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CERTIFIED PUBLIC ACCOUNTANTS

VAT Newsletter

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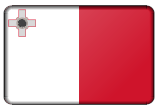
ABOUT US

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 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

LOCAL NEWS



Commissioner for Revenue News

The Covid-19 Scheme applicable to the Postponement of the due date for the Payment of Certain Taxes was extended to include eligible taxes up to end of June 2020 with the settlement period also being extended to the end of October 2020.

Publication of Legal Notices

Legal Notice 186 of 2020 published on 8th May 2020 and effective from 4th May 2020 amends the Eight Schedule to the Malta VAT Act, by introducing a reduced rate of VAT of 5% to supplies of "protective face masks, excluding diving equipment".Legal notices 219, 220, 221, 222, 223, 224, 225 and 226 of 2020 published on the 2nd June 2020, amend a number of schedules contained in the VAT Act.

The new rules transpose the provisions of Council Directive (EU) 2017/2455 and Council Directive (EU) 2019/1995 regarding the new 2021 rules for intra-community distance sale of goods including goods imported from third countries as well as services to non-taxable persons by suppliers not established in the Member State of consumption. The new rules were set to apply as from 1st January 2021 but due to the disruptive effects of the Covid-19 pandemic on the EU economy the EU Commission has directed Member States to postpone the entry into force by six months.

EUROPEAN NEWS

TAXUD news

03/04/2020: The EU Commission published a decision aimed to assist Member States affected by the Covid-19 pandemic consisting in the temporarily suspension, under certain conditions of Customs duties and VAT applicable to protective equipment and medical devices.

08/04/2020: Publication of new guidelines by the VAT Committee. For further reading see:

https://ec.europa.eu/taxation_customs/business/vat/vat-committee_en

VAT COMMITTEE MEETING

12/06/2020: Due to the Covid-19 pandemic measures, the 116th Meeting of the VAT Committee was held on-line with quite a busy agenda. The Commission gave a number of updates on a number of ongoing initiatives and presented a number of working papers for discussion, amongst which one relating to a follow-up of the Voucher Directive and another relating to the new legislation on Quick Fixes.

Working Paper 993 – Questions raised following the implementation of the Voucher Directive – further analysis

The Commission sought to address a number of controversies associated with the implementation of the new rules on vouchers introduced in 2019, in order to arrive at a common understanding of the concept of vouchers and hopefully reach a uniform approach by Member States regarding their VAT treatment. For this purpose, it was appropriate to examine, with a view to agreeing, on a common approach to a number of questions regarding vouchers and specifically: the criteria to distinguish vouchers from payment services and utility tokens; interaction between the rules for intermediaries and the voucher rules; application of the medical and dental care exemption along the distribution chain of an SPV; interaction of vouchers and other VAT special schemes (such as the tour operators scheme).

Working Paper 989 – Implementation of the Quick Fixes Package – VAT ID No. obtained after the moment of chargeability of the tax on the supply

In this paper the Commission sought to address the issue of the applicability of Art. 138 (the exemption for an intra-Community supply) where the acquirer had not indicated a VAT identification number to the supplier at the moment in time of the chargeability of VAT on the supply but had indicated such number afterwards. This particularly in the light of a unanimously agreed guideline of the VAT Committee which stated the a supplier must charge VAT on an intra-Community supply where the customer does not indicate a VAT identification number or the customer indicates a VAT identification number issued by the Member State from where the goods are being dispatched. In the paper a number of practical situations were selected for further discussion by the delegations, including: negligence or ignorance of the acquirer; VAT identification number requested but not yet allocated; supplier stopped his activity (in case the acquirer had applied but was still awaiting for the VAT No. to be issued to him).

VAT Expert Group Meeting

11/05/2020: During the 26th Meeting of the VAT Expert Group, held on-line in view of the Covid-19 pandemic measures a number of interesting documents were put up for discussion, notably a document on "Financial services – possible options for review"; "Upgrading the EU VAT system" and "the Platform economy". For further reading:

https://circabc.europa.eu/faces/jsp/extension/wai/navigation/container.jsp?FormPrincipal:_idcl=FormPrincipal:libraryContainerList:pager&page=2&FormPrincipal_SUBMIT=1&org.apache.myfaces.trinidad.faces.STATE=DUMMY

UPDATES ON ECJ DECISIONS

Case C-547/18 – Dong Yang Electronics – 07/05/2020

The case concerned the issue of whether Art. 44 of the Council Directive 2006/112/EC and Art. 11(1) and 22(1) of the VAT Implementing Regulation(EU) No. 282/2011 must be interpreted as meaning that the existence, in the territory of a Member State, of a fixed establishment of a company established outside the Community may be inferred by a supplier of services from the mere fact that that company has a subsidiary there or whether that supplier is required to inquire, for the purposes of such assessment, into contractual relationships between the two entities.

Dong Yang, a Polish company, carried out services consisting in assembling printed circuit boards from components owned by LG Korea which were cleared through Customs by LG Poland, a subsidiary of LG Korea in Poland. Dong Yang then supplied the assembled PCBs to LG Poland but invoiced the supply of the service to LG Korea by application of Art. 44 of the VAT Directive. The Polish Tax Administration took the view that inasmuch as LG Poland constituted a fixed establishment of LG Korea in Poland, the supply was made to the fixed establishment and consequently should have been treated as a taxable domestic supply subject to Polish VAT.

The Court observed that consideration of economic and commercial realities form a fundamental criterion for the application of the common system of VAT and therefore, the treatment of an establishment as a fixed establishment cannot depend solely on the legal status of the entity concerned. In that regard while it is possible that a subsidiary constitutes a fixed establishment of its parent company, such treatment depends on the substantive conditions set out in Implementing Regulation 282/2011, specifically Art. 11 thereof, which must be assessed in the light of economic and commercial realties. Furthermore, Art. 22 provides a series of criteria which the supplier of the services must take into account in order to identify the customer's fixed establishment. Where such assessment is not conclusive to determine the existence of a fixed establishment, attention has then to be given to the contract, the order form and the VAT identification number of the customer and whether the fixed establishment would be the entity paying for the service. Only if identification of a fixed establishment cannot be determined by application of these tests can the supplier legitimately consider that the services have been supplied at the place where the customer has established his business. The supplier's obligation in determining the existence or otherwise of a fixed establishment of a customer is limited to the contractual obligations between him and the customer. As such, he has no obligation still less a right, to examine the contractual relationships between the parent company and its subsidiary, a responsibility which lies squarely with the Tax Administration.

In the light of the foregoing, the Court ruled that Art. 44 of the VAT Directive must be interpreted as meaning that the existence, in the territory of a Member State, of a fixed establishment of a company established outside the Community may not be inferred by a supplier of services from the mere fact that the company has a subsidiary there, and that supplier is not required to inquire, for the purposes of such an assessment, into contractual relationships between the two entities.

UPDATES ON ECJ DECISIONS

cont.

Case C-43/19 – Vodafone Portugal – 11/06/2020

The ECJ was asked to determine whether the amounts received by an economic operator in the event of early termination, for reasons specific to the customer, of a services contract requiring compliance with a tie-in period in exchange for granting that customer advantageous commercial conditions, constitute the remuneration for a supply of services for consideration within the scope of VAT.

Vodafone Portugal concluded services contracts with customers which included special promotions subject to conditions which tied those customers in for a predetermined minimum period. According to the terms and conditions, where a customer terminated the contract before the end of the tie-in period, he was still required to continue paying the amounts to Vodafone provided for in the contract. Vodafone considered these payments as compensation for costs incurred in providing the customer the right to use its services and thus outside scope of VAT. On the other hand, the Portuguese tax administration took the view that such payments constituted a consideration for a supply of a service and hence should be treated as taxable supplies.

The Court recalling settled case-law remarked that a supply of services is carried out for consideration 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 actual consideration for an identifiable service supplied to the recipient. Furthermore, there has to be a direct link between the service supplied and the consideration received. The Court held, that in the case at issue, the consideration for the price paid at the time of the signing of the contract for the supply of a service is formed by the right derived by the customer to benefit from the fulfilment of the obligations arising from that contract, irrespective of whether the customer makes use of that right or not. Thus, that supply is made by the supplier of the service when it places the customer in a position to benefit from that supply, so that the existence of the above-mentioned direct link is not affected by the fact that the customer does not avail himself of that right.

In addition, the Court dismissed the argument brought forward by Vodafone, namely that the amounts so received were comparable to a statutory payment representing a compensation for damages sustained in incurring the costs associated with providing the services to the (defaulting) customers.

On the basis of its deliberations the Court ruled that Article 2(1)(c) of the VAT Directive must be interpreted as meaning that amounts received by an economic operator in the event of early termination, for reasons specific to the customer, of a services contract requiring compliance with a tie-in period in exchange for granting that customer advantageous commercial conditions, must be considered to constitute the remuneration for a supply of services for consideration, within the meaning of that provision.

CONTACT

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