

# VAT NEWSLETTER Q4- 2018

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## ABOUT US

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.

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# LOCAL NEWS

## **1.1 LEGAL NOTICE 434 OF 2018 PUBLISHED ON 14<sup>TH</sup> DECEMBER 2018**

The legal notice carries an amendment to Item 5 of the Eight Schedule to the VAT Act and provides that as from 01/01/2019, audio books, books and similar printed matter which are supplied electronically are to be taxed at a reduced rate of 5% and not any more at the standard rate of 18%. The amendment is most welcome since it settles an unfair disparity in the VAT treatment between audio books, books and similar printed matter supplied on physical means of support (such as a CD, DVD or traditional paper format) which were subject to a reduced rate of VAT and those supplied electronically which were not.

## **1.2 WHAT'S NEW FOR 2019?**

With effect from 01/01/2019 the following changes in VAT will kick in:

- New rules for the VAT treatment of vouchers
- Reduced rate of 5% extended to apply also to audio books, books and similar printed matter that are supplied electronically
- Electronically supplied services to non-taxable persons established outside Malta where the supplies do not exceed a calendar year threshold of EUR 10,000 will be taxed in Malta if the supplier of the service is established in Malta. However, supplier may opt to tax the services in the country of the customer by submitting a request in writing to the Commissioner
- For cross-border sales of electronically supplied services only one piece of evidence for customer location would be required by the service provider where such total sales do not exceed EUR 100,000 in a year
- Article 10 VAT registered persons who employ ten or more persons are required to submit the periodical VAT return only in electronic format

## **1.3 VAT APPEALS DECIDED BY THE ADMINISTRATIVE REVIEW TRIBUNAL ("TRIBUNAL")**

In case 55/2017 *Charles Galea vs Kummissarju tat-Taxxi* regarding the reduction of a VAT refund claim, the Tribunal found in favour of appellant by rejecting the Commissioner's preliminary plea that the appeal was based on an inappropriate legal provision and as a result should be considered null and void. The Tribunal consequently ordered the continuation of the hearing of the appeal.

## 1.4 COURT OF APPEAL (INFERIOR JURISDICTION) DECISIONS IN THE FIELD OF VAT

- In case 57/2015/1 *Adrian Chircop vs Kummissarju tat-Taxxi*, the Court dismissed the appeal by confirming the decision of the Administrative Review Tribunal (“ART”) which had established that Mr Chircop, in his capacity as company secretary of a particular company, was liable in the same manner and to the same extent as the company he was representing for all obligations imposed by or under the VAT Act.
- In case 188/2012/1 *Brincat’s Co. Ltd vs Kummissarju tat-Taxxa fuq il-Valur Mizjud*, the Court ruled that the appeal from the ART’s decision which found that the VAT assessments issued by the Commissioner to the company were fair and reasonable, was not based on a question of law as provided in Art. 47(1) of the VAT Act but on a question of fact (that the ART did not carry out a meaningful appreciation of the facts at hand). Consequently, the Court dismissed the appeal and confirmed the ART decision.
- In case 88/2013 *Edmund Barbara vs Direttur Generali (Taxxa fuq il-Valur Mizjud)*, the Court dismissed the appeal and confirmed the ART decision which had rejected appellant’s claim that the interest due to him on a refund of VAT in terms of S.L. 406.01 (VAT refund on Excise Stocks Regulations) was wrongly computed.
- In case 327/2013/1 *David Muscat vs Direttur Generali (Taxxa fuq il-Valur Mizjud)*, the Court found against the appellant Commissioner who had requested a revocation of the ART appeal decision which had ruled that the assessments served on appellant (David Muscat) were not in accordance with Art 32(5) of the VATA and hence null and void.
- In case 305/2012 *Quality Exports and Imports Ltd vs Kummissarju tat-Taxxa fuq il-Valur Mizjud*, rejected the appeal by the company and confirmed the ART decision which found that the VAT assessments issued by the Commissioner were to stand. The Court noted that the appeal was not strictly on a question of law but rather on a question of fact since the company was disputing the method used by the Commissioner to establish a mark-up for calculating the taxable value of the supplies.







# 2.0 EUROPEAN NEWS

## 2.1 ECOFIN MEETINGS

- On 02/10/2018, the Council reached political agreement on three VAT related proposals, namely:
  - the e-publication new rules (allowing Member States to apply a reduced rate on e-books and similar publications)
  - the generalised reverse charge mechanism (extended up to June 2022, allowing MS to apply a domestic Reverse Charge mechanism on goods which are susceptible to VAT fraud)
  - introduction of VAT “quick fixes” (introducing adjustments to EU VAT rules to fix specific issues)
- On 06/11/2018, the Council adopted a directive allowing alignment of VAT rules for electronic and physical publications opening up the possibility for Member States to extend, as from January 2019, a reduced rate to e-books and similar electronically supplied publications.
- On 04/12/2018, the Council adopted three legislative proposals aimed at adjusting some of the EU's VAT rules in order to fix four specific issues pending the introduction of a new VAT system. These adjustments are due to apply from 1 January 2020 and relate to:
  - **call-off stock:** Providing for a simplified and uniform treatment for call-off stock arrangements, where a vendor transfers stock to a warehouse at the disposal of a known acquirer in another member state;
  - **the VAT identification number:** To benefit from a VAT exemption for the intra-EU supply of goods, the identification number of the customer will become an additional condition;

- **chain transactions:** To enhance legal certainty in determining the VAT treatment of chain transactions, the texts establish uniform criteria;
- **proof of intra-EU supply:** A common framework is established for the documentary evidence required to claim a VAT exemption for intra-EU supplies.

*[ECOFIN is the Economic and Financial Affairs Council configuration of the European Council and is composed of the economic and finance ministers of the EU Member States. It is responsible for implementing EU policy in the areas of economic policy, taxation and regulation of financial services as well as adopting (by unanimous vote) VAT directives, regulations and decisions.]*

## **2.2 VAT COMMITTEE 111<sup>ST</sup> MEETING - BRUSSELS, 30<sup>TH</sup> NOVEMBER 2018**

A number of working papers were discussed of which we highlight the following:

- **Working Paper No. 947** regarding services provided by an electronic platform connecting for remuneration, by means of a smartphone application, a driver using his own vehicle with persons who wish to make urban journeys.
- **Working Paper No. 943** on the VAT treatment of organisations collectively managing copyright and related rights.
- **Working Paper No. 958** regarding conditions for the materialisation of a taxable transaction when internet services are provided in exchange for authorisation to use personal data.
- **Working Paper No. 960** on the application of the exemption provided in Article 132(1)(a) of the VAT Directive regarding “public postal services”.

VAT Committee working papers can be downloaded by accessing the link:

[https://circabc.europa.eu/faces/jsp/extension/wai/navigation/container.jsp?FormPrincipal:\\_id cl=FormPrincipal:libraryContainerList:pager&page=1&FormPrincipal\\_SUBMIT=1&org.apache.myfaces.trinidad.faces.STATE=DUMMY](https://circabc.europa.eu/faces/jsp/extension/wai/navigation/container.jsp?FormPrincipal:_id cl=FormPrincipal:libraryContainerList:pager&page=1&FormPrincipal_SUBMIT=1&org.apache.myfaces.trinidad.faces.STATE=DUMMY)

*[The VAT Committee is an advisory committee on value added tax set up in terms of Article 398 of the VAT Directive and consists of representatives of the Member States and of the Commission]*





## **3.0 UPDATE OF THE LATEST CJEU DECISIONS IN FIELD OF VAT**


### **3.1 CASE C-648/16 FORTUNATA SILVIA FONTANA**

On 21 November 2018, the Court of Justice of the European Union published its judgement in this case concerning the method of calculating the taxable amount by extrapolation by reference to sector studies. The Court ruled that Directive 2006/112/EC, and the principles of fiscal neutrality and proportionality, must be interpreted as meaning that they do not preclude national legislation, such as that at issue in the main proceedings, which authorises tax authorities, in the event of serious differences between declared revenue and revenue estimated on the basis of sector studies, to use extrapolation, based on such sector studies, in order to determine the amount of turnover achieved by a taxable person and, consequently, to carry out a tax adjustment requiring the payment of additional VAT, provided that that legislation and its application enable the taxable person, in compliance with the principles of fiscal neutrality, proportionality and the right of defence, to challenge the results obtained by that method, on the basis of all of the evidence to the contrary available to him, and to exercise his right of deduction in accordance with the provisions in Title X of Directive 2006/2012/EC, which it is for the referring court to verify.

The applicant, Ms Fontana, a VAT taxable person was subjected to a tax adjustment procedure by the tax authorities during 2010, which procedure she challenged arguing that the tax authorities had wrongly applied to her situation the sector study relating to accountants and tax consultants, instead of the study relating to human resources management advisers, which she considers to be her main activity. She also argued that the amount of VAT had been assessed on the basis of a sector study which does not give a consistent image of the income generated by her company in terms of proportionality and consistency.

### **3.2 CASE C-422/17 SKARPA TRAVEL**

By a decision published on 19th December 2018 the CJEU ruled Articles 65 and 306 to 310 of the VAT Directive must be interpreted as meaning that, when a travel agent, subject to the special scheme laid down in Articles 306 to 310 of that Directive, receives a payment on account for tourist services which it will provide to the traveller, VAT is chargeable, in accordance with that Article 65, on receipt of that payment on account, provided that, at that time, the tourist services to be supplied are precisely designated.



Secondly, that Article 308 of the VAT Directive must be interpreted as meaning that the margin of the travel agent, and, consequently, its taxable amount, corresponds to the difference between the total amount, exclusive of VAT, to be paid by the traveller and the actual input cost incurred by the travel agent in respect of supplies of goods and services provided by other taxable persons, insofar as those transactions are for the direct benefit of the traveller. When the amount of the payment on account corresponds to the total price of the tourist service or to a significant part of that price, and the travel agent has not yet incurred any actual cost, or has incurred only a limited part of the individual total cost of that service, or even when the individual actual cost of the trip incurred by the travel agent cannot be determined at the time when the payment on account is made, the profit margin can be determined on the basis of an estimate of the total actual cost which it will ultimately have to incur. For the purpose of such an estimate, the travel agent must take into account, where relevant, the costs which it has already actually incurred at the time of receipt of the payment on account. For the purpose of the calculation of the margin, the estimated total actual cost is deducted from the total price of the trip and the taxable amount for VAT to be paid at the time of receipt of the payment on account is obtained by multiplying the amount of that payment on account by the percentage corresponding to the part of the total cost of the trip that the estimated profit margin, thus determined, represents.

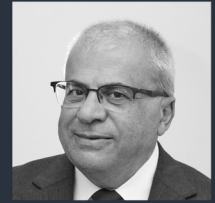
Skarpa, a Polish travel agent company, requested a Ministerial ruling regarding payments on accounts received from customers since the VAT treatment was not apparent from the national special scheme for travel agents' legislation. The Minister ruled that VAT should be chargeable at the time the payment is received and to determine the travel agent's margin, which amounts to the taxable amount for purposes of VAT, Skarpa can deduct from its gross margin the estimated costs that it will have to incur, relating to the supply in question, and make, later, as appropriate, the necessary adjustments, once it is in a position to determine the final amount of the costs actually incurred. Skarpa, taking the view that the VAT on its services should become chargeable only when it is in a position to determine its final profit margin, contested that tax opinion.



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