



MALTA  
INSTITUTE  
OF TAXATION

CERTIFICATE IN TAX  
COMPLIANCE 2022-  
2023

Part C – Value Added  
Tax

Lecture 1 –  
Introduction to VAT

Samantha Agius

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Date: 20 April 2023



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## AGENDA

- Introduction to VAT
- Scope of Taxation
- Place of Supply



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## INTRODUCTION TO VAT

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## INTRODUCTION

- Value Added Tax (VAT) is a consumption tax
- It is a tax on final consumption however it is a multistage tax (i.e. it is charged on supplies between business throughout the production and distribution chain)
- VAT is not a cumulative or cascade tax. Whilst it is charged to businesses at each stage of the production / distribution chain, it is (in most cases) neutral to business, and in fact businesses can recover the VAT they incur on business expenditure
- The final consumer bears the VAT cost but it is the responsibility of the VAT registered business to account for and pay the VAT to the VAT authorities



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## EU VAT FRAMEWORK

- Member States (MSs) are responsible for:
  - Transposing the provision of VAT Directive into national legislation
  - The correct application/ interpretation of EC VAT legislation within its territory
- MSs are bound by the provisions of implementing measures/ regulations
- Guidance from the VAT Committee
- Judgements of the Court of Justice of the European Union (CJEU)



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## LOCAL LEGISLATION AND GUIDANCE

- VAT Act (Chapter 406 of the Laws of Malta)
- Subsidiary Legislation (Legal Notice)
- Guidance issued by the VAT Department



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## INTRODUCTION TO MALTESE VAT LEGISLATION

- VAT was first introduced in Malta on 1 January 1995
- On 1 July 1997, this was replaced by a Customs and Excise Tax
- VAT was reintroduced on 1 January 1999 – Chapter 406 of the Laws of Malta
- Extensive amendments were made to this Act to bring it in line with EU legislation and to cater for the various derogations obtained during negotiations leading to Malta's accession to the EU



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# SCOPE OF TAXATION

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## SCOPE OF VAT ARTICLE 4

There shall be charged, levied and collected...a value added tax:

- On every supply of goods or of services
  - That takes place in Malta
  - For consideration
  - By a taxable person
  - Acting as such
- On every intra-community acquisition
  - Of goods made in Malta by persons registered under articles 10 / 12
  - Of new Means of Transport made into Malta by another person
  - Of excise goods made in Malta by a taxable person / non-taxable legal person
- On every importation made into Malta

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## SCOPE OF VAT

### ARTICLE 4

...on every supply of goods or of services that takes place in Malta made on or after 1 January 1999 for consideration by a taxable person acting as such other than a supply made by a person registered under article 11 or by a person who is exempted from registration under article 11, as the Minister may by regulations prescribe;



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## SCOPE OF VAT

### ARTICLE 4 – SUPPLY OF GOODS OR OF SERVICES

**Second Schedule** of the VAT Act provides clarifications and classification of certain supplies as either supplies of goods, services or otherwise

- Definition of supply of goods and of services
  - Supply of goods: *the right to dispose of tangible property as owner*
  - Supply of services: *a supply that is not a supply of goods*



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## SCOPE OF VAT

### ARTICLE 4 – SUPPLY OF GOODS

- *The supply of electricity, gas, heat or cooling energy and other sources of energy*
- *The transfer of an asset which is immovable property by definition of the law*
- *Delivery of possession of goods pursuant to an agreement for the sale of those goods on deferred terms*
- *Hire purchase*
- *Transfer of goods under a contract for commission*



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## SCOPE OF VAT

### ARTICLE 4 – SUPPLY OF SERVICES

- *An emphyteutical grant for a period not exceeding 50 years*
- *Contract of works*
- *An obligation to refrain from an act or to tolerate an act or situation*
- *The provision by a person of goods for the purpose and in the course of maintenance or repair services supplied by that person*



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## SCOPE OF VAT

### TRANSFER OF A GOING CONCERN

*The transfer by a person of assets of his economic activity shall be treated as **neither a supply of goods nor a supply of services** if:*

- a) the assets are transferred to a person registered under article 10 to whom he transfers his economic activity, or part of that economic activity which is capable of separate operation, as a going concern;*
- b) the said assets are to be used by the transferee in carrying on the same kind of activity, whether or not as part of an existing economic 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*



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## SCOPE OF VAT

### ARTICLE 4 – THAT TAKE PLACE IN MALTA

- **Third Schedule** of the VAT Act
- The determination of the place of supply of goods and services is one of the most important matters in VAT law as it determines:
  - in which MS a taxable person is deemed to be carrying out his economic activity and by consequences if he is obliged to register for VAT purposes in that MS;
  - in which MS VAT is to be accounted for and paid



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## SCOPE OF VAT

### ARTICLE 4 – FOR CONSIDERATION

- Consideration is any form of payment for a supply, whether the payment is monetary or in kind
- There must be a direct link between the supply and the consideration (CJEU Case 102/86 *Apple and Pearl Development Council*)
- The taxable basis for a supply of goods within the EC VAT Directive is made up of everything which is received directly in connection with the supply and represents the consideration for it, the latter being a subjective value which must be capable of being expressed in monetary terms (CJEU Case 230/87 *Naturally Yours*)



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## SCOPE OF VAT

### ARTICLE 4 – BY A TAXABLE PERSON

- Taxable Person means a person who carries on an economic activity, whatever the purpose or result of that activity
  - Includes a physical person, a body of persons, a public authority and any entity capable of carrying on an economic activity
  - Other than an employee and public authority



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## SCOPE OF VAT

### ARTICLE 4 – BY A TAXABLE PERSON

- An employee is an individual bound to an employer by a contract of employment or by other legal ties creating the relationship of employer and employee as regards working conditions, remuneration and the employee's liability and includes the holder of an office
- Activities of a public authority acting in the exercise of the functions assigned to it by law shall not be deemed to be an economic activity except as and to the extent provided in the First Schedule and except where such treatment as non-taxable persons would lead to significant distortions in competition



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## SCOPE OF VAT

### ARTICLE 4 – BY A TAXABLE PERSON

- San Domenico Vetraria SpA v Agenzia delle Entrate C-94/19

The CJEU essentially confirmed that the lending or secondment of staff by a parent company to its subsidiary, carried out in return for the mere reimbursement of the related costs, generally constitute a (taxable) supply for consideration falling within the scope of VAT



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## SCOPE OF VAT

### ARTICLE 4 – BY A TAXABLE PERSON

- Economic activity means an activity carried on by a person, other than an employee acting as such, and consisting of any one or more of the following:
  - any trade or business;
  - any profession or vocation and the provision of any personal services (excl. employment);
  - the exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis;
  - the provision by a club, association or organisation (for a subscription or other consideration) of the facilities or advantages available to its members;
  - the admission, for a consideration, of persons to any premises



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## SCOPE OF VAT

### ARTICLE 4 – ACTING AS SUCH

- A taxable person must be acting in his capacity as a taxable person in order for the supply to fall within the scope of Malta VAT
- A supply of goods and / or services in a private capacity is not subject to VAT

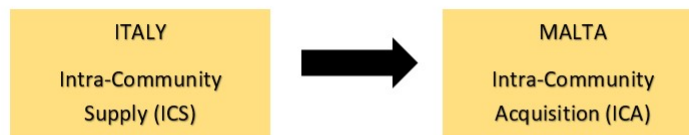


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## SCOPE OF VAT

### ARTICLE 4 – INTRA-COMMUNITY ACQUISITIONS

- *...on every intra-community acquisition made for consideration on or after the accession date in Malta*



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## SCOPE OF VAT

### ARTICLE 4 – INTRA-COMMUNITY ACQUISITIONS

*An intra-community acquisition is:*

- *the acquisition of the right to dispose as owner of goods which are transported by / on behalf of the supplier or the person acquiring them from a MS to the person acquiring them in another MS*
- *the use in a MS by a taxable person for the purpose of his economic activity of goods transported by him or on his behalf from another MS within the territory of which those goods were produced, extracted, purchased, acquired or imported by him for the purpose of his economic activity, where the transport of those goods would, if made from Malta to another MS be treated as a deemed ICA in accordance with item 17 of the Second Schedule*
- *the acquisition by a non-taxable legal person of goods imported by that person into the Community and transported to a MS other than the State of importation*



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## SCOPE OF VAT

### ARTICLE 4 – IMPORTATIONS

- ...on every importation that takes place in Malta

*Importation means:*

- the entry into Malta before the accession date of goods transported from any other country
- the entry into the Community on or after the accession date of goods transported from a third territory (non-EU territory)



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## PLACE OF SUPPLY

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## PLACE OF SUPPLY

### DEFAULT RULE FOR THE PLACE OF SUPPLY OF **B2B SERVICES**

- The place of supply of services to a taxable person acting as such shall be the place where that person has established his business
- However if those services are provided to a fixed establishment of the taxable person located in a different place, the place of supply of those services shall be the place where that fixed establishment is located
- In the absence of a place of establishment or fixed establishment, the place of supply of services shall be the place where the customer has his permanent address or usually resides



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## PLACE OF SUPPLY

### DEFAULT RULE FOR THE PLACE OF SUPPLY OF **B2C SERVICES**

- The place of supply of services to a non-taxable person shall be the place where the supplier has established his business
- However, if those services are provided from a fixed establishment of the supplier located in a different place, the place of supply of those services shall be the place where that fixed establishment is located
- In the absence of such place of establishment or fixed establishment, the place of supply of services shall be the place where the supplier has his permanent address or usually resides



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## PLACE OF SUPPLY

### BUSINESS ESTABLISHMENT VERSUS FIXED ESTABLISHMENT

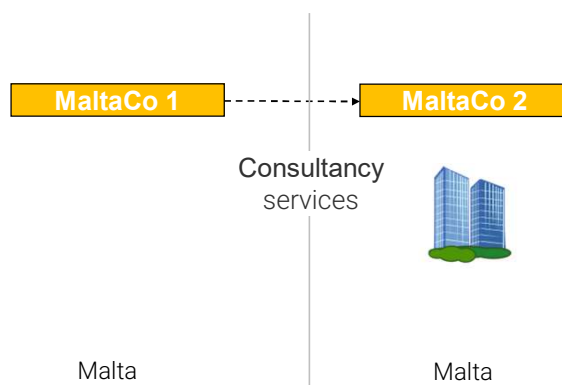
- According to the Council Implementing Regulation 282/2011, the place where the business of a taxable person is established shall be the place where the functions of the business' central administration are carried out
- Account shall be taken of the place where essential decisions concerning the general management of the business are taken, the place where the registered office of the business is located and the place where management meets
- Fixed establishment shall be any establishment, other than the place of establishment of a business, characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive and use the services supplied to it for its own needs



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## PLACE OF SUPPLY

### SUPPLIES OF SERVICES EXAMPLES

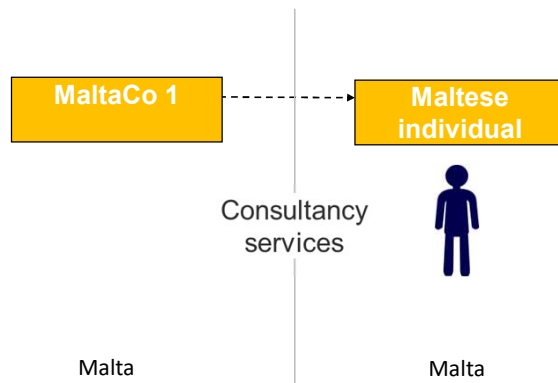


- MaltaCo 1 provides consultancy services to MaltaCo 2
- Services deemed supplied where customer is established (B2B), i.e. in Malta, therefore subject to Malta VAT

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## PLACE OF SUPPLY

### SUPPLIES OF SERVICES EXAMPLES

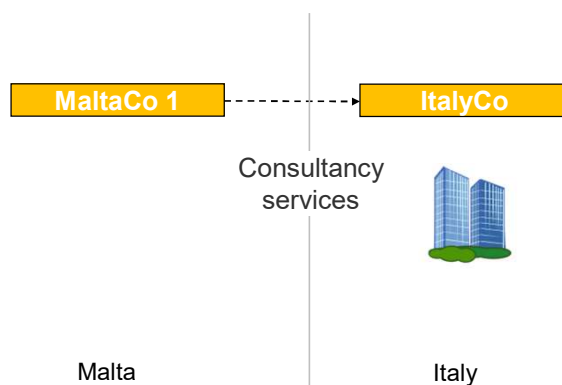


- MaltaCo 1 provides consultancy services to a Maltese individual being a non-taxable person
- Services deemed supplied where supplier is established (B2C), i.e. in Malta, therefore subject to Malta VAT

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## PLACE OF SUPPLY

### SUPPLIES OF SERVICES EXAMPLES



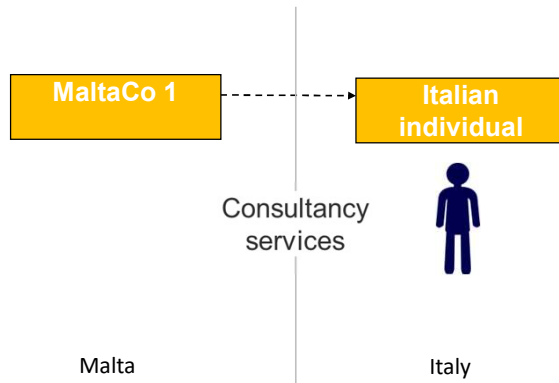
- MaltaCo 1 provides consultancy services to ItalyCo
- Services deemed supplied where customer is established (B2B), i.e. in Italy, therefore not subject to Malta VAT

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## PLACE OF SUPPLY

### SUPPLIES OF SERVICES EXAMPLES

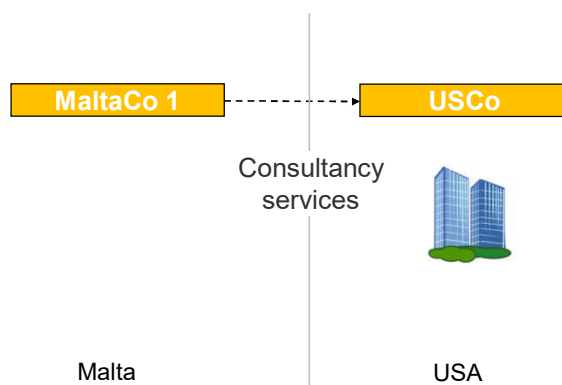


- MaltaCo 1 provides consultancy services to an Italian individual being a non-taxable person
- Services deemed supplied where supplier is established (B2C), i.e. in Malta, therefore subject to Malta VAT

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## PLACE OF SUPPLY

### SUPPLIES OF SERVICES EXAMPLES

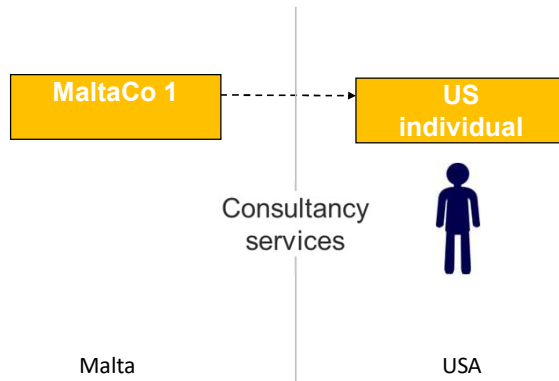


- MaltaCo 1 provides consultancy services to USCo
- Services deemed supplied where customer is established (B2B), i.e. in USA, therefore not subject to Malta VAT

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## PLACE OF SUPPLY

### SUPPLIES OF SERVICES EXAMPLES



- MaltaCo 1 provides consultancy services to a US individual being a non-taxable person
- Services deemed supplied where customer is established (B2C NON EU), i.e. in USA, therefore not subject to Malta VAT

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## PLACE OF SUPPLY

### EXCEPTIONS TO THE DEFAULT RULE

DESCRIPTION OF SERVICES	PLACE OF SUPPLY
Passenger transport	Where the transport takes place, proportionate to the distances covered  Please note this exception is not restricted to non-taxable persons (B2C) only but is equally applicable to B2B as well
B2C transport of goods (IC) *	Place of departure
B2C transport of goods (not IC) *	Where the transport takes place, proportionate to the distances covered

\*Please note this exception is restricted to non-taxable persons only (B2C). Therefore, for B2B we have to revert to the general rule.



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## PLACE OF SUPPLY

### EXCEPTIONS TO THE DEFAULT RULE

DESCRIPTION OF SERVICES	PLACE OF SUPPLY
Restaurant and catering services	<p>Where the services are physically carried out</p> <p>Please note that the exception is applicable for both B2B and B2C</p> <p>Means services consisting of the supply of prepared or unprepared food or beverages or both, for human consumption, accompanied by sufficient support services allowing for the immediate consumption thereof. The provision of food or beverages or both is only one component of the whole in which services shall predominated. Restaurant services are the supply of such services on the premises of the supplier, and catering services are the supply of such services off the premises of the supplier.</p>



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## PLACE OF SUPPLY

### EXCEPTIONS TO THE DEFAULT RULE

DESCRIPTION OF SERVICES	PLACE OF SUPPLY
B2B and B2C admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events (e.g. fairs and exhibitions) and ancillary services	Where the event actually takes place
B2C services and ancillary services relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities (including organisers' services)	Where those activities actually take place
Services related to immovable property (incl. architect, expert, estate agent, valuer, construction)	Where the immovable property is situated



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## PLACE OF SUPPLY

### EXCEPTIONS TO THE DEFAULT RULE – IMMOVABLE PROPERTY

The place of supply of services connected with immovable property, including the services of experts and estate agents, the provision of accommodations in the hotel sector or in sectors with a similar function, such as holiday camps or sites developed for use as camping sites, the granting of rights to use immovable property and services for the preparation and coordination of construction work, such as the services of architects and of firms providing on-site supervision, shall be the place where the immovable property is located



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## PLACE OF SUPPLY

### EXCEPTIONS TO THE DEFAULT RULE – IMMOVABLE PROPERTY

**Definition of Immovable Property** (Article 13b) Council Implementing Regulations 1042/2013 amending Council Implementing Regulation 282/2011 as regards the place of supply of services

- Any specific part of the earth (on or below its surface) over which title and possession can be created
- Any building of construction fixed to or in the ground above or below sea level which cannot be easily dismantled or moved
- Any item which has been installed and makes up integral part in a building or construction such as doors, windows, stairs, lifts
- Any item, equipment or machine permanently installed in a building or construction which cannot be moved without destroying or altering the building or construction



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## PLACE OF SUPPLY

### EXCEPTIONS TO THE DEFAULT RULE – IMMOVABLE PROPERTY

Services shall be regarded as having a sufficient direct connection with immovable property where:

- they are derived from any immovable property and that property makes up a constituent element of the services and is central to, and essential for, the services supplied
- they are provided to, or direct towards, an immovable property, having as their object the legal or physical alteration of that property



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## PLACE OF SUPPLY

### EXCEPTIONS TO THE DEFAULT RULE – IMMOVABLE PROPERTY

A Oy offered its customers a data center service. In the service, the customer owned servers were placed in the Company's computer rooms, which were equipped with the necessary telecommunication connections and where, among other things, humidity and temperature were regulated to serve the purpose of the servers. The services included a equipment cabinet with a lockable door, electricity and an optimal environment for the use of servers.

Question ECJ Case C215/19 – whether data hosting counts as immovable property within the meaning of the VAT directive



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## PLACE OF SUPPLY

### EXCEPTIONS TO THE DEFAULT RULE – IMMOVABLE PROPERTY

**Question ECJ Case C215/19 – whether data hosting counts as immovable property within the meaning of the VAT directive**

Hosting services in a data center, within the framework of which their provider provides his customers so that they can accommodate their servers in them, equipment cabinets and, as ancillary service, goods and services such as electricity and various services with which the used of these servers is to be guaranteed under optimal conditions, does not constitute property rental services that are exempt from VAT under this provision, provided that what is to be examined is a matter for the referring court,

On the other hand, the service provider does not passively leave an area or a location to his customers and assures them the right to take possession of this area or this location like an owner, and on the other hand, the equipment cabinets do not form an essential part of the building in which they are located, and are permanently installed there.



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## PLACE OF SUPPLY

### EXCEPTIONS TO THE DEFAULT RULE

DESCRIPTION OF SERVICES	PLACE OF SUPPLY
Short-term hiring of means of transport	Where the means of transport is put at disposal of the customer  For the purpose of this provision, short terms mean the continuous possession or use of the means of transport throughout a period of not more than 30 days and, in case of vessels, not more than 90 days
B2C long-term hiring of means of transport *	Where the customer is established, has his permanent address or usually resides
B2C long-term hiring of pleasure boat where provided by the supplier from his place of business / fixed establishment *	Where the pleasure boat is put at disposal of the customer



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## PLACE OF SUPPLY

### EXCEPTIONS TO THE DEFAULT RULE

DESCRIPTION OF SERVICES	PLACE OF SUPPLY
B2C valuation of and work on tangible movable property *	Where the services are physically carried out
B2C ancillary transport services (e.g. loading, unloading, handling) *	Where the services are physically carried out

\*Please note this exception is restricted to non-taxable persons only (B2C). Therefore, for B2B we have to revert to the general rule.



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## PLACE OF SUPPLY

### EXCEPTIONS TO THE DEFAULT RULE

DESCRIPTION OF SERVICES	PLACE OF SUPPLY
Restaurant and catering services on board ships, aircraft or trains during transport in EU	Point of departure
B2C telecoms, radio and television broadcasting and electronically supplied services	Where the customer is established



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## PLACE OF SUPPLY

### EXCEPTIONS TO THE DEFAULT RULE

With effect from 1 January 2015, the place of supply of the following services to a non-taxable person (B2C) shall be the place where that person is established, has his permanent address or usually resides:

- Telecommunication services
- Radio and television broadcasting services
- Electronically supplied services



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## PLACE OF SUPPLY

### EXCEPTIONS TO THE DEFAULT RULE – ELECTRONICALLY SUPPLIED SERVICES (ESS)

*...services which are delivered over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology*

ESS includes: *supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events*

**Uncertainty re: specific offerings:-**

- Live Casino
- Fixed odds betting (e.g. sports betting)



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## PLACE OF SUPPLY

### EXCEPTIONS TO THE DEFAULT RULE – ELECTRONICALLY SUPPLIED SERVICES (ESS)

The previous shall not apply where the following conditions are met:

- *The supplier is established / has his permanent address or usually resides in Malta only*
- *Services are supplied to non-taxable persons who are established / permanent address or usually reside in any MS other than Malta*
- *The total value, excluding VAT, does not exceed Euro10,000 in the current calendar year and did not do so in the course of the preceding calendar year*

*Note: the CfR shall grant the suppliers the right to opt for the POS to be determined in accordance with the previous slide which shall in any event cover 2 calendar years*

*Change as of 1 January 2019*



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## PLACE OF SUPPLY

### EXCEPTIONS TO THE DEFAULT RULE

DESCRIPTION OF SERVICES	PLACE OF SUPPLY
<p>Listed B2C services supplied to non-EU customers</p> <p>e.g.</p> <ul style="list-style-type: none"> <li>• Transfer of IP</li> <li>• Advertising</li> <li>• Services of consultants, engineers, lawyers, accountants, etc</li> <li>• Data processing and provision of information</li> <li>• Banking, finance and insurance</li> <li>• Supply of staff</li> <li>• Hiring of movable tangible property (excluding all means of transport)</li> </ul>	<p>Where the customer is established</p>



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## PLACE OF SUPPLY

### PLACE OF USE AND ENJOYMENT

- The Commissioner has, in certain circumstances the power to determine the place of supply to be the place where the transaction is used and enjoyed by the customer

#### Applicability

- Supplies of intangible services
- Supplies of short-term hiring of means of transport
- Supplies falling within the default rules
- Relevant services are deemed to be provided in Malta but effectively used and enjoyed outside the EU; or
- Relevant services are deemed to be provided outside the EU but effectively used and enjoyed in Malta
- Follow place of consumption principle
- Locally applicable to hiring of vessels and aircrafts



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## 2021 CHANGE

Reporting B2C supplies of services taking place outside Malta through the OSS regime

- Services connected with immovable property
- Transport of goods and passengers
- Hiring of means of transport
- Restaurant and catering services
- Events and admission to events
- Telecommunications, broadcasting and electronically supplied services



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## 2021 CHANGE

How should one report B2C services taking place outside Malta?

- **Option 1:** Through a VAT registration in the MS where the B2C services take place (i.e. in the MS of consumption)
- **Option 2:** Through the OSS regime
- ✓ **Union Scheme** - taxable persons established or having a FE in Malta, providing services to a non-taxable person taking place in the MS of consumption and not established in the MS of consumption
- ✓ **Non-Union Scheme** – taxable persons not established in the EU supplying services to a non-taxable person who is established in a MS or has his permanent address or usually resides in a MS



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## PLACE OF SUPPLY

### DEFAULT RULE FOR THE PLACE OF SUPPLY OF **GOODS**

- Supply of goods that are **not transported** takes place where the goods are at the time when they are placed at the disposal of the person acquiring those goods
- Supply of goods that are **transported** takes place where goods are at the time when the transport of those goods begins



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## PLACE OF SUPPLY

### EXCEPTIONS TO THE DEFAULT RULE

DESCRIPTION OF SERVICES	PLACE OF SUPPLY
Goods installed and assembled	Where the goods are installed or assembled
Good supplied on board ships, aircrafts or trains	Place of departure
Distance sale	Where the transport of the goods in question ends



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## PLACE OF SUPPLY

### Intra-community distance sales as from 1 July 2021

- A supply of goods dispatched or transported by or on behalf of the supplier, including where the supplier intervenes directly in the transport or dispatch of the goods
- From a MS other than in which the dispatch or transport of the goods to customer ends
- The supply of goods is carried out for a taxable person, or a non-taxable person whose ICA are not subject to VAT or for any other non-taxable person
- The goods supplied are neither new means of transport nor goods supplied after assembly or installation with or without a trial run by or on behalf of the supplier
- The goods are not second-hand goods, works of art, collector's items or antiques and the goods are not supplies of second-hand means of transport which do not qualify as new means of transport



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## PLACE OF SUPPLY

### Intra-community distance sales as from 1 July 2021

**MAIN RULE:** An intra-community distance sales takes place in the MS where the transport of the goods **ends**

An **exception** may be applied when all the following conditions are met:

- i. The supplier is established / has his permanent address or usually resides only in one MS;
- ii. The goods are dispatched or transported to any MS other than (i);
- iii. The total value, exclusive of VAT, of supplies referred to above, together with the total value of supplies of services referred to in item 10(2)(b) of Part Two of the Third Schedule does not exceed in the current calendar year Euro10,000 nor did so in the course of the preceding calendar year; and
- iv. The supplier makes a valid election, through a notice in writing for the exception to the main rule to apply



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## PLACE OF SUPPLY

### Intra-community distance sales as from 1 July 2021

How should one pay VAT on intra-community distance sales taking place in other MS?

- **Option 1:** Through a VAT registration in the MS where the ICDS takes place
- **Option 2:** Through the OSS regime
  - ✓ A taxable person established in Malta engaged in the supply of ICDS
  - ✓ A taxable person established outside the EU having a FE in Malta and engaged in ICDS
  - ✓ A taxable person established outside the EU with no Maltese FE transporting/dispatching ICSD from Malta



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## PLACE OF SUPPLY

### THE 4 QUICK FIXES

- New rules for EU cross-border supplies of goods
- Amendment to the EU VAT Directive
- Application date 1 January 2020
- Transposition of these provisions into national legislation (LN 249 of 2019, LN 250 of 2019, LN 251 of 2019, LN 252 of 2019, LN 253 of 2019)



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## PLACE OF SUPPLY

### CHAIN TRANSACTIONS

- Chain transactions refer to successive supplies of the same goods (meaning that there are two or more consecutive supplies) where the goods supplies are subject to a single intra-community transport between two MS

#### Conditions:

- The goods must be supplied successively. Therefore it is necessary that at least three persons are involved in the chain transaction.
- The goods must be dispatched or transported from one MS to another MS (excl. imports/exports).
- The goods must be transported directly from the first supplier to the last customer in the chain.
  - If these conditions are met Article 36a(1) of the VD lays down the general rule:
- The dispatch of the goods is ascribed to the supply made TO the intermediary operator



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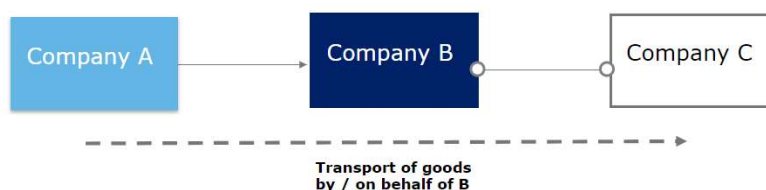
## PLACE OF SUPPLY CHAIN TRANSACTIONS

- However Article 36a(2) of the VD provides for the possibility to derogate from the general rule:
- In fact, by way of derogation, through LN 250 of 2019, where the intermediary operator has communicated to his supplier the VAT number issued to him by the MS from which the goods are dispatched or transported, then:
- The dispatch of the goods is ascribed to the supply made BY the intermediary operator



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- GR is that dispatch or transport of the goods shall be ascribed only to the supply made to the intermediary operator, i.e.:
- ICS will be the supply from A to B
- B will have to provide A with the VAT identification number issued to him by a MS other than MS1 in order for the supply made by A to benefit from the exemption
- B will make an ICA in MS2 and B will be liable in MS2 for the VAT charged on that supply
- B will have to be registered in MS2 and present a VAT return in that MS



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- However B is established in MS1. It is likely that he has been issued a VAT identification number by MS1 and, if that were the case, he might choose to provide A with that identification number instead of the VAT identification number issued to him by a MS other than MS1
- In that case, instead of the general rule, the applicable rule would be the one in Article 36a(2) VD. Therefore, the dispatch or transport of the goods would be ascribed not to the supply made to B but to the supply made by B
- In that case, A will make a domestic supply to B in MS1
- B will make in MS1 an ICS to C
- C will make an ICA in MS2
- Thus B does not need to be identified in MS2, nor does he need to present any VAT return in that MS



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## PLACE OF SUPPLY

### CALL-OFF STOCK

- Call-off stock – stock that a supplier holds in a MS where it is not established, so that it can be quickly sold to local customers on a call-off basis
- This quick fix refers to situations where a business moves stock to a warehouse in another EU country and at the time of the shipment knows the identity of the customer to whom the goods will be supplied
- With this simplification procedure where there is a taxable person (supplier) of goods forming part of his business assets to another MS under call-off stock arrangements, these shall not be treated as a supply of goods for consideration
- If one of the conditions is not fulfilled, a transfer of own goods by the supplier to the MS of destination will be deemed to be made, triggering a VAT registration for the supplier in the country of destination of the goods



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## PLACE OF SUPPLY

### CALL-OFF STOCK - conditions

- Dispatch/ transport of goods by a supplier or on his behalf to another MS with a view that those goods will, at a later stage and after arrival, be supplied to a customer based on an existing agreement between both parties
- The identity and VAT number of the customer are known to the supplier prior to the start of the transport
- Both the supplier and the customer are VAT taxable persons
- The customer has a VAT number in the MS of destination
- The supplier is not established or does not have a fixed establishment in the MS of destination
- Both the supplier and the customer (or third party stock keeper) records the transport to the stock in a register
- The supplier mentions the identity and VAT number of the customer in his recapitulative statements
- The goods are supplied to the customer within 12 months after arrival of the goods in the MS of destination



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## PLACE OF SUPPLY

### VALID VAT IDENTIFICATION NUMBER REQUIREMENT

- When supplying goods towards customers (taxable persons or non-taxable legal persons) who are registered for VAT in a MS other than that in which the dispatch/ transport begins, one should have a valid VAT identification number available in order to qualify as a VAT exempt ICS

- Validity can be checked in the VIES

If no such valid VAT number received from your customer:

- One would need to charge local VAT on the supply (even if all other conditions for the VAT exemption are fulfilled)
- The VAT can be reclaimed by the customer via the procedure in Directive 2008/09/EC (8<sup>th</sup> Directive)
- Supply with valid VAT identification number to be included in a recapitulative statement (in the case of Article 10 VAT registered person)
- The exemption still applies when the supplier can duly justify his shortcoming to the satisfactions of the competent authorities
- LN 253 of 2019 (amending the Item 3 of Part 1 of Fifth Schedule to the VATA)



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## PLACE OF SUPPLY

### PROOF OF TRANSPORT

- Article 42a of the IR provides for a condition that needs to be fulfilled to apply the exemption in relation to an ICS of goods laid down in Article 138 of VD, namely that the goods have been dispatched or transported from a MS to a destination outside its territory but within the Community
- Evidence that the goods were dispatched from one EU MS to another EU MS
- EU MSs have discretion over the evidence required
- May lead to uncertainty and additional costs for businesses in cross border trade
- Under the new rules, it will be presumed that goods were transported to another EU MS if the supplier can provide at least two independent, non-contradictory documents - Evidencing the transport of the goods

Examples: Bill of lading, Insurance, Airfreight



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## PLACE OF SUPPLY

### INTRA-COMMUNITY ACQUISITIONS

- An ICA takes place where the transport of the goods to the person acquiring them ends



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## PLACE OF SUPPLY IMPORTATION

- The place of importation of goods shall be the MS within whose territory the goods are located when they enter the EC
- An importation of goods takes place where the goods are at the time when the chargeable event takes place



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