

Guidelines on the application of the 12% VAT rate on the supply of management of securities

Date: 12/03/2024

Purpose and Background

Pursuant to the adoption of the VAT Rates Directive (Council Directive (EU) 2022/542 of 5 April 2022), Malta adopted Legal Notice 231 of 2023 which amends the Eighth Schedule to the VAT Act (Chapter 406, Laws of Malta) resulting, with effect from 1st January 2024, in the application of a 12% VAT rate on the supply of several services, including the supply of services consisting of the management of securities.

The purpose of this document is for the Commissioner for Tax and Customs ('CfTC') to provide guidance, in conformity with article 75(2) of the VAT Act, on the application of the 12% reduced VAT rate on such supplies.

These guidelines shall apply only in respect of assessing, henceforth, the correct and uniform VAT treatment of services consisting of the management of securities, from a Maltese VAT perspective.

Interpretation

A reduced VAT rate of 12% shall apply to services consisting of the management of securities where the date the tax on such services becomes chargeable in terms of the Fourth Schedule to the VAT Act falls on or after 1st January 2024. This reduced rate shall apply without prejudice to the application of any of the exemptions contained under item 3 of Part Two of the Fifth Schedule to the VAT Act.

Strictly for the purpose of the application of the reduced rate of 12% in this context, the management of securities shall be interpreted to refer to securities portfolio management services.

Securities portfolio management services are services involving an ongoing commitment to monitor and manage a client's securities investment portfolio to formulate investment decisions or recommendations. Such services can be provided on either a discretionary or advisory basis. If a manager is contracted to act on a discretionary basis, the client authorises the manager to invest funds on his or her behalf as the manager sees fit, limited by pre-agreed parameters relating to the level of risk exposure and, in some instances, the nature of the securities invested in. When contracted on an advisory basis, the manager provides personal recommendations to the client on the securities that would be suitable as an investment and refers back to the client before any investment transactions are undertaken.

For the avoidance of doubt, strictly for the purpose of the application of the reduced rate of 12% in this context, the management of securities shall be interpreted as excluding services consisting of the provision of advice to persons such as that relating to capital structure, corporate strategy and related matters, advice or other similar services relating to mergers and the purchase of undertakings, and other similar matters.

Interaction between the 12% VAT rate on the management of securities and the exemptions outlined in item 3 of Part Two of the Fifth Schedule

As mentioned above, the application of a reduced VAT rate of 12% on services consisting of the management of securities shall apply without prejudice to the application of any of the exemptions contained in item 3 of Part Two of the Fifth Schedule to the VAT Act.

For the avoidance of doubt, where services consisting of the reception, execution and transmission of orders to buy and sell securities are provided and consideration is charged strictly for such services on a transaction by transaction basis, even where any management services are provided, and this is reflected in the respective contractual and billing arrangements, such services, and any services ancillary thereto, are regarded as exempt pursuant to item 3 of Part Two of the Fifth Schedule to the VAT Act.

However, in line with the case-law of the Court of Justice of the European Union (CJEU)¹, where the elements comprising a package of services, on which a combined percentage fee on assets under management is charged, consisting of the management of securities, as defined in this guideline, and the reception, execution and transmission of orders to buy and sell securities, such elements must be considered to be so closely linked that they form, objectively, a single economic supply, which it would be artificial to split, thereby constituting a single composite supply. Since that service may be taken into account for VAT purposes only as a whole and given that VAT exemptions are to be interpreted strictly, the supply as a whole would not fall within the ambit of the exemption outlined in item 3 of Part Two of the Fifth Schedule to the VAT Act. As a result, VAT chargeable at the reduced rate of 12%, would apply to such package of services.

Disclaimer

These guidelines shall not prejudice in any way any of the powers of the CfTC in terms of the VAT Act.

These guidelines shall replace and supersede any previously applicable guidelines on the same matter.

The CfTC reserves the right to substitute, alter or withdraw these guidelines as necessary at any time.

¹ Deutsche Bank AG (C-44/11)