

## Guidelines on the place of supply of streamed and virtual activities

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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 manner of application of item 6(2)(a) of Part 2 of the Third Schedule to the VAT Act, on the determination of the place of supply of services and ancillary services, relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities, such as fairs and exhibitions, including the supply of services of the organisers of such activities, supplied to a non-taxable person, particularly where such services and ancillary services relate to activities which are streamed or otherwise made virtually available.

In terms of item 6(2) of Part 2 of the Third Schedule to the VAT Act:

*“(2)(a) The place of supply of services and ancillary services, relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities, such as fairs and exhibitions, including the supply of services of the organisers of such activities, supplied to a non-taxable person shall be the place where those activities actually take place:*

*Provided that where the services and ancillary services relate to activities which are streamed or otherwise made virtually available, the place of supply shall, however, be the place where the non-taxable person is established, has his permanent address or usually resides.”*

### **Interpretation**

In the case of activities relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities being streamed or otherwise made virtually available, the services in question shall fall under the proviso to item 6(2)(a) of Part 2 of the Third Schedule to the VAT Act when supplied to a non-taxable person, or, if seen to qualify as electronically supplied services, under item 10(1)(c) of Part 2 of the Third Schedule to the VAT Act. Where those activities are organised with a view to in-person participation, the services shall fall under the first paragraph of item 6(2)(a) of Part 2 of the Third Schedule to the VAT Act when supplied to a non-taxable person, even if on occasion the activities may instead be streamed or otherwise made virtually available.

Where activities leave a choice between in-person or virtual participation and the supplier does not know at the time of invoice issuance what the customer chooses, the first paragraph of item 6(2)(a) of Part 2 of the Third Schedule to the VAT Act shall take precedence unless facts demonstrate that the attendance was in fact virtual and therefore should fall under the proviso to item 6(2)(a) of Part 2 of the Third Schedule to the VAT or, if seen to qualify as electronically

supplied services, item 10 of Part 2 of the Third Schedule to the VAT Act, in which case the invoice must be corrected.

The streaming of events or activities shall only qualify for any reduced rate applicable to those events or activities if held physically in accordance with the Eighth Schedule to the VAT Act if live streamed. For streaming to be live, the activity must be performed in real time and streamed at the time of performance. Pre-recorded content that is played back shall not qualify as being live streamed. Where content is bundled with part being streamed live and part pre-recorded (including the facility for pre-recorded content access), that bundle may only be subject to a reduced rate if live streaming is found to be the predominant element of the supply.

For the avoidance of doubt live casino services shall qualify as an activity similar to an entertainment activity for the purpose of item 6(2)(a) of Part 2 of the Third Schedule to the VAT Act where such services concern casino-type games conducted in real time by means of a physical dealer or presenter operating a gaming device, as defined in the Gaming Definitions Regulations (Subsidiary Legislation 583.04), located in a studio or casino environment, and where:

- a) the game is captured and transmitted to players via live audio-visual streaming over the internet;
- b) players participate remotely through an electronic interface enabling the placement of bets and, where applicable, the communication of game outcomes;
- c) player actions are processed and transmitted to the dealer or presenter, either through an intermediary electronic system or by means of direct interaction between the player and the dealer or presenter, for the purpose of conducting the game; and
- d) the outcome of the game is determined by the execution of the game and communicated to players in real time.

### **Disclaimer**

These guidelines shall not prejudice in any way any of the powers of the CfTC in terms of the VAT Act, including the power to withdraw any confirmation issued in terms of these guidelines.

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.