

INTRODUCTION TO TAXATION

Lecture 5 - Principles of VAT

Dr. Gabriella Chircop
19th January 2023



Diploma in Law (Malta)



CAMILLERI PREZIOSI
ADVOCATES

MAMO TCV
ADVOCATES

Overview

1. Scope of VAT;
2. Place of Supply Rules;
3. VAT Exemptions;
4. VAT Registration Requirements;
5. Input Tax;
6. Liability of Directors



Introduction



Diploma in Law (Malta)



CAMILLERI PREZIOSI

ADVOCATES

MAMO TCV

ADVOCATES

Key Characteristics of VAT

VAT is a form of **INDIRECT TAX**, which is charged over **CONSUMPTION** (and not on income or profits);

VAT is charged and collected by traders on supplies falling within the scope of VAT, *but* is borne by the **FINAL CONSUMER**.

DIFFERENT rates of VAT are applicable.

VAT constitutes a tax which is **COMMON** throughout the EU Member States.

VAT is in principle **NEUTRAL** on businesses - most traders can recover the VAT which they are charged on their business expenditure via the input tax deduction system.

Applicable Rates of VAT

- Generally, VAT is charged at the **rate of 18%** but other reduced VAT rates are applicable in terms of the Eighth Schedule to the VAT ACT (i.e. **7% and 5%**). There can also be a **0%** rate if the supply is exempt.

Description	Rate of VAT
Accommodation	7%
Supply of electricity	5%
Confectionery and other similar items	5%
Medical Accessories	5%
Printed matter	5%
Items for exclusive use of the disabled	5%
Importation of works of art, collector's items and antiques	5%
Minor repairing of bicycles, shoes, leather goods, clothing and household linen (including mending and alteration)	5%
Domestic care services such as home help and care of the young, elderly, sick or disabled.	5%
Admission to museums, art exhibitions, concerts and theatres	5%
Use of sports facilities	7%

Scope of VAT



Diploma in Law (Malta)



CAMILLERI PREZIOSI

ADVOCATES

MAMO TCV

ADVOCATES

The Charging Provision

ARTICLE 4 of the VAT Act provides that:

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

- On every **supply of goods** and **services**
 - i. That takes place in Malta
 - ii. For consideration
 - iii. By a taxable person
 - iv. Acting as such

- On every **intra-community acquisition**
 - i. Of goods made in Malta by persons registered under articles 10/12;
 - ii. Of New Means of Transport made in Malta by any person;
 - iii. Of excise goods made in Malta by a taxable person/non-taxable legal person

- On every **importation** made in Malta

The three types of VAT

The VAT Act provides for a distinct VAT charge for

Supplies

Acquisitions

Imports

1. Supplies of goods (that take place in Malta, for consideration, by a taxable person acting as such);
2. Supplies of services (that take place in Malta, for consideration, by a taxable person acting as such);
3. Intra-community acquisitions of goods made in Malta (made by VAT-registered businesses; New Means of Transport & excise goods);
4. Importations made in Malta by any person

VAT on Supplies

Distinction between Goods and Services:

Goods

A supply of goods is the transfer of the right to dispose of tangible property as owner.

Services

A supply of services means a supply that is not a supply of goods.

Scope of VAT - *Concept of 'Taxable Person' (1)*

Who is a taxable person?

Article 5 of the VAT Act, defines a “taxable person” as:

*“a person who carries on an **economic activity**, whatever the purpose of result of that activity.”*

The term “economic activity”, as defined in the VAT Act, includes (other criteria under VAT Act apply):

- *any trade or business;*
- *any profession or vocation and the provision of any personal services;*
- *the exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis.*

EXCLUDES activities of an employee, including the holder of an office.

Scope of VAT - *Concept of 'Taxable Person' (2)*

- Being a taxable person means that your activities may fall within the scope of VAT.
- Activities of a non-taxable person, GENERALLY fall outside the scope of VAT, subject to the below:

Non-taxable
person

Fall OUTSIDE the scope of VAT with the exception of intra-community acquisitions of new means of transport.

Non-taxable legal
person

Generally Fall OUTSIDE the scope of VAT other than for the purposes of` intra-community acquisitions.



Scope of VAT - *Supply for ‘Consideration’*

What constitutes “consideration”?

- “Consideration” is the payment for the supply of goods or services.
- Typically takes the form of cash or equivalent, HOWEVER, *non-monetary consideration* is also possible, e.g. *payment in kind (via goods or services supplied in return)*.

Scope of VAT - *Supplies taking place in Malta*

Only supplies that are **deemed to be provided in Malta** are fall within the scope of Maltese VAT

DIFFERENT PoS rules for transactions in **GOODS** and supplies of **SERVICES**

Concept of **Place of Supply** (PoS), relevant rules contained under the **Third Schedule** to the VAT Act



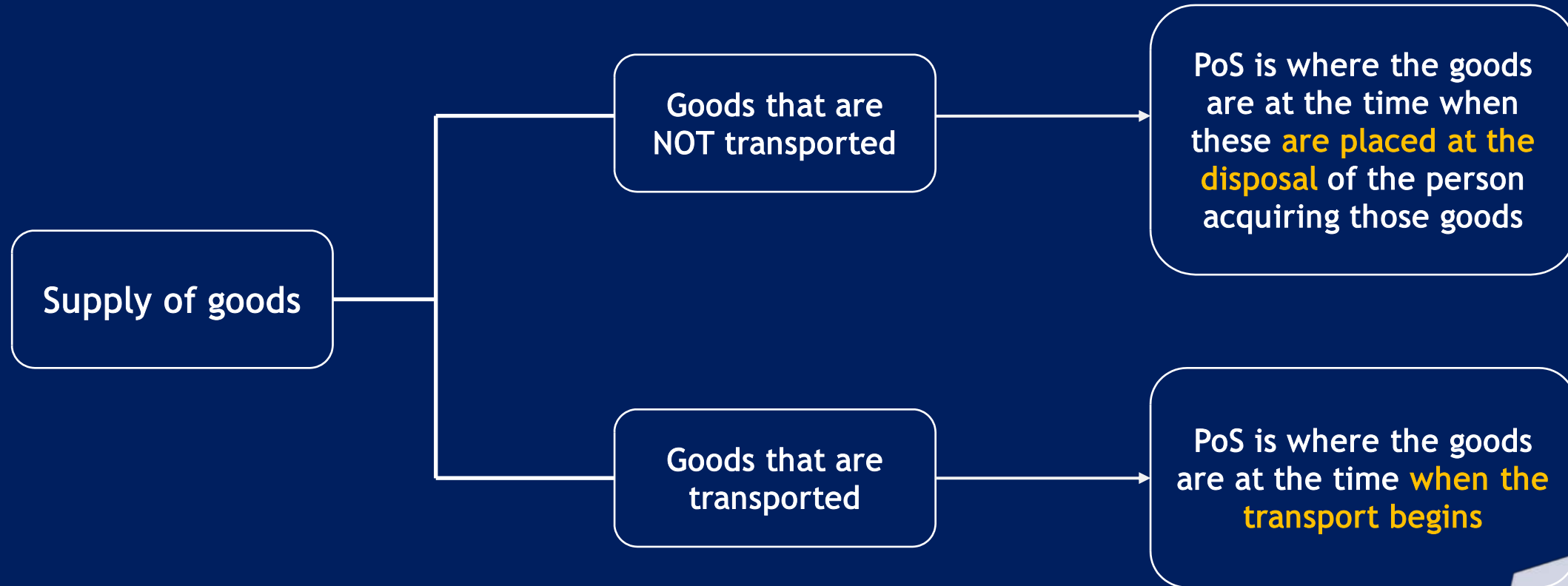
*i.e. transactions which take place **OUTSIDE MALTA** fall outside the scope of Malta VAT (but may still fall within the scope of VAT of another EU Member State)*

Place of Supply – Supply of Goods

- When it comes to determining the place of supply of goods, a distinction must be made between:
 - **Default Rules** for Place of Supply
 - **Special Rules** for Place of Supply



Supply of Goods - General Rules



Supply of Goods – Special Rules

- There exist special rules for certain supplies of goods (i.e. where general PoS rules for supplies of goods DO NOT apply), for example:

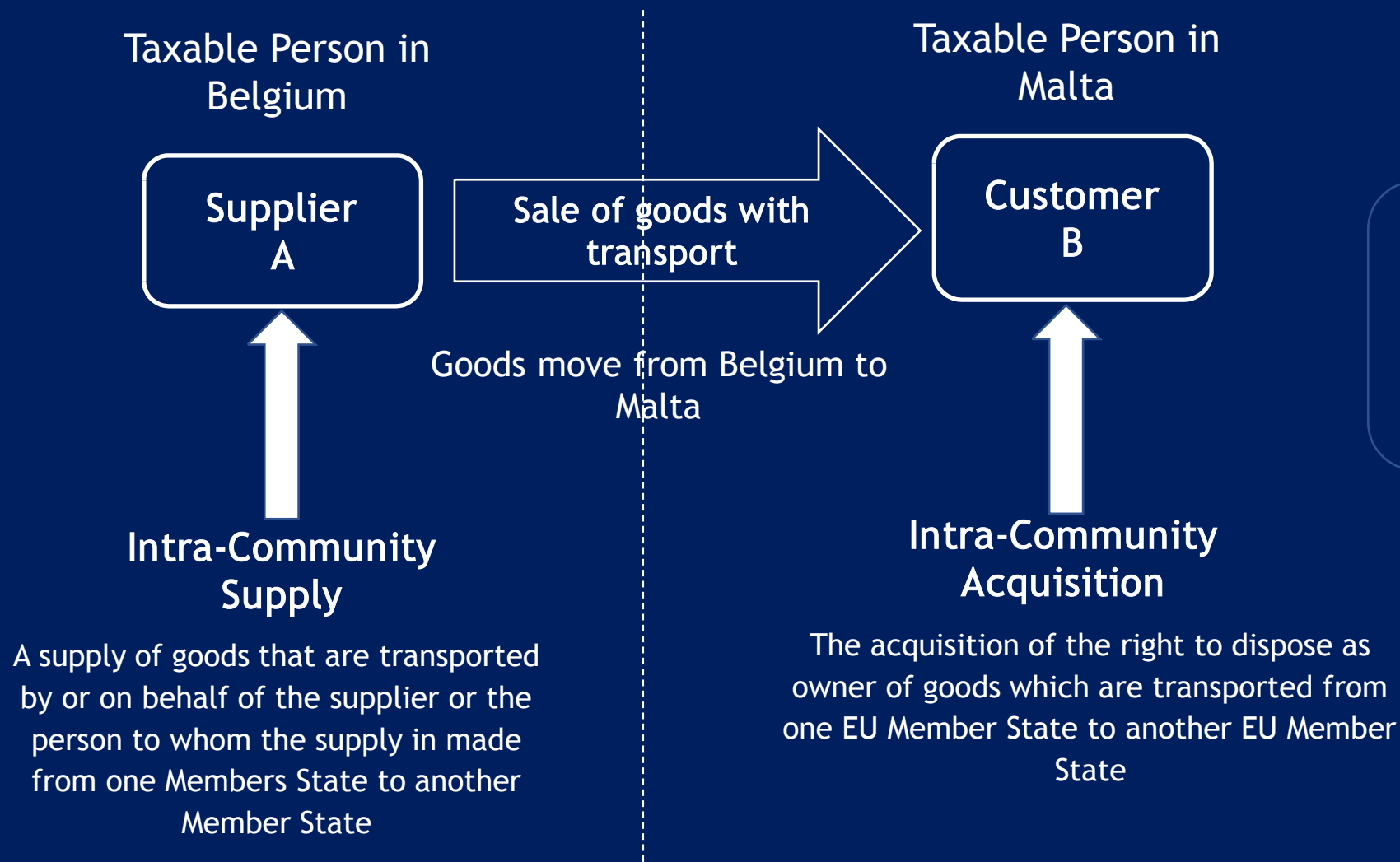
Supply of goods on board of ships, aircrafts or trains

A supply of goods on board trains, ships, aircraft or trains during the part of a transport of passengers effected in the Community takes place at the point of departure of the transport of passengers

Supply of goods installed or assembled

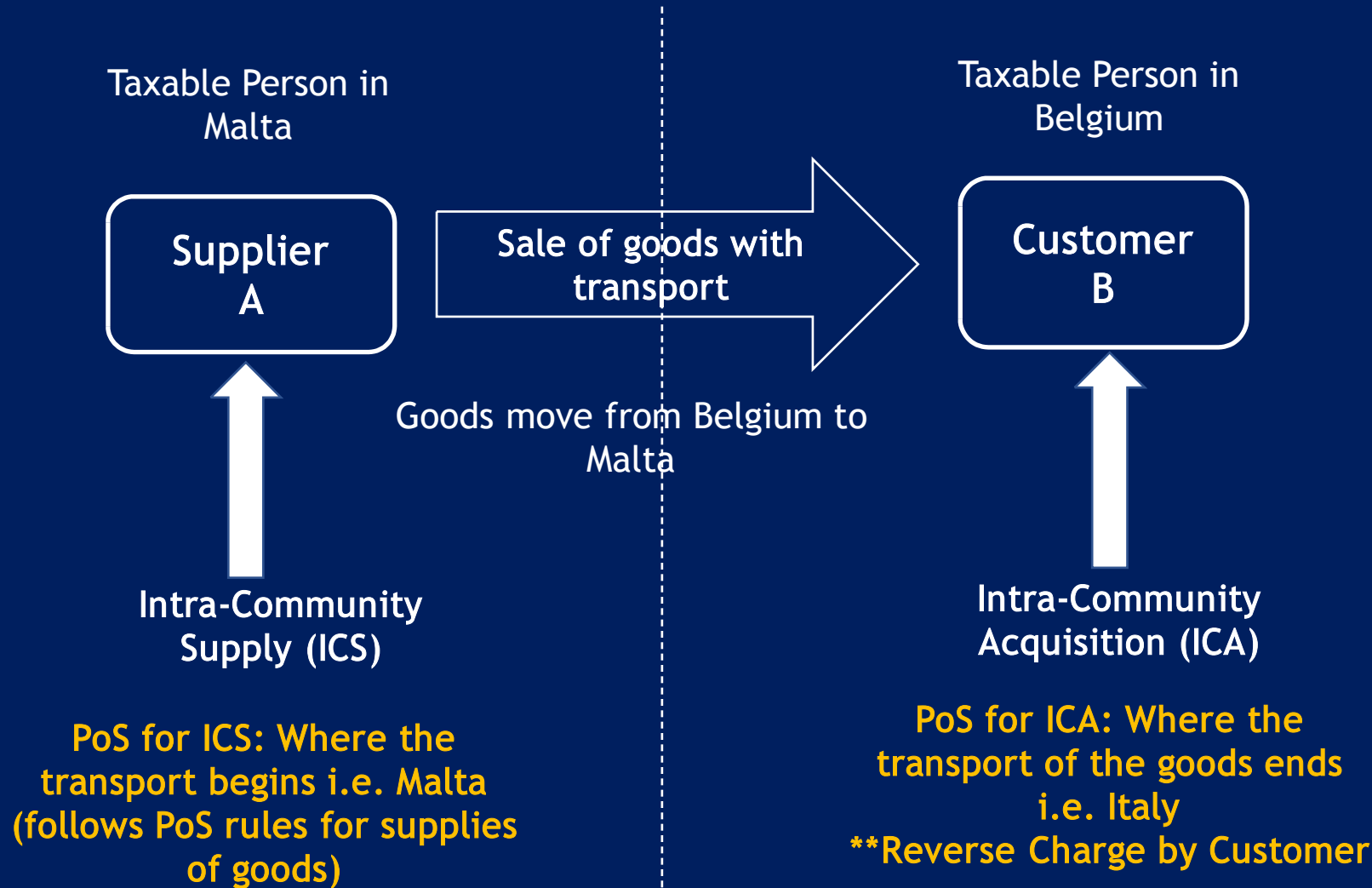
A supply of goods that are installed or assembled, with or without a trial run, by or on behalf of the supplier takes place where the goods are installed or assembled.

Supply of Goods between EU Member States (1)



ONE business transaction BUT TWO VAT transactions

Supply of Goods between EU Member States (2)



1. ICS will be **EXEMPT** with credit if Customer B has a valid VAT number. Supplier must also quote his and customer's VAT no. on invoice.
2. ICA is outside the scope of Maltese VAT, but in principle taxable in Belgium. Customer is required to self-account for VAT on a reverse charge basis in its VAT return at the rate applicable in Belgium.

Reverse Charge

- VAT is normally charged and accounted for by the supplier of the goods or services. However, in certain circumstances **CUSTOMER** *rather than the supplier*, is obliged to account for the VAT due.
- The reverse charge mechanism (i.e. self-accounting) refers to the **shifting of the responsibility to account for the VAT liability** on a supply (whether of goods or services) from the supplier to the **Customer**.
- Applies in respect of:
 - i. receipt of services from abroad that are taxable where received (to be seen later on);
and
 - ii. the intra-community acquisition of goods from another Member States.



Distinction between intra-EC trade and trade with Third Countries

- The entry into the EC of goods transported from a third territory WILL NOT result in ICS & ICA, but will be dealt with under the rules concerning IMPORTATIONS.

- An importation of goods takes place where the goods are at the time when the chargeable event takes place.

- “Chargeable Event”:
 1. When customs duties become chargeable; OR
 2. When the goods being imported cease to remain subject to a customs duty suspension regime.

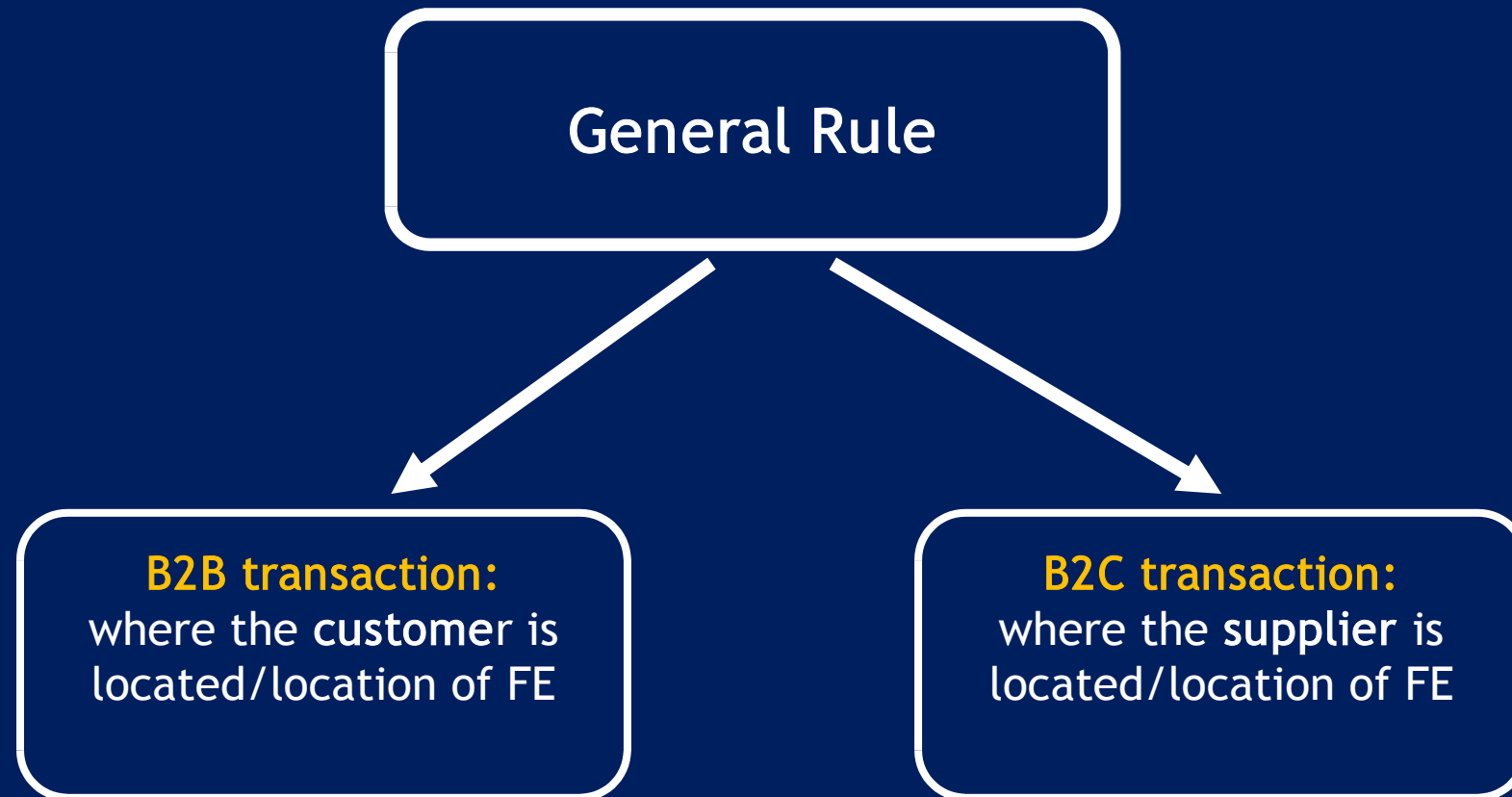


Place of Supply – Supply of Services

- When it comes to determining the place of supply of services, a distinction must be made between:
 - **Default Rules** for Place of Supply
 - **Special Rules** for Place of Supply



Supply of Services - General Rules



PoS: Business to Business (B2B) Supplies

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 place other than the place where he has established his business:

Place of Supply

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 taxable person who receives such services has his **permanent address** or **usually resides**.



PoS: Business to Consumer (B2C) Supplies

The place of supply of services to a non-taxable person acting as such, 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:

Place of Supply

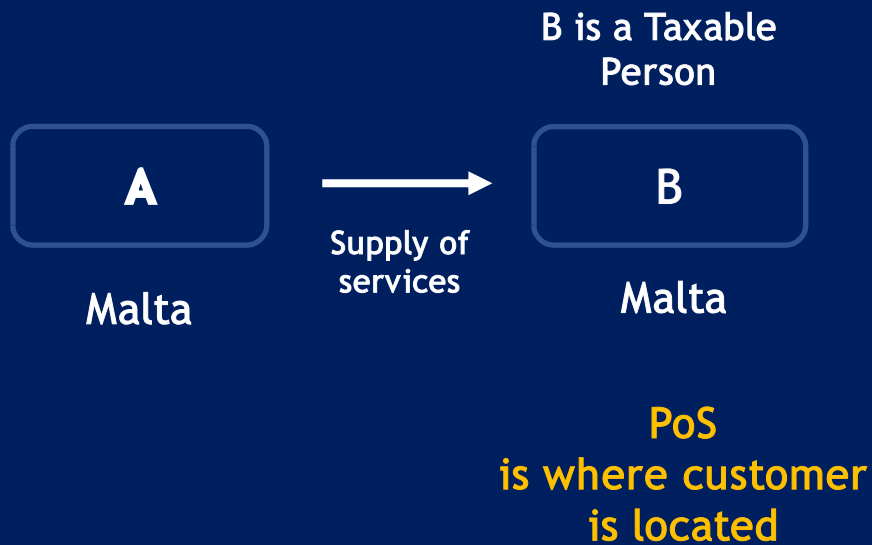
The place where that **fixed establishment** is located.

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**.

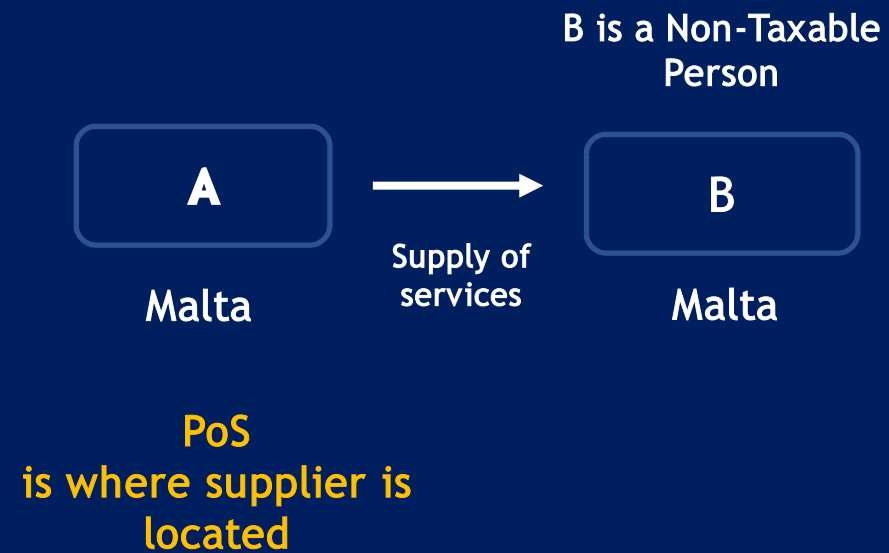


Supply of Services - General Rules

Domestic Supply



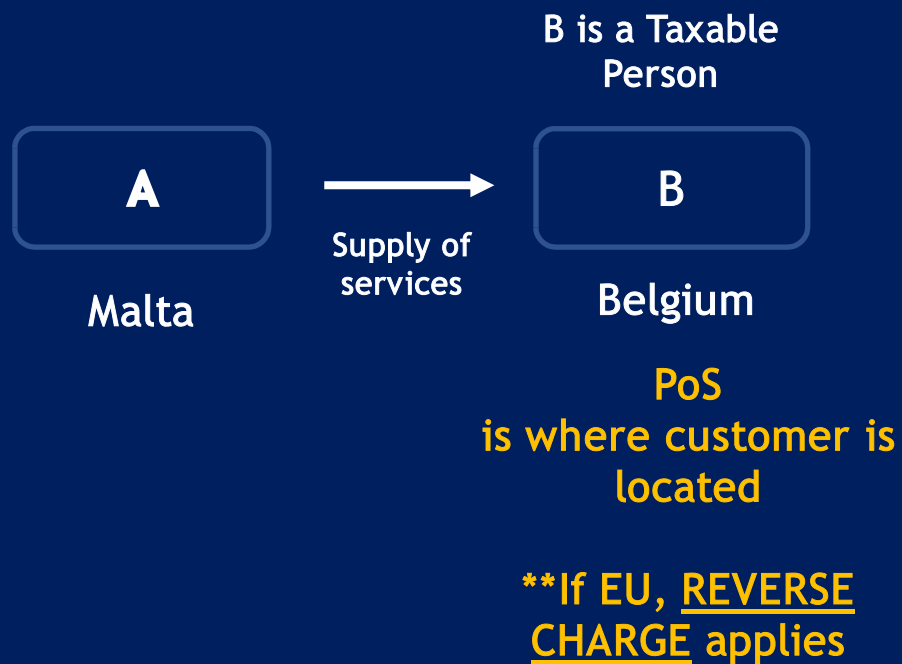
Example 1



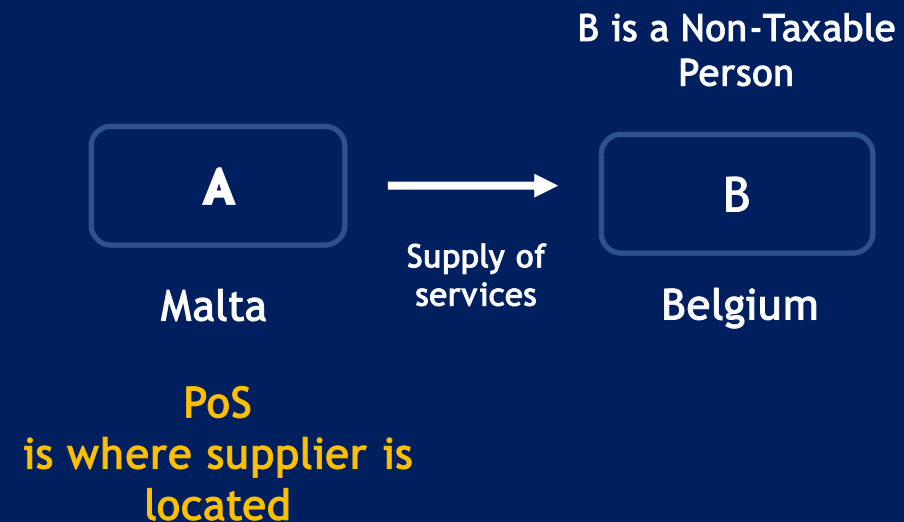
Example 2

Supply of Services - General Rules

Non-Domestic Supply



Example 1



Example 2

Reverse Charge

B2B Supply



- Place of Supply is where customer (B) is located, i.e. Malta.
- A is liable to Maltese VAT on supply of services, therefore charges Eur 180 output VAT on the invoice to B.
- B reports Eur 180 as input VAT in its VAT return.

B2B Supply



- Place of Supply is where customer (B) is located, i.e. Belgium.
- The supply is liable to Belgian VAT, at the rates applicable under Belgian law. This would mean that (A) would need to be registered for VAT in Belgium to account for Belgian VAT.
- Instead reverse charge mechanism applies & liability to account for VAT (i.e. Belgian VAT) shifts onto customer (B).
- A therefore DOES NOT charge VAT to B on supply.
- B declares Eur 180 output VAT in VAT return, & EUR 180 as input VAT.

Supply of Services - Special Rules

- Place of supply is determined irrespective of the status of the parties to the transaction.
- FULL list of special rules vis-à-vis supply of services is found under Part 2 of the Third Schedule to the VAT Act.

Supply of restaurant and catering services

Place of supply is where the services are physically carried out UNLESS services are carried out on board ships, aircrafts or trains, in which case, PoS is place of departure

Supply of services relating to immovable property

Place of supply is always where the immovable property is located

Supply of passenger transport

Place of supply is where the transport takes place, proportionate to the distance covered

Supply of Services - Special Rules

Place of Supply of telecommunication, broadcasting and electronically supplied services

- NEW rules to determine place of supply have started to apply from 1st January 2015.

Post-2015

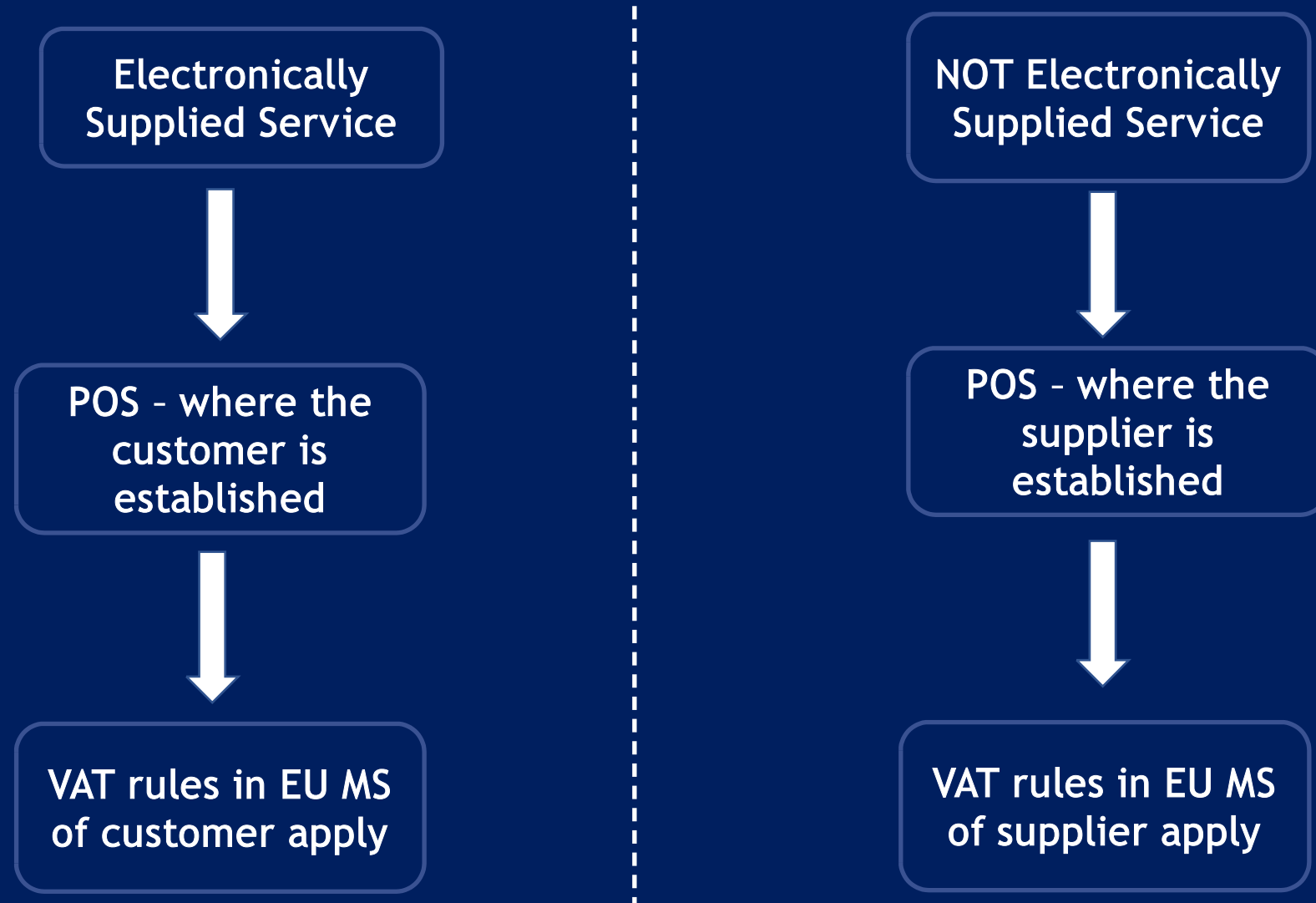
Item 10, Part 2 of the Third Schedule to the VAT Act:

“The place of supply of the following services on a B2C basis shall be **the place where that person (i.e. the CUSTOMER) is established**, has his **permanent address** or **usually resides**:

- Telecommunication services;
- Radio and television broadcasting services;
- Electronically supplied services (ESS)”



Place of Supply (B2C): *ESS*



What are ESS? (1)

- Important resources: VAT Act, Council Implementing Regulation EU (282/2011) (“CIR”) and Guidelines for the VAT treatment of ESS issued by CfR.
- Article 10 of the CIR defines ESS as:

*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”*



What are ESS? (2)

□ Therefore, the following conditions must be satisfied CUMULATIVELY for a service to qualify as an ESS:

- i. delivered over the internet or an electronic network*
- ii. essentially automated (not necessarily entirely)*
- iii. minimal human intervention (on the part of the supplier)*
- iv. impossible to ensure in the absence of information technology*



What are ESS? (3)

Item 10 of Part Two of the Third Schedule of the VAT Act includes list of what services are considered to be ESS:

Website Supply

Web-hosting

Broadcasting

Distance maintenance of programmes and equipment

Distance teaching

Supply of software and updating thereof

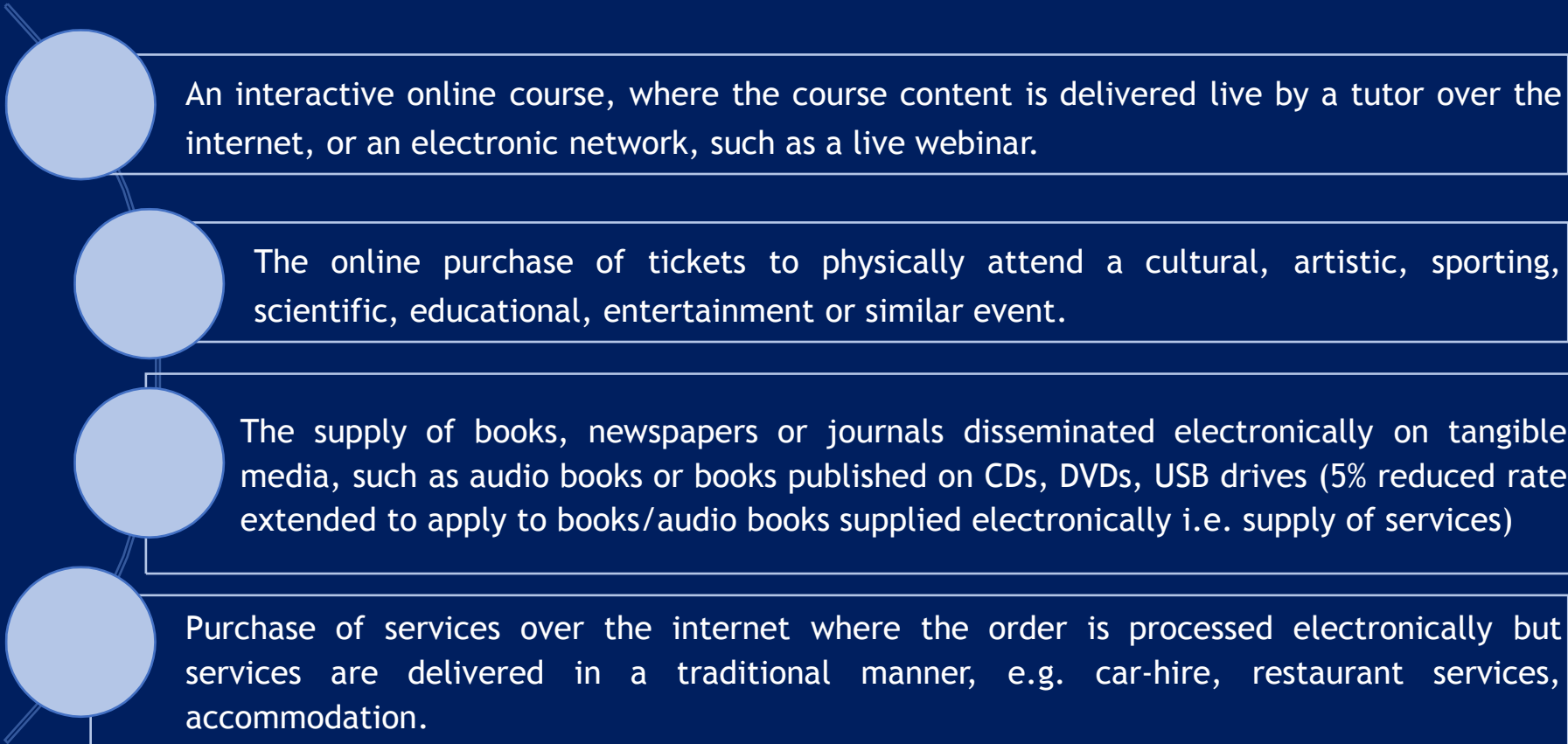
Supply of images, text and information and making available of:

- Databases
- Supply of Music
- Films and Games



What are ESS? (4)

- The Guidelines for the VAT treatment of Electronically Supplied Services (issued on 4 February 2015) provide a non-exhaustive list of services which SHALL NOT be regarded as ESS.
- A few of these services are being outlined below (for full list please consult guidelines):



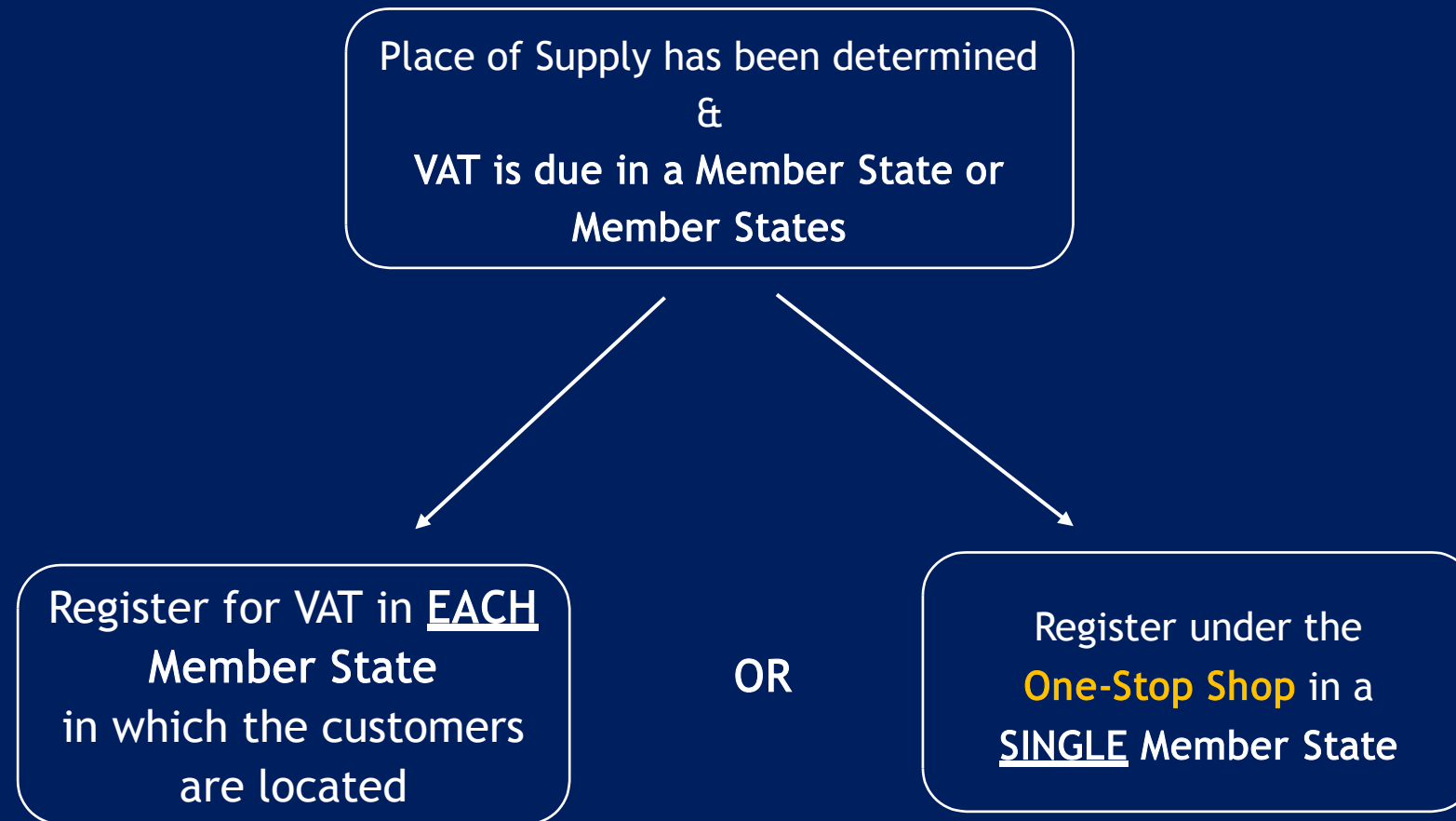
An interactive online course, where the course content is delivered live by a tutor over the internet, or an electronic network, such as a live webinar.

The online purchase of tickets to physically attend a cultural, artistic, sporting, scientific, educational, entertainment or similar event.

The supply of books, newspapers or journals disseminated electronically on tangible media, such as audio books or books published on CDs, DVDs, USB drives (5% reduced rate extended to apply to books/audio books supplied electronically i.e. supply of services)

Purchase of services over the internet where the order is processed electronically but services are delivered in a traditional manner, e.g. car-hire, restaurant services, accommodation.

VAT Compliance Obligations for ESS



The One-Stop Shop (“OSS”)

- From 1 July 2021, the Mini One Stop Shop (MOSS) became the One-Stop Shop (OSS). The OSS simplifies Value-Added Tax (VAT) obligations for businesses cross-border to final consumers in the European Union (EU).
- OSS allows suppliers to register, submit VAT returns and pay VAT due on their B2C digital services in other EU MSs in which they do not have an establishment through a single registration and contact point with their MSI, thereby avoiding the requirement to register in each MS in which there are final consumers (MSC).
- MSI will transmit the relevant information, together with the corresponding VAT paid via OSS, to each MSC via a secure communications network.
- OSS does not cover input VAT
- Split into a Union (for EU-established suppliers) and Non-Union Scheme (for Non-EU established suppliers).



VAT Exemptions



Diploma in Law (Malta)



CAMILLERI PREZIOSI

ADVOCATES

MAMO TCV

ADVOCATES

VAT Exemptions

General Principle

VAT is in principle charged on EVERY supply of goods/services taking place within the EU.

Exemptions

Exceptions to the general principle that all supplies of goods and services are subject to VAT.

HOWEVER

ECJ has reiterated on several occasions that exemptions must be interpreted **RESTRICTIVELY**.

Exempt With Credit Supplies

Fifth Schedule VAT Act
Part 1

Exempt with Credit/
'Zero Rated' Supplies

i.e. No VAT is charged on the
supply
&
Right to claim back input VAT
incurred on the provision of
that supply

1. Exports and Like Transactions
2. International Goods Traffic
3. Intra-Community Supplies
4. International transport and ancillary services
5. Brokers or other intermediaries
6. Sea Vessels
7. Aircraft
8. Gold
9. Pharmaceutical Goods
10. Food
11. Transport
12. Supplies of Goods on board Cruise Liners

Exempt With Credit Supplies: *Food*

- The supply of food for human consumption, **EXCLUDING** food supplied in the course of catering.
- “*Food supplied in the course of catering*” means food which is suitable for immediate consumption, whether such food is consumed in the place where it is supplied or not, and consisting of-
 - a) meals or snacks;
 - b) milkshake, tea, coffee and chocolate supplied in liquid form;
 - c) ice cream or products containing ice cream except in family packs;
 - d) yogurt or similar products.



Exempt With Credit Supplies: *Transport*

□ The supply of:

a) transport by **scheduled bus service** consisting of trips on scheduled routes.

“scheduled bus service” shall mean public passenger transport services by an operator contracted in terms of the provisions of regulation 68B of the Passenger Transport Services Regulations (S.L. 499.56), or any other regulations replacing those regulations;

b) **scheduled inter-island sea transport of passengers** by authorised carriers and other scheduled sea transport of passengers recognised as such by the Commissioner.

“scheduled inter-island sea transport of passengers” shall mean scheduled transport of passengers between the islands of Malta and Gozo.

c) **special regular services** consisting in the carriage of school pupils and students to and from an educational establishment recognised as such by the Commissioner;

d) **special regular services** consisting in the carriage of workers to and from their place of work.



Exempt Without Credit Supplies

Fifth Schedule VAT Act Part 2

Exempt without Credit Supplies

i.e. No VAT is charged on the
supply
BUT

NO Right to claim back input VAT
incurred
on the provision of that supply

1. Immovable Property
2. Credit Banking and Other Services
3. Insurance Services
4. Cultural and Religious Services
5. Sports
6. Services related to certain exempt services
7. Services supplied by independent groups
8. Services by non-profit making organisations to their members
9. Lotteries
10. Postal Services
11. Health and Welfare
12. Education
13. Supplies of goods in respect of which the supplier had not qualified for input tax credits
14. Broadcasting
15. Water



Exempt Without Credit Supplies: *Immovable Property* (1)

1. The letting of immovable property **EXCLUDING**:
 - a) the letting of or the provision of accommodation in any premises which for the purpose of the said letting or accommodation is **required to be licensed in virtue of the Malta Travel and Tourism Services Act**, or any Act which may be substituted therefor or in a holiday camp or camping site;
 - b) The letting of premises and sites for parking vehicles where such premises or sites have been **designated by the Commissioner as parking areas** or which fall to be treated as such in terms of such regulations as may be prescribed;

Subsidiary Legislation 406.05 – Value Added Tax (letting of premises and sites for parking vehicles) regulations
“premises and sites for parking vehicles” means any premises or sites for parking vehicles where a fee is charged for such parking, but shall not include any public property where a car park attendant licensed as such in terms of the Motor Vehicles Regulations is in attendance.

- c) the **letting of permanently installed equipment** and **machinery** and the **hire of safes**;



Exempt Without Credit Supplies: *Immovable Property (2)*

- d) the letting of property by a **limited liability company** to **a person registered under article 10** for the purpose of the economic activity of that other person;
- e) the letting of immovable property for **NOT MORE** than **thirty days** by a taxable person in the course of an economic activity, EXCEPT FOR:
 - i. the letting referred to in sub-paragraphs (a), (b), (c) and (d);
 - ii. the letting of space for artistic and cultural activities;
 - iii. the letting for the purposes of habitation of any premises which for the purpose of the said letting, those premises are not required to be licensed in virtue of the Malta Travel and Tourism Services Act, or any other Act which may be substituted therefor;
 - iv. the letting of premises used or intended to be used as garages, stores or similar uses;
 - v. the letting to players of rooms or other spaces lawfully designated for the playing of poker.

2. The transfer of immovable property.



Credit, banking and other services

- This exemption relates to the VAT treatment of financial services. Most financial services activities are EXEMPT from VAT.

- The following are exempt from VAT:
 - i. Credit transactions (e.g. loans, overdrafts)
 - ii. Credit guarantees/security for money (e.g. bank guarantees)
 - iii. Transactions in payments, transfers etc
 - iv. Transactions in currency, bank notes, and coins used as legal tender
 - v. Transactions in securities (e.g. shares, interest in companies)
 - vi. Management of special Investment Schemes

Credit, banking and other services

Management of special Investment Schemes:

“The supply of services consisting of the management of any investment scheme, provided that these services are limited to those activities that are specific to and essential for the core activity of the

“investment schemes” shall refer to:

- **“collective investment scheme”** as defined under the Investment Services Act;
- **“retirement scheme”** as defined under the Retirement Pensions Act;
- **“securitisation vehicle”** as defined under the Securitisation Act; and
- **“authorised reinsurance special purpose vehicle”** as defined in the Re-insurance Special Purpose Vehicle Regulations.

“management”:

- **portfolio management/investment management** - selection and disposal of assets under management;
- **administrative management** - services such as computing the amount of income and the price of units or shares, the valuation of assets, accounting, the preparation of statements for the distribution of income;
- **Investment advisory services** supplied to an investment scheme/manager.



Exempt Without Credit Supplies - *Education*

1. The provision of education or educational research, vocational training or retraining, including distance learning, by a **government school or institution**, by the **University of Malta**, by a **school or institution registered under the Education Act**, or by any **educational establishment recognized as such by the Commissioner**, or by any establishment recognized for this purpose by the Minister responsible for education.
2. The provision of education or educational research, including distance learning, of a kind provided by a school or university, or of religious instruction, by a **non-profit making institution** recognised as such by the Commissioner.
3. **Tuition given privately by teachers** acting in an independent capacity in subjects which are normally taught in the course of education provided by a school or university **BUT excluding tuition in recreational, physical or sporting activities or disciplines**.
4. Any **training in the arts** which is provided by an organisation accredited by the Register for the Accreditation in the Training of the Arts.
5. The supply of goods and services where the said supply is **CONNECTED WITH and ESSENTIAL** for the **supply of services referred to in paragraphs (1), (2), (3) and (4)**, by the school, institution, university, teacher or organisation, as the case may be, supplying the said services, or supplied by any other organisation recognised by the Commissioner as an organisation which has similar objectives.



VAT Registrations



Diploma in Law (Malta)



CAMILLERI PREZIOSI

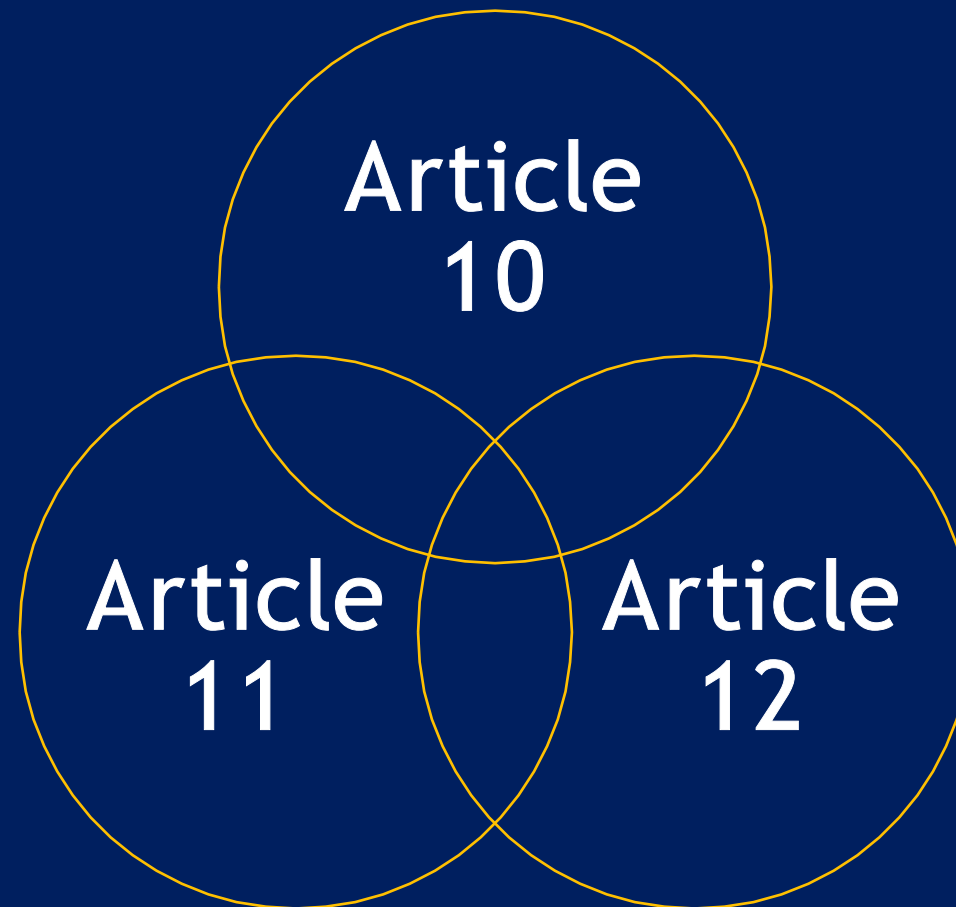
ADVOCATES

MAMO TCV

ADVOCATES

VAT Registrations

Three different types of registrations under the VAT Act....



Article 10 Registration

□ An obligation to register in terms of Article 10 (i.e. mandatory registration) arises in a number of circumstances:

- supplies goods/services which are taxable in Malta (place of supply Malta);
- supplies goods/services which are exempt with credit in Malta (place of supply Malta);
- supplies services to EU business customers for which services the VAT is payable solely by the customer.

□ Obligation to register under article 10 arises as soon as specified supplies are made.

□ If there is an obligation to register under Article 10, the registration must happen within 30 days from the relevant event (i.e. a supply).

□ Possibility to shift from an Article 10 to an Article 11 registration (assuming thresholds are satisfied), BUT a period of 36 months has to lapse before shift is possible.



Effects of an Article 10 Registration

- By virtue of being registered in terms of Article 10, a taxable person:
 - i. is provided with a **VAT Identification Number** (MT Reg. No.);
 - ii. Submission of VAT return for a tax period of **three months** by the not later than **6 weeks after the end of the tax period**, or as directed by the Commissioner.;
 - iii. is entitled to **recover input VAT** (although partial attribution may apply);
 - iv. Must inform CfR **within 15 days** of any **change in circumstances** effecting particulars declared in the application for registration, or in case of **cessation or transfer of economic activity** or part thereof;
 - v. has to **issue fiscal receipts** or **tax invoices**, as the case may be, on all supplies made by him.



Article 11 Registration

Who qualifies?

A person who qualifies to be registered under Article 11:

- must be a **taxable person**;
- must be **established in Malta**;
- must qualify as a **“small undertaking”**



Article 11 Registration - *Who Qualifies?* (1)

Small Undertaking Certain turnover thresholds must be satisfied in order to qualify:

Economic Activity	Entry Threshold	Exit Threshold
Consisting principally in the supply of goods	€35,000	€28,000
Other economic activities	€30,000	€24,000

What constitutes turnover?

“Turnover” refers to the total taxable value of ALL supplies made by a person in the course of furtherance of his economic activity during the period, to the EXCLUSION of certain supplies, e.g. *exempt without credit supplies*.

Where the taxable person provides BOTH goods and services, the applicable threshold is determined by reference to the principal nature of the supply.

Article 11 Registration - *Who Qualifies?* (2)

Entry Threshold

Refers to the turnover threshold **ABOVE WHICH** a taxable person **DOES NOT continue to qualify as a small undertaking**. When the taxable person's turnover is above the Entry Threshold, that person can **NO LONGER** be **registered under Article 11** and that **person must ENTER the VAT system**.

Exit Threshold

Refers to the turnover threshold **BELOW WHICH** a taxable person **qualifies as a small undertaking**. When the taxable person's turnover is below the Exit Threshold, that person can **registered under Article 11** and that **person can EXT the VAT system**. The exit threshold is applied in the case where a person who is registered under article 10 would change his registration to article 11.

Applying for an Article 11 Registration

A person may apply to be registered under Article 11 as follows:

1

At the time of
registration

If the turnover threshold
for the relevant period is
LESS than the **ENTRY
THRESHOLD**

OR

2

At any other time
that at the time of
registration

If the turnover threshold
does **NOT** exceed the **EXIT
THRESHOLD** & provided
36 months have lapsed
from registration under
Article 10

Effects of an Article 11 Registration

Registration number
WITHOUT an MT prefix
(contrary to an Article 10
registration).

NO VAT is charged on
supplies made
and
NO entitlement to deduct
input tax

Annual simplified VAT
return (a declaration) to be
submitted by the 15 March
of the following year

Must issue fiscal receipts on
all supplies made by him

Must inform CfR within 15 days
of any change in circumstances
effecting particulars declared in
the application for registration,
or in case of cessation or
transfer of economic activity or
part thereof.

Article 12 Registration

□ An obligation to register in terms of Article 12 (i.e. mandatory registration) arises in a number of circumstances:

□ A taxable person who is not registered under Article 10, who:

- i. Purchases services from outside Malta which are taxable in Malta (by virtue of the reverse charge); and/or
- i. Makes ICA of goods exceeding €10,000 in a calendar year

□ a non-taxable legal person which makes an intra-community acquisition of goods exceeding €10,000 in a calendar year.



Effects of an Article 12 Registration

- By virtue of being registered in terms of Article 12, a taxable person:
 - i. is provided with a **VAT Identification Number** (MT Reg. No.);
 - ii. must **file VAT returns/ declaration on a MONTHLY BASIS** within 15 days of the second month following the date on which the transaction becomes chargeable to Maltese VAT.
 - iii. **NO input VAT recovery entitlement;**
 - iv. Must inform CfR **within 15 days** of any **change in circumstances** effecting particulars declared in the application for registration, or in case of **cessation or transfer of economic activity** or part thereof.;
 - v. Non-taxable persons registered under Article 12 **are considered to be taxable persons** for the purposes of determining place of supply rules.



Input VAT



Diploma in Law (Malta)



CAMILLERI PREZIOSI

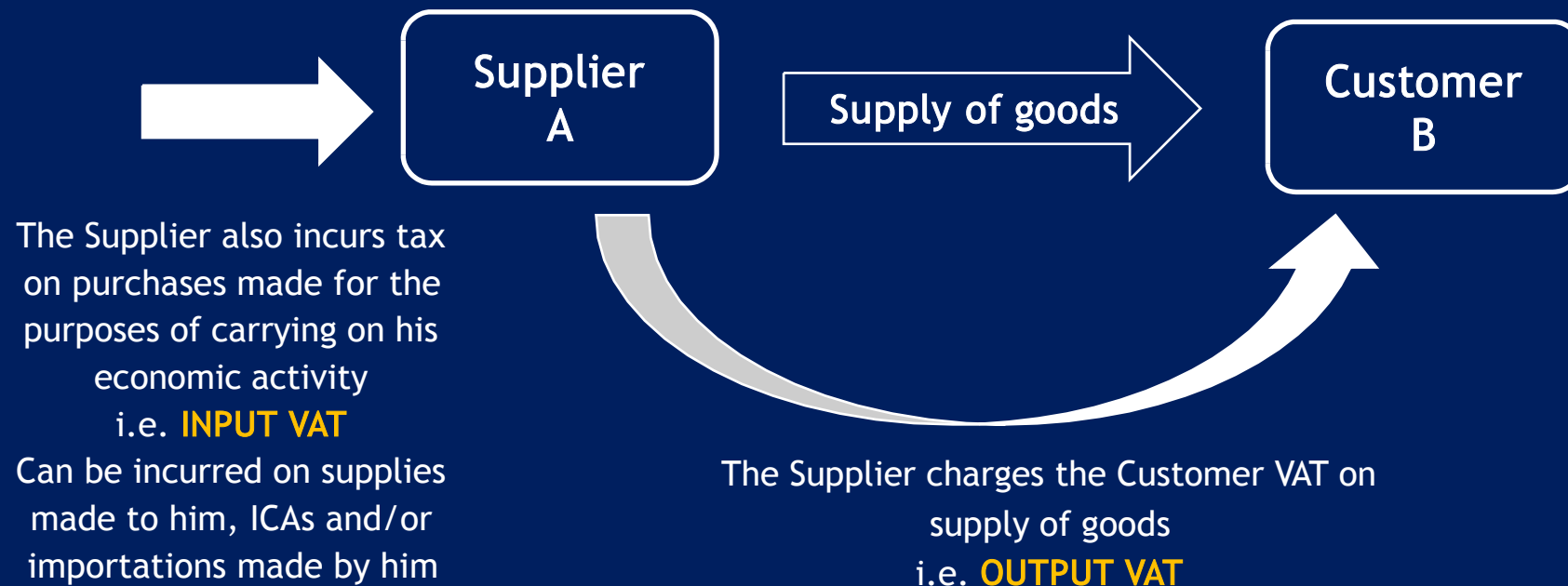
ADVOCATES

MAMO TCV

ADVOCATES

Input Tax - Introduction

- VAT is in principle NEUTRAL on businesses - most traders can recover the VAT which they are charged on their business expenditure via the input tax deduction system.
- Such a deduction (or credit) is allowed against the VAT chargeable (i.e. the output VAT) on the said business' supplies. This right is however subject to certain conditions and limitations.



Input Tax - Important Principles

Input tax is deductible **ONLY** to the extent that the purchases have been or are intended to be wholly used by him in the course or furtherance of an economic activity (Article 22(1), VAT Act).

There must be a **DIRECT** and **IMMEDIATE** link between input transactions and output transactions (which give rise to a right of deduction); OR direct and immediate link between costs and the taxable person's economic activity as a whole.



First Step: Entitlement to deduct VAT

1 Does the person have the right to claim input tax?

In principle, in person to be in a position to claim input tax, such person must be

a **taxable person** registered under **Article 10**.



Second Step: Qualifying Supplies

2 Is the supply a “qualifying supply”?

VAT is **ONLY deductible** if the business makes one or more of the following types of **qualifying supplies** (as outlined under Article 22(4) VATA):

- i. Taxable supplies;
- ii. Exempt with credit supplies;
- iii. Supplies made outside Malta that would be taxable or exempt with credit if made in Malta;
- iv. Supplies taxed outside Malta that would be exempt without credit if made in Malta;
- v. ‘Qualifying’ Financial Services supplied to non-EU customers.



Third Step: Identifying Exclusions/ Limitations

3 Is there an Exclusion or a Limitation?

NO deduction in respect of input tax incurred on supplies including:

- ☐ Tobacco and tobacco products
- ☐ Alcoholic beverages
- ☐ Motor vehicles, vessels or aircraft, and including goods and services related thereto
- ☐ Works of art and antiques
- ☐ Reception, entertainment and hospitality costs
- ☐ Goods and services for transport and entertainment of staff

Blocked Supplies

Third Step: Identifying Exclusions/ Limitations

3 Is there an Exclusion or a Limitation?

A taxable person may be subject to a limitation on the input tax which may be recovered, where that taxable person makes **MIXED SUPPLIES**:

1. Supplies on which he is **entitled to input tax deductions i.e. the qualifying supplies under Article 22(4)**;
2. **Other non-qualifying supplies** (e.g. exempt without credit supplies and transactions that are outside the scope of VAT).

Partial
Attribution
Mechanism

Third Step: Identifying Exclusions/ Limitations

Input Tax may
NOT be Claimed

When the input tax is EXCLUSIVELY attributable to **non-qualifying supplies** (e.g. exempt without credit supplies and transactions that are outside the scope of VAT).

Input Tax may be
Claimed in FULL

When the input tax is EXCLUSIVELY attributable to **qualifying supplies** [i.e. supplies under Article 22(4)].

Input Tax Partial
Attribution

When the input tax is attributable to BOTH **qualifying supplies** **AND non-qualifying supplies**.



Partial Attribution: Example

- Mr. X, a taxable person carries out mixed supplies.
- In so doing, his input tax amounts to €2,000, €500 of which is attributable to exempt without credit supplies.
- The remaining €1,500 is attributable to both taxable supplies and to exempt without credit supplies.
- Mr. X:
 - Will NOT be entitled to claim back any of the €500 - input tax exclusively attributable to non-qualifying supplies;
 - On the €1,500, he will be able to claim back the part of the remaining balance as is partially attributed to qualifying supplies (i.e. part of the €1,500).

Value of supplies that give rise to a deduction of input tax

Total Value of supplies



Fourth Step: Evidence

- No amount shall be treated as input tax of a person UNLESS it is supported by applicable evidence, i.e. proof that the tax was chargeable on purchases which have been or will be in the course or furtherance of his economic activity.
- Rules laid down under Item 2 of the Tenth Schedule to the VAT Act.



VAT Liability



Diploma in Law (Malta)



CAMILLERI PREZIOSI

ADVOCATES

MAMO TCV

ADVOCATES

Liability of Directors for VAT

- In terms of Article 66(1) of the VAT Act, directors, as mandataries, are treated as the representatives of the company on which board they sit.

Any secretary, manager, director, liquidator or other principal officer of an entity or of a body of persons...and any person who is a tutor, curator, administrator or trustee of any other person or of any trust, fund or other entity shall, for the purposes of this Act, be a representative of that body of persons... another person, trust, fund or other entity, as the case may be.



Implications of being a “Representative”

Article 66(3)(a)
of the VAT Act



Company directors are liable for all the obligations arising from the VAT Act in the same manner and to the same extent as the company that they represent.

Article 66(3)(b)
of the VAT Act



Anything done or omitted by the directors is deemed to have been done/omitted by the company which the director represents.

Article 66(3)(c)
of the VAT Act



Notices served on representatives of the company are deemed to have been served on the company.

Article 66(3)(d)
of the VAT Act



Refunds paid to a representative shall be deemed to have been paid to the person he/she represents.

Article 66(4) of
the VAT Act



Directors who have under their management or control, any funds or property belonging or due to the company shall not dispose of the funds or property unless they have made adequate provision for any tax due under the VAT Act.

Joint & Several Liability: Article 66(5)

A representative shall be jointly and severally liable with the person of whom he is a representative for the tax due by that person:

Provided that where the representative has acted in good faith and is NOT knowingly in breach of Article 66(4) or of any other obligation under this Act, his liability shall be limited to the funds or to the value of any property under his management or control which belongs or is due to the person of whom he is a representative.



VAT Offences and Punishment

- **Article 76** of the VAT Act lays down what omissions will constitute an offence in terms of the Act, including:

- i. Failure to apply for registration at the time and in the manner required by article 10 or 12;
- ii. Failure to keep or to store records, documents and accounts for the time and in the manner required by the Act or any regulations made under the Act;
- iii. Failure to furnish a tax return when required to do so in virtue of the Act;
- iv. Failure to furnish any additional return, statement or information or to produce any books, records, documents and accounts, or fails to pay any tax or administrative penalty due when required to do so in virtue of the Act or of any regulations made under the Act;
- v. Supply goods or services having failed to provide the security requested by the Commissioner under article 63(5)

- On conviction of any of the above-mentioned offences, the offender will be liable to:
 - a) a fine of not less than **€700** and not exceeding **€3,500**; and
 - b) on a request by the prosecution, the court shall, in respect of an offence under paragraph (iii), **order the offender to comply with the law** within a time sufficient for the purpose, but in any case **not exceeding three months**.
- In default, the offender shall be liable to the payment of a further fine **€5** for every day that the **default continues** after the lapse of the time fixed by the Court.

Determining VAT Treatment in a Nutshell

1.

□ Classifying the supply (goods or services);

2.

□ Determining place of supply;

3.

□ Determining VAT treatment;

(i) If out of scope of VAT (e.g. supplies between Malta & USA);

(ii) If in scope of VAT further determination whether supply is taxable or exempt (i.e. where place of supply is Malta);

4.

□ Compliance Obligations (i.e. registration obligations)

5.

□ Input tax entitlement