

Guidelines for the application of the 12% VAT rate on the hiring of pleasure boats

Date: 31/01/2024

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 several services, including the hiring of a pleasure boat to a person according to an agreement for any term or part of a term that, when added to the term of a previous hiring, of the same goods or of other goods of the same kind, to the said person during the previous twelve (12) months ending on the date of the beginning of the existing hiring, does not exceed five (5) weeks.

A reduced VAT rate of 12% shall apply to the supply of the aforementioned services where the tax on such services becomes chargeable in terms of the Fourth Schedule to the VAT Act on or after 1st January 2024.

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 the VAT treatment of supplies taking place in Malta from a Maltese VAT perspective.

Interpretation

In terms of item 8 of Part Two of the Third Schedule to the VAT Act, the supply of the continuous possession or use of a pleasure boat for not more than ninety (90) days is considered to be a short-term hiring of a means of transport the place of supply of which would be the place where that pleasure boat is actually put at the disposal of the customer.

On the other hand the place of supply of the hiring of a pleasure boat, other than short-term hiring, would be the place where the customer is established, has his permanent address or usually resides. The place of supply of the hiring of a pleasure boat to a non-taxable person, other than short-term hiring, would be the place where the pleasure boat is actually put at the disposal of the customer, in so far as such supply is actually provided by the supplier (i.e. the lessor of the pleasure boat) from their place of business or a fixed establishment situated in that place.

Article 40 of Council Implementing Regulation (EU) No 282/2011¹ clarifies that in respect of the place of supply of a short-term hiring of a pleasure boat, the place where a pleasure boat is actually put at the disposal of the customer shall be the place where the customer or a third party acting on his behalf takes physical possession of that pleasure boat. For Maltese VAT purposes, this rule shall be deemed to equally apply to the determination of the place where a pleasure boat is actually put at the disposal of the customer where relevant in the context of a hiring of a pleasure boat to a non-taxable person, other than short-term hiring.

Accordingly, where the place of supply of the hiring of a pleasure boat takes place in Malta in terms of the aforesaid, the VAT rate applicable shall be 12% where the pleasure boat is hired to a person according to an agreement for any term or part of a term that, when added to the term of a previous hiring, of the same goods or of other goods of the same kind, to the said person during the previous twelve (12) months ending on the date of the beginning of the existing hiring, does not exceed five (5) weeks. 5 weeks shall mean a total of 35 days.

For the avoidance of doubt, as regards the hiring of a pleasure boat to a person according to an agreement for a term exceeding five weeks, the reduced rate of 12% would only apply to the first part of that term that, when added to the term of a previous hiring, of the same pleasure boat or of other pleasure boats of the same kind, to the said person during the previous twelve months ending on the date of the beginning of the existing hiring, does not exceed five weeks. The default rate of VAT of 18% would be applicable to the remaining term. In such case, the lessor shall ensure that the taxable value for such supply shall be apportioned between the part of the term subject to the 12% reduced rate and the other part of the term subject to the 18% VAT rate on the basis of the number of days contained in the respective terms.

The reduced rate of 12% shall not apply to the provision for consideration of seating or space on board a pleasure boat along with other passengers to whom such seating or space is separately supplied for consideration, and other such supplies.

Hypothetical examples:

- i. Company A hires a pleasure boat to Mr Z for a 2 week term from 3rd July 2024 to 16th July 2024. During the previous 12 months ending on the date of the start of the existing hiring, being 3rd July 2024, therefore referring to the period 4th July 2023 up to 3rd July 2024, neither that pleasure boat nor any other pleasure boat was hired by Company A to Mr Z. In so far as the place of supply of said hiring would be Malta, the 12% reduced rate would apply.
- ii. Company B hires a pleasure boat to Mr Y for a 2 week term from 3rd July 2024 to 16th July 2024. During the previous 12 months ending on the date of the start of

¹ Council Implementing Regulation (EU) No 282/2011¹ of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (recast)

the existing hiring, being 3rd July 2024, therefore referring to the period 4th July 2023 up to 3rd July 2024, that pleasure boat was also rented by Company B to Mr Y for another 2 week term from 1st August 2023 to 14th August 2023. When added together these terms do not exceed 5 weeks. In so far as the place of supply of said hiring would be Malta, the 12% reduced rate would apply to the hiring covering the period 3rd July 2024 to 16th July 2024.

- iii. Company C hires a pleasure boat to Mr X for a 2 week term from 3rd July 2024 to 16th July 2024. During the previous 12 months ending on the date of the start of the existing hiring, being 3rd July 2024, therefore referring to the period 4th July 2023 up to 3rd July 2024, that pleasure boat was also rented by Company C to Mr X for another 2 week term from 1st August 2023 to 14th August 2023. Company C had also rented the pleasure boat to Mr X for a 3 week term from 6th June 2023 to 26th June 2023. When added to the terms of any previous hirings during the previous 12 months ending on the date of the beginning of the existing hiring these terms do not exceed 5 weeks. In so far as the place of supply of said hiring would be Malta, the 12% reduced rate would apply to the current hiring.
- iv. Company D hires a pleasure boat to Mr W for a 2 week term from 3rd July 2024 to 16th July 2024. That pleasure boat was also rented by Company D to Mr W for a 4 week term from 7th September 2024 to 4th October 2024. Given that the first hiring falls within the previous 12 months of the date of the start of the second hiring and, when added together these terms exceed 5 weeks, in so far as the place of supply of the hirings covering such terms would be Malta, the 12% reduced rate would apply to the hirings covering the term from 3rd July 2024 to 16th July 2024 (2 weeks) and part of the term from 7th September 2024 to 27th September 2024 (3 weeks). The hiring covering the remaining part of the term from 28th September 2024 to 4th October 2024 would be subject to the default rate of 18% VAT.
- v. Company E hires a pleasure boat to Mr V for the first time for a 3 week term from 3rd July 2024 to 16th July 2024, then hires that pleasure boat to Mr U for the first time for the subsequent 3 week term from 17th July 2024 to 6th August 2024, and then hires that pleasure boat to Mr T for the first time for the subsequent 3 week term from 7th August 2024 to 28th August 2024. Despite the yacht being hired for more than 5 weeks within a 12 month period, given that it is hired to a different person each term, in so far as the place of supply of each hiring would be Malta, the 12% reduced rate would apply respectively to each such hiring.
- vi. Company F hires a pleasure boat to Mr S for a term of 2 weeks and 5 days from 3rd July 2024 to 21st July 2024. During the previous 12 months ending on the date of the start of the existing hiring, being 3rd July 2024, therefore referring to the period 4th July 2023 up to 3rd July 2024, a similar pleasure boat was also rented by Company F to Mr S for another 2 week term from 1st September 2023 to 14th September 2023. Company F had also rented another similar pleasure boat to Mr

S for a 3-week term from 25th June 2023 to 15th July 2023. When added to the terms of any previous hirings during the previous 12 months ending on the date of the beginning of the existing hiring these terms exceed 5 weeks. In so far as the place of supply of the existing hiring would be Malta, the 12% reduced rate would apply to the part of the term of the existing hiring from 3rd July 2024 to 11th July 2024 (1 week and 2 days). The hiring covering the remaining part of the term from 12th July 2024 to 21st July 2024 would be subject to the default rate of 18% VAT.

Interaction between the 12% VAT rate and other supplies provided by the person hiring the pleasure boat

For the avoidance of doubt, where a taxable person provides a package of supplies consisting of the provision of goods and services, which package includes various elements subject to differing VAT treatment, such package of supplies could constitute a single composite supply for VAT purposes. In such case, the VAT treatment applying to such a single composite supply shall follow the VAT treatment applicable to the principal component of that supply. Therefore, for example, where the single principal component of a single composite supply is a supply of hiring of a pleasure boat subject to the reduced rate of 12%, then accordingly said reduced rate would apply to the whole package of supplies.

For this purpose, only supplies which are typically made available during the course of a hiring of a pleasure boat by the taxable person, and those supplies not provided upon specific request by the customer, may be considered to possibly form part of any such single composite supply. Any goods which are not made available upon putting the pleasure boat at the disposal of the customer shall in no case be deemed to form part of any such single composite supply.

Further, goods which are not of a consumable nature shall in no case be deemed to form part of a single composite supply together with the hiring of a pleasure boat.

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.