

VAT AND THE E.U.

Suppliers of Services



MALTA

SUPPLIERS OF SERVICES

This leaflet is mainly intended for suppliers of services who are registered under article 10 of the VAT Act. If you are registered as exempt under the Small Undertakings scheme as your turnover falls below the established turnover threshold please read the leaflet entitled **Small Undertakings registered as Exempt**.

If you supply services only in the local market (i.e. in Malta to Maltese customers) then there are no significant changes with respect to VAT in your operations. However you are advised to read the leaflet entitled **List of Goods that are Exempt or have a Reduced Rate** to inform yourself about those goods that are not taxable at the standard Maltese rate. Any goods that are not listed in this leaflet are taxable at the local standard rate. You are advised to make any necessary adjustments to your Fiscal Cash Register to implement changes in rates of certain items. If you import goods from outside the European Union (E.U.) or if you buy goods from suppliers in other E.U. member states, then you are also advised to read the leaflet entitled **Importers & Persons making Intra-Community Acquisitions**.

In the context of this write up, an “Import” refers only to goods bought from a person established in a third territory (i.e. any place in the world that is not the territory of a E.U. Member State) and transported from that territory into Malta. An “Intra-Community Acquisition” refers to a purchase of goods from a person registered in another E.U. member state whereby the goods have been dispatched or transported to Malta from another member state.



You are required to keep proper records and documents of your business activities including all Intra-Community Acquisitions. Further details on records and documents to be kept are to be found in leaflet entitled **Records and Documents to be kept by a Business Concern**.

For what follows, please take into account that a “Taxable Person” is any person who carries on an economic activity, whatever the purpose or the result of that activity (economic activity is further defined in article 5 of the VAT Act). Therefore taxable persons who carry on an exempt economic activity, such as medical doctors, insurance companies as well as persons registered under article 11 of the VAT Act (persons operating below the established threshold for small undertakings) and their equivalent in another Member State are also considered as taxable persons even though they do not charge and collect VAT.

In order to determine whether or not Maltese VAT is due on any service, it is necessary to establish whether that service takes place or is deemed to take place in Malta according to the provisions of the VAT Act. If the application of the rules set out in this leaflet leads to the conclusion that the service takes place in Malta or is deemed to take place in Malta, then Maltese VAT is due on that service (except if an exemption is applicable). As a person registered for VAT under article 10, you will have to charge that VAT due to your customer (and account for it in your VAT Return). You might also have to pay Maltese VAT on such a service supplied to you, by directly including the VAT due in your VAT Return. In principle you may also claim back credit of input VAT incurred in Malta for business use, including the Maltese VAT you paid on services received.



General Rule for Place of Supply of Services



The General Rule is that the place of supply of services is **where the supplier (service provider) is established**. Therefore if a person registered under article 10 is established in Malta and provides a service to which this rule applies, to any person (whether established in Malta or abroad), then he has to charge Maltese VAT on the supply of the service unless it is specifically exempt.

However there are three groups of specific services where this rule does not apply (while specific rules apply for all kinds of intermediary services). These are:

- (a) Services where the place of supply depends upon the location of the property or activity;
- (b) Services where the place of supply is where the customer is established;
- (c) Services relating to Intra-Community Transport of Goods and Ancillary Services thereto.

A. Services where the Place of Supply depends upon the Location of the Property or Activity.

The following services take place as indicated in each of the following:

1. Services in connection with immovable property, including the services of an architect, an estate agent or expert, a valuer or an appraiser, construction works and on site supervision of construction works. Such supply of services takes place **where the immovable property is situated**. However, some of these services are exempt.
2. Transport services, other than Intra-Community Transport of Goods (further details below), take place **where the transport takes place**, having regard to the distances covered. A supply of services consisting in activities ancillary to transport, such as loading, unloading and handling, takes place where the services are physically carried out (see further details below). Please note that international and Intra-Community Transport of persons (including

transport of luggage and motor vehicles accompanying passengers and the supply of ancillary services relating to the international and intra-Community transport of passengers] is exempt with credit. Moreover, transport within Malta by scheduled bus service, scheduled inter-island sea transport, school and transport provided by an employer is also exempt with credit.

3. Cultural, artistic, sporting, scientific, educational or entertainment activities, the activities of promoters and organisers of the said activities, and activities ancillary thereto. These take place **where the activities are physically carried out**. Some of these services are exempt.
4. Services consisting in the valuation of tangible movable property, or of work on tangible movable property, take place **where the services are physically carried out**. However where these services refer to goods which have been processed in one member state and are transported out of the member state where the services are physically carried out and the customer provides a valid VAT identification number issued in another member state, the place of supply shall be the latter member state. However, some of these services are exempt.

For example, goods are sent to you from Italy for valuation. If these goods stay in Malta after the valuation (for any reason whatsoever), you have to charge Maltese VAT on the service you provide. If after you finish the valuation, the goods are sent out of Malta (to any place, whether within or outside the E.U.), you have to charge Maltese VAT on the service you provide unless your customer provides you with a valid VAT identification number from another member state than Malta. Here, although the services are physically carried out in Malta, they are deemed to take place in that other member state (as a result of this exception), and VAT is therefore due in the other member state. You can check whether a VAT identification number from another member state provided to you by your customer is a



valid number or not either by calling the VAT Department's CLO office or through the Internet (http://europa.eu.int/comm/taxation_customs/vies/en/vieshome.htm).

Note that your customer can also be registered for VAT in another member state than Italy, so he might provide you with a valid VAT identification number from that other member state.

Services under this category that are carried out by **intermediaries** acting in the name and for the account of other persons, are treated as follows:

- if the client has a valid VAT identification number in another member state other than that where the transactions are carried out, these services are taxable in the member state that issued the VAT number;
- in any other case these are taxable in the state where the transactions are carried out.

This group of services are deemed to take place where the customer is established if any supplier (E.U. or non-E.U.) provides these services to:-

- *any person* (taxable or non-taxable) outside the E.U.
- *a taxable person (registered or not for VAT purposes)* in a member state other than that of the supplier

Otherwise the General Rule applies (i.e. the service takes place where the supplier is established).

Consequently, if you are a supplier of such services (in this group) and you are registered in Malta under article 10 then

- you must not charge VAT on these services if your customer is established outside the E.U. or is a taxable person established in another member state;
 - you must charge VAT on these services (unless a specific exemption applies) to
 - Any person (taxable or non-taxable) who is established in Malta
 - Any non-taxable person (including non-taxable legal person) established in another member state.

B. Services where the Place of Supply is where the Customer is Established.

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If on the other hand, being a person registered in Malta under article 10, you are receiving such a service from a supplier in another member state or even from a supplier established outside the E.U., that service is deemed to take place in Malta and therefore Maltese VAT is due on it. In any case, wherever your supplier is established, you are to account for the VAT due in your trade records and pay the amount by declaring it in your next VAT Return under the Reverse Charge Rule.

The Reverse Charge Rule means that the customer has to declare the services and relative output tax due and then claim the tax back as a deduction thus resulting in a zero balance. The whole amount of input VAT may only be claimed as a deduction if all these services are acquired for business use giving a full right to deduct VAT. Otherwise the customer may claim back as a deduction only that input VAT related to the part of the service that was for business use (giving a right to deduct VAT) and has to pay VAT on the remaining part of the service.

If you are a taxable person not registered under article 10 (because you are providing exempt without credit goods or services or because you are a small undertaking falling below the established turnover threshold and registered under article 11) and you receive such a service from any provider not established in Malta, then you have to pay the VAT due directly to the VAT Department on a prescribed form by not later than the fifteenth day of the month following that during which it becomes chargeable.

It is to be noted that with regard to **telecommunication services and electronic services** only, there is an additional special rule: *if the supplier is established outside the E.U. and his customer is a non-taxable person (including a non-taxable legal person) who is established in a member state of the E.U., then the supplier is to collect VAT at the rate of that member state and pay it to that member state.* In order to simplify the consequences of this rule, a system has been set up whereby the supplier can register in only



one member state and pay to that member state the VAT due in each of the other member states where the service is consumed.

List of Services whose Place of Supply is the Place where the Customer is Established

The services whose place of supply is the place where the customer is established, where these are supplied to a person outside the E.U. or to a taxable person in the E.U. (or in the case of telecommunication and electronic services to any person in the E.U.) are the following:

- (a) the transfer or assignment of a copyright, patent, trademark, trade-name or licence and similar rights;
- (b) advertising services;
- (c) services of consultants, engineers, consultancy bureaux, advocates, legal procurators, accountants, auditors, financial advisers and other similar services, as well as data processing and the supply of information;
- (d) obligations to refrain from pursuing or exercising in whole or in part any economic activity, or a right referred to in this item;
- (e) banking, financial, insurance and re-insurance transactions, excluding the letting of a place for the safe deposit of any goods or documents;
- (f) the supply of staff;
- (g) the letting of movable tangible property with the exception of all forms of transport;
- (h) the services of an intermediary who acts in the name and for the account of another, when he procures for his principal any of the services referred to in this item.
- (i) telecommunication services and electronically supplied services.



Examples of treatment of services where the Place of Supply is the Place where the Customer is Established and the Customer is Established in Malta

Business in another member state to Business Registered under Article 10 in Malta

- If the customer is registered under art 10, no VAT is charged by the supplier. The Reverse Charge Rule applies. In this case, it is up to the customer to let his supplier know that he is a taxable person, for instance by supplying his VAT identification number.



Business in another member state to Exempt Business in Malta

- If customer is an “exempt” taxable person (e.g. doctor; insurance company, or small undertaking registered under article 11 etc) no VAT is charged by the supplier. Payment is to be made by the customer on a prescribed form to the VAT Department in Malta. In this case, it is up to the customer to let his supplier know that he is a taxable person, for instance by supplying his VAT registration number or other documentary evidence.

Business to a Non-Taxable Customer

- If customer is a non-taxable person (including a non-taxable legal person) and *supplier is established in another member state*, supplier charges VAT at the rate of his member state.
- If customer is a non-taxable person (including a non-taxable legal person) and *supplier is established outside the E.U.*, the service takes place outside the E.U. and therefore falls outside the scope of E.U. VAT (except for telecommunication and electronically supplied services).

C. Intra-Community Transport of Goods and Ancillary Services thereto

The general rule for Intra-Community Transport is that transport of Intra-Community Goods is subject to VAT where the transport begins and ancillary services are subject to VAT in the member state where these are physically carried out. However this rule does not apply to Intra-Community Transport of Goods (or ancillary services thereto) where the customer provides to his supplier a valid VAT identification number issued in another member state.

If supplier and customer are established in two different member states and the customer has a valid VAT identification number; the customer always accounts for VAT by the Reverse Charge Rule in his member state. Where the customer is registered under article 12 then he has to pay VAT on such services directly to the VAT Department in Malta on a prescribed form.

For example, if a Maltese person registered under article 10 or 12 contracts a haulage contractor who is established in Italy to provide an intra-Community transport of goods to Malta (or ancillary services related to such a transport), then the Italian transport service provider will not charge Maltese VAT if his customer provides a valid Maltese VAT identification number. The Maltese person registered under article 10 will account for VAT by the Reverse Charge Rule while the Maltese person registered under article 12 will have to pay the VAT directly to the VAT Department in Malta accompanied by a prescribed form.

This also applies the other way round, that is, if a person from Italy provides a valid VAT identification number to a Maltese contractor contracted to provide an Intra-Community Transport of Goods to Malta (or ancillary services related to such a transport). If the customer in Italy does not provide a valid VAT identification number to the Maltese contractor; then the Maltese contractor has to register in the member state where transport begins and charge him tax at the applicable rate.

If both supplier and customer are established in the same member state then the supplier charges VAT which the customer may claim as input tax deduction.



In any other case, the place of supply is the place where transport begins or where the ancillary services take place. If the customer is not a registered person for VAT, the contractor has to register in that member state of supply and charge VAT at the rate of that member state. If, however, the customer is established and registered for VAT in that member state and the contractor is not established in that member state, the Reverse Charge Rule is to be applied.

For example, if the customer is an Italian individual who is not a registered person, the Maltese contractor has to register in Italy and charge him Italian VAT. On the other hand, if the customer is a person established and registered for VAT in Italy, the Maltese contractor should not charge VAT and the Italian person applies the Reverse Charge Rule.

The most common ancillary services are Loading, Unloading or Reloading, Stevedoring, Stowing or Restowing, Tonnage and Cargo Dues, Opening for Inspection, Storage, Landing, Crannage, Towage, Cargo Security Services and Weighing.

Services connected with Intra-Community Transport of Goods and Ancillary Services thereto, that are carried out by **intermediaries** acting in the name and for the account of other persons, are treated as follows:-

- if the client has a valid VAT identification number in another member state other than that where the transactions are carried out, these services are taxable in the member state that issued the VAT number;
- in any other case these are taxable in the state where the transport departed or where the ancillary services are physically carried out.



Please be aware that the leaflets referred to in this brochure are published by the VAT Department for information purposes and as guidance for further exploration. That means these documents are not legally binding. They are simply guidelines and not legal documents providing legally binding rulings. If you need to know more or require precise information on how to implement VAT legislation in specific special situations, kindly contact the VAT Department or consult the documents available in the special section for Tax Professionals at the VAT Department's website .

The following table gives a (non-exhaustive) account of how transport and ancillary services in some circumstances should be treated for VAT purposes (whereby it should be stated that in some cases an exemption could apply - e.g. services for the direct needs of the cargo of vessels and aircraft).

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SERVICE PROVIDER	CUSTOMER	CIRCUMSTANCES	VAT POSITION
Is established and registered for VAT under article 10 in Malta	Is registered for VAT under Article 10 in Malta	Part of Intra E.U. Transport from or to Malta	Service Provider charges Maltese VAT
Is registered for VAT under article 10 in Malta	Has a valid VAT identification in another member state and communicates it to his supplier (not being established in that member state)	Part of Intra E.U. Transport from or to Malta	Service Provider does not charge VAT in Malta. Customer accounts for VAT under the reverse charge rule in the member state of his VAT identification.
Is registered for VAT under article 10 in Malta	Does not have a valid VAT identification number	Part of Intra E.U. Transport from Malta	Service Provider charges VAT in Malta (unless the ancillary service takes place in another member state - Service Provider may have to register there (subject to VAT rules in member state)
Is registered for VAT under article 10 in Malta	Does not have a valid VAT identification number	Part of Intra E.U. Transport to Malta	VAT liable in member state where transport begins or where service is provided. If that is member state of customer, Service Provider may have to register there (subject to VAT rules in that member state). If the ancillary service takes place in Malta: Service Provider charges Maltese VAT.
Is registered for VAT in other member state (and is not established in Malta)	Is registered for VAT under article 10 in Malta and communicates it to his supplier	Part of Intra E.U. Transport to or from Malta	Service Provider does not charge VAT. Customer accounts for VAT under the Reverse Charge Rule.
Is registered for VAT in other member state	Does not have a valid VAT identification number	Part of Intra E.U. Transport from Malta	VAT liable in member state where transport begins (i.e. Malta) or where service is provided. If that is other than member state in which Service Provider is registered then he may have to register there (subject to VAT rules in that member state - if in Malta: Service Provider has to register here).
Is registered for VAT in other member state	Does not have a valid VAT identification number	Part of Intra E.U. Transport to Malta	No VAT liability in Malta if service performed outside Malta. In case ancillary service is performed in Malta Service Provider may have to register in Malta (subject to VAT rules in Malta).