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No. 1293

VALUE ADDED TAX
(CAP. 406)

**Guidelines on Item 9 of Part Two of the Fifth Schedule to the Value
Added Tax Act**

THE Commissioner for Revenue notifies that, in conformity with article 75(2) of the Value Added Tax Act (Cap. 406, Laws of Malta), the following guidelines shall apply:

Legal basis for these guidelines

Item 9 of Part Two of the Fifth Schedule to the Value Added Tax Act exempts from VAT *“Government lotto and lotteries, the supply of agency services related thereto, and such other supplies related to gambling as may be approved by the Minister”*.

This provision implements Article 135(1)(i) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax which provides that Member States shall exempt without a right of deduction of input VAT *“betting, lotteries and other forms of gambling, subject to the conditions and limitations laid down by each Member State”*.

This guideline identifies those supplies related to gambling which, when supplied in Malta in terms of Part Two of the Third Schedule to the Value Added Tax Act, shall be treated as exempt without credit.

Supplies related to gambling

With effect from 1st January, 2018, the supplies related to gambling approved by the Minister for the purposes of Item 9 of Part Two of the Fifth Schedule to the Value Added Tax Act, and which (in addition to Government lotto and lotteries and the supply of agency services related thereto), shall therefore be exempt without credit for Malta VAT purposes, are the following:

- i. The provision of any facilities for the placing of bets and wagers, including the services of book makers, betting exchanges and any equivalent facilities. The ‘placing of bets and wagers’ refers to gambling on the outcome of an event, which outcome is unknown at the time of the placing of the bet or wager.

The term 'event' includes, but is not limited to: a sporting event, both real life or virtual; a competition; a lottery; the performance of an index; and a natural phenomenon.

For the purposes of this guideline, 'placing of bets and wagers' shall exclude gambling on the outcome of: (a) casino-type table games such as blackjack, poker and roulette; and (b) any games of chance, the outcome of which is determined by a random generator.

- ii. The granting of the right to participate in a lotto or lottery, including Grand Lottery, Super 5, scratch cards, keno and any other lottery-type games;
- iii. The granting of the right to participate in a bingo game;
- iv. The provision to players of devices or equipment for the playing of casino-type games of chance, the outcome of which is determined by a random generator, including tables for the playing of roulette, blackjack, baccarat, poker when played against the house, and slot machines.

The terms "devices or equipment" refers to game tables, machines and other similar objects which are physically located in such premises or location, including a studio, which is licensed, or otherwise recognised, by the Malta Gaming Authority, whether accessed by the player physically or remotely.

For the avoidance of doubt, "devices or equipment" excludes "amusement machines" as defined in Chapter 438 of the Laws of Malta, and "remote gaming equipment" as defined in S.L. 438.04; and

- v. Supplies which are strictly required, related and essential to, and which form part of an underlying gambling or betting transaction falling within paragraphs (i) - (iv) above, as shall from time to time be determined by the Malta Gaming Authority.

The Commissioner may substitute, alter or withdraw these guidelines at any time.

21st November, 2017

No. 1294

VALUE ADDED TAX

(CAP. 406)

Guidelines for the determination of the taxable value of gambling and betting services

THE Commissioner for Revenue notifies that, in conformity with article 75(2) of the Value Added Tax Act (Cap. 406, Laws of Malta), the following guidelines shall apply:

Legal basis for these guidelines

This document provides guidance, for the purposes of article 18 and the Seventh Schedule of the Value Added Tax Act, on the determination of the taxable value of gambling and betting services that fall within the scope of article 4 of the Value Added Tax Act and which are not exempt pursuant to item 9 of Part Two of the Fifth Schedule of the Value Added Tax Act.

In terms of item 1 of the Seventh Schedule to the Value Added Tax Act: *“...the taxable value of a supply shall be the total value of the consideration paid or payable to the supplier by the purchaser, the customer or any other person for the supply, including any subsidy directly linked to the provision of that supply, but excluding the value added tax chargeable under this Act on that supply.”*

1. Taxable value of gambling and betting services

1.1 Consideration

For the purposes of determining the taxable value of gambling and betting services that fall within the scope of article 4 of the Value Added Tax Act, the term “consideration” shall be construed as follows:

- (i) Where the supplier receives a commission or participation fee (typically referred to as the ‘rake’), the said commission or fee (including when the commission/fee is settled using bonus credit) shall be regarded as the consideration for the service, which shall be deemed to be inclusive of the VAT chargeable under the Value Added Tax Act.
- (ii) In all other cases, the consideration received by the operator shall, for the purposes of determining the taxable value, be an amount equivalent to the revenue of the supplier, i.e. the total stakes/bets placed by players (including bets placed

using bonus credit) less the winnings and other amounts paid out to players in connection with that bet (including bonus credit comprised within the bets placed - refer to section 1.2(ii) below). The consideration determined as aforesaid shall be deemed to be inclusive of the VAT chargeable under the Value Added Tax Act.

1.2 Exclusions

(i) Any amount of the commission or fee received by a supplier, or of the stakes/bets placed by the player, in relation to supplies which fall within the scope of article 4 of the Value Added Tax Act, which is immediately allocated by the supplier to a jackpot pool is to be deducted for the purposes of determining the taxable value.

(ii) Bonuses and other incentives which are provided by the supplier are considered to constitute a rebate or price reduction allowed by the supplier to the customer in terms of item 3 of the Seventh Schedule of the Value Added Tax Act, and as such should be excluded from the taxable value of the supply when such bonuses have been included within the consideration received by the supplier for the purposes of 1.1 above, by the aggregation of the amount of that bonus to the winnings and other amounts paid out to players in connection with that bet.

2. Periodic determination of the taxable value

In principle, the taxable value of a supply is to be determined on a transaction per transaction basis. However, the VAT Department acknowledges the particular nature of gambling and betting services, and the practical difficulties that could arise in the application of this principle. The taxable value of those gambling and betting services falling within the scope of article 4 of the Value Added Tax Act shall be determined on the last day of a given tax period, by reference to the aggregate taxable value of transactions during that tax period.

In other words:

(i) Where the supplier receives a commission or participation fee, the taxable value shall be the overall result of the commissions or fees from supplies falling within the scope of article 4 of the Value Added Tax Act generated during a VAT period, less any permitted deductions for that same period, as determined in accordance with section 1 above;

(ii) In all other cases, the taxable value shall be the revenue of the supplier determined in accordance with section 1.1(ii) above deriving from supplies falling within the scope of article 4 of the Value Added Tax Act generated during a VAT period, less any permitted deductions for that same period, as determined in accordance with sections 1.1(ii) and 1.2 above.

Should, in a given VAT period, the taxable value determined pursuant to these guidelines result in a negative figure, that negative amount shall be carried forward to the subsequent VAT period or periods in succession and offset against the taxable value as determined pursuant to these guidelines for the subsequent VAT period or periods in succession. For the avoidance of doubt, a negative figure shall in no way be construed as an entitlement of the supplier to any refund of, or adjustment to, output VAT paid, or reported, in any prior period.

3. Issuance of fiscal receipts

A person who makes supplies of gambling and betting services that fall within the scope of article 4 of the Value Added Tax Act and which are not exempt pursuant to item 9 of Part Two of the Fifth Schedule to the Value Added Tax Act is exempt from the obligation to issue fiscal receipts in terms of article 51 and the Thirteenth Schedule to the Value Added Tax Act.

These guidelines shall be applicable to the determination of the taxable value of gambling and betting services as from 1st January, 2018, and are restricted to the determination of the taxable value for the purposes of the Value Added Tax Act.

The Commissioner may substitute, alter or withdraw these guidelines at any time.

21st November, 2017

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Nru. 1293

**ATT DWAR IT-TAXXA FUQ IL-VALUR MIŻJUD
(KAP. 406)**

Linji gwida dwar il-partita 9 tat-Taqsima Tnejn tal-Ħames Skeda li tinsab mal-Att dwar it-Taxxa fuq il-Valur Miżjud

Il-Kummi ssarju tat-Taxxi jgħarraf illi, f'konformità mal-artikolu 75(2) tal-Att dwar Taxxa fuq il-Valur Miżjud (Kap. 406, Liġijiet ta' Malta), għandhom japplikaw il-linji gwida li ġejjin:

Bażi Legali għal dawn il-linji gwida

Il-partita 9 tat-Taqsima Tnejn tal-Ħames Skeda tal-Att dwar Taxxa fuq il-Valur Miżjud teżenta mill-VAT "*Lottu u lotteriji tal-Gvern, il-provvista ta' servizzi ta' aġenziji li għandhom x'jaqsmu ma' dan, u dawk il-provvisti l-oħra li għandhom x'jaqsmu mal-logħob tal-ażżard, li l-Ministru jista' japprova*".

Din id-dispożizzjoni timplimenta l-Artikolu 135(1)(i) tad-Direttiva tal-Kunsill 2006/112/KE tat-28 ta' Novembru 2006 dwar is-sistema komuni ta' taxxa fuq il-valur miżjud li tipprovdi li l-Istati Membri għandhom jeżentaw mingħajr id-dritt ta' tnaqqis ta' *input* VAT "*imħatri, lotteriji u forom oħrajn ta' logħob tal-ażżard, soġġetti għall-kondizzjonijiet u għal-limitazzjonijiet imfasslin minn kull Stat Membru*".

Din il-linja gwida tidentifika dawk il-provvisti li għandhom x'jaqsmu ma' logħob tal-ażżard li, meta jiġu provduti f'Malta skont it-Taqsima Tnejn tat-Tielet Skeda li tinsab mal-Att dwar Taxxa fuq il-Valur Miżjud, għandhom jiġu ttrattati bħala eżentati bla kreditu.

Provvisti li għandhom x'jaqsmu ma' logħob tal-ażżard

B'effett mill-1 ta' Jannar, 2018, il-provvisti li għandhom x'jaqsmu ma' logħob tal-ażżard approvati mill-Ministru għall-finijiet tal-Partita 9 tat-Taqsima Tnejn tal-Ħames Skeda li tinsab mal-Att dwar Taxxa fuq il-Valur Miżjud, u li (b'żieda mal-lottu u lotteriji tal-Gvern u l-provvista ta' servizzi ta' aġenziji li għandhom x'jaqsmu ma' dan), għaldaqstant ikunu eżentati bla kreditu għall-finijiet ta' VAT ta' Malta, huma dawn li ġejjin:

- i. Il-provvista ta' kull faċilità għall-għemil ta' mħatri, inklużi servizzi ta' *book makers*, skambji ta' mħatri u faċilitajiet ekwivalenti. L-għemil ta' mħatri jirreferi għal logħob tal-ażżard fuq eżitu ta' avveniment, liema eżitu mhuwiex magħruf fil-ħin meta ssir l-imħatra.

Il-kelma 'avveniment' tinkludi, iżda mhix limitata għal: avveniment sportiv, kemm fattwali kif ukoll virtwali; kompetizzjoni; lotterija; il-prestazzjoni ta' indiċi; u fenomenu naturali.

Għall-finijiet ta' din il-linja gwida, 'għemil ta' mħatri u logħob ieħor tal-ażżard (*wagers*)' għandha teskludi logħob tal-ażżard fuq l-eżitu ta': (a) logħob ta' fuq il-mejda tat-tip ta' każinò bħalma huma *blackjack*, *poker* u *roulette*; u (b) kull logħba ta' sogru li l-eżitu tagħha hu determinat minn generatur każwali;

- ii. L-għoti ta' dritt għall-partecipazzjoni f'lottu jew lotterija, inklużi l-*Grand Lottery*, *Super 5*, *scratch cards*, *keno* u logħob ieħor tat-tip ta' lotterija;
- iii. L-għoti ta' dritt għall-partecipazzjoni f'logħba tal-bingo;
- iv. L-għoti lil ġugaturi ta' mezzi jew apparat sabiex jintlagħbu logħbiet ta' sogru tat-tip ta' każinò, li l-eżitu tagħhom hu determinat minn generatur każwali, inklużi mwejjed biex jintlagħbu r-*roulette*, il-*blackjack*, il-*baccarat*, il-*poker* meta jintlagħbu kontra l-post, u magni tat-tip *slot machines*.

Il-frazi "mezzi jew apparat" tirreferi għal imwejjed tal-logħob, makkinarju u oġġetti oħra simili li jinsabu fizikament f'dak is-sit jew lok, inkluż studju, li huma liċenzjati, jew mod ieħor rikonnoxxuti mill-Awtorità Maltija dwar il-Logħob kemm jekk il-ġugatur ikollu aċċess għalihom fizikament kif ukoll minn distanza.

Sabiex jitneħħa kull dubju, "mezzi jew apparat" teskludi "magna għal-logħob tad-divertiment" kif imfissra fil-Kapitolu 438 tal-Liġijiet ta' Malta, u "apparat ta' logħob minn distanza" kif imfisser fil-L.S. 438.04; u

- v. Provvisti li huma ta' bilfors meħtieġa, li għandhom x'jaqsmu ma' jew huma essenzjali għal, u li jiffurmaw parti minn transazzjoni sottostanti ta' logħob tal-ażżard jew ta' mħatri liema transazzjoni tinkwadra fil-paragrafi (i) - (iv) hawn qabel, kif jista' jiġi determinat mill-Awtorità Maltija dwar il-Logħob minn żmien għal żmien.

Il-Kummissarju jista' jissostitwixxi, jibdel jew jirtira dawn il-linji gwida fi kwalunkwe żmien.

Il-21 ta' Novembru, 2017

ATT DWAR IT-TAXXA FUQ IL-VALUR MIŻJUD
(KAP. 406)

Linji Gwida għad-Determinazzjoni tal-Valur taxxabli ta' servizzi għal logħob tal-ażżard u ta' mħatri

Il-Kummissarju tat-Taxxi jgħarraf illi, f'konformità mal-artikolu 75(2) tal-Att dwar Taxxa fuq il-Valur Miżjud (Kap. 406, Liġijiet ta' Malta), għandhom japplikaw il-linji gwida li ġejjin:

Bażi legali għal dawn il-linji gwida

Dan id-dokument jipprovdi gwida, għall-finijiet tal-artikolu 18 u tas-Seba' Skeda li tinsab mal-Att dwar Taxxa fuq il-Valur Miżjud, għad-determinazzjoni tal-valur taxxabli ta' servizzi għal logħob tal-ażżard u ta' mħatri li jinkwadraw fil-kamp ta' applikazzjoni tal-artikolu 4 tal-Att dwar Taxxa fuq il-Valur Miżjud u li mhumiex eżentati konformement mal-partita 9 tat-Taqsima Tnejn tal-Ħames Skeda li tinsab mal-Att dwar Taxxa fuq il-Valur Miżjud.

Skont il-partita 1 tas-Seba' Skeda li tinsab mal-Att dwar Taxxa fuq il-Valur Miżjud: *"...il-valur taxxabli ta' provvista għandu jkun il-valur totali tal-prezz imħallas jew li għandu jitħallas lill-fornitur mix-xerrej, mill-klijent jew minn xi persuna oħra għall-provvista, inkluż kull sussidju direttament marbut mal-għoti ta' dik il-provvista, iżda eskluża t-taxxa fuq il-valur miżjud li għandha titħallas taħt dan l-Att fuq dik il-provvista."*

1. Valur taxxabli fuq servizzi għal logħob tal-ażżard u ta' mħatri

1.1 Prezz imħallas

Għall-finijiet li jiġi determinat il-valur taxxabli ta' servizzi għal logħob tal-ażżard u ta' mħatri li jinkwadraw fil-kamp ta' applikazzjoni tal-artikolu 4 tal-Att dwar Taxxa fuq il-Valur Miżjud, il-frazi "prezz imħallas" għandha tinftiehem skont kif ġej:

(i) Fejn il-fornitur jirċievi kummissjoni jew dritt għall-partecipazzjoni (tipikamenti msejha 'rake'), dik il-kummissjoni jew dak id-dritt (inkluż fejn il-kummissjoni/dritt jitħallsu bl-użu ta' kreditu ta' bonus) għandhom jitqiesu bħala l-prezz imħallas għal dak is-servizz, li għandu jitqies li jinkludi l-VAT li għandha titħallas taħt l-Att dwar Taxxa fuq il-Valur Miżjud.

(ii) Fil-każijiet l-oħra kollha, il-prezz imħallas li jirċievi l-operatur għandu, għall-finijiet sabiex jiġi determinat il-valur taxxabli, ikun somma ekwivalenti għad-dhul tal-fornitur, jiġifieri t-total tal-ġugati/imħatri li jintlagħbu mill-ġugaturi (inklużi mħatri magħmula bl-użu ta' kreditu ta' bonus) nieqes ir-rebħiet u somom oħra mħallsa lill-ġugaturi fir-rigward ta' dik l-imħatra (inkluż kreditu ta' bonus li hu kompriz fl-imħatri magħmula - ara s-sezzjoni 1.2(ii) hawn aktar 'l isfel). Il-prezz imħallas determinat kif

hawn qabel imsemmi għandu jitqies li jinkludi l-VAT li għandha tithallas taħt l-Att dwar Taxxa fuq il-Valur Miżjud.

1.2 Esklużjonijiet

(i) Kull ammont ta' kummissjoni jew dritt li fornitur jirċievi, jew tal-ġugati/imħatri magħmula mill-ġugatur, fir-rigward ta' provvisti li jinkwadraw fil-kamp ta' applikazzjoni tal-artikolu 4 tal-Att dwar Taxxa fuq il-Valur Miżjud, li jiġi minnufih allokati mill-fornitur għall-*jackpot* tal-flus tar-rebħ li għandu jitnaqqas sabiex jiġi determinat il-valur taxxabli.

(ii) *Bonuses* u incentivi oħra li jingħataw mill-fornitur jitqiesu li jikkostitwixxu skont fil-prezz jew tnaqqis mill-prezz mogħti mill-fornitur lill-klijent konformement mal-partita 3 tas-Seba' Skeda li tinsab mal-Att dwar Taxxa fuq il-Valur Miżjud, u għaldaqstant għandhom jiġu esklużi mill-valur taxxabli tal-provvista meta dawn il-*bonuses* ikunu ġew inklużi fil-prezz imħallas li l-fornitur jirċievi għall-finijiet ta' 1.1 ta' hawn qabel, billi l-ammont ta' dak il-bonus jiżdied mat-total ta' rebħiet jew somom oħra li jithallsu lil ġugaturi fir-rigward ta' dik l-imħatra.

2. Determinazzjoni perijodika tal-valur taxxabli

Bħala prinċipju, il-valur taxxabli ta' provvista għandu jiġi determinat fuq bażi ta' kull waħda mit-transazzjonijiet. Madankollu, id-Dipartiment tal-VAT jirrikonoxxi n-natura partikolari ta' servizzi għal loġġob tal-ażżard u ta' mħatri, u d-diffikultajiet prattiċi li jistgħu jinholqu fl-applikazzjoni ta' dan il-prinċipju. Il-valur taxxabli ta' dawk is-servizzi għal loġġob tal-ażżard u ta' mħatri li jinkwadraw fil-kamp ta' applikazzjoni tal-artikolu 4 tal-Att dwar Taxxa fuq il-Valur Miżjud għandu jiġi determinat fl-aħħar ġurnata ta' perjodu partikolari ta' ħlas ta' taxxa, b'referenza għall-valur taxxabli totali matul dak il-perjodu ta' ħlas ta' taxxa.

Fi kliem ieħor:

(i) Fejn il-fornitur jirċievi kummissjoni jew dritt għall-partecipazzjoni, il-valur taxxabli għandu jkun ir-riżultat totali tal-kummissjonijiet jew drittijiet minn provvisti li jinkwadraw fil-kamp ta' applikazzjoni tal-artikolu 4 tal-Att dwar Taxxa fuq il-Valur Miżjud iġġenerati matul perjodu tal-VAT, nieqes kull tnaqqis permess għal dak l-istess perjodu, kif determinat skont is-sezzjoni 1 hawn qabel;

(ii) Fil-każijiet l-oħra kollha, il-valur taxxabli jkun id-dħul tal-fornitur determinat skont is-sezzjoni 1.1(ii) ta' hawn qabel li jinkiseb minn provvisti li jinkwadraw fil-kamp ta' applikazzjoni tal-artikolu 4 tal-Att dwar Taxxa fuq il-Valur Miżjud iġġenerat matul perjodu tal-VAT, nieqes kull tnaqqis permess għal dak l-istess perjodu, kif determinat skont is-sezzjonijiet 1.1(ii) u 1.2 hawn qabel.

Jekk, f'perjodu partikolari tal-ħlas tal-VAT, il-valur taxxabli ddeterminat konformement ma' dawn il-linji gwida jirriżulta f'cifra negattiva, dak l-ammont negattiv għandu jingiebi 'il quddiem għall-perjodu jew perjodi sussegwenti ta' ħlas tal-VAT wieħed wara l-ieħor u ssir tpaċija kontra l-valur taxxabli kif determinat konformement ma' dawn il-linji gwida għall-

perjodu jew perjodi sussegwenti ta' ħlas tal-VAT wieħed wara l-ieħor. Sabiex jitneħħa kull dubju, ċifra negattiva ma għandha qatt tinftiehem bħala jedd tal-fornitur għal xi rifużjoni ta', jew aġġustament għal, *output VAT* imħallsa, jew irrappurtata, f'xi perjodu ta' qabel.

3. Ħruġ ta' rċevuti fiskali

Persuna li tagħmel provvisti ta' servizzi għal logħob tal-ażżard u ta' mħatri li jinkwadraw fil-kamp ta' applikazzjoni tal-artikolu 4 tal-Att dwar Taxxa fuq il-Valur Miżjud u li mhumiex eżentati konformement mal-partita 9 tat-Taqsima Tnejn tal-Ħames Skeda li tinsab mal-Att dwar Taxxa fuq il-Valur Miżjud hi eżentata mill-obbligu tal-ħruġ ta' rċevuti fiskali konformement mal-artikolu 51 u t-Tlethtax-il Skeda li tinsab mal-Att dwar Taxxa fuq il-Valur Miżjud.

Dawn il-linji gwida huma applikabbli għad-determinazzjoni tal-valur taxxabbli ta' servizzi għal logħob tal-ażżard u ta' mħatri mill-1 ta' Jannar, 2018, u japplikaw biss għad-determinazzjoni tal-valur taxxabbli għall-finijiet tal-Att dwar Taxxa fuq il-Valur Miżjud.

Il-Kummissarju jista' jissostitwixxi, jibdel jew jirtira dawn il-linji gwida fi kwalunkwe żmien.

Il-21 ta' Novembru, 2017