

# Guidelines for Bad Debt Relief claims

## 1. Introduction

### 1.1 Who should read these Guidelines?

Anyone who is registered for VAT under Article 10 and has made supplies of goods or services to a customer for which they have not been paid may be able to claim relief from VAT on bad debts they have incurred, as long as they meet all the conditions set out in this document.

### 1.2 What is the legal basis for these Guidelines?

Item 10(2) of the Tenth Schedule to the VAT Act (Cap 406, Laws of Malta) provides that “a claim for a deduction by way of a bad debt relief shall be subject to such directives as the Commissioner may give as to the circumstances in which it may be made and the documents or other evidence that should be produced.”

In terms of this provision, the Commissioner\* hereby directs that the following administrative procedures shall apply. A claim for a deduction by way of a bad debt relief shall be accepted provided that all the conditions set out in this document are met.

*\* For the purposes of these Guidelines the term “Commissioner” shall have the meaning assigned to it in terms of Article 2 of the VAT Act.*

## 2. Claiming bad debt relief

### 2.1 What are the conditions?

#### Conditions for claiming bad debt relief

1. Claim for bad debt relief may be made following a final Court judgement showing beyond doubt and to the satisfaction of the Commissioner that the debt can never be recouped.
2. The claim must reach the Commissioner by not later than twelve months from the date of delivery of the final judgement.
3. VAT in connection with the claim must have already been accounted for and paid to the Department.
4. All VAT returns and payments due as at the date of the claim must have been submitted by that date.
5. The debt must have been written off in the claimant’s day-to-day VAT accounts and transferred to a separate bad debt account.
6. The supply must have been made to the customer, or to a third party through the customer.
7. The value of the supply must not be more than the customary selling price.
8. The debt must not have been paid, sold or factored under a valid legal assignment.

### 2.2 How may bad debt relief be claimed?

To claim a refund, an application to claim bad debt relief must be made by means of a registered letter addressed to the Commissioner, providing:

- a copy of the relative final Court judgement;
- the date and number of any invoice issued for each supply to the customer, which is included in the claim;
- for each relevant supply, the amount which has been written off as a bad debt; and

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- the amount of the claim.

The Commissioner shall subsequently examine the case, accept or reject the claim and inform the claimant accordingly.

### **2.3 When and how may the bad debt relief be accounted for?**

The claimant may deduct the tax relative to the bad debt relief claim in Box 41 of the VAT return for the tax period following that in which the Commissioner has authorised the relief.

### **2.4 What records should be kept?**

When claiming a refund the following documentation should be kept:

- The sales ledger for the tax period in which the supplies had originally been accounted for;
- A copy of the tax invoices for the supplies on which a refund is being claimed. (In case you were not required to issue a tax invoice you must have a document showing the equivalent information); and
- Any other documents which the Commissioner may request to ascertain the validity of the bad debt relief claim.

## **3. Calculation of the claim**

### **3.1 How is the claim calculated?**

The calculation of the bad debt relief claim shall be based on the amount of VAT attributable to the supply or supplies included in the claim. Pro-rata calculation shall be made in the case of invoice/s containing supplies with varying liabilities, that is, subject to varying VAT rates.

The Commissioner reserves the right to refuse or reverse a bad debt relief claim where it results that:

- the claimant holds a security or was insured against the bad debt;
- the claimant has received payment from a guarantor or other person; or
- the claimant has assigned or factored the debt.

### **3.2 What if payment is received after bad debt relief has been claimed?**

If payment for the supplies is received after a refund claim was made, the VAT element included in the payment must be repaid to the Department. All payments received for the supply or supplies must be properly accounted for in the taxpayer's records. When repaying all or part of the refund, the amount being repaid must be inserted in Box 40 of the VAT return for the period in which the payment was received.

All or part of the refund must still be repaid even where the claimant is no longer registered for VAT and therefore does not submit VAT returns. In such cases the claimant is to contact the VAT Department for guidance.

## **4. Frequently asked questions**

### **4.1 Can bad debt relief be claimed on an existing debt in the case of the transfer of a business?**

A claim for bad debt relief may only be submitted by the actual supplier of the goods or services.

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Where a business is transferred, the purchaser cannot claim bad debt relief on supplies made before the transfer because the purchaser did not make the supplies.

### **4.2 Can bad debt relief be claimed where the claimant is no longer registered under Article 10 of the Act?**

Yes, bad debt relief may be claimed even where the claimant is no longer registered under Article 10 of the Act, as long as the conditions laid out in these Guidelines have been satisfied.

### **4.3 Can a credit note be substituted for a bad debt relief claim?**

No, credit notes may only be issued where there is a genuine mistake or overcharge or an agreed reduction in the value of the supply.

### **4.3 Can a supplier using a profit margin scheme claim bad debt relief?**

Yes, bad debt relief may be claimed on supplies made under profit margin schemes, subject to a maximum of the VAT on the margin. This will be refunded on a pro-rata basis of the total consideration of the supply which would be declared bad.

**5.** The Commissioner may substitute, alter or withdraw these guidelines at any time as necessary.

Issued on 30<sup>th</sup> November 2014