

New administrative penalty “Short payment penalty”

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New administrative penalty for default in payment of VAT declared

On 17 May 2013, the Budget Measures Implementation Act, 2013 was published. One of the features of the Act was the introduction of a new article 38A in the Value Added Tax Act, Chapter 406 of the Laws of Malta, imposing an administrative penalty, **both to article 10 and 12 VAT registered persons**¹, for default in payment of the VAT declared on a VAT return / VAT Form 004 (the so called “short payment penalty”). Legal Notice 259 of 2013, published on 30 August 2013 now has determined 4 June 2013 as the date with effect from which the new penalty is deemed to have come into force.

The penalty

Any person registered under article 10 or 12 of the Malta VAT Act who fails to pay Malta VAT as declared in a VAT return (article 10 VAT registered person) or VAT Form 004 (article 12 VAT registered person) submitted to the VAT Department will be liable to an administrative penalty in an amount equivalent to the higher of:

- 1% of the difference between the amount of VAT declared to be payable and the amount paid; or
- €20

for every month or part thereof that elapses from the date when the VAT should have been paid and the date when full payment of that VAT is actually made. **The penalty is capped however at €50 per VAT return or VAT Form 004 submitted.**

The administrative penalty is payable in addition to any interest (already) chargeable for late payment of any Malta VAT due to the VAT Department (i.e. interest at a rate of 0.75% for each month or part thereof during which such VAT due remains unpaid).

Application

The administrative penalty is chargeable where there is a discrepancy between the VAT reported / due and that paid (underpayment).

This could occur where for example:

- a VAT return declaring VAT payable / a VAT Form 004 is submitted without any payment;
- a VAT return / VAT Form 004 is submitted along with payment of the Malta VAT declared to be due, but contains computational errors which result in an understatement (and, as a result, underpayment) of the

¹ This new provision formalises the “short payment penalty” that was previously imposed on persons registered under article 10 of the VAT Act, and extends it to persons registered under article 12.

- Malta VAT actually due in respect of the transactions reported in the VAT return / VAT Form 004; or
- a VAT return / VAT Form 004 is submitted along with payment, however, the amount of the payment is less than the amount of Malta VAT declared in the VAT return / VAT Form 004 as being due.

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