

L.N. 234 of 2001

**VALUE ADDED TAX
(CAP. 406)**

**Value Added Tax (Amendment of Fifteenth Schedule)
(No. 2) Regulations, 2001**

IN exercise of the powers conferred by articles 57 and 75 of the Value Added Tax hereinafter referred to as "the Act", the Minister of Finance has made the following regulations:

Citation.

1. The title of these regulations is the Value Added Tax (Amendment of Fifteenth Schedule) (No. 2) Regulations, 2001, and shall be read and construed as one with the Fifteenth Schedule to the Value Added Tax Act, which Fifteenth Schedule is hereinafter being referred to in these regulations as "the Schedule".

Amends the 15th
Schedule to the Act.

2. For Part B of the Schedule, there shall be substituted the following new Part:

"Part B

Articles 57 and 75

Second-hand goods, works of art, collectors' items and antiques

Interpretation

1. In this Part unless the context otherwise requires:

(1) "works of art" means -

(a) paintings, drawings and pastels executed by hand, other than hand-painted or hand-decorated manufactured articles;

(b) original engravings, prints and lithographs produced in limited numbers;

(c) original sculptures and statuary, in any material, and sculpture casts the production of which is limited to eight copies;

(d) tapestries and wall textiles made by hand from original designs provided by artists provided that there are not more than eight copies of each.

(2) “collectors’ items” means:

(a) postage or revenue stamps, postmarks, first day covers, pre-stamped stationery and the like, franked, or if unfranked not being of legal tender and not being intended for use as legal tender;

(b) collections and collectors’ pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological, palaeontological, ethnographic or numismatic interest.

(3) “antiques” means objects other than works of art or collectors’ items which are more than 100 years old.

(4) “second-hand goods” means tangible movable property that is suitable for further use as it is or after repair, other than works of art, collectors’ items or antiques and other than precious metals or precious stones.

(5) “second-hand goods dealer” means a registered person who, in the course of his economic activity, purchases or acquires for the purposes of his undertaking, or imports with a view to resale, second-hand goods and/or works of art, collectors’ items or antiques, whether that registered person is acting for himself or on behalf of another person pursuant to a contract under which commission is payable on purchase or sale.

(6) “auctioneer” means any registered person who, in the course of his economic activity, offers goods for sale by public auction with a view to handing them over to the highest bidder.

(7) “principal of an auctioneer” means any person who transmits goods to an auctioneer under a contract under which commission is payable on a sale subject to the following provisions:

(a) the auctioneer offers the goods for sale in his own name but on behalf of his principal;

(b) the auctioneer hands over the goods, in his own name but on behalf of his principal, to the highest bidder at a public auction.

Second-hand goods dealer

2. A second-hand goods dealer who makes supplies of second-hand goods, works of art, collectors’ items and antiques, shall charge and collect VAT on the profit margin, in accordance with the other provisions of this Part.

Supplies

3. The supplies of goods referred to in item 2 of this Part shall be supplies of second-hand goods, works of art, collectors' items and antiques, made by a second-hand goods dealer, which had been supplied to him in Malta:

- (a) by a non-registered person; or
- (b) by another registered person, in so far as the supply of goods by that other registered person is an exempt supply in terms of Part Two of the Fourth Schedule to the Act; or
- (c) by another registered person, in so far as that other registered person is classified as an exempt person and involves capital assets; or
- (d) by another second-hand goods dealer, in so far as the supply of goods by that other second-hand goods dealer was subject to value added tax in accordance with the other provisions of this Part.

Taxable Value

4. (1) The taxable value of the supplies of goods referred to in item 3 of this Part shall be the profit margin made by the second-hand goods dealer less the amount of value added tax relating to the profit margin. That profit margin shall be equal to the difference between the selling price charged by the second-hand goods dealer for the goods and the purchase price.

(2) For the purposes of paragraph (1) of this item:

- (a) "selling price" means everything which constitutes the consideration which has been, or is to be, charged by the second-hand goods dealer to the purchaser, including subsidies directly linked to that transaction, taxes, duties, levies and charges and incidental expenses such as commission, packaging, transport and insurance costs charged by the second-hand goods dealer to the purchaser but excluding discounts and repayment for expenses paid out in the name and for the account of the purchaser;
- (b) "purchase price" means everything which constitutes the consideration as defined in subparagraph (a) of this paragraph, paid, or to be paid, by the second-hand goods dealer to his supplier.

Applicable option

5. (1) Second-hand goods dealers shall have the option to apply the provisions of this Part, after having obtained the approval in writing of the Commissioner, in respect of supplies of:

(a) works of art, collectors' items or antiques which they have imported themselves;

(b) works of art supplied to them by their creators or their successors in title.

(2) Where a second-hand goods dealer exercises the option available under paragraph (1) of this item, such option shall cover, at least, two calendar years.

(3) Where a second-hand goods dealer exercises the option available under paragraph (1) of this item, the taxable value shall be determined in accordance with item 4 of this Part. Where the supplies refer to supplies to which subparagraph (a) of paragraph (1) of this item refers, the purchase price to be taken into account in calculating the profit margin shall be equal to the taxable value on importation, plus the value added tax due or paid on importation.

Input Tax

6. (1) Registered persons shall not be entitled to deduct the value added tax due or paid in respect of goods which have been, or are to be, supplied to them by second-hand goods dealers, where the supply of those goods has been subject to the provisions of this Part.

(2) Where the second-hand goods dealer accounts for value added tax in terms of the provisions of this Part, he shall not be entitled to claim back:

(a) value added tax due or paid in respect of works of art, collectors' items or antiques which he has imported himself;

(b) value added tax due or paid in respect of works which have been, or are to be supplied, to him by their creators or their successors in title;

(c) value added tax due or paid in respect of works of art which have been, or are to be, supplied to him by a registered person other than a second-hand goods dealer.

Separate accounting

7. Where a second-hand goods dealer makes supplies to which this Part refers and other supplies, he must keep separate accounts to distinguish between the supplies made to which this Part refers and those other supplies.

Purchase invoice

8. Where a supply of second-hand goods to a second-hand goods dealer has been made by a person who had not supplied the said goods in the course of an economic

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activity, such dealer shall issue a purchase invoice at the time when the said goods have been supplied to him, containing the following information:

- (a) the purchase invoice number;
- (b) the date of the purchase;
- (c) the name and address of the seller;
- (d) the name and address of the purchaser;
- (e) a description of the goods;
- (f) the total price paid;
- (g) a cross reference to the entry of the transaction in the purchaser's account books;
- (h) the signature of the seller.

Sales invoice

9. A second-hand goods dealer who makes any supply to which this Part refers shall not issue a tax invoice or any other document showing an amount as being tax or as being attributed to tax, but shall issue a sales invoice containing the following information and shall keep a copy thereof:

- (a) the sales invoice number;
- (b) the date of the sale;
- (c) the name, address and value added tax registration number of the seller;
- (d) the name and address of the purchaser;
- (e) a description of the goods;
- (f) the total price inclusive of tax;
- (g) a cross reference to the entry of the transaction in the seller's account books;
- (h) the following declaration signed by the seller: "I declare that no credit for input tax has or will be claimed by me in respect of the goods sold on this invoice."

Option available for second-hand goods dealers

10. (1) A second-hand goods dealer may account for value added tax in terms of the other provisions of the Act to any supply to which items 2 and 3 of this Part refer, without any reference to this Part.

(2) Where a second-hand goods dealer so opts in respect of:

(a) the supply of works of art, collectors' items or antiques which he has imported himself, he shall be entitled to claim back the value added tax due or paid on the importation of those goods;

(b) the supply of works of art supplied to him by their creator, he shall be entitled to claim back the value added tax due or paid for the work of art supplied to him;

(c) the supply of works of art supplied to him by a registered person other than a second-hand goods dealer, he shall be entitled to claim back the value added tax due or paid for the work of art supplied to him;

(3) The right to claim back input tax on supplies to which paragraph (1) of this item refers shall arise at the time of submitting the value added tax return.

Sales by public auction

11. (1) Where an auctioneer makes a supply of second-hand goods, works of art, collectors' items or antiques by public auction, acting in his own name, pursuant to a contract under which commission is payable on the sale of those goods by public auction, on behalf of:

(a) a non-registered person; or

(b) another registered person in so far as the supply of goods by that other registered person is made pursuant to a contract under which commission is payable on purchase or sale and is an exempt supply in terms of Part Two of the Fourth Schedule to the Act; or

(c) another registered person in so far as the supply of goods by that other registered person involves capital assets and is made pursuant to a contract under which commission is payable on purchase or sale and in so far as such other registered person is classified as an exempt person; or

(d) another second-hand goods dealer, in so far as the supply of goods by that other second-hand goods dealer is made pursuant to a contract under which commission is payable on purchase or sale and is subject to value added tax in terms of the other provisions of this Part;

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The taxable value of each supply of goods shall be that specified in the other paragraphs of this item.

(2) The taxable value of each supply of goods to which paragraph (3) of this item applies is the total amount invoiced to the purchaser by the auctioneer in accordance with paragraph (4) of this item, less:

(a) the net amount paid or to be paid by the auctioneer to his principal, determined in accordance with paragraph (3) of this item, and

(b) the amount of the tax due by the auctioneer in respect of that supply.

(3) The net amount paid or to be paid by the auctioneer to his principal shall be equal to the difference between:

(a) the price of the goods at the public auction, and

(b) the amount of the commission obtained or to be obtained by the auctioneer from his principal, under the contract whereby commission is payable on the sale.

(4) An auctioneer must issue to the purchaser a sales invoice containing the following information:

(a) the sales invoice number;

(b) the date of the sale;

(c) the name, address and value added tax registration number of the seller;

(d) the name and address of the purchaser;

(e) a description of the goods;

(f) the auction price of the goods;

(g) taxes, dues, levies and charges;

(h) incidental expenses such as commission, packing, transport and insurance costs charged by the auctioneer to the purchaser;

(i) reference to the entry of the transaction in the seller's account books;

(j) the following declaration signed by the seller: "I declare that no credit for input tax has or will be claimed by me in respect of the goods sold on this invoice."

The sales invoice shall not show any amount of value added tax separately.

(5) The auctioneer to whom the goods were transmitted under a contract whereby commission is payable on a public auction sale must issue an invoice to his principal, containing the following information:

- (a) a consecutive invoice number;
- (b) the date of the transaction;
- (c) the name and address of the principal;
- (d) the name, address and value added tax registration number of the auctioneer;
- (e) a description of the goods;
- (f) the amount of the transaction (i.e. the auction price of the goods less the amount of commission obtained or to be obtained from the principal;
- (g) the signature of the principal:

Provided that where the principal is a registered person, the invoice so drawn up shall serve as the tax invoice required to be issued in terms of the Thirteenth Schedule to the Act.

(6) Auctioneers who supply goods under the conditions laid down in paragraph (1) of this item, must indicate in the suspense account of their accounts:

- (a) the amounts obtained or to be obtained from the purchaser of the goods;
- (b) the amount reimbursed or to be reimbursed to the vendor of the goods.

The above amounts must be substantiated by the relevant documentation.

(7) The supply of goods by an auctioneer shall be deemed to be made at the time when the sale of those goods by public auction is effected.

Repossessed goods

12. Where any goods are repossessed –

- (a) under the terms of a finance agreement, or

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(b) by any insurer in the settlement of a claim under an insurance policy,
or

(c) by a mortgagee in terms of his rights under a mortgage over a ship or
aircraft,

and supplied by the person who repossessed them in the same condition as they
were in at the time they were repossessed, the said supply by that person shall be
treated as neither a supply of goods nor as a supply of services.”.