

Questions & Answers
Cases and Solutions

INTRA-COMMUNITY ACQUISITION OF GOODS BY « GROUP OF 3 »
DISTANCE SALES
TRIANGULATION

Preliminary Remarks:

- ▶ The following are a series of situations that could occur in day to day practice. The answers given are in accordance with the amended VAT Act, as applicable from the 1st of May 2004. **However, while the VAT Department has made every effort to ensure that the content of this document is as legally accurate as possible, it should not be used as a substitute for the provisions of the VAT Act 1998, of the Act No X of 2003, of any other Act and of the relevant Legal Notices as published in the Malta Government Gazette, which are the only ones that have legal value.**
- ▶ Any reference in the examples/cases/situations described in this document to a particular European Union member state, to a specific country outside the European Union or to a specific product brand name is by way of example only. Answers remain valid when the name of the member state mentioned is substituted by the name of any other member state, when any outside country is substituted by any other outside country and when any brand name is substituted by any other brand name.
- ▶ As from the 1st of May 2004, European Union member states (besides Malta) are Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom.

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- Q.** *A Maltese company A (a small undertaking which is registered under art. 12) purchases in 2006 a computer (2.000 Lm, excl. VAT) in Italy from a normal taxable person B. The supplier transports the computer from Italy to Malta. In 2005, A opted to pay VAT in Malta on all his intra-Community acquisitions (and received a VAT registration number art. 12), but the purchase of the computer was his first purchase in another Member State in 2006. What VAT is applicable to the purchase of the computer?*
- A.** Maltese VAT, since A performs a taxable intra-Community acquisition in Malta (where transport ends)
- Q.** *A Maltese insurance company A (not registered under art. 10) purchases in 2007 a printer (1.500 Lm, excl. VAT) in Spain from a regular taxable person B. A has the printer transported from Spain to Malta. In 2006, A has exceeded his intra-Community acquisitions threshold (and has then received a VAT registration number*

art. 12). The purchase of the printer doesn't lead A to exceed the intra-Community acquisition threshold in 2007. What VAT is applicable to the purchase of the computer?

A. Maltese VAT, since A is obliged to have his intra-Community acquisitions subject to VAT in Malta up to the end of 2007

Q. *A Maltese company A (a small undertaking registered under art. 11) purchases in 2005 an industrial printer (Lm 5,000, excl. VAT) in Germany from a normal taxable person B. The supplier transports the printer from Germany to Malta. A did not opt to pay VAT in Malta on all his intra-Community acquisitions. The purchase of the printer is his first purchase ever in another EU Member State. What VAT is applicable to the purchase of the printer?*

A. Maltese VAT, since A must perform a taxable intra-Community acquisition in Malta (where transport ends)

Q. *In October 2004, a Maltese insurance company A, not registered under art. 10, purchases goods from a Swedish company B, not established in Malta. Goods are transported from Sweden to Malta by the Maltese transport company C acting on behalf of A. The price of the goods amounts to the equivalent of 6.000 EUR in Maltese liri. Since Malta's EU accession, A already purchased goods outside Malta but in the Community for a total value of 5,000 EUR.. Who is liable to pay VAT in Malta (if any)?*

A. A, as the person making an intra-Community acquisition in Malta

Q. *A Maltese public authority A (not doing operations listed in the First Schedule) purchases in 2008 a printer (2.500 Lm, excl. VAT) in the UK from a regular taxable person B. A has the printer transported from the UK to Malta. In 2005, A has opted to have his intra-Community acquisitions subject to VAT in Malta (and has then received a VAT registration number art. 12). A has not exceeded the acquisition threshold in 2007 and the purchase of the printer doesn't lead A to exceed the intra-Community acquisition threshold in 2008. What VAT is applicable to the purchase of the printer?*

A. Maltese VAT, as A is obliged to have his intra-Community acquisitions subject to VAT in Malta unless his VAT registration number art. 12 has been cancelled in 2008 (in which case UK VAT would be due)

Q. *In October 2004, a Maltese insurance company A, not registered under art. 10, purchases goods from an Irish company B, not established in Malta. Goods are transported from Ireland to Malta by C acting on behalf of B. The price of the goods amounts to the equivalent of 36.000 EUR in Maltese liri. It is the first time as from the*

EU accession that A is purchasing goods outside Malta but in the Community. Who is liable to pay VAT in Malta (if any)?

A. A, as the person making an intra-Community acquisition in Malta

Q. *A, a Spanish supplier of wine, sells wine to a Maltese restaurant B, registered under art. 11. Goods are sent from Italy to Malta by C, a Spanish transport company acting on behalf of A. Where is the supply of wine taking place?*

A. The **SUPPLY** of the wine is taking place in Italy because

- The operation is performed by a taxable person
- The operation is in the scope of VAT (a supply of goods, transported from Italy to Malta)
- The place of supply is ITALY, where the transport begins)

Please remark that the **ACQUISITION of the wine by B** is subject to Excise duties and VAT in Malta, because:

- The operation is performed by a taxable person (a person registered under article 11 is still a taxable person)
- The operation is in the scope of VAT (intra-Community acquisition of excise products)
- The place of supply is MALTA, where the transport ends
- There is no exemption
- The person liable to pay VAT is B

Q. *A, a French supplier of wine, sells wine to a school not registered for VAT purposes in Malta (price is 2.500 EUR). Goods are sent from Italy to Malta by C, a Maltese transport company acting on behalf of the school. Is there any intra-Community acquisition, taking place in Malta?*

A. Yes, there is an intra-community **ACQUISITION of the wine by A**, subject to Excise duties and VAT in Malta, because:

- The operation is performed by a taxable person (a school is a taxable person)
- The operation is in the scope of VAT (intra-Community acquisition of excise products)
- The place of supply is MALTA, where the transport ends
- There is no exemption and no threshold as it concerns *excise goods* acquired by a taxable person
- The person liable to pay VAT is the school.

CASE 1 - DATA

A Libyan company (A) sells computers to a regular German taxable person (B) who resells these computers to a Maltese customer (C). Goods are directly sent from the premises of the Libyan company to the Maltese customer.

CASE 1 - Question

Determine the VAT treatment of the above operations. Make the necessary distinctions and elaborate on the requirements to be fulfilled by each party involved with respect to the VAT compliance.

CASE 1 - SOLUTION

Hypothesis 1: The Libyan company A transports the goods from Libya to Malta (i.e. transport is taking place in the relation A-B) and A acts as importer of the goods into Malta

► *Solution: A*

1. Qualifying person (importer): YES
2. Operation in the scope of VAT: YES (importation of goods)
3. Place of importation: Malta (Item 15 Third Schedule and item 7 Fourth Schedule)
4. Exemption: NO
5. Person liable to pay VAT: the Libyan company A (art. 20 (1) (c) VAT Act)

► *Solution: A-B*

1. Taxable person: YES
2. Operation in the scope of VAT: YES (supply of goods)
3. Place of supply: Malta (in MS of importation - Item 1 (c) Third Schedule)
4. Exemption: NO
5. Person liable to pay VAT: A (Art. 20 (1) (a) VAT Act, who will have to register under art. 10 VAT Act), *unless* B is established and registered under art. 10 VAT Act and A is not established nor registered under art. 10 VAT Act (in the latter case B is the person liable to pay VAT - art. 20 (2) (c) VAT Act)

Specific formalities:

In case **A** is the person liable to pay VAT:

- A should register under art. 10 VAT Act (if this would not yet be the case)
- VAT return (A): box 18 and 23

In case **B** is the person liable to pay VAT:

- VAT return (B): box 4 and 7 and box 11 and 15

► *Solution: B-C*

1. Taxable person: YES
2. Operation in the scope of VAT: YES (supply of goods)
3. Place of supply: Malta (in MS of importation - Item 1 (c) Third Schedule)
4. Exemption: NO

5. Person liable to pay VAT: B (Art. 20 (1) (a) VAT Act, who will have to register under art. 10 VAT Act), *unless* C is established and registered under art. 10 VAT Act and B is not established nor registered under art. 10 VAT Act (in the latter case C is the person liable to pay VAT - art. 20 (2) (c) VAT Act)

Specific formalities:

In case B is the person liable to pay VAT:

- B should register under art. 10 VAT Act (if this would not yet be the case)
- In his VAT return (B), he must fill out box 18 and 23

In case C is the person liable to pay VAT,

- VAT return (C): box 4 and 7 and box 11 and 15

Hypothesis 2: The German company B transports the goods from Libya to Malta (i.e. transport is taking place in the relation A-B) and B acts as importer of the goods into Malta

► *Solution: A-B*

1. Taxable person: YES
2. Operation in the scope of VAT: YES (supply of goods)
3. Place of supply: Libya (where transport begins - Item 1 (b) Third Schedule)
4. Exemption: N/A
5. Person liable to pay VAT: N/A

► *Solution: B*

1. Qualifying person (importer): YES
2. Operation in the scope of VAT: YES (importation of goods)
3. Place of importation: Malta (Item 15 Third Schedule and item 7 Fourth Schedule)
4. Exemption: NO
5. Person liable to pay VAT: the German company B (art. 20 (1) (c) VAT Act)

► *Solution: B-C*

1. Taxable person: YES
2. Operation in the scope of VAT: YES (supply of goods)
3. Place of supply: Malta (in MS of importation - Item 1 (c) Third Schedule)
4. Exemption: NO
5. Person liable to pay VAT: B (Art. 20 (1) (a) VAT Act, who will have to register under art. 10 VAT Act), *unless* C is established and registered under art. 10 VAT Act and B is not established nor registered under art. 10 VAT Act (in the latter case C is the person liable to pay VAT - art. 20 (2) (c) VAT Act)

Specific formalities:

In case B is the person liable to pay VAT:

- B should register under art. 10 VAT Act (if this would not yet be the case)
- VAT return (B): box 18 and 23

In case **C** is the person liable to pay VAT,

- VAT return (C): box 4 and 7 and box 11 and 15

Hypothesis 3: The Maltese customer C transports the goods from Libya to Malta (i.e. transport is taking place in the relation B-C) and C acts as importer of the goods into Malta

► *Solution: A-B*

1. Taxable person: YES
2. Operation in the scope of VAT: YES (supply of goods)
3. Place of supply: Libya (where goods are put at the disposal of the customer B - Item 1 (a) Third Schedule)
4. Exemption: N/A
5. Person liable to pay VAT: N/A

► *Solution: B-C*

1. Taxable person: YES
2. Operation in the scope of VAT: YES (supply of goods)
3. Place of supply: Libya (where transport begins - Item 1 (b) Third Schedule)
4. Exemption: N/A
5. Person liable to pay VAT: N/A

► *Solution: C*

1. Qualifying person (importer): YES
2. Operation in the scope of VAT: YES (importation of goods)
3. Place of importation: Malta (Item 15 Third Schedule and item 7 Fourth Schedule)
4. Exemption: NO
5. Person liable to pay VAT: the Maltese C (art. 20 (1) (c) VAT Act)

VAT return (C): box 27 and 34

CASE 2 - DATA

A regular taxable person established in MS 1 (A) sells goods to a regular taxable person established in MS 2 (B). The latter resells these goods to a regular taxable person established in MS 3 (C). The goods are directly transported from MS 1 to MS 3 for the account of the taxable person established in MS 1.

CASE 2 - Question

Determine the VAT treatment of the above operations. Make the necessary distinctions and elaborate on the requirements to be fulfilled by each party involved with respect to the VAT compliance.

- *If Malta is MS 1*
- *If Malta is MS 2*
- *If Malta is MS 3*

CASE 2 - SOLUTION

Assumption: The transport from MS 1 to MS 3 takes place within the relation A-B and the simplification rules with respect to triangulation apply when all other conditions are met (see hereafter)

► **Malta is MS 1**

Solution: A-B, from the point of view of A

1. Taxable person: YES
2. Operation in the scope of VAT: YES (intra-Community supply of goods)
3. Place of supply: MS 1 = Malta (where transport begins - Item 1 (b) Third Schedule)
4. Exemption: YES (on the condition that the transport from Malta to another EU MS can be proved and B provides to A a valid VAT identification number of another MS than Malta – item 3 (4) Part One Fifth Schedule)
5. Person liable to pay VAT: N/A

Specific formalities:

A will have to report the exempt ICS in its recapitulative statement in Malta (mentioning the valid VAT number provided by B)

VAT return (A): box 1

► **Malta is MS 2**

Solution: A-B, from the point of view of B

Assumption: B provides his MT VAT number to A

1. Taxable person: YES
2. Operation in the scope of VAT: YES (intra-Community acquisition)
3. Place of ICA: in MS 3 (security net does not apply in Malta (MS 2) under the simplification rules - Item 14 (2) Third Schedule)
4. Exemption: N/A

5. Person liable to pay VAT: N/A

Specific formalities:

- B has to designate (on the invoice) C as the person liable to pay the VAT on the subsequent supply in MS 3
- B has to report the subsequent local supply to C in its VAT return as if it is an exempt ICS (box 1)
- B has to report the subsequent local supply to C in its recapitulative statement in Malta (mentioning the VAT number of C in MS 3) and the code “T”

► **Malta is MS 3**

Solution: A-B, from the point of view of B

1. Taxable person: YES
2. Operation in the scope of VAT: YES (intra-Community acquisition of goods)
3. Place of ICA: MS 3 = Malta (where transport ends - Item 13 Third Schedule)
4. Exemption: YES (Item 1, Part Three, Fifth Schedule)
5. Person liable to pay VAT: N/A

Solution: B-C

1. Taxable person: YES
2. Operation in the scope of VAT: YES (supply of goods)
3. Place of supply: MS 3 = Malta (where goods are put at the disposal of the customer - Item 1 (a) Third Schedule)
4. Exemption: NO (assumption)
5. Person liable to pay VAT: C (Art. 20 (2) (a) VAT Act)

Specific formalities:

- C has to be designated (on the invoice) as the person liable to pay the VAT on the subsequent supply in Malta
- C has to report the subsequent local supply by B in its Maltese VAT return as if it is an ICA:
 - Box 3 and 6
 - and**
 - Box 9 (or 10) and 13 (or 14)

CASE 3 - DATA

A hospital (B) established in Malta and not registered under art. 10 (new VAT Act) is purchasing medical equipment in Italy (from an Italian taxable person A). Goods are transported from Italy to Malta for the account of the Maltese hospital.

CASE 3 - Question

Determine the VAT treatment of the above operation. Make the necessary distinctions and elaborate on the requirements to be fulfilled by each party involved with respect to the VAT compliance.

Remark: From a Maltese perspective, public bodies performing activities that are exempt without credit, are considered to be taxable persons. E.g.: public hospitals, public schools, ... are considered to be taxable persons

CASE 3 - SOLUTION

- **A = a regular taxable person and goods are NOT sold under the profit margin regime**

Solution: A-B

Hypothesis 1: B did not exceed the acquisition threshold and has not opted

1. Taxable person: YES
2. Operation in the scope of VAT: YES (supply of goods)
3. Place of supply: Italy (where transport begins - Item 1 (b) Third Schedule)
4. Exemption: N/A
5. Person liable to pay VAT: N/A

Remark: The ICA made by B falls outside the scope of Maltese VAT (= not subject to VAT)

Solution: A-B, from the point of view of A

Hypothesis 2: B exceeded the acquisition threshold or opted to pay VAT in Malta

1. Taxable person: YES
2. Operation in the scope of VAT: YES (supply of goods)
3. Place of supply: Italy (where transport begins - Item 1 (b) Third Schedule)
4. Exemption: N/A
5. Person liable to pay VAT: N/A

Solution: A-B, from the point of view of B

1. Taxable person: YES
2. Operation in the scope of VAT: YES (intra-Community acquisition of goods)
3. Place of ICA: Malta (where transport ends - Item 13 Third Schedule)
4. Exemption: NO
5. Person liable to pay VAT: B (Art. 20 (1) (b) VAT Act)

Specific formalities by B

- B has to register under art. 12 VAT Act
- B shall give notice to the Commissioner within 30 days from the receipt of the invoice (**Art. 15 (3) VAT Act**)
- B shall pay the VAT not later than the 15th day of the month following the month during which that VAT becomes chargeable (**Art. 21 (2) VAT Act**)
- B shall file a special VAT return (**See art. 30 (2) VAT Act**)

► **A = a regular taxable person but goods ARE sold under the profit margin regime**

Solution: A-B

1. Taxable person: YES
2. Operation in the scope of VAT: YES (supply of goods)
3. Place of supply: Italy (where transport begins - Item 1 (b) Third Schedule)
4. Exemption: N/A
5. Person liable to pay VAT: N/A

Remark: the ICA by B in Malta falls out of the scope of VAT (= not subject to VAT)

► **A = a taxable person, falling under the special scheme for small undertakings**

Solution: A-B

Hypothesis 1: B did not exceed the acquisition threshold and has not opted

1. Taxable person: YES
2. Operation in the scope of VAT: YES (supply of goods)
3. Place of supply: Italy (where transport begins - Item 1 (b) Third Schedule)
4. Exemption: N/A
5. Person liable to pay VAT: N/A

Remark: the ICA by B in Malta falls out of the scope of VAT (= not subject to VAT)

Hypothesis 2: B exceeded the acquisition threshold or opted to pay VAT in Malta

Solution: A-B, from the point of view of A

1. Taxable person: YES
2. Operation in the scope of VAT: YES (supply of goods)
3. Place of supply: Italy (where transport begins - Item 1 (b) Third Schedule)
4. Exemption: N/A
5. Person liable to pay VAT: N/A

Solution: A-B, from the point of view of B

The ICA by B in Malta falls out of the scope of VAT (= not subject to VAT)

CASE 4 - DATA

An Italian company, regular taxable person, (A) sells a computer to a Maltese customer (B). The computer is transported from Italy to Malta by the Italian company.

Case 4 - Question

Determine the VAT treatment of the above operation and elaborate on the requirements to be fulfilled by each party involved with respect to the VAT compliance, according to the following distinctions:

- 1: the customer is a private individual or a taxable person art. 10 (new VAT Act)*
- 2: the customer is a small undertaking not exceeding the acquisition threshold and that has not opted*
- 3: the customer is a small undertaking that exceeds the threshold thanks to this acquisition*

CASE 4 - SOLUTION UNDER ASSUMPTION 1

► The customer is a private individual

Solution: A-B

Hypothesis 1: the distance sales threshold fixed by Malta is not exceeded by A and there is no option by A to pay VAT in Malta

1. Taxable person: YES
2. Operation in the scope of VAT: YES (supply of goods)
3. Place of supply: Italy (where transport begins - Item 1 (b) Third Schedule)
4. Exemption: N/A
5. Person liable to pay VAT: N/A

Hypothesis 2: the distance sales threshold fixed by Malta is exceeded by A or A opted to pay VAT in Malta

1. Taxable person: YES
2. Operation in the scope of VAT: YES (distance sale)
3. Place of supply: Malta (where transport ends - Item 4 (2) (a) Third Schedule)
4. Exemption: NO
5. Person liable to pay VAT: A (Art. 20 (1) (a) VAT Act – A has to register under art. 10 in Malta)

Specific formalities:

- A, being the person liable to pay VAT, should register under art. 10 VAT Act
- VAT return (A): box 18 and 23

► The customer is a taxable person registered art. 10

Solution: A-B, from the point of view of A

1. Taxable person: YES

2. Operation in the scope of VAT: YES (supply of goods)
3. Place of supply: Italy (where transport begins - Item 1 (b) Third Schedule)
4. Exemption: N/A
5. Person liable to pay VAT: N/A

Solution: A-B, from the point of view of B

1. Taxable person: YES
2. Operation in the scope of VAT: YES (intra-Community acquisition of goods)
3. Place of supply: Malta (where transport ends - Item 13 Third Schedule)
4. Exemption: NO
5. Person liable to pay VAT: B (Art. 20 (1) (b) VAT Act)

Specific formalities:

VAT return (B): box 3 and 6 AND box 9 (or 10) and 13 (or 14)

CASE 4 - SOLUTION UNDER ASSUMPTION 2

► **The customer is a taxable person registered art. 11**

Solution: A-B

Hypothesis 1: the distance sales threshold fixed by Malta is not exceeded by A and there is no option by A to pay VAT in Malta AND B is a small undertaking not exceeding the acquisition threshold and that has not opted

1. Taxable person: YES
2. Operation in the scope of VAT: YES (supply of goods)
3. Place of supply: Italy (where transport begins - Item 1 (b) Third Schedule)
4. Exemption: N/A
5. Person liable to pay VAT: N/A

Hypothesis 2: the distance sales threshold fixed by Malta is exceeded by A or A opted to pay VAT in Malta AND B is a small undertaking not exceeding the acquisition threshold and that has not opted

1. Taxable person: YES
2. Operation in the scope of VAT: YES (distance sale)
3. Place of supply: Malta (where transport ends - Item 4 (2) (a) Third Schedule)
4. Exemption: NO
5. Person liable to pay VAT: A (Art. 20 (1) (a) VAT Act – A has to register under art. 10 in Malta)

Specific formalities:

- A, being the person liable to pay VAT, should register under art. 10 VAT Act
- VAT return (A): box 18 and 23

CASE 4 - SOLUTION UNDER ASSUMPTION 3

Solution: A-B, from the point of view of A

Hypothesis 3: the customer is a small undertaking that exceeds the acquisition threshold thanks to this acquisition

1. Taxable person: YES
2. Operation in the scope of VAT: YES (intra-Community supply of goods)
3. Place of supply: Italy (where transport begins - Item 1 (b) Third Schedule)
4. Exemption: N/A
5. Person liable to pay VAT: N/A

This applies irrespective whether or not A exceeded the distance sales threshold fixed by Malta <u>or</u> opted to pay VAT in Malta

Solution: A-B, from the point of view of B

Hypothesis 3: the customer is a small undertaking that exceeds the acquisition threshold thanks to this acquisition

1. Taxable person: YES
2. Operation in the scope of VAT: YES (intra-Community acquisition of goods)
3. Place of ICA: Malta (where transport ends - Item 13 Third Schedule)
4. Exemption: NO
5. Person liable to pay VAT: B (Art. 20 (1) (b) VAT Act)

This applies irrespective whether or not A exceeded the distance sales threshold fixed by Malta <u>or</u> opted to pay VAT in Malta

Specific formalities by B

- B has to register under art. 12 VAT Act
- B shall give notice to the Commissioner within 30 days from the receipt of the invoice (**Art. 15 (3) VAT Act**)
- B shall pay the VAT not later than the 15th day of the month following the month during which that VAT becomes chargeable (**Art. 21 (2) VAT Act**)
- B shall file a special VAT return (**See art. 30 (2) VAT Act**)

Remark valid for Solution under Assumptions 1, 2 and 3

In case the computer is sold under the profit margin scheme:

- the supply is always taking place in Italy (i.e. where transport begins), irrespective who the customer is

AND

- the ICA in Malta is always out of scope of VAT