



VAT Newsletter

Q3 - 2024



Local News

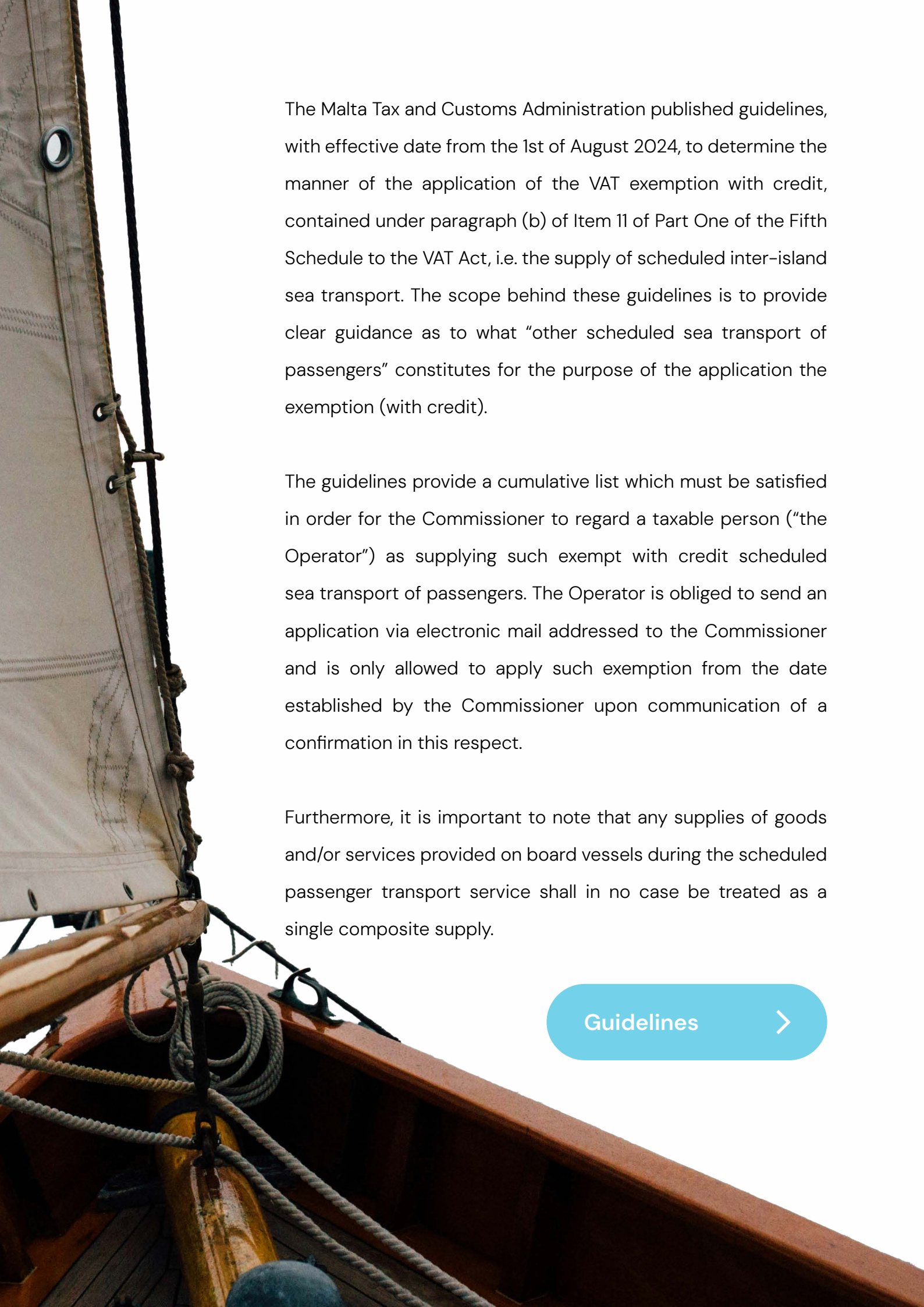
Malta Tax and Customs Administration News

Guidelines on the VAT exemption on other scheduled sea transport of passengers.

01.08.2024



01.



The Malta Tax and Customs Administration published guidelines, with effective date from the 1st of August 2024, to determine the manner of the application of the VAT exemption with credit, contained under paragraph (b) of Item 11 of Part One of the Fifth Schedule to the VAT Act, i.e. the supply of scheduled inter-island sea transport. The scope behind these guidelines is to provide clear guidance as to what “other scheduled sea transport of passengers” constitutes for the purpose of the application the exemption (with credit).

The guidelines provide a cumulative list which must be satisfied in order for the Commissioner to regard a taxable person (“the Operator”) as supplying such exempt with credit scheduled sea transport of passengers. The Operator is obliged to send an application via electronic mail addressed to the Commissioner and is only allowed to apply such exemption from the date established by the Commissioner upon communication of a confirmation in this respect.

Furthermore, it is important to note that any supplies of goods and/or services provided on board vessels during the scheduled passenger transport service shall in no case be treated as a single composite supply.

[Guidelines](#)



Malta Tax and Customs Administration News

Updated VAT Guidelines on the VAT
Treatment of Health Care Service

13.09.2024

02.

An updated version with regards to the VAT Treatment of Health Care Services has been published by the MTCA following the publication of Legal Notice 228 of 2024 on the 13th of September 2024.

The updated guidelines, which were also published on the 13th of September 2024, reflect the changes made to the applicability of such exemption. The updated guidelines define the term “dental technicians” and the term “dental prosthesis” whilst also providing guidance with regards to Item 11(7) as to which supplies of goods and services by a hospital, institution or centre are connected with and essential for the supply of medical care as exempted under item 11(2).

Guidelines



Legal Notices

LN 228 of 2024

Through the publication of Legal Notice 228 of 2024, an amendment has been carried out with regards to the exemption provided for in Item 11 of Part two of the Fifth Schedule of the Malta VAT Act.

The legal notice has amended the application of the exemption without credit with regards to Health and Welfare. It has defined the psychotherapy and counselling professions as medical professions in accordance with Article 132(1)(c) of Council Directive 2006/112/EC, which therefore benefit from the exemption at hand.

Furthermore, the amendment to Item 11 sub-item 3 now allows for the application of the exemption without credit to dental technicians in their professional capacity and to the supply of dental prostheses by dentists and dental technicians.

[Link to Legal Notice](#)



Administrative Review Tribunal

No VAT decisions were published during this calendar quarter.

Court of Appeal (Civil and Superior Jurisdiction)

No VAT appeals decisions were published during this calendar quarter.

EU News



VAT goes Digital: New Electronic VAT Exemption Certificate.



As EU Member States keep pace with the digital age advancements with a view to reduce administrative burdens on businesses, the European Commission has proposed to replace the current paper version of the VAT exemption certificate and instead introduce an electronic version.

The VAT exemption certificate serves as a supporting document for international bodies to prove that the goods or services they purchase, qualify for an exemption from VAT. The current paper format of the VAT exemption certificate is not compatible with the digital age advancements and currently poses administrative burdens and challenges to Member States and businesses alike.

The European Commission has adopted a legislative package proposing the amendment of both Council Directive 2006/112/EC and Council Implementing Regulation No 282/2011 that include implementing measures laying down the technical details and specifications concerning the applicable electronic format of the certificates and the way in which such certificates are to be processed electronically.

Whilst this legislative package is still at proposal stage, the European Commission recognises the large number of IT projects which are being faced by Member States and has allowed for a transitional period until 30 June 2030.



VAT Committee Meetings

No meetings were held during this calendar quarter.

VAT Expert Group Meetings

No meetings were held during this calendar quarter.

Group on the Future of VAT Meetings

No meetings were held during this calendar quarter.

CJEU decisions – latest selection update

C-184/23 – Finanzamt T II

This case deals with Article 11 of Council Directive 2006/112/EC. S is a German foundation which is governed by public law and is the controlling company of a university, which also manages a university medical department and of the company U-GmbH. U-GmbH and S form part of one VAT group.

As carries out economic activities in the building complex for which it is subject to VAT whilst also using lecture rooms and other parts of that complex for teaching students, which it carries out as a public authority and for which it is therefore not regarded to be a taxable person. U-GmbH provided S with cleaning, hygiene and laundry services as well as patient transport services.

The dispute arose whether the services to the foundation's non-taxable sector were subject to VAT, with the referring court raising the following questions:

01.

Does the VAT group have the effect of removing supplies made for consideration between those persons from the scope of VAT?

02.

Do supplies made for consideration between those persons fall within the scope of VAT in any event in the case where the recipient of the supply is not (or is only partly) entitled to deduct input tax, as there is otherwise a risk of tax losses?

The ECJ deemed it appropriate to tackle and decide both questions together. The ECJ ruled that regardless of whether one of the members of the VAT group is subject to input-VAT deductions restrictions, inter-company supplies between members of the same VAT group are not to be subject to VAT. Throughout its judgement the ECJ also made reference to the guidance provided by the VAT Committee on this matter and stated that whilst such guidance is not legally binding it provides guidance on how this provision of Council Directive 2006/112/EC should be introduced.

The ECJ ruled that regardless of whether one of the members of the VAT group is subject to *input-VAT* deductions restrictions, *inter-company supplies* between members of the same VAT group *are not to be subject to VAT*.

C-639/22 – C-644/22 (Joint Cases) – Inspecteur van de Belastingdienst Utrecht

The case at hand involved six joint cases all relating to the provision of pension funds in the Netherlands and the possible application of the VAT exemption as laid down in Article 135(1)(g) of Council Directive 2006/112/EC regarding the management of special investment funds as defined by Member States.

Cases C-639/22 and C-641/22 to C-644/22 concerned Dutch pension funds which purchased asset management services from an investment manager established outside the Netherlands. Whilst case C-640/22, concerned a Netherlands established company, which provided asset management services to a sector specific pension fund.

The Dutch pension system is essentially based on three pillars: the legal basic pension, pension systems which are organised by employers and an individual voluntary pension scheme. The second pillar is further subdivided into three categories – namely a company pension fund, a sector-specific pension fund and a compulsory occupational pension fund.

The cases at hand concerned the three different categories as established by the second pillar. Case C-641/22 concerned the company pension funds category, Cases C-640/22, C-643/22 and C-644/22 concerned the sector-specific pension funds and Cases C-639/22 and C-642/22 concerned the compulsory occupational pension funds. Contributions made to the pension funds by the members of the pension fund varied depending on the type of pension fund which the member was utilising.

The sector-specific pension funds were composed of a management board who through consultation with employer and work organisations sets the amount of the contributions to be paid. On the other hand, contributions to the company pension fund were determined for individual members however were subject to a ceiling and in addition the employers of the individuals acted as guarantors for such pension fund contribution. Lastly, contributions made to the compulsory occupational pension funds were made by members who contributed on the basis of their income.

The pension entitlements and retirement benefits, save for case C-639/22, were all calculated on the basis of the remuneration whilst also taking into consideration the number of years of employment of each worker. On the other hand, the pension entitlements for case C-639/22 were set according to the number of quarterly contributions which were made.

The pension funds at issue raised the question whether they could possibly benefit from the exemption established under Article 135(1)(g) of Council Directive 2006/112/EC with regards to the management of special investments funds as defined by Member States. Whilst such exemption is limited to the management of special investment funds which are defined by the UCITS directive, the referring court asks whether a pension fund may be considered to be a UCITS when it has certain features, however the referring Court was uncertain whether one of those features, namely the requirement whether the member bears the investment risk, is satisfied or not.

The referring court essentially raised two questions:

01.

Whether Article 135(1)(g) of Council Directive 2006/112/EC must be interpreted that members of a pension fund may be regarded as bearing the investment risk, and whether the following characteristics have any bearing on such decision:

- a. The size of the risk.
- b. The individual or collective nature of the risk.
- c. The number of years during which the pension entitlement of a member has accrued.
- d. The fact that accrual of the pension entitlements was interrupted at a certain point in time.
- e. The fact that an employer acted as a guarantor for a certain period of time for the targeted pension accrual.

02.

Secondly, the referring Court asked whether Article 135(1)(g) of Council Directive 2006/112/EC, read in the light of the principle of fiscal neutrality, must be interpreted as meaning that, in order to determine whether a pension fund that is not a UCITS may benefit from the exemption provided for under that provision, it is necessary not only to carry out a comparison with such an undertaking but also to assess whether, in the light of the legal and financial situation of the member in relation to the pension fund, that pension fund is comparable to other funds which without being UCITS are regarded by the Member State concerned as being special investment funds for the purposes of that provision.

The ECJ ruled that the primary factor which affected the pension entitlement of the members was not the investment performance, as most of the pension entitlement was pre-defined and whilst this could have varied due to investment performance, the amount which the members received did not depend solely on the investment performance, but rather depended on the contributions made by them and their years in employment. The ECJ decided that while individual or collective risk or the fact that employers acted as guarantors in the event of bankruptcy, were relevant factors, this however, could not be considered to be a deciding factor per se. The pension fund may be regarded to be bearing the investment risk where the amount to be paid out to the members depends primarily on the performance of those investments.

With respect to the second question raised, the ECJ decided that in light of the principle of fiscal neutrality, in order to determine whether a pension fund may benefit from the exemption as laid down in Article 135(1)(g) of Council Directive 2006/112/EC, it is necessary to carry out a comparison between the pension fund and an undertaking, whilst also assessing whether in light of the legal and financial situation of the member in relation to the pension fund, that pension fund is comparable to other funds which, without being UCITS, are regarded by the Member State concerned as being special investment funds for the purposes of that provision.

Zampa Debattista is a boutique accounting and assurance firm primarily focused on international business. Its main areas of specialization are VAT, Audit and Assurance, and Financial Reporting. Zampa Debattista is in a position to offer its clients quality professional services whilst at the same time retaining a high level of partner involvement.

DISCLAIMER

While every effort was made to ensure that the content of this newsletter is accurate and reflects the current position at law and in practice, we do not accept any responsibility for any damage which may result from a change in the law or from a different interpretation or application of the local law by the authorities or the local courts.

The information contained in the newsletter is intended to serve solely as guidance and any content of a legal nature therein does not constitute or should be interpreted as constituting legal advice. Consulting your tax practitioner is recommended in case you wish to take any decision connected to content of this newsletter.

Should you require further information on the above please contact **Matthew Zampa** on mz@zampadebattista.com or **Charles Vella** on cv@zampadebattista.com.

