

Budget Measures Implementation Act, 2012 Changes to the VAT Act

VAT Insight Issue No. 2012/03

June 2012



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Amendments to the Malta VAT Act introduced by the Budget Measures Implementation Act, 2012

The Budget Measures Implementation Act, 2012, which was published a few weeks ago, introduced various changes to the Value Added Tax Act ('VAT Act'). A brief overview of some of the key changes is provided in the following table while further details may be found below.

Contacts:

Mark Grech
mgrech@deloitte.com.mt
Tel: +356 23432000
Deloitte Malta

Change introduced to the VAT Act	Description
<i>New administrative penalty</i>	A new penalty imposed on article 12 registrants for failure to accurately state VAT payable in terms of the 'reverse charge' mechanism
<i>Clarification of article 10</i>	A clarification of article 10 and its interaction with the Regulation on administrative cooperation and combating fraud in the field of VAT
<i>New notification obligations</i>	The introduction of a legal basis for notification obligations to be adhered to by persons registered under article 11 or article 12
<i>Limitation on interest</i>	A limitation of the maximum amount of interest on outstanding VAT that can accrue for a particular tax period

New administrative penalty

One of the most notable changes is the introduction of a new article 37A in the VAT Act which imposes an administrative penalty on persons registered under article 12 thereof for failure to accurately report their Malta VAT due.

VAT Form 004

An article 12 VAT registration mostly applies to persons who make “exempt without credit” supplies and typically includes businesses operating in the remote gaming, financial services and healthcare industries.

Generally, these persons are obliged to notify the Malta tax authorities of purchases of goods and services on which they are required to account for Malta VAT in terms of the ‘reverse charge’ mechanism. For the purpose thereof, such persons must submit to the tax authorities ‘notices of payment’ (VAT Forms 004) along with the payment of any VAT due.

Understated or assessed tax

In general terms, the new article 37A provides that an article 12 VAT registered person becomes liable to an administrative penalty in the following situations:

- where such person submits a VAT Form 004 which contains an understatement of Malta VAT due;
- where such person fails to submit a VAT Form 004 within the stipulated timeframe, subsequent to which the Commissioner of VAT makes an assessment upon that person for the tax payable.

Administrative penalty

The penalty which may be imposed on an article 12 VAT registered person amounts to 20% of the understated or assessed tax. As such, failure to satisfy the necessary reporting obligations could have a considerable financial impact on that person. To avoid these unnecessary costs, businesses should ensure that their internal procedures are adequate to meet their VAT reporting obligations.

It is remarkable that the legislation, as currently enacted, does not provide for a reduction of the administrative penalty introduced by article 37A, while such a reduction is possible in comparable situations for article 10 VAT registered persons. More specifically, where an article 10 VAT registered person understates Malta VAT due, the VAT Act provides for the possibility of a reduction of the applicable administrative penalty from 20% to 10% upon the satisfaction of certain conditions. As no express provision to this effect has been introduced for understatements of VAT in a VAT Form 004 it seems that article 12 VAT registered persons are not entitled to benefit from any such reduction.

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Clarification of article 10

A clarification has been added to the VAT Act stating that article 10 in no way prevents or is deemed to prevent the Commissioner of VAT from enforcing his obligations under Council Regulation (EU) No. 904/2010 on administrative cooperation and combating fraud in the field of value added tax.

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New notification obligations

The obligation to notify the Commissioner of VAT of any changes in circumstances which affect the particulars declared in the application for VAT registration has been formally extended to cover article 11 and article 12 registrants. These notifications, in essence, allow the VAT Department to ensure that the taxable person is registered for VAT under the correct article and is, consequently, complying with the relevant obligations.

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Limitation on interest

A limitation on the maximum amount of interest (on outstanding sums of VAT) that can accrue in a particular tax period has been introduced. Interest will no longer accrue in respect of a tax period where the total amount of payments appropriated to that period is equivalent to or exceeds the amount of tax payable for that tax period.

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Example

Assume that the VAT payable on a VAT return is €10,000 and the return, together with the relevant payment of VAT is submitted one month late resulting in the imposition of an administrative penalty of €100 and interest of €75.

In accordance with the VAT Act, the payment submitted with the VAT return (i.e. the €10,000) is appropriated to the administrative penalty and interest first. The remainder (€9,825) is the amount that is appropriated to the VAT due, leaving an outstanding VAT balance of €175.

Previously, interest would have applied to the outstanding €175 of VAT. However, in light of the recent amendment, no further interest would accrue in that tax period given that the payment appropriated to it (i.e. the €10,000) is equivalent to the tax payable for that period.

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For further information, please contact:

Mark Grech
mgrech@deloitte.com.mt
Tel: +356 23432000
Deloitte Malta

Or your usual Deloitte Malta contact.

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Mriehel Bypass, Mriehel
Malta BKR3000

www.deloitte.com.mt

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