

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

Date: 01/04/2024

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 supply of custody 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 supplies of custody of securities from a Maltese VAT perspective.

Interpretation

The following definitions shall apply solely for the application of this reduced rate:

"Securities" means any tradable financial instrument included in the Second Schedule to the Investment Services Act (Chapter 370, Laws of Malta), as may be amended or substituted from time to time, that can be broadly categorised into (i) equity securities which confer a property right over legal persons; (ii) securities representing debt; and (iii) other securities such as tradable securities conferring an intangible right to carry out a further transaction. The term "securities" shall however exclude any documents which establish title to goods.

"Custody" means:

i. Control of Assets

Services concerning the holding, safekeeping or control of securities to which the Investment Services Act (Control of Assets) Regulations (Subsidiary Legislation 370.05) or the Central Securities Depository (Control of Assets) Regulations (Subsidiary Legislation 345.13) refer, or any legislation, as may be amended or substituted from time to time.

ii. Depository Services (for Collective Investment Schemes)

Services provided by a custodian (the "Depository") consisting of the safekeeping, cash flow monitoring and oversight of securities in respect of a collective investment scheme (as

defined in item 3(6) of Part Two of the Fifth Schedule to the VAT Act), and which services are referred to in regulations 19 to 21 and 31 to 33 of the Investment Services Act (Custodians of Collective Investment Schemes) Regulations [‘Subsidiary Legislation 370.32’] as may be amended or substituted from time to time.

iii. Any other services

Any other services concerning securities identical in nature to those covered under points (i) and (ii) above which are not covered by those points.

A reduced VAT rate of 12% shall apply to services consisting of the custody 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 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.

The 12% VAT rate on the custody of securities and exemptions relevant to the custody of securities

As mentioned above, the application of the reduced VAT rate of 12% on services consisting of the custody 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.

Global Custody Services

Services commonly referred to as “global custody services” would typically incorporate a package of services in relation to securities held by a person consisting of safekeeping, security settlement, the collection of dividends or interest on securities held, corporate action processing (including actions relating to scrip and rights issues, and payment against delivery of securities), cash management, securities lending and may include the supply of supervision (monitoring and oversight) services as described in regulations 19, 20, 31 and 33 of Subsidiary Legislation 370.32, as may be amended or substituted from time to time.

It should be noted that, in line with the Abbey National judgement of the Court of Justice of the European Union (‘CJEU’)¹, the safekeeping and supervisory (monitoring and oversight) functions of a Depository do not fall within the ambit of the exemption relevant to the management of collective investment schemes as set out in item 3(6) of Part Two of the Fifth Schedule to the VAT Act and as such are taxable. This is relevant for determining the VAT treatment of such taxable services when provided as part of a global custody services package.

In this respect, it is the interpretation of the Commissioner that the supply of such taxable supervision services by a Depository forming part of a global custody services package do not

¹ Abbey National (C-169-04)

form a single supply from an economic point of view due to the distinct and independent nature of such supervision services, provided that it would not be artificial to split said services.

On the other hand, a package of global custody services, excluding any supervisory services forming part of that package, would qualify as exempt in so far as such services (excluding supervisory services) constitute a single composite supply comprised principally of services which are exempt in terms of item 3 of Part Two of the Fifth Schedule to the VAT Act, as well as other ancillary services.

Determining the principal component of a single composite supply would be a question of fact, which should be assessed on a case-by-case basis taking into account the customer's perspective and intentions for the requested services, and the nature of the services supplied.

Nominee Services

Where a person holds securities in his own name on behalf of the beneficial owner for the principal purpose of providing to the beneficial owner services which are exempt in terms of item 3 of Part Two of the Fifth Schedule to the VAT Act such as the reception, execution and transmission of orders to buy and sell such securities, negotiation concerning payments/transfers/currency and other ancillary services, such package of services would qualify as exempt to the extent that the services in question constitute a single composite supply.

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.