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L.N. 226 of 2020

VALUE ADDED TAX ACT
(CAP. 406)

Value Added Tax Act (Amendment of Fourteenth 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.

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

Cap. 406.

(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.

Substitutes Part Seven of the Fourteenth Schedule.

2. Part Seven of the Fourteenth Schedule, shall be substituted by the following:

"Part Seven

Special schemes for taxable persons supplying services to non-taxable persons or making distance sales of goods or certain domestic supplies of goods

Section 1
General Provisions

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Interpretation

1. In this Part, the following definition shall apply:

"VAT return" means the statement containing the information necessary to establish the amount of VAT due in each Member State.

Section 2
Special scheme for services supplied by taxable persons not established within the Community

Interpretation

1. For the purpose of this Section, without prejudice to other provisions of this Act, the following definitions shall apply:

"Member State of consumption" means the Member State in which the supply of services is deemed to take place according to Part Two of the Third Schedule;

"Member State of identification" means the Member State which the taxable person not established within the Community chooses to contact to state when his activity as a taxable person within the territory of the Community commences in accordance with the provisions of this Section;

"taxable person not established within the Community" means a taxable person who has not established his business in the territory of the Community and who has no fixed establishment there.

Permission to use the special scheme

2. The Commissioner shall permit any taxable person not established within the Community supplying services to a non-taxable person who is established in a Member State or has his permanent address or usually resides in a Member State, to use this special scheme. This scheme applies to all those services supplied within the Community.

Notification to the Commissioner

3. The taxable person not established within the Community shall state to the Commissioner when he commences or ceases his activity as a taxable person, or changes that activity

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in such a way that he no longer meets the conditions necessary for use of this special scheme. He shall communicate that information electronically.

Information that shall be provided to the Commissioner

4. (1) The information which the taxable person not established within the Community shall provide to the Commissioner when he commences a taxable activity shall contain the following details:

(a) name;

(b) postal address;

(c) electronic addresses, including websites;

(d) national tax code number, if any;

(e) a statement that the person has not established his business in the territory of the Community and has no fixed establishment there.

(2) The taxable person not established within in the Community shall notify the Commissioner of any changes in the information provided.

VAT identification number

5. The Commissioner shall allocate to the taxable person not established within the Community an individual VAT identification number for the application of this special scheme and shall notify him of that number by electronic means. On the basis of the information used for that identification, Member States of consumption may have recourse to their own identification systems.

Cancellation from identification register

6. The Commissioner shall delete the taxable person not established within the Community from the identification register in the following cases:

(a) if he notifies the Commissioner that he no longer supplies services covered by this special scheme;

(b) if it may otherwise be assumed that his taxable activities have ceased;

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(c) if he no longer meets the conditions necessary for use of this special scheme;

(d) if he persistently fails to comply with the rules relating to this special scheme.

Submission of VAT return

7. The taxable person not established within the Community making use of this special scheme shall submit by electronic means to the Commissioner a VAT return for each calendar quarter, whether or not services covered by this special scheme have been supplied. The VAT return shall be submitted by the end of the month following the end of the tax period covered by the return.

Details and adjustments that shall be included in VAT return

8. The VAT return shall show the individual VAT identification number for the application of this special scheme and, for each Member State of consumption in which VAT is due, the total value, exclusive of VAT, of supplies of services covered by this special scheme carried out during the tax period and total amount per rate of the corresponding VAT. The applicable rates of VAT and the total VAT due shall also be indicated on the return. Where any amendments to the VAT return are required after its submission, such amendments shall be included in a subsequent return within three (3) years of the date on which the initial return was required to be submitted pursuant to item 7. That subsequent VAT return shall identify the relevant Member State of consumption, the tax period and the amount of VAT for which any amendments are required.

Reporting currency

9. The value added tax return shall be made out in euro. If the supplies have been made in other currencies, the taxable person not established within the Community shall, for the purpose of completing the VAT return, use the exchange rate applying on the last day of the tax period. The conversion shall be made by applying the exchange rates published by the European Central Bank for that day, or if there is no publication for that day, on the next day of publication.

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Payment of the tax

10. The taxable person not established within the Community shall pay the VAT, making reference to the relevant VAT return, when submitting the VAT return, at the latest, at the expiry of the deadline by which the return shall be submitted.

Payment shall be made to a bank account denominated in euro, designated by the Commissioner.

Deduction of input tax

11. The taxable person not established within the Community making use of this special scheme may not deduct VAT pursuant to Article 168 of Council Directive 2006/112/EC. Notwithstanding paragraph 1 of Article 1 of Directive 86/560/EEC, the taxable person in question shall be refunded in accordance with that Directive. Article 2(2) and (3), and Article 4(2) of Directive 86/560/EEC shall not apply to refunds relating to services covered by this special scheme.

If the taxable person making use of this special scheme is required to be registered in a Member State for activities not covered by this special scheme, he shall deduct VAT incurred in that Member State in respect of his taxable activities which are covered by this special scheme in the VAT return that shall be submitted pursuant to Article 250 of Council Directive 2006/112/EC.

Records

12. (1) The taxable person not established within the Community shall keep records of the transactions covered by this special scheme. Those records shall be sufficiently detailed to enable the tax authorities of the Member State of consumption to verify that the VAT return is correct.

(2) The records referred to in sub-item (1) shall be made available electronically on request to the Commissioner and to the Member State of consumption.

Those records shall be kept for a period of ten (10) years from the end of the year during which the transaction was carried out.

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Section 3
Special scheme for intra-Community distance sales of goods, for supplies of goods within a Member State made by electronic interfaces facilitating those supplies and for services supplied by taxable persons established within the Community but not in the Member State of consumption

Interpretation

1. For the purpose of this Section, without prejudice to other provisions of this Act, the following definitions shall apply:

"Member State of consumption" means one (1) of the following:

(a) in the case of the supply of services, the Member State in which the supply is deemed to take place in terms of Part Two of the Third Schedule;

(b) in the case of intra-Community distance sales of goods, the Member State where the dispatch or transport of the goods to the customer ends;

(c) in the case of the supply of goods made by a taxable person facilitating those supplies in accordance with sub-item (2) of item 12A of the Second Schedule, where the dispatch or transport of the goods supplied begins and ends in the same Member State, that Member State;

"Member State of identification" means the Member State in the territory of which the taxable person has established his business or, if he has not established his business in the Community, where he has a fixed establishment.

Where a taxable person has not established his business in the Community, but has more than one (1) fixed establishment therein, the Member State of identification shall be the Member State with a fixed establishment where that taxable person indicates that he shall make use of this special scheme. The taxable person shall be bound by this decision for the calendar year concerned and the two (2) calendar years following.

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Where a taxable person has not established his business in the Community and has no fixed establishment therein, the Member State of identification shall be the Member State in which the dispatch or transport of the goods begins. Where there is more than one (1) Member State in which the dispatch or transport of the goods begins, the taxable person shall indicate which of those Member States shall be the Member State of identification. The taxable person shall be bound by that decision for the calendar year concerned and the two (2) calendar years following;

"taxable person not established in the Member State of consumption" means a taxable person who has established his business in the Community or has a fixed establishment there but has not established his business and has no fixed establishment within the territory of the Member State of consumption.

Permission to use the special scheme

2. The Commissioner shall permit the following taxable persons to use this special scheme:

(a) a taxable person carrying out intra-Community distance sales of goods;

(b) a taxable person facilitating the supply of goods in terms of sub-item (2) of item12A of the Second Schedule where the dispatch or transport of the goods supplied begins and ends in the same Member State;

(c) a taxable person not established in the Member State of consumption supplying services to a non-taxable person.

This special scheme applies to all those goods or services supplied in the Community by the taxable person concerned.

Notification to the Commissioner

3. A taxable person shall state to the Commissioner when he commences and ceases his taxable activities covered by this special scheme, or changes those activities in such a way that he no longer meets the conditions necessary for use of this special scheme. He shall communicate that information by electronic means.

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VAT identification number

4. A taxable person making use of this special scheme shall, for the taxable transactions carried out under this scheme, be identified for VAT purposes in Malta only. For that purpose the Commissioner shall use the individual VAT identification number already allocated to the taxable person in respect of his obligations under the internal system.

On the basis of the information used for that identification, Member States of consumption may have recourse to their own identification systems.

Exclusion from the special scheme

5. The Commissioner shall exclude a taxable person from the special scheme in any one (1) of the following cases:

(a) if he notifies that he no longer carries out supplies of goods and services covered by this special scheme;

(b) if it may otherwise be assumed that his taxable activities covered by this special scheme have ceased;

(c) if he no longer meets the conditions necessary for use of this special scheme;

(d) if he persistently fails to comply with the rules relating to this special scheme.

Submission of VAT return

6. The taxable person making use of this special scheme shall submit by electronic means to the Commissioner a VAT return for each calendar quarter, whether or not supplies of goods and services covered by this special scheme have been carried out. The VAT return shall be submitted by the end of the month following the end of the tax period covered by the return.

Details and adjustments that shall be included in VAT return

7. (1) The VAT return shall show the VAT identification number referred to in item 4 and, for each Member State of consumption in which VAT is due, the total value exclusive of VAT, the applicable rates of VAT, the total amount per rate of the corresponding VAT and the total VAT due in

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respect of the following supplies covered by this special scheme carried out during the tax period:

(a) intra-Community distance sales of goods;

(b) supplies of goods in accordance with sub-item (2) of item 12A of the Second Schedule where the dispatch or transport of those goods provided begins and ends in the same Member State;

(c) supplies of services.

The VAT return shall also include amendments relating to previous tax periods as provided in sub-item (4).

(2) Where goods are dispatched or transported from Member States other than Malta, the VAT return shall also include the total value exclusive of VAT, the applicable rates of VAT, the total amount per rate of the corresponding VAT and the total VAT due in respect of the following supplies covered by this special scheme, for each Member State where such goods are dispatched or transported from:

(a) intra-Community distance sales of goods other than those made by a taxable person in accordance with sub-item (2) of item 12A of the Second Schedule;

(b) intra-Community distance sales of goods and supplies of goods where the dispatch or transport of those goods begins and ends in the same Member State, made by a taxable person in accordance with sub-item (2) of item 12A of the Second Schedule.

In relation to the supplies referred to in paragraph (a), the VAT return shall also include the individual VAT identification number or the tax reference number allocated by each Member State where such goods are dispatched or transported from.

In relation to the supplies referred to in paragraph (b), the VAT return shall also include the individual VAT identification number or the tax reference number allocated by each Member State where such goods are dispatched or transported from, if available.

The VAT return shall include the information referred to in this sub-item broken down by Member State of consumption.

(3) Where the taxable person supplying services covered

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by this special scheme has one (1) or more fixed establishments, other than that in Malta, from which the services are supplied, the VAT return shall also include the total value exclusive of VAT, the applicable rates of VAT, the total amount per every rate of the corresponding VAT and the total VAT due of such supplies, for each Member State in which he has an establishment, together with the individual VAT identification number or the tax reference number of this establishment, broken down by Member State of consumption.

(4) Where any amendments to the VAT return are required after its submission, such amendments shall be included in a subsequent return within three (3) years of the date on which the initial return was required to be submitted pursuant to item 6. That subsequent VAT return shall identify the relevant Member State of consumption, the tax period and the amount of VAT for which any amendments are required.

Reporting currency

8. The VAT return shall be made out in euro.

If the supplies have been made in other currencies, the taxable person making use of this special scheme shall, for the purpose of completing the VAT return, use the exchange rate applying on the last date of the tax period. The conversion shall be made by applying the exchange rates published by the European Central Bank for that day, or if there is no publication for that day, on the next day of publication.

Payment of the tax

9. The taxable person making use of this special scheme shall pay the VAT, making reference to the relevant VAT return, at the latest at the expiry of the deadline by when the return shall be submitted.

Payment shall be made to a bank account denominated in euro, designated by the Commissioner.

Deduction of input tax

10. The taxable person making use of this special scheme may not, in respect of his taxable activities covered by this special scheme, deduct VAT incurred in the Member State of consumption pursuant to Article 168 of Council Directive 2006/112/EC. Notwithstanding Article 2(1), Article 3 and point (e) of

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Article 8(1) of Directive 2008/9/EC, the taxable person in question shall be refunded in accordance with that Directive.

If the taxable person making use of this special scheme is required to be registered in a Member State for activities not covered by this special scheme, he shall deduct VAT incurred in that Member State in respect of his taxable activities which are covered by this special scheme in the VAT return that shall be submitted pursuant to Article 250 of Council Directive 2006/112/EC.

Records

11. (1) The taxable person making use of this special scheme shall keep records of the transactions covered by this special scheme. Those records shall be sufficiently detailed to enable the tax authorities of the Member State of consumption to verify that the VAT return is correct.

(2) The records referred to in sub-item (1) shall be made available electronically on request to the Member State of consumption and to the Commissioner.

Those records shall be kept for a period of ten (10) years from 31 December of the year during which the transaction was carried out.

Section 4
Special scheme for distance sales of goods imported from third territories or third countries

Interpretation

1. For the purposes of this Section, without prejudice to other provisions of this Act, the following definitions shall apply:

"intermediary" means a person established in the Community appointed by the taxable person carrying out distance sales of goods imported from third territories or third countries as the person liable for payment of the VAT and to fulfil the obligations laid down in this special scheme in the name and on behalf of the taxable person;

"Member State of consumption" means the Member State where the dispatch or transport of the goods to the customer ends;

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"Member State of identification" means the following:

(a) where the taxable person is not established in the Community, the Member State in which he chooses to register;

(b) where the taxable person has established his business outside the Community but has one (1) or more fixed establishments therein, the Member State with a fixed establishment where the taxable person indicates he shall make use of this special scheme;

(c) where the taxable person has established his business in a Member State, that Member State;

(d) where the intermediary has established his business in a Member State, that Member State;

(e) where the intermediary has established his business outside the Community but has one (1) or more fixed establishments therein, the Member State with a fixed establishment where the intermediary indicates he shall make use of this special scheme.

For the purposes of sub-paragraphs (b) and (e), where the taxable person or the intermediary has more than one (1) fixed establishment in the Community he shall be bound by the decision to indicate the Member State of establishment for the calendar year concerned and the two (2) calendar years following;

"taxable person not established within the Community" means a taxable person who has not established his business in the territory of the Community and who has no fixed establishment there.

Distance sales of goods imported from third territories or third countries

2. For the purposes of this Section, distance sales of goods imported from third territories or third countries shall only cover goods, except goods subject to excise duty, in consignments of an intrinsic value not exceeding one-hundred and fifty euro (€ 150).

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Permission to use the special scheme

3. (1) The Commissioner shall permit the following taxable persons carrying out distance sales of goods imported from third territories or third countries to use this special scheme:

(a) any taxable person established in the Community carrying out distance sales of goods imported from third territories or third countries;

(b) any taxable person whether or not established in the Community carrying out distance sales of goods imported from third territories or third countries and who is represented by an intermediary established in the Community;

(c) any taxable person established in a third country with which the Union has concluded an agreement on mutual assistance similar in scope to Council Directive 2010/24/EU and Regulation (EU) No 904/2010 and who is carrying out distance sales of goods imported from that third country. Those taxable persons shall apply this special scheme to all their distance sales of goods imported from third territories or third countries.

(2) For the purposes of paragraph (b) of sub-item (1), any taxable person shall not appoint more than one (1) intermediary at the same time.

Chargeable event and chargeability of tax

4. For distances sales of goods imported from third territories or third countries on which VAT is declared under this special scheme, the chargeable event shall occur and VAT shall become chargeable at the time of supply. The goods shall be regarded as having been supplied at the time when the payment has been accepted.

Notification to the Commissioner

5. The taxable person making use of this special scheme or an intermediary acting on his behalf, shall state to the Commissioner when he commences or ceases his activity under this special scheme, or changes that activity in such a way that he no longer meets the conditions necessary for use of this special scheme. That information shall be communicated electronically.

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Information that shall be provided to the Commissioner

6. (1) The information which the taxable person not making use of an intermediary shall provide to the Commissioner before he commences the use of this special scheme, shall contain the following details:

(a) name;

(b) postal address;

(c) electronic address and websites;

(d) VAT identification number or national tax code number.

(2) The information which the intermediary shall provide to the Commissioner before he commences the use of this special scheme on behalf of a taxable person shall contain the following details:

(a) name;

(b) postal address;

(c) electronic address;

(d) VAT identification number.

(3) The information which the intermediary shall provide to the Commissioner in respect of each taxable person which he represents before that taxable person commences the use of this special scheme, shall contain the following details:

(a) name;

(b) postal address;

(c) electronic address and websites;

(d) VAT identification number or national tax code number;

(e) his individual identification number allocated in accordance with sub-item (3) of item 7.

(4) Any taxable person making use of this special scheme or, where applicable, his intermediary shall notify the Commissioner of any changes in the information provided.

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VAT identification number

7. (1) The Commissioner shall allocate to the taxable person making use of this special scheme an individual VAT identification number for the application of this special scheme and shall notify him of that number by electronic means.

(2) The Commissioner shall allocate to an intermediary an individual identification number and shall notify him of that number by electronic means.

(3) The Commissioner shall allocate an individual VAT identification number for the application of this special scheme to the intermediary in respect of each taxable person for which he is appointed.

(4) The VAT identification number allocated under sub-items (1), (2) and (3) shall be used only for the purposes of this special scheme.

Cancellation from identification register

8. (1) The Commissioner shall delete the taxable person not making use of an intermediary from the identification register in the following cases:

(a) if he notifies the Commissioner that he no longer carries out distance sales of goods imported from third territories or third countries;

(b) if it may otherwise be assumed that his taxable activities of distance sales of goods imported from third territories or third countries have ceased;

(c) if he no longer meets the conditions necessary for use of this special scheme;

(d) if he persistently fails to comply with the rules relating to this special scheme.

(2) The Commissioner shall delete the intermediary from the identification register in the following cases:

(a) if for a period of two (2) consecutive calendar quarters he has not acted as an intermediary on behalf of a taxable person making use of this special scheme;

(b) if he no longer meets the other conditions

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necessary for acting as an intermediary;

(c) if he persistently fails to comply with the rules relating to this special scheme.

(3) The Commissioner shall delete the taxable person represented by an intermediary from the identification register in the following cases:

(a) if the intermediary notifies the Commissioner that this taxable person no longer carries out distance sales of goods imported from third territories or third countries;

(b) if it may otherwise be assumed that the taxable activities of distance sales of goods imported from third territories or third countries of this taxable person have ceased;

(c) if this taxable person no longer meets the conditions necessary for use of this special scheme;

(d) if this taxable person persistently fails to comply with the rules relating to this special scheme;

(e) if the intermediary notifies the Commissioner that he no longer represents this taxable person.

Submission of VAT return

9. The taxable person making use of this special scheme or his intermediary shall submit by electronic means to the Commissioner a VAT return for each month, whether or not distance sales of goods imported from third territories or third countries have been carried out. The VAT return shall be submitted by the end of the month following the end of the tax period covered by the return.

Where a VAT return shall be submitted in accordance with this item, the Commissioner shall not impose, for VAT purposes, any additional obligation or any other formality upon importation.

Details and adjustments that shall be included in VAT return

10. (1) The VAT return shall show the VAT identification number referred to in item 7 and, for each Member State of consumption in which VAT is due, the total value,

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exclusive of VAT, of distance sales of goods imported from third territories or third countries for which VAT has become chargeable during the tax period and the total amount per rate of the corresponding VAT. The applicable rates of VAT and the total VAT due shall also be indicated on the return.

(2) Where any amendments to the VAT return are required after its submission, such amendments shall be included in a subsequent return within three (3) years of the date on which the initial return was required to be submitted pursuant to item 9. That subsequent VAT return shall identify the relevant Member State of consumption, the tax period and the amount of VAT for which any amendments are required.

Reporting currency

11. The VAT return shall be made out in euro.

If the supplies have been made in other currencies, the taxable person making use of this special scheme or his intermediary shall, for the purposes of completing the VAT return, use the exchange rate applying on the last date of the tax period. The conversion shall be made by applying the exchange rates published by the European Central Bank for that day, or, if there is no publication on that day, on the next day of publication.

Payment of the tax

12. The taxable person making use of this special scheme or his intermediary shall pay the VAT, making reference to the relevant VAT return at the latest at the expiry of the deadline by which the return shall be submitted.

Payment shall be made to a bank account denominated in euro, designated by the Commissioner.

Deduction of input tax

13. The taxable person making use of this special scheme may not, in respect of his taxable activities covered by this special scheme, deduct VAT incurred in the Member States of consumption pursuant to Article 168 of Council Directive 2006/112/EC. Notwithstanding Article 1(1) of Directive 86/560/EEC and Article 2(1) and Article 3 of Directive 2008/9/EC, the taxable person in question shall be refunded in accordance with those Directives. Article 2(2) and (3) and Article 4(2) of

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Directive 86/560/EEC shall not apply to refunds relating to goods covered by this special scheme.

If the taxable person making use of this special scheme is required to be registered in a Member State for activities not covered by this special scheme, he shall deduct VAT incurred in that Member State in respect of his taxable activities which are covered by this special scheme in the VAT return that shall be submitted pursuant to Article 250 of Council Directive 2006/112/EC.

Records

14. (1) The taxable person making use of this special scheme shall keep records of the transactions covered by this special scheme. An intermediary shall keep records for each of the taxable persons he represents. Those records shall be sufficiently detailed to enable the tax authorities of the Member State of consumption to verify that the VAT return is correct.

(2) The records referred to in sub-item (1) shall be made available electronically on request to the Member State of consumption and to the Commissioner.

Those records shall be kept for a period of ten (10) years from the end of the year during which the transaction was carried out.".

Substitutes Part Eight of the Fourteenth Schedule.

3. Part Eight of the Fourteenth Schedule, shall be substituted by the following:

"Part Eight

Special arrangements for declaration and payment of import VAT

Permission to use the special arrangement

1. Where, for the importation of goods, except goods subject to excise duties, in consignments of an intrinsic value not exceeding one-hundred and fifty euro (€150), the special scheme in Section 4 of Part Seven of this Schedule is not used, the Commissioner shall permit the person presenting the goods to Customs on behalf of the person for whom the goods are destined within Malta to make use of special arrangements for declaration and payment of import VAT in respect of goods for which the dispatch or transport ends in Malta.

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Liability and collection of the tax

2. (1) For the purpose of this special arrangement, the following shall apply:

(a) the persons for whom the goods are destined shall be liable for the payment of the VAT;

(b) the person presenting the goods to Customs in Malta shall collect the VAT from the person for whom the goods are destined and effect payment of such VAT.

(2) The Commissioner shall establish an administrative procedure to be followed by the person presenting the goods to Customs by which that person should take appropriate measures to ensure that the correct tax is paid by the person for whom the goods are destined.

Reporting, payment and records

3. (1) The person presenting the goods to Customs under this special arrangement shall report electronically the VAT collected from the persons for whom the goods are destined in a monthly declaration. The declaration shall include the total VAT collected during the relevant calendar month.

(2) The Commissioner shall require that the VAT referred to in sub-item (1) be payable monthly by the deadline for payment applicable to the payment of import duty.

(3) The persons making use of this special arrangement shall keep records of the transactions covered by this special arrangement for a period of at least three (3) years and that period shall start to run from the end of the year in which the customs declarations for release for free circulation are accepted. Those records shall be sufficiently detailed to enable the Commissioner or the Comptroller of Customs to verify that the VAT declared is correct and be made available electronically on request to the Commissioner or the Comptroller of Customs as the case may be.".

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