

**Questions & Answers**  
**Cases and Solutions**

**IMPORTATION 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 1<sup>st</sup> 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 1<sup>st</sup> 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.

**Q.** *A, a Maltese company registered under art. 11 purchases carpets from a Turkish company T. A has the goods sent to Malta, where they are put into free circulation. At that moment, A has already resold the goods to a UK customer B, who has a UK VAT identification number, and sends the goods from Malta to the premises of B in the UK. Can the import by A be exempt from Maltese VAT?*

**A.** No, the import by A can not be exempt from Maltese VAT because:

- The operation is performed by a taxable person
- The operation is in the scope of VAT (importation)
- The place of the operation is Malta
- But A is registered under article 11 of the VAT Act while an exemption could only apply if A were registered under article 10 of the VAT Act (and on the twin condition that the customer provides A with a valid VAT number of an EU country other than Malta and that the goods are transported to the UK).

Consequently, the person liable to pay VAT on the import is A

**Q.** *A, a Maltese company registered under art. 10 purchases carpets from a Libyan company L. L has the goods transported to Malta, where A puts the goods into free circulation. At that moment, A has already resold the goods to an Italian customer B, who does not provide A with a valid IT VAT identification number. Goods are immediately dispatched from Malta to the premises of B in Italy. Can the import by A be exempt from Maltese VAT?*

**A.** No, the import by A can not be exempt from Maltese VAT because:

- The operation is performed by a taxable person
- The operation is in the scope of VAT (importation)
- The place of the operation is Malta
- But the Intra-Community supply can not be exempt from VAT as the Italian customer has not provided A with a valid VAT number from another Member State than Malta
- Consequently, the person liable to pay VAT on the import is A

**Q.** *A, a Maltese company registered under art. 10, purchases carpets from a Libyan company L. A has the goods sent to Malta, where A puts the goods into free circulation. At that moment, A has already resold the goods to a French customer B, who has a FR VAT identification number, and sends the goods from Malta to the premises of B in France. Can the import by A be exempt from Maltese VAT?*

**A.** Yes the import by A is exempt from Maltese VAT because:

- The operation is performed by a taxable person
- The operation is in the scope of VAT (importation of goods)
- The place of importation is MALTA since the goods are in Malta at the time when the chargeable event takes place – i.e. when customs duties become chargeable.
- However, there is an exemption: an importation of goods into Malta, followed by an exempt intra-Community supply of the *same* goods by the *same taxable person*, registered under art. 10 VAT Act, is exempt from VAT – see art. 9 VAT Act and item 3, Part Four, Fifth Schedule - The importer has to *prove at the moment of importation* that there will be a *subsequent exempt intra-Community supply of the goods* (i.e. proof of transport and VAT identification number final recipient)

## **CASE ON IMPORTATION - DATA**

*A Maltese company A, established in Malta and VAT registered under art. 10 VAT Act, buys and resells goods. A's suppliers and clients are located in various countries.*

*A's activities can be summarised as follows:*

### **First case**

- *A buys boomerangs from an Australian company X. The goods are transported by A from Australia to his premises in Malta. Goods are put into free circulation by A. Subsequently A, sells these boomerangs to another Maltese company B (registered under art. 11). B comes to pick up the goods at the stock of A in Malta and transports them to his shop in Sliema.*

### **Second case**

- *A buys fishing equipment from a US company Y. The goods are transported by A from the US to his premises in Malta. A acted as importer of record although he already knew his final customer (a Swedish company C who provided his SE VAT nr. to A). Subsequently, A dispatches the goods from Malta to C in Sweden.*

### **Third case**

- *A buys medical equipment from a Canadian company Z. The goods are transported by A from Canada to his premises in Malta. A acted as importer of record although he already knew his final customer (a Dutch hospital D). Subsequently, A dispatches the goods from Malta to D in the Netherlands.*

### **Fourth case**

- *A buys caviar from a Russian company Q. The goods are transported by A from Russia to Malta. A already knew his final customer (a Luxembourg company L). The goods are put under a customs duty suspension regime (e.g. a regime of temporary storage and later on under an external transit procedure). A dispatches the goods from Malta to Luxembourg, where L clears the goods for customs and VAT purposes.*

## **QUESTIONS**

- *Determine, by using the basic questions, the VAT treatment of the described transactions and operations under the Maltese VAT legislation applicable as from 1 May 2004*
- *What if, in the third case, the customer would have been a public body (acting as such) and would have acted as importer of record?*

## CASE ON IMPORTATION - SOLUTION

### ► First case

- **A buys boomerangs from an Australian company X.** The goods are transported by A from Australia to his premises in Malta. Goods are put into free circulation by A. Subsequently A, sells these boomerangs to another Maltese company B (registered under art. 11). B comes to pick up the goods at the stock of A in Malta and transports them to his shop in Sliema.

*Solution: X-A*

1. Taxable person: YES
2. Operation in the scope of VAT: YES (supply of goods)
3. Place of supply: Australia (Item 1 (b) Third Schedule – where transport begins)
4. Exemption: N/A
5. Person liable to pay VAT: N/A

*Solution: A*

1. Qualifying person (importer): YES
2. Operation in the scope of VAT: YES (importation of goods)
3. Place of importation: Malta (Item 15 Third Schedule and item 7 Fourth Schedule)
4. Exemption: NO
5. Person liable to pay VAT: the Maltese company A (art. 20 (1) (c) VAT Act)

VAT return (A): box 27 and 34

*Solution: A-B*

1. Taxable person: YES
2. Operation in the scope of VAT: YES (supply of goods)
3. Place of supply: Malta (Item 1 (b) Third Schedule – where transport begins)
4. Exemption: NO
5. Person liable to pay VAT: the Maltese company A (art. 20 (1) (a) VAT Act)

VAT return (A): box 18 and 23

### ► Second case

- **A buys fishing equipment from a US company Y.** The goods are transported by A from the US to his premises in Malta. A acted as importer of record although he already knew his final customer (a Swedish company C who provided his SE VAT nr. to A). Subsequently, A dispatches the goods from Malta to C in Sweden.

*Solution: Y-A*

1. Taxable person: YES
2. Operation in the scope of VAT: YES (supply of goods)
3. Place of supply: USA (Item 1 (b) Third Schedule – where transport begins)
4. Exemption: N/A

5. Person liable to pay VAT: N/A

*Solution: A*

1. Qualifying person (importer): YES
2. Operation in the scope of VAT: YES (importation of goods)
3. Place of importation: Malta (Item 15 Third Schedule and item 7 Fourth Schedule)
4. Exemption: YES (Item 3, Part Four, Fifth Schedule)
5. Person liable to pay VAT: N/A

VAT return (A): box 29

*Solution: A-C in the head of A*

1. Taxable person: YES
2. Operation in the scope of VAT: YES (IC supply of goods)
3. Place of supply: Malta (Item 1 (b) Third Schedule – where transport begins)
4. Exemption: YES (Item 3 (1), Part One, Fifth Schedule)
5. Person liable to pay VAT: N/A

**Specific formalities:** A will have to report the exempt ICS in its recapitulative statement in Malta VAT return (A): box 1

*Solution: A-C in the head of C*

1. Taxable person: YES
2. Operation in the scope of VAT: YES (IC acquisition of goods)
3. Place of supply: Sweden (Item 13 Third Schedule – where transport ends)
4. Exemption: N/A
5. Person liable to pay VAT: N/A

► **Third case**

- **A buys medical equipment from a Canadian company Z.** The goods are transported by A from Canada to his premises in Malta. A acted as importer of record although he already knew his final customer (a Dutch hospital D). Subsequently, A dispatches the goods from Malta to D in the Netherlands.

*Solution: Z-A*

1. Taxable person: YES
2. Operation in the scope of VAT: YES (supply of goods)
3. Place of supply: Canada (Item 1 (b) Third Schedule – where transport begins)
4. Exemption: N/A
5. Person liable to pay VAT: N/A

*Solution: A*

1. Qualifying person (importer): YES
2. Operation in the scope of VAT: YES (importation of goods)
3. Place of importation: Malta (Item 15 Third Schedule and item 7 Fourth Schedule)

4. Exemption:
  - YES, in case the importation is followed by an exempt IC supply (Item 3, Part Four, Fifth Schedule)
  - NO, in case the importation is not followed by an exempt IC supply
5. Person liable to pay VAT: if no exemption, the Maltese company A (art. 20 (1) (c) VAT Act)

VAT return (A):

- In case importation is not exempt: box 27 and 34
- In case importation is exempt : box 29
- **Hypothesis 1: D exceeded the threshold for IC acquisitions in NL or opted to subject IC acquisitions to VAT in NL**

*Solution: A-D, in the head of A*

1. Taxable person: YES
2. Operation in the scope of VAT: YES (IC supply of goods)
3. Place of supply: Malta (Item 1 (b) Third Schedule – where transport begins)
4. Exemption: YES (Item 3 (1), Part One, Fifth Schedule)
5. Person liable to pay VAT: N/A

**The importation by A will be exempt from VAT**

**Specific formalities:** A will have to report the exempt ICS in its recapitulative statement in Malta VAT return (A): box 1

*Solution: A-D, in the head of D*

1. Taxable person: YES
2. Operation in the scope of VAT: YES (IC acquisition of goods)
3. Place of supply: the Netherlands (Item 13 Third Schedule – where transport ends)
4. Exemption: N/A
5. Person liable to pay VAT: N/A

- **Hypothesis 2: D did not exceed the threshold for IC acquisitions in NL nor opted to subject IC acquisitions to VAT in NL AND A did not exceed the threshold for distance sales from Malta towards NL nor opted to subject his supplies from Malta to NL to VAT in NL under the distance sales rules**

*Solution: A-D*

1. Taxable person: YES
2. Operation in the scope of VAT: YES (supply of goods)
3. Place of supply: Malta (Item 1 (b) Third Schedule – where transport begins)
4. Exemption: NO
5. Person liable to pay VAT: A (art. 20 (1) (a) VAT Act)

VAT return (A): box 18 and 23

- **Hypothesis 3: D did not exceed the threshold for IC acquisitions in NL nor opted to subject IC acquisitions to VAT in NL BUT A exceeded the threshold for distance sales from Malta towards NL or opted to subject his supplies from Malta to NL to VAT in NL under the distance sales rules**

*Solution: A-D*

1. Taxable person: YES
2. Operation in the scope of VAT: YES (distance sale)
3. Place of supply: the Netherlands (Item 4 (2) (b) Third Schedule – where transport ends)
4. Exemption: N/A
5. Person liable to pay VAT: N/A

VAT return (A): box 2

► **Fourth case**

- **A buys caviar from a Russian company Q**. The goods are transported by A from Russia to Malta. A already knew his final customer (a Luxembourg company L). The goods are put under a customs duty suspension regime (e.g. a regime of temporary storage and later on under an external transit procedure). A dispatches the goods from Malta to Luxembourg, where L clears the goods for customs and VAT purposes.

*Solution: Q-A*

1. Taxable person: YES
2. Operation in the scope of VAT: YES (supply of goods)
3. Place of supply: Russia (Item 1 (b) Third Schedule – where transport begins)
4. Exemption: N/A
5. Person liable to pay VAT: N/A

*Solution: A*

1. Qualifying person (importer): YES
2. Operation in the scope of VAT: YES (importation of goods)
3. Place of importation: Malta (**??**) (Item 15 Third Schedule and item 7 Fourth Schedule)
4. Exemption: YES (Art. 9 VAT Act and item 2 (b), Part Four, Fifth Schedule)
5. Person liable to pay VAT: N/A

VAT return (A): box 29 (??)

*Solution: A-L*

1. Taxable person: YES
2. Operation in the scope of VAT: YES (supply of goods)
3. Place of supply: Malta (Item 1 (b) Third Schedule – where transport begins)
4. Exemption: YES (Item 2 (1) Part One Fifth Schedule)
5. Person liable to pay VAT: N/A

VAT return (A): box 20

*Solution: L*

1. Qualifying person (importer): YES
2. Operation in the scope of VAT: YES (importation of goods)
3. Place of importation: Luxembourg (Item 15 Third Schedule and item 7 Fourth Schedule)
4. Exemption: N/A
5. Person liable to pay VAT: N/A