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ZAMPA DEBATTISTA

VAT NEWSLETTER

EXCELLENCE IS OUR AIM.
PRO-ACTIVENESS IS KEY TO OUR SUCCESS.

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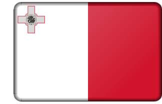
ABOUT US

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.



1.1 Announcements by the Commissioner for Revenue ("CfR")

1.1.1. On 20/02/2020 the CfR notified taxpayers that payments in respect of taxes due thereto and which are done by bank draft/cheques drawn in the name of foreign banks will no longer be accepted by the CfR. Likewise, no refunds of tax paid by the CfR to taxpayers will be issued through the use of bank drafts/cheques drawn in the name of foreign banks.

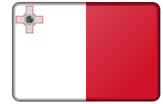
1.1.2. On 20/03/2020 the CfR published aScheme for the Postponement of Payment of Certain Taxes, a fiscal measure aimed to assist businesses and self-employed whose liquidity was negatively impacted as a result of the Covid-19 pandemic. With regard to VAT, eligible applicants would be able to postpone the VAT payments falling due in March and April 2020, and settle them, in two equal instalments, with the two quarterly VAT returns immediately following the quarter whose dues would have been deferred. The deferral scheme is limited to the payment of the VAT and consequently the VAT returns to which the payment relates are to be submitted by the prescribed due date.

1.2 CfR - Guidelines regarding Item 12 of Part Two of the Third Schedule to the VAT Act

On 12/03/2020 the Commissioner published a new version of the Guidelines regarding Item 12 of Part Two of the Third Schedule (the use and enjoyment clause) as applied to the leasing of pleasure boats (leases commencing on or post 01/11/2018). The general principle remains the same, namely presupposing that the lessor of a pleasure boat will not be able to assess, at the date of each chargeable event, the extent to which the pleasure boat is effectively used and enjoyed by the lessee within and outside EU territorial waters where lease payments are paid in advance. Accordingly, subject to the conditions contained in the Guidelines being met, the Commissioner shall only consider the place of supply of the hiring of pleasure boats, if situated within Malta, as being situated outside EU territorial waters if the actual effective use and enjoyment of the services takes place outside EU territorial waters. Whilst no changes are noted with regard to the tax periods (one or two) when the lease commences, the calculation of the "actual ratio" for the tax periods following the tax periods when the lease commences, has to be carried out for each tax period, with any VAT adjustment, in favour of or against the lessor, to be made in the VAT return for the next following tax period. The lessor shall calculate the actual effective use and enjoyment by the lessee of such pleasure boat outside EU territorial waters during the relevant tax period (i) by reference only to the period of time when the pleasure boat is used and enjoyed outside EU territorial waters and (ii) when it is possible to identify such place of effective use and enjoyment outside EU territorial waters. For the purpose of such calculation, the lessor shall utilise such documentary and/or technological data (including logs retained by the master of the pleasure boat as well as any GPS/AIS data) as the lessor can reasonably obtain from the lessee.

The withdrawal by the Commissioner of the Notice (dated 28/02/2019) which complemented the previous Guidelines, implies that agreements concerning the leasing of pleasure boats do not require his prior approval for the purpose of applying the use and enjoyment provision.

However, following the commencement of a lease, the Commissioner may, upon a request in writing by the lessor, issue a communication to confirm that VAT relating to the pleasure boat is being accounted for in Malta.



1.3 Budget Measures Implementing Act 2020 – 20/03/2020

In terms of Article 70 of Act VIII of 2020 (Budget Measures Implementing Act), the words "together with the tax due on the return" in paragraph (d) of sub-article (1) of Article 42 of the VAT Act were deleted. As a result, no administrative penalty for default in furnishing a VAT return shall apply where that VAT return is furnished electronically by not later than seven days from the date it is due had it not been furnished electronically, even if submitted without payment.

1.4 Administrative Review Tribunal

Case 2/16 – XXX vs Il-Kummissarju tat-Taxxi – The Tribunal ruled that the appeal lodged in terms of Article 43 of the VAT Act by plaintiff company against the assessments served to it by the Commissioner in terms of Article 32 of the VAT Act was invalid having been filed on a date falling more than thirty days after the date on which the assessments were notified to it.

2.1 European Commission – Taxation and Customs Union Directorate (TAXUD)

During this calendar quarter TAXUD uploaded the following items on its web portal:

16.01.2020 – Report on "The Prevention and Solution of VAT Double Taxation Dispute" by EU VAT Forum[1]

VAT double taxation or non-taxation situations with regard to EU cross-border transactions have been undermining the internal market for a long time. VAT double taxation violates the principle of tax neutrality and imposes costs on businesses and final consumers. Tax administrations and businesses are interconnected and need to work together to tackle VAT double taxation in the internal market and to collect VAT accurately. The report aims at identifying and highlighting current best practices and to analyse how to efficiently and effectively prevent or solve double-taxation (or non-taxation) situations in the Community.

The full report is available on:

https://ec.europa.eu/taxation_customs/sites/taxation/files/01-2020-executive-note-eu-vat_forum.pdf

18.02.2020 – New measures to fight VAT fraud using payment data

The Council has approved new measures to transmit and exchange payment data in order to fight e-commerce VAT fraud. The new regime on the exchange of payment data will reinforce the capacity of Member States to fight against e-commerce VAT fraud by launching a Central Electronic System of Payment information (CESOP). As of 2024, CESOP will keep records of cross-border payment information within the EU, as well as payments to third countries or territories, for a period of five years. This will allow tax authorities to properly control the correct fulfilment of VAT obligations on cross-border Business to Consumer (B2C) supplies of goods and services.

25.02.2020 – Publication of New VAT Committee Guidelines

The list of VAT Committee guidelines was updated to include the guidelines that were discussed during the 113rd and 114th Meetings of the VAT Committee. The guidelines on the "Implementation of the 2020 Quick Fixes Package" and the guidelines on "VAT related issues in view of the withdrawal of the United Kingdom from the European Union without an Agreement" should be of particular interest.

[1] The EU VAT Forum is a consultative body set up in terms of Commission Decision 2012/C 198/05 to assist the Commission in the early preparation of implementing acts, promote good practices, discuss practical insights etc. It is chaired by a representative of TAXUD and comprises one representative from each Member State and representatives of maximum fifteen organisations representing business or tax practitioners.

18.03.2020 – Transmission and exchange of payment data to fight VAT fraud

The European Commission published a survey for operators in the payment industry aimed at gathering their views on the implementation of the package on the transmission and exchange of payment data in order to fight VAT fraud. The goal of the survey is to obtain feedback regarding the new reporting obligations for these operators introduced by Directive (EU) 2020/284.

The survey will run until 17th April at 20.00 (CET) and is available on the following link:

https://ec.europa.eu/eusurvey/runner/VATPaymentDataSurvey

2.2 VAT Committee and VAT Expert Group Meetings

The VAT Committee and the VAT Expert Group did not meet during this calendar quarter.

3.1 Case C-48/19 X GmbH – 05.03.2020

X, a German limited liability company, provided, on behalf of public health insurance funds, over the phone, consultations for the purpose of giving medical advice to (insured) patients in respect of health issues. In a number of cases a patient support program is conducted, also telephonically, intended to improve the understanding of the health issue by the patient or his relatives, as well as ensuring the correct observance of the prescribed medical treatment. For the purpose of carrying out these services, X utilised nurses and medical assistants who were trained as "health educators", but in more than a third of the cases, a doctor would take over the consultation and prescribe the medical treatment.

A dispute arose between X, that considered the services to be exempt from VAT, and the German Tax Office that considered the services to be taxable. The Federal Finance Court of Germany, stayed proceedings and asked the ECJ for a preliminary ruling as to whether in the circumstances such as those at issue in the main proceedings where a taxable person, acting on behalf of health insurance funds, provides over the phone advice to insured persons in connection with various health and health related issues, falls within the scope of the exemption set out in Article 132(1)(c) of the VAT Directive[2]. Secondly, whether for the exemption to apply it would be sufficient that the consultations and support programs are carried out by nurses and medical staff trained as "health educators" with a doctor taking over in some cases.

The ECJ remarked that for the exemption set out in Article 132(1)(c) to apply, two conditions must be met, namely that it constitutes a provision of medical care to the person receiving it and secondly it is carried out in the context of the exercise of the medical and paramedical professions as defined by the Member State concerned. The wording related to the first condition refers to the context of the "provision of medical care" without any mention regarding the place of delivery of the service, as against the wording of Article 132(1)(b) which clearly refers to the medical care service as to be performed in a "hospital setting". It follows therefore that for the purpose of applying Article 132(1)(c) a service which satisfies both conditions may fall within the exemption, irrespective of where it is performed. The ECJ recalled that according to its settled case-law the concept of medical care refers to services aimed at the diagnosis, care and as far as possible the curing of diseases or health disorders and may also include services of a therapeutic and prophylactic nature. On the other hand, merely communicating information about pathologies or therapies in a general context or furnishing information of an administrative nature, such as details on a particular physician or specialist, do not fall under the concept of medical care.

Regarding the second condition set out in Article 132(1)(c), namely that the service is to be carried out "in exercise of the medical and paramedical professions as defined by the Member State concerned", the ECJ declared that it would be a matter for the national referring court to establish, in the context of the applicable German law which defines this concept, whether the persons providing the service actually fall within that concept.

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[2] "the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member States concerned".

In conclusion, the ECJ ruled that insofar as the services at issue given over the phone have a therapeutic purpose, and that they are provided by persons in the exercise of the medical and paramedical professions, a matter to the verified by the national referring court, the exemption set out in Article 132(1 (c) of the VAT Directive may apply.

3.2 Case C-94/19 San Domenico Vetraria SpA – 11.03.2020

Avir SpA, a parent company, seconded a director to a subsidiary San Domenico Vetraria ("SDV"), in respect of which it raised invoices corresponding to the costs it incurred for the seconded director. When reimbursing Avir for these costs, SDV applied VAT for the purpose of exercising its right of input VAT deduction. The Italian Tax Office took the view that such costs were reimbursements which fell outside the scope of VAT and consequently the application of VAT by SDV was not only inappropriate but did not give rise to a right of deduction.

The Supreme Court of Cassation, hearing the appeal case, had doubts whether a national law which provided that where the sum reimbursed for a secondment corresponds to the amount of costs incurred for the seconded staff, that sum is not taxable, since it is irrelevant for VAT purposes, would actually exclude such a reimbursement for seconded staff from falling within the scope of VAT in terms of the VAT Directive. In the light of these doubts, it stayed proceedings, and asked the ECJ whether the relevant provisions in the VAT Directive[3] are to be interpreted as precluding national legislation under which the secondment of staff by a parent company in respect of which the subsidiary company merely reimburses the related costs to be regarded as irrelevant for VAT purposes.

The ECJ observed that whilst it is apparent from the information furnished by the referring court that the transaction related to a service by a taxable person taking place in Italy, it is not clear whether it was effected for consideration within the concept of a supply of services set out in the VAT Directive. In that regard, according to settled case-law taxable transactions presuppose the existence of a transaction between the parties in which a price or consideration is stipulated. Thus, where a person's activity consists exclusively in providing services for no direct consideration, there is no basis of assessment and the services are therefore not subject to VAT. It follows therefrom, that a supply of services is effected "for consideration" within the meaning of Article 2(1) of the VAT Directive, and hence is taxable, only if there is a legal relationship between the provider of the service and the recipient pursuant to which there is a reciprocal performance, the remuneration received by the provider of the service constituting the value actually given in return for the service supplied to the recipient. It appears to the ECJ, from the documents before it, that the secondment was carried out on the basis of a legal relationship of a contractual nature between Avir and SDV. It follows that there would be a direct link where two services are mutually dependent on each other, that is, one is made only on condition that the other is also made and vice versa.

[3] Articles 2 and 6(1) of the Sixth Directive (now Articles 2(1) and 24(1) of Council Directive 2006/112/EC)

Accordingly if it were to be established, a matter for the referring national court to ascertain, that the payment by SDV of the amounts invoiced to it by the parent company was a condition for the latter to second the director and that the subsidiary paid those amounts only in return for the secondment, it would have to be held that there was a link between thetwo services, in which case the transaction should be regarded as supplied for consideration and given that the conditions in Art. 2(1) are all met, subject to VAT.

The ECJ thus ruled that the relevant provisions in the VAT Directive must be interpreted as precluding national legislation under which the secondment of staff by a parent company to its subsidiary carried out in return for only the reimbursement of the related costs, is irrelevant for the purpose of VAT, provided that the amounts paid by the subsidiary to the parent company, on the one hand, and that secondment, on the other hand, are interdependent.

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