

L.N. 132 of 2009**VALUE ADDED TAX ACT
(CAP. 406)****Value Added Tax (Fourteenth Schedule) (Amendment)
Regulations, 2009**

IN virtue of the powers conferred by articles 57 and 75 of the Value Added Tax Act, the Minister of Finance, the Economy and Investment has made the following regulations:

1. (1) The title of these regulations is the Value Added Tax (Fourteenth Schedule) (Amendment) Regulations, 2009 and these 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 Schedule”.

Citation and scope.

(2) These regulations bring into force the provisions of Council Directive 2008/8/EC of the 12th February 2008 amending Council Directive 2006/112/EC as regards the place of supply of services.

2. As of the 1st January, 2010, paragraphs (2) and (3) of item 1 in Part Seven of the Schedule shall be substituted as follows:

Substitutes paragraphs (2) and (3) of item 1, Part Seven of the Schedule as of the 1st January, 2010.

“(2) “Electronic services” and “electronically supplied services” means those services referred to in paragraph (2) of item 10, Part Two of the Third Schedule to the Act.

(3) “Member State of consumption” means the Member State in which the supply of electronic service is deemed to take place in accordance with paragraph (1) of item 10, Part Two of the Third Schedule to the Act.”.

3. As of the 1st January 2015, Part Seven of the Schedule shall be substituted as follows:

Substitutes Part Seven of the Schedule as of the 1st January, 2015.

“Part Seven

**Special scheme for telecommunications, broadcasting or
electronic services supplied by taxable persons not established
within the Community**

Interpretation

1. In this Part, unless the context otherwise requires:

(a) “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 and who is not otherwise required to be identified for VAT purposes under Article 10 of the Act;

(b) “Member State of consumption” means the Member State in which the supply of the telecommunications, broadcasting or electronic services is deemed to take place according to item 10 (1) in Part Two of the Third Schedule to the Act;

(c) “telecommunications services” and “broadcasting services” mean the services referred to in points (a) and (b) of the first paragraph of item 10 (1) in Part Two of the Third Schedule to the Act;

(d) “electronic services” and “electronically supplied services” mean the services referred to in point (c) of the first paragraph of item 10 in Part Two of the Third Schedule to the Act;

(e) “VAT return” means the statement containing the information necessary to establish the amount of VAT due in each Member State.

2. The Commissioner shall permit any taxable person not established within the Community supplying telecommunications, broadcasting or electronic 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.

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

4. (1) The information which the taxable person not established within the Community must 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 number, if any;
- (e) a statement that the person is not identified for VAT purposes within the Community.

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

5. The Commissioner shall allocate to the taxable person not established within the Community an individual VAT identification number 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.

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 telecommunications, broadcasting or electronic services;
- (b) if it may otherwise be assumed that his taxable activities 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.

7. The taxable person not established within the Community shall submit by electronic means to the Commissioner a VAT return for each calendar quarter, whether or not telecommunications, broadcasting or electronic services have been supplied. The VAT return shall be submitted within 20 days following the end of the tax period covered by the return.

8. The VAT return shall show the identification number and, for each Member State of consumption in which VAT is due, the total value, exclusive of VAT, of supplies of telecommunications, broadcasting and electronic services 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 must also be indicated on the return.

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 exchange rates shall be those published by the European Central Bank for that day, or if there is no publication for that day, on the next day of publication.

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, however, at the expiry of the deadline by which the return must be submitted.

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

11. A taxable person not established within the Community making use of the scheme shall, instead of making the deductions under article 23 of this Act, upon application, be granted a refund, under such conditions and subject to such limitations as the Minister may by regulations prescribe.

12. (1) The taxable person not established within the Community shall keep records of the transactions covered by this special scheme. Those records must 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 paragraph (1) must be made available electronically on request to the Commissioner and to the Member State of consumption.

Those records must be kept for a period of ten years from the end of the year during which the transaction was carried out.”.

4. As of the 1st January 2015, immediately after Part Seven of the Schedule, there shall be added the following new part:

Adds new Part Eight to the Schedule as of the 1st January, 2015.

“Part Eight

Special scheme for telecommunications, broadcasting or electronic services supplied by taxable persons established within the Community but not in the Member State of consumption

Interpretation

1. In this Part, unless the context otherwise requires:

(a) “taxable person not established in the Member State of consumption” means a taxable person who has established his business in the territory of 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;

(b) “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 fixed establishment therein, the Member State of identification shall be the Member State with a fixed establishment where that taxable person indicates that he will make use of this special scheme. The taxable person shall be bound by this decision for the calendar year concerned and the two calendar years following.

(c) “Member State of consumption” means the Member State in which the supply of the telecommunications,

broadcasting or electronic services is deemed to take place according to item 10 (1) in Part Two of the Third Schedule to the Act;

(d) “telecommunications services” and “broadcasting services” mean the services referred to in points (a) and (b) of the first paragraph of item 10 (1) in Part Two of the Third Schedule to the Act;

(e) “electronic services” and “electronically supplied services” mean the services referred to in point (c) of the first paragraph of item 10 (1) in Part Two of the Third Schedule to the Act;

(f) “VAT return” means the statement containing the information necessary to establish the amount of VAT due in each Member State.

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

3. The taxable person not established in the Member State of consumption 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 electronically.

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.

5. The Commissioner shall exclude the taxable person not established in the Member State of consumption from this special scheme in any of the following cases:

- (a) if he notifies that he no longer supplies telecommunications, broadcasting or electronic services;
- (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.

6. The taxable person not established in the Member State of consumption shall submit by electronic means to the Commissioner a VAT return for each calendar quarter, whether or not telecommunications, broadcasting or electronic services have been supplied. The VAT return shall be submitted within 20 days following the end of the tax period covered by the return.

7. The VAT return shall show the identification number referred to in item 4 of this Part and, for each Member State of consumption in which VAT is due, the total value, exclusive of VAT, of supplies of telecommunications, broadcasting or electronic services carried out during the tax period and the total amount per rate of the corresponding VAT. The applicable rates of VAT and the total VAT due must also be indicated on the return.

Where the taxable person has one or more fixed establishments, other than that in Malta, from which the services are supplied, the VAT return shall in addition to the information referred to in the first paragraph include the total value of supplies of telecommunications, broadcasting or electronic services covered by this special scheme, 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.

8. 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 in the Member State of consumption shall,

for the purpose of completing the VAT return, use the exchange rate applying on the last day of the tax period. The exchange rates shall be those published by the European Central Bank for that day, or if there is no publication for that day, on the next day of publication.

9. The taxable person not established in the Member State of consumption shall pay the VAT, making reference to the relevant VAT return, when submitting the VAT return, at the latest, however, at the expiry of the deadline by which the return must be submitted.

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

10. The taxable person not established in the Member State of consumption making use of this special scheme may not, in respect of his taxable activities covered by this scheme, deduct VAT pursuant to article 23 of this Act. Notwithstanding this, upon application, the taxable person in question shall be granted a refund under such conditions and subject to such limitations as the Minister may by regulations prescribe.

If the taxable person not established in the Member State of consumption making use of this special scheme also carries out in the Member State of consumption activities not covered by this scheme in respect of which he is obliged to be registered for VAT purposes, he shall deduct VAT in respect of his taxable activities which are covered by this scheme in the VAT return to be submitted in the Member State of consumption.

11. (1) The taxable person not established in the Member State of consumption shall keep records of the transactions covered by this special scheme. Those records must 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 paragraph (1) must be made available electronically on request to the Member State of consumption and to the Commissioner.

Those records must be kept for a period of 10 years from 31 December of the year during which the transaction was carried out.”.

