

Guidelines – Trusts

Date: 7th February 2025

Purpose and Background

The purpose of this document is for the Commissioner for Tax and Customs ('CfTC') to provide explanations, in conformity with article 75(2) of the VAT Act, on the applicability of Subsidiary Legislation 406.14.

The Trusts and Trustees Act, Cap. 331 of the Laws of Malta, defines a trust as: "A trust exists where a person (referred to as a trustee) holds, as owner, or has vested in him property under an obligation to deal with that property for the benefit of persons (called the beneficiaries), whether or not yet ascertained or in existence, which is not for the benefit only of the trustee, or for a charitable purpose or for both such benefit and purpose aforesaid".

A trust thus creates the following major legal capacities for persons, including :

- *The Settlor* – the person who creates the Trust;
- *The Trustee* – the person who has full ownership of the property but with restricted application. He may appoint a Nominee, in whose name the Trust is held;
- *The Beneficiary* – the person or persons for whose benefit the property is held, managed and administered by the Trustee. The beneficiary has a right over the Trustee on the amount derived from the sale of the property;
- *The Protector* – a person appointed by the Settlor to control the Trustee.

There are two types of Trusts:

Fixed Interest Trust – the interest of the beneficiary is defined by the Trust itself; and
Discretionary Trust – the Trustee decides upon his discretion on what he gives to the beneficiaries.

A Trust may have more than one Trustee in different countries.

A Trustee has to maintain the Trust on its own and cannot consider the property in the Trust as forming part of his personal property.

Interpretation

Consideration of Trusts for VAT purposes.

As the Trust itself merely consists of property and/or other assets, there is no economic activity carried on and therefore it is outside the scope of VAT.

Treatment of Trustee for VAT purposes.

Since the Trustee services essentially consist in the management and administration of assets of which, in terms of Trust law, the Trustee is the legal owner, it is considered that any sums that the Trustee is entitled to appropriate from the Trust assets by way of remuneration do not constitute a consideration for services rendered. Therefore, no economic activity is deemed to be carried out, where such remuneration is specified under the terms of the deed of the Trust.

However, if the Trustee exploits the property of the Trust for a consideration, then this exploitation is considered as an economic activity, and if such activity is taxable under Maltese VAT legislation, then the Trustee has to register for VAT in Malta.

For example, the rental of holiday accommodation in Malta pertaining to the Trust assets is an economic activity taking place where the immovable property is situated and therefore subject to VAT. Such operation transforms the Trustee to a taxable status and therefore has to register for VAT in Malta and charge VAT accordingly.

The economic activities of the Trustee, in his personal capacity, should always be considered separate from his activities as administrator of the Trust. This means that if for example, he gives advice or consultation to the Trust, it should be considered as if in his personal capacity, he is giving a service to himself as Trustee. If, as explained above, his status as a Trustee is considered taxable, then such service is taxable where the customer is established in line with Part 2, Third Schedule to the VAT Act, Cap. 406 of the Laws of Malta) and has to charge VAT in his personal capacity to himself as Trustee.

It is to be pointed out that the taxable status or otherwise of any activity carried out by the Trustee in respect of the Trust assets, would have to be considered on a case-by-case basis depending on the status of such activity.

Persons who encounter any difficulties or have any queries are invited to call on 144 or send an e-mail to servizz@gov.mt.

Disclaimers

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. Notwithstanding, this shall not prejudice the application of any previous guidelines prior to the date of publication of these guidelines.

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