

## **Guidelines for the VAT treatment of Electronically Supplied Services**

### **Who should read these Guidelines?**

This document is intended to provide guidance on the definition of Electronically Supplied Services. Any taxable person providing electronically supplied services under the normal VAT system or under the MOSS scheme (Mini One Stop Shop) should read these guidelines.

### **What is the legal basis for these Guidelines?**

In terms of Item 10 of Part 2 of the Third Schedule to the VAT Act, with effect from 1 January 2015:

*“the place of supply of the following services to a non-taxable person shall be the place where that person is established, has his permanent address or usually resides:*

- (a) Telecommunications services*
- (b) Radio and Television Broadcasting Services*
- (c) Electronically supplied services”*

Article 7 of EC Regulation 282/2011 defines “Electronically Supplied Services” 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*”.

Therefore in order for a service to classify as an electronically supplied service for the purposes of Item 10 of Part 2 of the Third Schedule to the VAT Act, the following conditions must be satisfied:

1. The service must be delivered over the Internet or an electronic network;
2. The nature of the service must be such that it renders its supply essentially automated and involving minimal human intervention;
3. The nature of the service must be such that it renders its supply impossible to ensure in the absence of information technology.

In particular, the following services, when supplied as standalone services, shall not be regarded as “electronically supplied services” for the purposes of Item 10 of Part 2 of the Third Schedule to the VAT Act:

1. The purchase of goods over the internet or an electronic network, where the order is processed electronically.
2. The supply of books, newspapers, newsletters or journals disseminated electronically on tangible media, such as audio books or books published on CDs, DVDs, SD-cards or USB drives, even where these are ordered over the internet.
3. The purchase of services over the internet or an electronic network, where the order is processed electronically but the services are delivered in a traditional manner,

such as accommodation, car-hire, restaurant services and passenger transport services.

4. The online purchase of tickets to physically attend a cultural, artistic, sporting, scientific, educational, entertainment, or similar event.
5. An interactive online course, where the course content is delivered live by a tutor over the Internet or an electronic network (namely via a remote link), such as a live webinar.
6. An online course delivered by a tutor over the internet, where the course content is pre-recorded, but where live support is provided by a tutor;
7. The offering of a facility for the placing of bets on the internet or via an electronic network in connection with live horse races and other live sporting events;
8. The offering of a facility for internet gambling pursuant to the streaming of a live casino event;
9. Conventional auctioneers' services reliant on direct human intervention, even if the bids are placed over the internet.
10. The provision of professional services (such as professional services provided by lawyers and financial consultants), where the services are delivered by e-mail.
11. The provision of access to the internet, including the World Wide Web (this service would classify as a "Telecommunications" service for the purposes of item 10 of Part 2 of the Third Schedule to the VAT Act).

The above list is only indicative and is not exhaustive.

This document is the interpretation of the rules according to the VAT Department and is only binding in Malta.

The Commissioner may substitute, alter or withdraw these guidelines at any time.

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