

GUIDELINES REGARDING TRUSTS

What is a Trust?

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. (The Trusts and Trustees Act, 2005)

A trust thus creates the following major legal capacities for persons. A Person in this context may mean also a body of person:

- 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

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.

How are Trusts considered for VAT purpose?

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.

How is the Trustee treated for the purpose of VAT?

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 he 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 (item 10 of the Third Schedule to the VAT Act 1998) and he 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 asset, would have to be considered on a case by case basis depending on the status of such activity.

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