

GUIDELINES REGARDING ITEM 12 OF PART TWO OF THE THIRD SCHEDULE TO THE VALUE ADDED TAX ACT

12 March, 2020

1. General

The Commissioner for Revenue recognises that lessors of means of transport which are pleasure boats will not be able to assess, at the date of each chargeable event, the extent to which the pleasure boat is effectively used and enjoyed by the lessee within and outside EU territorial waters in those situations where lease payments are payable in advance by the lessee to the lessor.

Accordingly, and for the purposes of Item 12 of Part Two of the Third Schedule to the VAT Act, the Commissioner shall only consider the place of supply of the hiring of pleasure boats, if situated within Malta, as being situated outside EU territorial waters if the actual effective use and enjoyment of the services takes place outside EU territorial waters and as long as the conditions referred to in this Guideline are satisfied. This Guideline is the only guideline of the Commissioner which shall apply to leases commencing on or after the 1 November, 2018.

2. Commencement of Lease

Upon the commencement of a new lease of a pleasure boat which is intended to be effectively used and enjoyed outside EU territorial waters, the lessor shall not take into account the expected effective use and enjoyment of the pleasure boat by the lessee outside EU territorial waters and shall apply VAT as follows:

- (a) Where the lease commences at least 30 days prior to the end of the tax period in which the lease commencement date falls (“the first tax period”), the lessor shall charge the full VAT due on the consideration payable by the lessee for the said first tax period; and
- (b) Where the lease commences less than 30 days prior to the end of the first tax period, the lessor shall charge the full VAT on the consideration payable by the lessee for the first tax period and the subsequent tax period (“the second tax period”).

3. Determination of Actual Ratio based on Actual Effective Use and Enjoyment

Upon the lapse of the tax periods as referred to in Section 2(a) and 2(b) above, the lessor shall procure from the lessee such reasonable documentary and / or technological data to determine the actual effective use and enjoyment by the lessee of the pleasure boat within and outside EU territorial waters during the afore-said tax period or tax periods as applicable.

Based on such documentary and / or technological data, the lessor shall obtain an “Actual Ratio” of actual effective use and enjoyment outside EU territorial waters by dividing the actual effective use and enjoyment of the pleasure boat outside EU territorial waters by the total effective use and enjoyment in and outside EU territorial waters during the said tax period or tax periods as applicable.

4. Use of the Actual Ratio

An “Excess of Output Tax” shall be calculated as the difference between (i) the VAT charged according to section 2 of these Guidelines and (ii) the result of the “Actual Ratio” multiplied by the taxable value charged for the period multiplied by the standard rate of VAT.

5. Tax adjustment allowed for the first and, if applicable, second tax period/s

The Excess of Output Tax shall represent tax overpaid by the lessor, which overpaid tax shall be adjusted for in the tax return for the tax period immediately following the first or the second tax period referred to in section 2, as applicable.

6. Adjustment of output tax for subsequent tax periods

The procedures referred to in Clauses 2 – 5 of these Guidelines shall be applied for every subsequent tax period of the lease, and any Excess of Output Tax for each such tax period shall be made in the tax return immediately following such tax period.

7. Calculation of Actual Effective Use and Enjoyment

The general principle is that full taxation in Malta is applicable where the place of supply of the service consisting in the leasing of a pleasure boat is determined to be Malta in accordance with the provisions of Item 8 of Part Two of the Third Schedule to the VAT Act.

However, where all the conditions referred to in Item 12 of Part Two of the Third Schedule to the VAT Act are satisfied and in order to prevent double taxation, non-taxation or distortion of competition, a lessor of a pleasure boat shall calculate the actual effective use and enjoyment by the lessee of such pleasure boat outside EU territorial waters during the relevant tax period (i) by reference only to the period of time when the pleasure boat is used and enjoyed outside EU territorial waters and (ii) when it is possible to identify such place of effective use and enjoyment outside EU territorial waters. For the purpose of such calculation, the lessor shall utilise such documentary and / or technological data (including logs retained by the master of the pleasure boat as well as any GPS/AIS data) as the lessor can reasonably obtain from the lessee.