? YES (Prodi Ltd)
 - Operation in the scope of VAT? YES (supply of goods)
 - Place of operation? In Malta (where goods are placed at the disposal of the client)
 - Is there any exemption? No
 - Who is liable to pay VAT? Prodi Ltd who is registered under art.10 in Malta