

Guidelines for the VAT treatment of Health Care Services

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Purpose and Background

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 (Chapter 406, Laws of Malta), on the application of the VAT exemptions contained under sub-items (1), (2), (3) and (7) of item 11 of Part Two of the Fifth Schedule to the VAT Act based on the provisions of the EU VAT Directive (2006/112/EC)¹ and jurisprudence of the Court of Justice of the European Union (CJEU)² applicable at the time of issuance of these guidelines.

The VAT exemption contained under the first sub-item (item 11(1)) applies to the supply of medical care by a person in the exercise of any profession regulated by the Health Care Professions Act (Chapter 464, Laws of Malta), the Psychology Act (Chapter 471, Laws of Malta), the Counselling Profession Act (Chapter 538, Laws of Malta), or the Psychotherapy Profession Act (Chapter 587, Laws of Malta).

The VAT exemption contained under the second sub-item (item 11(2)) applies to the provision of hospital and medical care undertaken by any government hospital or institution, or by any other hospital, institution, or centre for medical treatment or diagnosis approved by the Minister for the purposes of said exemption.

The VAT exemption contained under the third sub-item (item 11(3)) applies to the supply of services by dental technicians in their professional capacity and the supply of dental prostheses.

The VAT exemption contained under the seventh sub-item (item 11(7)) applies to the supply of goods and services by the same hospital, institution, centre or home, as the case may be, supplying the services referred to in sub-items (2) and (4), and which are connected with and essential for the supply of those services: provided that this exemption is not likely to cause distortion of competition.

¹ Article 132(1), points (b) and (c)

² Peter d'Ambrumenil (C-307/01); L.u.p GmbH (C-106/05); PFC Clinic (C-91/12); Termas Sulfurosas (C-513/20); I GMBH (C-228/20); CIG (C-458/21); amongst others.

Interpretation

Item 11(1) – Medical care supplied by professionals

For this exemption to be applied, two conditions must be **cumulatively** satisfied:

1. The supply must be a supply of “*medical care*”; and
2. The supply must be provided by a person in the exercise of any profession regulated by the Health Care Professions Act, the Psychology Act, the Counselling Profession Act, or the Psychotherapy Profession Act (hereinafter referred to collectively as “Health Care Professionals”).

Therefore, not all supplies by Health Care Professionals automatically qualify for the VAT exemption – such supplies must also be “*medical care*” in order for the exemption to apply.

For the purpose of the application of this exemption, the term “*medical care*” shall mean any services that have as their purpose the protection (including maintaining and restoring) of human health and the diagnosis, treatment and, in so far as possible, cure of diseases or health disorders in humans. “Health” includes the mental health of a patient.

Item 11(2) – Hospital and medical care

For this exemption to be applied, two conditions must be **cumulatively** satisfied:

1. The supply must be a supply of “*hospital and medical care*”; and
2. The supply must be provided by a government hospital or institution or by any other hospital, institution or centre for medical treatment or diagnosis approved by the Minister for the purpose of this exemption.

For the purpose of the application of this exemption, the following shall apply:

- I. “*hospital or medical care*” shall have the same meaning as “*medical care*” which is delivered by a “*Health Care Professional*”; and
- II. “*other hospital, institution or centre for medical treatment or diagnosis approved by the Minister*” for the purpose of this exemption shall be an entity that is aligned with the legal requirements determined by the relevant competent authorities to render supplies of medical care as defined in these guidelines.

For the avoidance of doubt, any terms defined for the purpose of the exemption under item 11(1) shall be equally applicable for the purpose of applying the exemption under item 11(2).

Other matters relating to both exemptions under items 11(1) and 11(2)

1. For the avoidance of doubt, supplies not primarily for the benefit of the patient shall not be considered as supplies of medical care. By way of example, services cannot be regarded as supplies of medical care if they are provided by a Health Care Professional whereby such services are effected primarily in order to enable a third party to take a decision which has legal consequences for the person concerned or other persons, with any medical care implications being merely indirect.
2. Supplies of an aesthetic or cosmetic nature (i.e. supplies whose purpose is to alter, change, improve, or modify, in any way, the appearance of the human body) provided or delivered by Health Care Professionals, subject to the satisfaction of the other applicable conditions as detailed within the preceding sections to these guidelines, may also qualify for an exemption without credit in so far as they qualify as supplies of “*medical care*”.

Item 11(3) - Services by dental technicians and the supply of dental prostheses by dentists and dental technicians

This exemption applies to:

- a. Services typically provided by dental technicians in their professional capacity;
- b. Supplies of dental prosthesis by both dentists and dental technicians.

The term “dental technicians” shall refer to any persons, irrespective of their legal form, acting in the exercise of the “Dental Technology” profession regulated by the Health Care Professions Act (Chapter 464, Laws of Malta) or any Act which may be substituted therefor.

The term “dental prosthesis” shall be seen as broad enough to also include the supply of parts of a dental prosthesis which are typically manufactured by dentists or dental technicians. It however shall not encompass the supply of dental devices and of material which is used to manufacture dental prostheses.

For the avoidance of doubt, in line with jurisprudence of the CJEU³, the exemption does not apply to supplies of dental prostheses effected by an intermediary who does not have the status of dentist or dental technician, but has acquired such prostheses from a dental technician.

³ VDP Dental Laboratory (C-401/05)

Exemption for goods and services in terms of item 11(7) in relation to item 11(2)

Item 11(7) provides for an exemption on goods and services which are supplied by the same hospital, institution or centre, as the case may be, which would be supplying the services exempted under item 11(2) subject to the following conditions being cumulatively satisfied:

- I. Those goods and services must be connected with and essential for the supply of the services exempted under item 11(2);
- II. Those goods and services are supplied **by** the same person supplying the services exempted under item 11(2); and
- III. The application of the exemption on such goods and services is not likely to cause distortion of competition.

Supplies of goods and services by the hospital, institution or centre, are connected with and essential for the supply of medical care exempted under item 11(2) where, without such goods and services, it is not possible to achieve the objectives pursued by the related supply of medical care, i.e. to protect, diagnose, treat, and in so far as possible, cure diseases or health disorders in humans, and only in so far as the basic purpose of such supplies is not to obtain additional income for the hospital, institution or centre by carrying out transactions which are in direct competition with those of commercial enterprises liable for VAT.

For the avoidance of doubt, this exemption shall not apply to supplies of goods and services made **to** the hospital, institution or centre supplying the services exempted under item 11(2). However, if the supplier would be himself providing to the hospital, institution or centre services exempted under item 11(2), the exemption under item 11(7) could apply subject to the other conditions for the application of that exemption being satisfied.

Records to be Kept

In order to substantiate the application of the respective exemption on the supply of medical care, particularly for supplies of an aesthetic or cosmetic nature, the following records may be requested by the CfTC for each such supply:

- a) Type of service provided;
- b) Brief medical justification for exempting any supplies of an aesthetic or cosmetic nature;
- c) Details and warrant number of the Health Care Professional providing the justification in (b) above;
- d) Unique identification number linking the supply to a specific patient;
- e) Value of the service;
- f) Date(s) the service was provided.

Such records may be stored electronically in any format and should be retained for a period of at least 6 years from the end of the year to which they relate.

Disclaimer

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

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

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