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L.N. 220 of 2020

VALUE ADDED TAX ACT
(CAP. 406)

Value Added Tax Act (Amendment of Third Schedule) Regulations, 2020

IN EXERCISE of the powers conferred by article 75 of the Value Added Tax Act, the Minister for Finance and Financial Services, has made the following regulations:-

Citation, scope and commencement.

Cap. 406.

1. (1) The title of these regulations is Value Added Tax Act (Amendment of Third Schedule) Regulations, 2020 and these regulations shall be read and construed as one with the Third Schedule to the Value Added Tax Act, which Third Schedule is hereinafter in these regulations referred to as "the Third Schedule".

(2) These regulations shall bring into force the provisions of Article 2 of Council Directive (EU) 2017/2455 of the 5th December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods and the provisions of Council Directive (EU) 2019/1995 of 21st November 2019 amending Directive 2006/112/EC as regards provisions relating to distance sales of goods and certain domestic supplies of goods.

(3) These regulations shall come into force on such date or dates as the Minister for Finance and Financial Services, may by notice in the Gazette, establish.

Amends item 1 of Part One of the Third Schedule.

2. Item 1 of Part One of the Third Schedule, shall be amended as follows:

(a) paragraph (b) thereof, shall be substituted by the following:

"*(b)* a supply of goods that are transported takes place where the goods are at the time when the transport of those goods begins:

Provided that:

(i) where the same goods are supplied successively and those goods are dispatched or transported from one (1) Member State to another

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Member State directly from the first supplier to the last customer in the chain, the dispatch or transport shall be ascribed only to the supply made to the intermediary operator;

(ii) by way of derogation from sub-paragraph (i), the dispatch or transport shall be ascribed only to the supply of goods by the intermediary operator when the intermediary operator has communicated to his supplier the VAT identification number issued to him by the Member State from which the goods are dispatched or transported; and

(iii) for the purpose of this proviso, "intermediary operator" means a supplier within the chain other than the first supplier in the chain who dispatches or transports the goods either himself or through a third party acting on his behalf:

Provided further that where a taxable person is deemed to have received and supplied goods in accordance with item 12A of the Second Schedule, the dispatch or transport of the goods shall be ascribed to the supply made by that taxable person;";

(b) in paragraph (c) thereof, the words "they are imported;" shall be substituted by the words "they are imported."; and

(c) paragraph (d) thereof, shall be deleted.

3. Item 4 of Part One of the Third Schedule, shall be substituted by the following:

Substitutes item 4 of Part One of the Third Schedule.

"*Distance sales*

4. (1) "Intra-Community distance sales of goods" means supplies of goods dispatched or transported by or on behalf of the supplier, including where the supplier intervenes indirectly in the transport or dispatch of the goods, from a Member State other than that in which dispatch or transport of the goods to the customer ends, where the following conditions are met:

(a) the supply of goods is carried out for a taxable person, or a non-taxable legal person, whose intra-Community acquisitions of goods are not subject to VAT pursuant to Article 3(1) of Council Directive 2006/112/EC,

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or for any other non-taxable person;

(b) the goods supplied are neither new means of transport nor goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier.

(2) "Distance sales of goods imported from third territories or third countries" means supplies of goods dispatched or transported by or on behalf of the supplier, including where the supplier intervenes indirectly in the transport or dispatch of the goods, from a third territory or third country, to a customer in a Member State, where the following conditions are met:

(a) the supply of goods is carried out for a taxable person, or a non-taxable legal person, whose intra-Community acquisitions of goods are not subject to VAT pursuant to Article 3(1) of Council Directive 2006/112/EC, or for any other non-taxable person;

(b) the goods supplied are neither new means of transport nor goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier.

(3) (a) The place of supply of intra-Community distance sales of goods shall be deemed to be the place where the goods are located at the time when dispatch or transport of the goods to the customer ends.

(b) The place of supply of distance sales of goods imported from third territories or third countries into a Member State other than that in which dispatch or transport of the goods to the customer ends, shall be deemed to be the place where the goods are located at the time when dispatch or transport of the goods to the customer ends.

(c) The place of supply of distance sales of goods imported from third territories or third countries into the Member State in which dispatch or transport of the goods to the customer ends shall be deemed to be in that Member State, provided that VAT on those goods shall be declared under the special scheme in item 4 of Part Seven of the Fourteenth Schedule or the corresponding legislation of any another Member State.

(4) Sub-item (3) shall not apply to supplies of second-hand goods, works of art, collectors' items or antiques, as defined in item 1 of Part Two of the Fourteenth Schedule, nor to

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supplies of second-hand means of transport which do not qualify as new means of transport, subject to VAT in accordance with the relevant special arrangements.

(5) Paragraph (a) of sub-item (3) shall not apply where the following conditions are met:

(a) (i) the supplier is established or, in the absence of an establishment, has his permanent address or usually resides only in one (1) Member State; and

(ii) the goods are dispatched or transported to any Member State other than the Member State referred to in sub-paragraph (i); and

(iii) the total value, exclusive of VAT, of the supplies referred to in sub-paragraph (ii), together with the total value of the supplies of services referred to in paragraph (b) of sub-item (2) of item 10 of Part Two of this Schedule does not in the current calendar year exceed ten-thousand euro (€10,000) nor did it do so in the course of the preceding calendar year.

(b) Where, during a calendar year, the threshold referred to in sub-paragraph (iii) of paragraph (a) is exceeded, paragraph (a) of sub-item (3) shall apply as of that time.

(c) The Commissioner shall grant to those taxable persons providing supplies eligible under paragraph (a) the right to opt for the place of supply to be determined in accordance with paragraph (a) of sub-item (3) and sub-item (1) of item 10 of Part Two of this Schedule, which shall in any event cover two (2) calendar years:

Provided that, a valid election for this purpose shall be made by means of a notice in writing to the Commissioner on a form acceptable to the Commissioner specifying the date from which it shall apply, not being earlier than thirty (30) days from the date on which it is furnished.".

4. Item 2 of Part Two of the Third Schedule, shall be substituted by the following:

Substitutes item 2 of Part Two of the Third Schedule.

"*General rules*

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2. Except as otherwise provided in this Schedule:

(a) The place of supply of services to a taxable person acting as such shall be the place where that person has established his business. However, if those services are provided to a fixed establishment of the taxable person located in a place other than the place where he has established his business, the place of supply of those services shall be the place where that fixed establishment is located. In the absence of such place of establishment or fixed establishment, the place of supply of services shall be the place where the taxable person who receives such services has his permanent address or usually resides.

(b) The place of supply of services to a non-taxable person shall be the place where the supplier has established his business. However, if those services are provided from a fixed establishment of the supplier located in a place other than the place where he has established his business, the place of supply of those services shall be the place where that fixed establishment is located. In the absence of such place of establishment or fixed establishment, the place of supply of services shall be the place where the supplier has his permanent address or usually resides.".

Substitutes item 10 of Part Two of the Third Schedule.

5. Item 10 of Part Two of the Third Schedule, shall be substituted by the following:

"*Supply of telecommunications, broadcasting and electronic services to non-taxable persons*

10. (1) The place of supply of the following services to a non-taxable person shall be the place where that person is established, has his permanent address or usually resides:

(a) telecommunications services;

(b) radio and television broadcasting services;

(c) electronically supplied services, in particular services relating to websites supply, web-hosting, distance maintenance of programmes and equipment, supply of software and updating thereof, supply of images, text and information, and making available of databases, supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events, and supply of distance teaching.

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Where the supplier of a service and the customer communicate via electronic mail, that shall not of itself mean that the service supplied is an electronically supplied service.

(2) Sub-item (1) shall not apply where the following conditions are met:

(a) the supplier is established or, in the absence of an establishment, has his permanent address or usually resides only in one (1) Member State; and

(b) services are supplied to non-taxable persons who are established, or have their permanent address or usually reside in any Member State other than the Member State referred to in paragraph (a); and

(c) the total value, exclusive of VAT, of the supplies referred to in paragraph (b), together with the total value of the supplies referred to sub-paragraph (ii) of paragraph (a) of sub-item (5) of item 4 of Part One of this Schedule does not in the current calendar year exceed ten-thousand euro (€10,000) nor did it do so in the course of the preceding calendar year.

(3) Where, during a calendar year, the threshold referred to in paragraph (c) of sub-item (2) is exceeded, sub-item (1) shall apply as of that time.

(4) The Commissioner shall grant to those taxable persons providing supplies eligible under sub-item (2) the right to opt for the place of supply to be determined in accordance with sub-item (1) and paragraph (a) of sub-item (3) of item 4 of Part One of this Schedule, which shall in any event cover two (2) calendar years:

Provided that, a valid election for this purpose shall be made by means of a notice in writing to the Commissioner on a form acceptable to the Commissioner specifying the date from which it shall apply, not being earlier than thirty (30) days from the date on which it is furnished.".

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Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — ***Published by the Department of Information (doi.gov.mt) — Valletta***
Mitbugħ fl-Istamperija tal-Gvern fuq karta riċiklata — ***Printed at the Government Printing Press on recycled paper***

Prezz/*Price*
€0.63