MALTA INSTITUTE OF TAXATION

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Credit for Input Tax

Applying article 22(4)(c) of the VAT Act

In terms of article 22 of the VAT Act (CAP 406), input tax is deductible in so far as it is incurred in connection with purchases which have been or are intended to be wholly used in the course or furtherance of an economic activity. Specifically, the input tax credit of a person registered under article 10 is that input tax which is attributable to supplies listed in article 22(4):

(a) taxable supplies;
(b) exempt with credit supplies;
(c) supplies which take place outside Malta which would, if made in Malta, be treated under the provisions of this Act as taxable supplies or as exempt with credit supplies, or supplies taxed outside Malta which if made in Malta would have been treated as exempt without credit;
(d) operations exempt from VAT, relating to specific banking, financial services and insurance.

This information paper focuses on article 22(4)(c), specifically, the interpretation of *"supplies taxed outside Malta which if made in Malta would have been treated as exempt without credit"*.

When are supplies considered to be "taxed outside Malta" for the purposes of Article 22(4)(c)?

It is our understanding that the phrase "taxed outside Malta" means that the supply made by the person registered under article 10 is subject to VAT in another EU Member State, or to an equivalent tax in a third country.

What does the term "taxed" refer to?

We understand that the term 'taxed' refers to the following:

i. supplies made by a person registered under article 10 for which the said **supplier** is liable to charge and collect the VAT levied by the other jurisdiction (an example of such supplies would be a B2C supply of

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electronically supplied services which are taxable and taxed at the location of the Customer); and

ii. supplies made by a person registred under article 10 in respect of which the **customer** is liable for the VAT due in the other jurisdiction under the reverse charge mechanism (for example, this would refer to an intra-EU B2B supply of services which are taxable and taxed in terms of the reverse charge mechanism in the Member State of the Customer).

MIT members are reminded that all persons registered under article 10 are required to keep appropriate records of transactions.

In practice, in the scenario referred to in (i) above, the article 10 registered person claiming credit for input tax on the basis of the application of article 22(4)(c), would be expected to retain the relevant documentation evidencing the fact that the VAT or equivalent tax of the Member State/country where the supply took place was in fact appropriately charged, collected and reported in accordance with the requirements applicable in the said Member State/country where the supply took place. In the scenario referred to in (ii) above, we understand that the Office of the Commissioner for Revenue requires that the article 10 registered supplier obtains documentary evidence that the relevant VAT/equivalent tax has been self-accounted for by the customer.

We take this opportunity to remind MIT Members that the absence of the relevant evidence supporting a claim for credit of input tax could lead to an assessment raised by the Commissioner for Revenue pursuant to article 32 of the VAT Act.

It is our understanding that the above reflects the interpretation which is currently being applied in practice by the Office of the Commissioner for Revenue.

This notwithstanding, the above should not be construed as official guidance on the interpretation of article 22(4)(c) of the VAT Act, nor advice, and should not be relied upon as such. The possibility that a different interpretation may be applied in practice by the Office of the Commissioner for Revenue cannot be excluded.

Any comments or queries concerning the contents of this document should be addressed to the Chief Technical Officer on CTO@maintax.org or MIT@maintax.org

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