



MALTA
**INSTITUTE
OF TAXATION**

PROFESSIONAL AWARD
IN TAXATION 2018/2019
MODULE D
LECTURE 10
PRACTICAL ASPECTS (2)

AGENDA

- VAT Returns and Other Notices
- Time Limits
- Examination of records
- Provisional Assessments
- Assessments
- Objections & Appeals
- Administrative penalties
- Interest
- Criminal Offences



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VAT return by a person registered under article 10

- Every person registered under article 10 is obliged to furnish to the Commissioner a tax return for every tax period by not later than the fifteenth day of the second month following the month during which that tax period ends
- Tax return must contain a declaration of the output tax, the input tax and any other declarations and particulars for that tax period that are required under the VAT Act and shall be furnished on such form as the Minister may by regulations prescribe
- Tax return is not deemed to have been filed unless it is full and complete in all material respects and unless resulting tax is paid



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Electronic submission

- Every person registered under article 10 may opt to submit the VAT return using the web portal of the VAT Department. This gives the taxpayer an extension of 7 days for the submission of the VAT return and relative payment of VAT
- Submission of electronic VAT return is currently only possible for persons registered under article 10
- Obligation to file electronically has recently been imposed on all companies as well as on other persons employing more than 10 employees



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Tax period

- The Commissioner allocates a tax period to every person registered under article 10
- Normally a tax period means a period of three calendar months commencing on the first day immediately following the end of the preceding tax period
- The first tax period for a person commences on the date that person is registered under article 10 and ends on such date as may be determined by the Commissioner



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**DIPARTIMENT TAT-TAXXA FUQ IL-VALUR MIŻJUD**

Centre Point Building, Triq Ta' Paris, Birkirkara BKR 4633
Tel: 21499330/4
E-mail: vat@gov.mt
Website: http://www.vat.gov.mt

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Nru. tal-VAT: _____

KUMMERĊ INTRA-KOMUNITARJU U NON-EU	VALUR - €	OUTPUT TAX - €
Provvisti IK ta' oġġetti eżenti u provvisti ta' servizzi fejn il-klijent hu responsabbli għal hias tal-VAT *	1	XEJN
Provvisti ta' oġġetti u servizzi fejn il-lok tal-provvista jkun barra minn Malta - EU u barra l-EU *	2	XEJN
Akkwisti IK ta' oġġetti u servizzi mixtrija minn Stati Membri oħra *	3	6
Oġġetti u servizzi li rċevajt li l-lok tal-provvista tagħhom hu Malta hief dawk imniżżla f'Kaxxa 3 *	4	7
SUB-TOTAL	5	8
REVERSE CHARGE	VALUR - €	INPUT TAX - €
Akkwisti IK ta' oġġetti għall-bejgħ *	9	13
Servizzi mixtrija minn Stati membri oħra fejn il-klijent hu responsabbli għal hias tal-VAT *	9A	13A
Akkwisti IK ta' oġġetti ta' natura kapitali *	10	14
Oġġetti u servizzi li rċevajt li l-lok tal-provvista tagħhom hu Malta *	11	15
SUB-TOTAL	12	16
BEJGħ DOMESTIKU U ESPORTAZZJONI	VALUR - €	OUTPUT TAX - €
Oġġetti/Servizzi Taxxabli bit-18%	18	23
Servizzi Taxxabli bis-7%	18A	23A
Oġġetti/Servizzi Taxxabli bit-5%	19	24
Eżentati bi kreditu/Esportazzjonijiet	20	XEJN
Eżentati bla kreditu	21	XEJN
SUB-TOTAL	22	
XIRI DOMESTIKU U IMPORTAZZJONI	VALUR - €	INPUT TAX - €
Oġġetti taxxabli għall-bejgħ bit-18%	27	34
Oġġetti taxxabli għall-bejgħ bit-5%	28	35
Xiri ta' oġġetti eżentati għall-bejgħ	29	XEJN
Infliq Kapitali	30	36
Servizzi u Spejjeż bit-18%	31	37
Servizzi u Spejjeż bis-7%	31A	37A
Servizzi u Spejjeż bit-5%	32	38
SUB-TOTAL	33	

Jien, _____ (Isim s'Nih b'ITTRI KBAR) Nru. I D: _____
niddikjara li d-dettalji u l-informazzjoni provduti huma korretti u sħaħ. Tel: _____
Firma: _____ Kariga: _____ Data: / /

SLIP TAL-HLAS

(timtela' meta l-hlas isir fid-Dipartiment fi flus jew ċekk):

Ammont Dovut (kaxxa 45): € _____ Ammont imħallas: € _____
Bank _____ Nru.tal-Kont: _____ Nru.taċ-ċekk: _____

KOPJA TAD-DIPARTIMENT

* Ara n-noti fuq wara tal-kopja s-safra.

DENUNZJA TA' TAXXA

Skont l-Artiklu 27 ta' l-Att dwar it-Taxxa fuq il-Valur Miżjud, Kap.406

Id-denunzja tista' tintbagħat permezz tas-sit elettroniku www.vat.gov.mt

Bidu:	
Tmiem:	
Data ta' l-Għeluq:	

Denunzja b'dettalji nieqsa hija nvalida u tintbagħat lura.

TIMBRU
TAL-BANK

Komputazzjoni tat-Taxxa**(KAXXA 8 - KAXXA 16)****17 €****(KAXXI 23 + 23A + 24)****25 €****(KAXXA 17 + KAXXA 25)****26 €****(KAXXI 34+35+36+37+37A+38)****39 €**

Aggustament ta' VAT favur id-Dipartiment

40 €

Aggustament favur il-persuna Registrata

41 €**EĊĊESS TA' KREDITU****(KAXXA 39 - 26)+(KAXXA 41 - 40)****42 €****(KAXXA 26 - 39)+(KAXXA 40 - 41)****43 €****KREDITU TA' QABEL****44 €****TAXXA LI TRID TITHALLAS****(KAXXA 43 - KAXXA 44)****45 €**

Formola tal-VAT 003/2011



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Extract of the VAT return

KUMMERĊ INTRA-KOMUNITARJU U NON-EU		VALUR - €		OUTPUT TAX - €
Provvisti IK ta' oġġetti eżenti u provvisti ta' servizzi fejn il-klijent hu responsabbli għal hlas tal-VAT *	1			XEJN
Provvisti ta' oġġetti u servizzi fejn il-lok tal-provvista jkun barra minn Malta - EU u barra l-EU *	2			XEJN
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Oġġetti u Servizzi li rċevejt li l-lok tal-provvista tagħhom hu Malta hliet dawk imniżżla f'Kaxxa 3 *	4		7	
SUB-TOTAL	5		8	
REVERSE CHARGE		VALUR - €		INPUT TAX - €
Akkwisti IK ta' oġġetti għall-bejgħ *	9		13	
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Oġġetti u servizzi li rċevejt li l-lok tal-provvista tagħhom hu Malta *	11		15	
SUB-TOTAL	12		16	



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Oġġetti/Servizzi Taxxabbli bil-5%	19		24
Eżentati bi kreditu/Esportazzjonijiet	20		XEJN
Eżentati bla kreditu	21		XEJN
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SUB-TOTAL	33		

(KAXXI 23 + 23A + 24)

25 €

(KAXXA 17 + KAXXA 25)

26 €

(KAXXI 34+35+36+37+37A+38)

39 €

Agġustament ta' VAT favur id-Dipartiment

40 €

Agġustament favur il-persuna Reġistrata

41 €

EĊĊESS TA' KREDITU

(KAXXA 39 - 26) + (KAXXA 41 - 40)



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Other notices

- Various notices and forms are applicable in different circumstances
- Statutory forms prescribed in LN364 of 2009
- Include:
 - Application for registration
 - Recapitulative statement
 - form to be presented with the payment of the tax on intra-Community acquisitions or on services supplied to persons registered under article 12 of the Act
- Different forms carry different deadlines



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Recapitulative statements

- Recap statements are required to report
 - exempt intra-Community supplies of goods
 - supplies of services made to EU customers who are liable to pay VAT in their Member State of establishment
- Amounts reported in the recapitulative statement are, in general, equivalent to amount reported in Box 1 of the VAT return



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Recapitulative statements – a control mechanism

- Main purpose of the recap statement is to ensure that the customer does effectively account for reverse charged VAT in his country
 - Particularly relevant in cases where such customer does not have a right to deduct reverse charged input tax



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Recapitulative statements – administrative considerations

- Recap statement must be submitted electronically through www.vat.gov.mt
 - Requires a one time registration process
- A recap statement is only required if qualifying transactions are performed – no obligation to file nil statements
- Recap statement must be filed on a calendar quarterly basis
 - However in the case of ICS of goods >€50k per quarter, then recap must be submitted monthly



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Information required for recapitulative statement

Declaration Details			
Year	<input type="text"/>	For Period	<input type="text"/>
Submission Basis	<input type="text"/>	Due Date	<input type="text"/>
Foreign Customer Details			
Country	<input type="text"/>	Triangular Trade	<input type="text"/>
VAT Number	<input type="text"/>	Name & Surname	<input type="text"/>
Goods (EUR)	<input type="text"/>	Services (EUR)	<input type="text"/>

☐ NIL Declaration



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Examination of records

- Commissioner may request taxable persons all records and information relating to their economic activity
- Records and information may be requested within a period of six years from the end of the year to which these relate
- Where such person fails to produce records as requested, he will not be allowed to produce such records after the issue of provisional assessments or assessments or before the VAT Appeals Tribunal or in any Court of law
 - Extended time period in respect of capital goods



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Powers of the Commissioner to examine records

- Any person to whom a tax invoice, receipt or other document has been provided must, on request by the Commissioner, produce the said invoice, receipt or document
- For the purpose of ensuring compliance, officials of the VAT Department are empowered to:
 - Enter any premises where a business is carried out or where any goods, records and accounts are kept
 - Inspect and require the production of records relating to the business

...



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Powers of the Commissioner to examine records

...

- Require any person to give information (subject to the duty of professional secrecy) relating to a business
- To request the particulars of any person who is suspected to be in breach of the provisions of the Act
- To download information held in another Member State in case such person stores in that Member State invoices sent or received by electronic means



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Examination of records – special considerations

- Subject to the duty of professional secrecy, information from the following institutions can solely be requested for the purpose of ensuring compliance by these institutions with the provisions of the Act:
 - Licensed banks and licensed insurance companies
 - Persons licensed to carry on investment business
 - Licensed collective investment schemes and licensed stockbrokers



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Examination of records – special considerations

- Where a credit or financial institution grants credit ... to a customer in connection with the supply of goods or services by third parties to that customer for the construction, re-construction, repair, refurbishment or maintenance of immovable property or for fixtures related thereto, and which effects payments for such goods to the vendor ... vendor, that credit or financial institution must provide to the Department a list of the names and VAT registration numbers of those suppliers by not later than the end of the calendar quarter following the calendar quarter during which the said payments were made



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Assessments

- Power of the Commissioner to serve an assessment:
 - On a taxable person registered under article 10 where
 - a return has not been submitted
 - a return has been submitted
 - On any other person



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Assessments – where a return has not been submitted

- Where a person registered under article 10 does not furnish a tax return for a tax period, the Commissioner may issue an assessment of the tax due for that period as well as for the administrative penalty to which that person becomes liable
- However, when such an assessment has been issued, this does not relieve that person from the obligation to furnish the VAT return for that period



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Assessments – where a return has not been submitted

- Once the return has been submitted the assessment is cancelled without prejudice to the right of the Commissioner to issue further assessments
- The Commissioner may also institute criminal action. On conviction such person may be liable to a fine of not less than €700 and not more than €3,500 and to a further daily fine of not less than €5 until the return is submitted



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Assessments – where a return has been submitted

- Where the Commissioner has reason to believe that a tax return submitted by a person registered under article 10 does not contain a full and correct statement of the matters that are required to be declared therein, it may issue and serve a **provisional assessment** on that person
- A provisional assessment must indicate that it is a provisional assessment and that it may be followed by an assessment after the expiration of a period of not less than thirty days and not more than six months from the service of the provisional assessment



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Confirmation of provisional assessments

- After the expiration of the thirty day period, the Department may make an assessment of the output tax and the deductions of that person for that period and of the administrative penalty to which that person became liable
- An assessment issued as above may not contain any variations to the amounts specified in the provisional assessment except for:
 - variations agreed to by the said person
 - variations consisting of amounts shown in the provisional assessment that are equal to or closer to those declared in the relative tax return



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Assessments on multiple tax periods

- The Commissioner may attribute an assessment for a number of tax periods to a particular tax period, provided that the person subject to that aggregated assessment shall not have been made liable to more tax, administrative penalty or interest than he would have been liable to had the amounts been attributed to particular tax periods



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Assessments – on other persons

- Assessments of tax
 - When a person who is not registered under article 10 fails to pay any tax due by him
- Assessments of administrative penalties
 - When a person who is registered under article 11 becomes liable to an administrative penalty
 - When a person who is not registered under article 10 or 11 becomes liable to an administrative penalty



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Assessments– some general comments

- The powers of the Commissioner to make an assessment includes the power to make additional or revised assessments within the time limits allowed by the Act
- However, the Commissioner cannot re-open any matter that has been decided on appeal
- The VAT Appeals Board and Court of Appeal have confirmed that once the time for confirming a provisional assessment has elapsed, a new provisional assessment cannot be issued



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Assessments time limits (where no return has been filed)

- Where a return has not been submitted
 - An assessment relating to a tax period for which a return has not been furnished must be made by not later than six years from the end of the tax period to which the assessment relates



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Assessments time limits (where a return was filed)

- Where a return has been submitted
 - A provisional assessment relating to a tax period for which a return has been furnished must be made by not later than six years from the end of the tax period to which the assessment relates or from the date in which that return is submitted, whichever is the later
- However, when a provisional assessment relates to an adjustment of input tax on capital goods, the six years shall start to run after the lapse of five years in the case of capital goods and after twenty years in the case of immovable property



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Assessments time – other persons

- Assessment of tax on person not registered under article 10
 - six years from the date when that tax became due
- Assessment of administrative penalty on a person registered under article 11
 - six years from the end of the tax period to which it relates
- Assessment of administrative penalty on a person who is not registered under article 10 or 11
 - six years from the date when such administrative penalty became due



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Appeals and appealable matters

- Appeal against an assessment
 - Any person who is aggrieved by an assessment served upon him may appeal against that assessment to the Administrative Review Tribunal
- Other matters that may be referred to appeal
- Appeal to the Court of Appeal



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Other matters that may be referred to appeal

Any question, other than an assessment, relating to:

- The registration or cancellation thereof of a person under the Act
- any tax chargeable on a supply or acquisition (other than an assessment) and any deductions that can be claimed against such tax
- whether a transaction made is a taxable supply is a taxable supply, a taxable acquisition or a taxable importation
- any tax chargeable on the importation of goods
- the place, the time or the taxable value of a supply or acquisition



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Other matters that may be referred to appeal

- the amount of deductions allowable to a person registered under article 10
- any security required by the Commissioner in terms of the Act
- whether any refund of tax claimed by a person is due or not
- any question of law not falling under the above
- any other matter that may be referred to appeal in terms of the Act or any regulations made thereunder
- the imposition of any administrative penalty imposed for an incorrect tax return



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Powers of the Tribunal

- There shall be an Administrative Review Tribunal for the purpose of hearing and determining appeals and references made in accordance with articles 43 and 44.
- The Tribunal is competent to hear any appeal against an assessment and to confirm, reduce or increase the amount assessed, or to cancel such assessments
- The Tribunal is also competent to determine any other matter that may be referred to it in terms of articles 43 and 44 of the Act



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Procedure to appeal against an assessment of tax

- In order for an appeal to be valid, the following conditions must be fulfilled:
 - The return for the tax period relating to the assessment must have been filed and all tax not in dispute must have been paid
 - It is filed within 30 days from the date of service of the assessment
 - It is made in such form and in such manner as may be prescribed under the Administrative Justice Act
 - The payment of an administrative fee of €58



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Procedure on other matter that is referred to the Tribunal

- A reference to the Tribunal on any matter referred to in article 44 cannot be made unless it is first raised in correspondence with the Department
- A reference to the Tribunal relating to the imposition of an administrative penalty is to be made by not later than two years from the date when a notice of such administrative penalty was given



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Process – appeal against an assessment

- Within five working days from the filing of an appeal, the Secretary submits a copy to the Department who must reply in duplicate, within twenty days, stating the reasons for contesting the appeal
- The Tribunal appoints a day for the hearing of the appeal
- The onus of proving that any amount as assessed by the Commissioner is incorrect lies with the appellant.
- The Tribunal is empowered to summon witnesses, request the production of records and appoint legal or technical referees



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Process – appeal against an assessment

- However any persons employed by the appellant as well as his relatives cannot be called to give evidence except on the request of the appellant; and
- No person employed by the Department, other than the Commissioner, may be called to give evidence except on the request of the Commissioner
- After hearing all the evidence, the Tribunal delivers its decision in writing and sends a copy to the parties to the appeal



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Process – other matter referred to the Tribunal

- On receiving an appeal consisting in the reference of a question to it, a procedure similar to an appeal against an assessment is applicable
- Tribunal appoints the date of the hearing of the appeal and notify that date to the parties.
- After hearing the evidence of the parties who have an interest in the matter, the Tribunal decides on the matter and causes a copy of its decision to be served on the parties
- A reference can also be initiated by the Commissioner



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Process – other matter referred to the Tribunal (contd.)

- The Tribunal shall refrain from deciding such an appeal unless the appellant shows that he had, before making his application, referred the matter to the Commissioner in writing and that:
 - the Commissioner agreed that the question should be referred to the Tribunal, or
 - the Commissioner did not give a reply, or
 - the appellant feels aggrieved by the Commissioner's reply



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Appeals to the Court of Appeal

- Any of the parties to an appeal or to a reference to the Tribunal who feels aggrieved by a decision of the Tribunal may appeal to the Court of Appeal against that decision on ***any question of law*** only :
 - Appeal is made to the Court of Appeal (Inferior Jurisdiction) where total amount of tax, administrative penalty and interest under appeal is less than €1,500,000
- Such appeal must be made by means of an application to the Court of Appeal to be filed within thirty days from the date on which the decision to be appealed is notified to the party



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Administrative penalties

- Administrative penalties are applicable in the case of
 - Incorrect tax return
 - Late Registration or failure to give notice
 - Failure to submit return or other declarations
 - Other situations
- Subject to mitigation in certain circumstances
- Late payment of tax is also subject to interest



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Administrative penalties – incorrect tax return

- The administrative penalty for an understatement of output tax or an overstatement of input tax is an amount of twenty per cent of:
 - the understatement of the output tax in the return; and
 - the overstatement of the input tax in that return
- Where a person corrects an understatement or overstatement as referred to above before he is served with an assessment, the administrative penalty shall be an amount of ten per cent



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Administrative penalties – late registration/failure to give notice

- Any person who, being required to apply for registration under article 10, fails to do so within the prescribed time becomes liable to an administrative penalty equivalent to the higher of:
 - one per cent of the tax due in the first return following registration; and
 - €20
- for every month or part thereof from the date on which the application should have been made and the date on which the application is made



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Administrative penalties – late registration/failure to give notice

- Where the excess, if any, of the output tax over the deductions for the first tax period following registration is €2,000 or less, such administrative penalty shall not exceed €250
- Where the excess of the output tax over the deductions for the first tax period following registration is more €2,000 such administrative penalty shall not exceed 20% of such excess.



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Administrative penalties – failure to submit return or declaration

- Any person registered under article 10 who fails to submit a tax return within the prescribed time-limit becomes liable to an administrative penalty equivalent to the higher of:
 - one per cent of the tax due for that period; and
 - €20
- for every month or part thereof from the date on which the return should have been submitted and the date when it is furnished to the Department
- However, such administrative penalty shall in no case exceed €250 for each return submitted late



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Administrative penalties – failure to submit return or declaration

- Any person registered under article 11 who fails to submit *the simplified tax return* as prescribed, any person registered under article 12 who fails to submit declarations about his intra-community acquisitions and any taxable person who fails to submit a recapitulative statement becomes liable to an administrative penalty of €10 for every month or part thereof from the date on which those declarations should have been submitted and the date when these furnished to the Commissioner
- Maximum penalty €120 for each declaration submitted late



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Administrative penalties – failure to submit notice (one example)

- Any person who fails to inform the Commissioner within the prescribed time-limit that he does not qualify to remain registered under article 11 becomes liable to an administrative penalty equivalent to the higher of:
 - ten per cent of the tax due for the first tax period following the cancellation under article 11; and
 - €100
- For every month or part thereof from the date on which he should have applied for the cancellation of such registration under article 11 and the date of cancellation by the Department (capped at €500)



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Mitigation of administrative penalties – incorrect tax return

- Where, during the course of an investigation carried out, a person co-operates with the Commissioner, enters into an agreement with the Commissioner and within one month from the signing of the agreement pays the tax due, the agreed administrative penalty and the interest due, the administrative penalty shall be reduced to ten per cent of the amount of tax due



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Waiving of administrative penalties

Article 42(1)

- No administrative penalty shall be due by a person for any default if that person proves that there is a ***reasonable excuse*** for the default;
- If the Commissioner is of the view that the default resulted from ***particular circumstances*** that merit a mitigation of the administrative penalty, he may, in his discretion, remit part of the administrative penalty for that default;
- If the Commissioner is of the view that the default resulted from a ***genuine mistake*** he may remit in whole or in part the administrative penalty for that default



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Reasonable excuse

- No definition of the term “reasonable excuse”
 - However
 - any insufficiency of funds to pay the tax due
 - reliance is placed on a third party, the fact of that reliance or dilatoriness on the part of that third party
 - do not constitute a reasonable excuse
- Discretion of the Commissioner to mitigate penalties under other scenarios (i.e. other than when there is a reasonable excuse) is not subject to appeal



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Interest

- Interest at the rate at the rate which the Minister shall prescribe is due on any tax for the period that such tax remains unpaid
- However, the running of interest on an amount of tax which is the merit of an appeal before the Tribunal, is suspended for the period that exceeds two months from the date of the last sitting of the Tribunal relating to that appeal and the date when a decision is given by the Tribunal or when a final judgement is delivered by the Court of Appeal, as the case may be



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Interest – subarticles 21(4A) and (4B)

- Where a VAT return is filed electronically, no interest is due if the tax is paid not later than 7 days from the due date of the said return
- Interest in a particular tax period shall cease to accrue where the total amount of payments appropriated to that tax period in terms of article 67 is equivalent to or exceeds the amount of tax payable for that tax period



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Criminal offences

- Failure to register
 - Failure to keep records as required by the Act
 - Failure to submit returns or failure to produce records
 - Failure to issue tax invoices or fiscal receipts
 - Obstruction of VAT officials
-
- A full list of criminal offences can be found in Part X of the Act (article 76 to article 84)



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Compromise penalty

- Where a taxable person has failed to keep records as required or has failed to issue a tax invoice or fiscal receipt, the Commissioner may impose a compromise penalty in lieu of criminal proceedings as follows:

• First offence	€200
• Second offence	€400
• Third offence	€800



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