ZAMPA DEBATTISTA

VAT NEWSLETTER

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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.

LOCAL NEWS

Commissioner for Revenue News

With effect from 1 June 2020 new on-line VAT services for requesting a change in VAT registration and for maintenance of the economic activity were introduced. The new services, available through the Office of the CfR website, offer real time processing of the afore-mentioned requests thus ensuring speed and efficiency.

Administrative Review Tribunal

On 3 July 2020 the Administrative Review Tribunal published the following decisions:

Appeal No 93/12 VG – Tracey Azzopardi vs Commissioner of Value Added Tax

This appeal was filed after the taxable person was served with four notices of assessment following a credit control exercise by the CfR, which assessments amounted to EUR 27,164.65 inclusive of administrative penalties and interest. According to the CfR, appellant had failed to substantiate the input VAT credit as required under the 10th and 12th Schedules of the VAT Act. In addition, in the course of the credit control exercise by the CfR it transpired that there was a discrepancy between the amounts in the invoices retained in the records of the suppliers and the corresponding invoices in respect of which the input VAT credit had been claimed to the extent that the CfR had a strong reason to believe that appellant had tampered with the purchases invoices. The discrepancy thus established formed the taxable base for the assessments which were under appeal. Furthermore, in support of his case the CfR filed a copy of a *res judicata* judgement delivered by the Criminal Court wherein the appellant had admitted to the charge of tampering with purchase invoices related to the submission of his VAT Returns, thus breaching Article 77 (b) (c) (g) of the VAT Act. In the light of the arguments and evidence by the parties, the Tribunal ruled that the appellant did not present any proof to contradict the CfR's findings and consequently it proceeded to
dismiss the appeal and confirm the validity of the assessments.

Appeal No 36/14 VG – Westminster Properties Ltd vs Director General (Value Added Tax)

This appeal was in respect of the imposition of administrative penalties and interest pursuant to the raising of VAT assessments. The Tribunal had rejected a preliminary plea by the CfR regarding the validity of the appeal, namely that the appellant had failed to declare whether the appeal was being filed in terms of article 43 (appeal against assessments) or article 44 (question to the Tribunal) of the VAT Act. The grievances put forward by the appellant related to the allegation that the assessments were not issued properly, reasonably, and fairly. Furthermore, the appellant claimed that he had acted in *bona fide* and as such, in his view, the administrative penalty and interest so imposed should have been waived off. In addition, he considered the said administrative penalty and interest to be disproportionate when compared to the endangered tax. In consideration of plaintiff's grievances, the Tribunal observed that the CfR had raised the administrative penalty and interest in terms of the pertinent provisions of the VATA and as such certainly not in an arbitrary, discriminatory or disproportionate manner as claimed. Furthermore, although Article 42 of the VATA allows the CfR a discretion to reduce/waive administrative penalties, such discretion can only be exercised if he is satisfied that there was a reasonable excuse for the default.

It was within the CfR's discretion not to accept, as a reasonable excuse, the claim put forward by appellant that the input VAT was claimed in error due to a genuine mistake. In rejecting this plea, the Tribunal remarked that appellant should have been knowing or should have known what he was paying his suppliers for. Furthermore, the Tribunal reminded appellant that when a person furnishes a VAT return to the CfR in terms of Article 27, that person would *de facto* be declaring that the information contained therein is complete and correct. On the basis of the evidence and the arguments brought forward by the parties, the Tribunal dismissed the appeal and confirmed that the administrative penalty and interest in question were due and payable to the CfR.

Appeal No 77/12 VG – XXX vs Director General (Value Added Tax)

XXX filed an appeal against assessments, amounting to EUR 226,206 inclusive of the administrative penalty and interest, raised by the CfR pursuant to an audit investigation by the Tax Compliance Unit. CfR filed a preliminary plea on grounds that XXX did not co-operate during the investigation stage thus breaching Articles 48(1) (2) (3) and (4) and invoked the coming into effect of article 48(5). The Tribunal informed the parties that it will give a preliminary judgement on the matter and ordered the parties to submit evidence in this sense. On his part the CfR, informed the Tribunal that the plaintiff, notwithstanding a meeting and following correspondence did not provide him with the requested documentation. On the other hand, appellant alleged that he had been the victim of an intra-community fraud, and that furthermore a large chunk of his documentation had been mislaid and what remained of it had been rendered useless as a result of mould. The Tribunal, in not considering the evidence brought forward by appellant as constituting a reasonable excuse at law, upheld the preliminary plea instituted by the CfR and ordered the continuation of the proceedings on the merits of the case with appellant being precluded, in terms of Article 48(5) of the VATA, from producing during the hearing, any records, documentation, accounts or electronic data relating to the assessments under appeal.

EUROPEAN NEWS

TAXUD news

15th July 2020 – Fair and Simple Taxation; Proposal for new package of measures to contribute to Europe's recovery and growth

The European Commission adopted an ambitious new Tax Package to ensure that EU tax policy supports Europe's economic recovery and long-term growth. The Package is built on the twin pillars of fairness and simplicity. Fair taxation remains a top priority for the European Commission, as a means of protecting public revenues, that will pay an important role for the EU's economic recovery in the short-run and prosperity in the long-run. The Package seeks to boost tax fairness, by intensifying the fight against tax abuse, curbing unfair tax competition and increasing tax transparency. In parallel, it focuses on simplifying tax rules and procedures so as to improve the environment for businesses across the EU. This includes removing tax obstacles and administrative burdens for taxpayers in many sectors with a view to making it easier for companies to thrive and grow in the Single Market.

For further reading you can visit; https://ec.europa.eu/taxation_customs/general-information-taxation/eu-tax-policy-strategy/package-fair-and-simple-taxation_en

23rd July 2020 – VAT relief for medical equipment imports

In line with the introduction of measures to combat the effects of the Covid-19 pandemic the European Commission decided to prolong, up to 30 October 2020, the temporary relief for both VAT and customs duties on the importation of protective equipment, testing kits or medical devices such as ventilators. It is recalled that when the measure was first announced on 20 March 2020 it was set to expire after six months, that is by 30 June 2020. The relief applies to state organisations and charitable or philanthropic organisations approved by the competent authorities of the Member States.

7th August 2020 – Proposal to amend VAT rules to accommodate trade with Northern Ireland after transition period

The European Commission proposed changes to the EU's VAT rules in preparation for the end of the transition period with the United Kingdom. The amendment to the VAT Directive will introduce a special VAT identification number for businesses in Northern Ireland in line with the Protocol on Ireland/Northern Ireland. Under the Protocol, the EU VAT provisions shall continue to apply in relation to goods traded between EU and Northern Ireland (and vice-versa) when crossing the border between Ireland/Northern Ireland. Such supplies of goods will be treated as if they were cross-border supplies of goods between Member States of the EU, including also the application of VAT exemptions and deductions. However, these provisions shall not apply to supplies of services in Northern Ireland or supplies of goods or services made elsewhere in the United Kingdom which shall become subject to the United Kingdom's VAT rules after the expiry of the transition period on 31 December 2020. Given that the changes may require IT adjustments from Member States, the Commission is proposing the changes well in advance in order to ensure that the VAT provisions set out in the Protocol become fully operational on 1 January 2021.

EUROPEAN NEWS

10 September 2020 – The 2018 VAT Gap Report

The Commission released the VAT Gap report for 2018. The report sets out to estimate the difference between the expected and the actual VAT revenue accruing to the Member States. The VAT revenue losses are generally attributable to fraud and evasion, tax avoidance, bankruptcies, financial insolvencies, miscalculations as well as inefficiencies of the tax administrations. By analysing the VAT revenue gap the report aims to measure the effectiveness of VAT enforcement and compliance measures in each Member State with a view to help develop well-targeted measures and monitor their effectiveness to counter the revenue losses.

In a nutshell, the main findings show that EU Member States lost an estimated EUR 140 billion in VAT revenues for the year 2018. Though overall the VAT gap remains extremely high, it has improved marginally in recent years. As a matter of fact, in nominal terms, the overall EU VAT Gap slightly decreased by almost €1 billion to EUR 140.04 billion in 2018, slowing down from a decrease of EUR 2.9 billion in 2017. This downward trend was expected to continue for another year, though the impact of the coronavirus pandemic on the EU economy is most likely to revert the positive trend.

VAT Committee Meeting

VAT Committee did not meet during this quarter.

VAT Expert Group Meeting

VAT Expert Group did not meet during this quarter.

UPDATES ON ECJ DECISIONS

Case C-231/19 – Blackrock Investment Management (UK) Ltd – 02/07/2020

Blackrock ("BR"), a member of a VAT group established in the UK provided services consisting in the management of special investment funds as well as other funds. To enable its fund managers to manage the funds effectively BR made use of a software platform named Aladdin belonging to a third party. BR accounted for these services by reverse charge in terms of Art. 196 of the VAT Directive. BR treated these services as exempt from VAT on grounds that they were used in the management of special investment funds (even though the management of 'other funds' was predominant). On the other hand, HMRC (the UK tax authority), disagreed with that approach and consequently issued notices of assessment to BR to recover the VAT chargeable on those services.

The ECJ (the "Court") was asked to determine whether a single supply of management services, such as that at issue in the main proceedings, provided by a software platform belonging to a third-party supplier for the benefit of a fund management company, which manages both special investment funds and other funds, falls within the remit of the exemption in Art.135(1)(g) and if so, what would be the rules for its application.

On an examination of the facts at issue the Court observed that whereas the information provided via the Aladdin platform consisted of a number of elements it may be regarded as a single supply of service made up of a principal service and several ancillary services following the VAT treatment of the principal service. However, recalling the settled case law in *Deutsche Bank* the Court found it impossible to determine which was the principal and which were the ancillary elements of the service, all elements being regarded as equally important in such a way that none was predominant. The Court dismissed HMRC's argument that the treatment of the service at issue was to be determined by reference to the nature of their use. Whilst noting that the Aladdin platform offered services which were designed for the purpose of managing investments of various kinds and consequently can be used both for the management of special investment funds as well as other schemes, it cannot be concluded that the service at issue bought in by BR as being regarded to have been specifically designed for the management of special investment funds.

Finally the Court ruled that a single supply of management services, provided by a software platform belonging to a third-party supplier for the benefit of a fund management company, which manages both special investment funds and other funds, does not fall within the exemption provided for in Article 135(1)(g) of the VAT Directive.

Case C-374/19 – HF – 09/07/2020

The Court was asked to determine whether Articles 184, 185 and 187 of the VAT Directive must be interpreted as not precluding the national legislation (of Germany) pursuant to which a taxable person is required to adjust the initial VAT deduction related to the construction of an immovable property (a cafeteria) following a change in circumstances such as those at issue in the main proceedings.

UPDATES ON ECJ DECISIONS

HF is the parent company of a limited liability company which operates a retirement home. The limited liability company constructed a cafeteria in an annex to the retirement home declaring to exclusively use it to make taxable supplies to external visitors to the exclusion of the residents of the home. Following a first audit by the Tax Office, the company had consented to assume a 10% use of the cafeteria by the residents of the home which triggered a requirement to carry out an adjustment of the input VAT initially deducted on the cafeteria. In a second audit covering the years 2009 to 2012, the Tax Office found that the company no longer carried taxable supplies in the cafeteria and that subsequently the business was removed from the commercial register. This led to the Tax Office making a further adjustment to the initial VAT deduction since the cafeteria was no longer used for transactions which give right to deduct input VAT. HF filed an appeal on a point of law against the decision to make a second adjustment before the referring national court, claiming that, although the cafeteria, which forms part of the company's assets without the possibility of private use, is no longer used for taxable purposes, there has been no change in the use of the cafeteria capable of leading to an adjustment subject to the relevant provision in the German VAT Code. According to HF, the fact that the cafeteria is not being used for taxable supplies should be understood as the result of a bad investment. Access to the cafeteria was blocked solely for reasons of safety and furthermore there had been no increase in use of the cafeteria by the residents of the retirement home.

The Court observed that from the information provided, for the period from 2009 to 2012, taxed transactions ceased, for whatever reason, while exempt transactions continued to be carried out. That necessarily implied that the cafeteria's premises, which are an integral part of a retirement home operated as an activity exempt from VAT, did not remain empty, but were used from then on exclusively for exempt transactions. Therefore, in accordance with settled case-law of the Court, insofar as the goods or services acquired by the applicant in the main proceedings for the purpose of constructing the cafeteria were used, from 2009 to 2012, exclusively for the purpose of its exempt transactions — which is nevertheless a matter for the referring court to determine — the transactions carried out at the earlier stage are no longer used to make taxed supplies and are therefore subject to the deduction adjustment mechanism. In such circumstances, the close and direct relationship between the right to deduct input VAT paid on the expenditure incurred and taxed activities subsequently carried out by the taxable person, even though it existed at an earlier stage, would now have been broken. It follows that, in those circumstances such as those at issue, there would in principle be a change for the purpose of Article 185 of the VAT Directive making it necessary to adjust the initial deduction. The need to do so is not called into question by the sole fact that it results from circumstances beyond a taxable person's control. Finally, it should be stated that the principle of fiscal neutrality does not preclude such a conclusion. The situation of an undertaking which makes investments for the purpose of an economic activity giving rise to both taxed and exempt transactions and which continues to carry out exempt transactions is different from that of an undertaking which makes investments for the purpose of an economic activity giving rise to only taxed transactions without that activity ultimately resulting in such transactions.

In the light of the foregoing, the Court ruled that Articles 184, 185 and 187 of the VAT Directive must be interpreted as not precluding national legislation pursuant to which a taxable person who has acquired the right to deduct, on a pro-rata basis, VAT related to the construction of a cafeteria, which is annexed to the retirement home operated by him as an activity exempt from VAT and which is intended to be used for both taxed and exempt transactions, is required to adjust the initial VAT deduction where he has ceased all taxed transactions in that cafeteria's premises, if he has continued to carry out exempt transactions in those premises, thus using them henceforth only for those transactions.

Should you require any further information on the above please contact:

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DISCLAIMER