L.N. 100 of 1997

CUSTOMS AND EXCISE TAX ACT, 1997
(ACT NO. XII OF 1997)

Customs and Excise Tax (Sale of Products and Provision of Services) Regulations, 1997

IN exercise of the powers conferred by section 75 of the Customs and Excise Tax Act, 1997, hereinafter in these regulations referred to as "the Act", the Minister of Finance and Commerce has made the following regulations:–

Citation and commencement.

1. (1) These regulations may be cited as the Customs and Excise Tax (Sale of Products and Provision of Services) Regulations, 1997.

(2) These regulations shall come into force on the 1st July, 1997.

Interpretation.

2. Terms used in these regulations shall, unless the context otherwise requires, have the meaning assigned to them in the Act.

Sale or provision by an intermediary

3. When a sale or provision is made through an intermediary who acts in the name and for the account of another person and to the extent that the Director is satisfied that the sale or provision is made as aforesaid, that sale or provision shall be treated as a sale or provision made by that other person.

Exchange.

4. In a contract of exchange each of the parties shall be deemed to make a sale of any products and the provision of any services he gives pursuant to that contract.

Delivery on deferred terms.

5. The delivery of the possession of products pursuant to an agreement for the sale of those products on deferred terms shall be treated as a sale of those products.

Hire purchase.

6. The delivery of the possession of products pursuant to an agreement for the hire of those products for a certain period which expressly contemplates that the ownership of those products will be transferred at a time not later than the date on which an agreed price has been paid in full shall be treated as a sale of those products.

Supply of water, fuel, electricity and gas.

7. The supply of water, fuel, electric current and gas shall be treated as a supply of products.

Contract of works.

8. The delivery of products pursuant to a contract of works, whether or not the materials have been provided in full or in part by the customer, shall be treated as a sale of those products.

Judicial auction.

9. (1) Where any products forming part of the business assets of a business activity carried on by a person are sold by judicial auction pursuant to any proceedings exercised by a creditor or by creditors of that person, those assets shall be deemed to have been supplied by the debtor as a business sale.

(2) The Registrar of the court under the authority of which a sale to which paragraph (1) of this regulation applies shall, after notifying the person or persons appearing to be interested therein, remit to the Director from the proceeds lodged in court, with preference over any other person not having a prior claim to that of the Director as provided for in section 52 of the Act, the tax chargeable, if any, on the supply deemed to have been made in terms of the said paragraph.

(3) Any interested person may oppose the remittance referred to in paragraph (2) of this regulation by means of a writ of summons filed against the Director within six working days from the date of the notification referred to in the said paragraph.

(4) No bid *animo compensandi* shall be approved for the purposes of section 331 of the Code of Organisation and Civil Procedure unless the tax chargeable, if any, on the supply deemed to have been made in terms of paragraph (1) of this regulation has been lodged in court and remitted by the Registrar in accordance with paragraph (2) of this regulation.

Expropriation.

10. The transfer by order made by or in the name of a public authority or in pursuance of the law, of the ownership of products against payment of compensation shall be treated as a sale of those products.

Transfer of assets by a person to himself.

11. (1) Subject to the provisions of regulation 13 of these regulations, the transfer or disposal of assets forming part of the assets of the business activity of a registered person by or under the direction of the person carrying on that activity, whether or not a consideration is paid or payable, and including the transfer or disposal of such assets by that person to himself, shall be treated as a sale of those assets made for a consideration as part of the business activity of that person.

(2) Paragraph (1) of this regulation shall not apply-

(a) to a gift of products made in the course of that business activity, otherwise than as forming part of a series of gifts made to

the same person, where the cost to the donor is not more than twenty liri;

(b) to a gift of an industrial sample in a form not ordinarily available for sale to the general public.

Private use.

12. Subject to regulation 13 of these regulations, when products forming part of the assets of a business activity of a registered person are used by that person himself or by any other person for any purpose other than for the purpose of that business activity, whether or not a consideration is paid or payable, that registered person shall be treated as having made a sale of products for a consideration as part of his business activity.

Limitation of applicability of regulations 11 and 12.

13. Where no consideration is paid or payable for a transfer, disposal or use of products referred to in regulation 11 or 12 of these regulations, that transfer, disposal or use shall not be treated as a business sale made by a registered person unless that person was entitled to a refund in terms of subsection (5) of section 12 or subsection (2) of section 56 of the Act, in respect of the whole or part of the excise tax paid by him on the acquisition or importation of the said products or anything comprised in them.

Cessation of business.

14. (1) When a person ceases to be liable to be registered, any assets forming part of his business activity shall be treated as having been supplied for a consideration to himself before he had ceased to be liable to be so registered and the provisions of paragraph (1) of regulation 11, as subject to the provisions of regulation 13 shall apply accordingly.

(2) Paragraph (1) of this regulation shall not apply where the business activity is transferred as a going concern and the said transfer is, in terms of regulation 15 of these regulations, treated as neither a sale of products nor a provision of services.

Transfer of going concern.

15. The transfer by a registered person of assets of his business activity shall be treated as neither a sale of products nor a provision of services if -

(a) the assets are sold to a registered person to whom he transfers his business activity, or part of that activity which is capable of separate operation, as a going concern, and

(b) the said assets are to be used by the transferee in carrying on the same kind of business activity, whether or not as part of an existing activity, as that carried on by the transferor, and

(c) the said transfer is recorded in the records of the transferor, indicating the registration number of the transferee.

Intangible property.

16. Subject to the provisions of the Act, an assignment of any rights over property or of any intangible property whether or not it is the subject of a document establishing title is a provision of services.

Obligation to refrain from an act or to tolerate an act.

17. An obligation to refrain from an act or to tolerate an act or situation is a provision of services.

Ippubblikat mid-Dipartiment ta' l-Informazzjoni – 3, Pjazza Kastilja – *Published by the Department of Information – 3, Castille Place*
Mitbugh fl-Istamperija tal-Gvern – *Printed at the Government Printing Press*
Prezz 8c — *Price 8c*