Zampa Debattista

Russell Bedford
taking you further

Entrust your VAT matters to us

VAT Newsletter

Q1 2021

ABOUT US

Zampa Debattista was founded in 2014 by Matthew Zampa and John Debattista.

Before kicking off their own venture, the partners had accumulated over a decade of experience in accounting and assurance, developing a specialisation – respectively – in Indirect Taxation and Financial Reporting.

Since then, Zampa Debattista has grown to a 360-degree business advisory also covering areas such as Direct Taxation and Assurance.

In 2019, the company launched ZD Academy, an innovative platform offering highly technical courses for accountants and auditors.

Today, Zampa Debattista unites more than 45+ highly trained and dedicated professionals.

As a mid-size company, it offers a comprehensive range of services while maintaining its original, small firm's personal approach.

We aim to raise the profession with *Integrity, Honour* and *Passion*

THE PARTNERS

John Debattista
Founding Partner

John Debattista is a Certified Public Accountant and Registered Auditor. Prior to Zampa Debattista, John occupied the post of audit manager in a medium sized audit firm where he developed a specialisation in the financial services industry and remote gaming sector.

John is one of the founding partners at Zampa Debattista and heads the Assurance function of the office. He is the IFRS leader and acts as an advisor on highly technical IFRS issues. John lectured at the final stages of the ACCA, namely the Corporate Reporting paper. John also lectured the ACA course for the ICAEW, Institute Chartered of Accountants for England and Wales, namely the Corporate Reporting paper. John is also a speaker in various audit and accounting seminars delivered by a number of institutes in Malta. He also lectured the Diploma in IFRS provided by the Malta Institute of Accountants (DipIFR).

John has also worked abroad on a number of assignments which mainly relate to gaming and financial services

Matthew Zampa
Founding Partner

Matthew is a certified public accountant specialised in indirect taxation. He has been specializing in VAT since 2008 and has been involved in complex VAT assignments both within and outside of Malta.
Matthew, a member of the Malta Institute of Accountants, is also a part-time lecturer with the Malta Institute of Taxation.

Matthew Zampa is also the first Maltese to successfully complete the Expert in EU VAT degree. This coveted degree is administered and awarded by the VAT Forum, an international partnership of indirect tax specialists, founded in 1999.

Matthew forms part of Malta Institute of Accountants tax committee and is a member of the indirect taxation committee of the Malta Institute of Taxation.

Kris Bartolo
Partner

Kris is a Certified Public Accountant and Registered Auditor specialising in assurance services and international financial reporting standards.
Kris graduated from the University of Malta after completing the Bachelor of Accountancy (Honours) Degree. Following four years as an audit senior at a medium-sized audit and accountancy firm, Kris joined Zampa Debattista, a boutique accounting and assurance firm primarily focused on international business, managing the audit function.

Throughout his work experience he was exposed to assurance assignments on wealth management, pension funds, gaming companies, shipping, manufacturing and retail. In 2021, he was appointed a Partner at Zampa Debattista.

Kris also read for the Diploma in International Financial Reporting and is a lecturer of Corporate Reporting at the advance stages of the ACCA course.

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LOCAL NEWS

Legal Notice 4 of 2021 – 08/01/2021

In terms of this legal notice, with immediate effect and until 31 December 2022, services closely linked to Covid-19 vaccines are to be treated as exempt with credit supplies.

Legal Notice 5 of 2021 – 08/01/2021

Under this legal notice, with immediate effect and until 31 December 2022, Covid-19 in vitrio diagnostic medical devices and services closely linked to in vitrio diagnostic medical devices are to be taxed at a reduced rate of 5%.

Legal Notice 52 of 2021 – 16/02/2021

The legal notice amends Item 3(e) of the Seventh Schedule providing that the taxable value of a supply must not include "a deposit paid on returnable package of goods insofar as the deposit is regulated in terms of the Beverage Containers Recycling Regulations or any law which may be substituted therefor".

VAT and PE Reactivation form – 19/01/2021

The Commissioner for Revenue had launched a new service feature for the reactivation of VAT and PE number for the use of sole proprietors. The new service provides efficiency as the compilation of the e-form provides a single channel and it amalgamates all forms needed by the various local authorities into one submission. The requests will be processed in real time with prompt replies and approvals.

https://cfr.gov.mt/en/News/Pages/2021/VAT-and-PE-reactivation-Forms.aspx

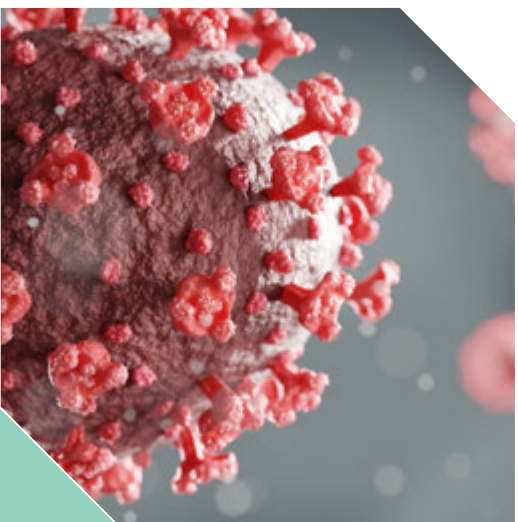
Termination of Over-the-Counter Facilities Through Local Banks of VAT Registered Persons – 29/01/2021

The Office of the Commissioner for Revenue notified that the service offered by local commercial banks in relation to the submission and payment of VAT Returns was to be terminated with effect from 28 February 2021. However, it remains possible to submit manual VAT returns with accompanying payment at Malta Post branches.

New Guidelines on the rectification of VAT registration from Art. 10 to Art. 11 – 24/02/2021

The new guidelines lay down the conditions that must be met in order for the Commissioner to accept an application for the conversion of a VAT registration of a registered person from Art. 10 to Art. 11 (the small undertakings registration). The guidelines are intended to complement the amendments contained in L.N. 463 of 2020 of 18/12/2020 (amending Item 2 of the Sixth Schedule to the VATA) whereby the minimum period for a conversion from Art. 10 to Art. 11 was reduced to twenty-four months, as well as allowing a person newly registered under Art. 10 to be able to apply for a conversion to Art. 11, by the latest of either the date of VAT registration or the due date of the first VAT return and subject to meeting certain conditions. For further information visit:

https://cfr.gov.mt/en/vat/guidelines_to_certain_VAT_Procedures/Documents/Guideline%20(Final)%20Rectification%20of%20registration%2010%20to%2011.pdf



Covid-19 Fiscal Assistance – Postponement of payments of certain taxes – 20/03/2021

In the light of the prolongation of the Covid-19 pandemic the CfR has updated the conditions applicable for businesses and self-employed to be able to defer payment of provisional tax, social security contributions (of self-employed) and Value Added Tax. The taxes that may be deferred cover the period from August 2020 to December 2021. For further details see:

https://cfr.gov.mt/en/News/Pages/2020/Fiscal-Assistance-Postponement-of-Payment-of-Certain-Taxes.aspx

LOCAL NEWS

Administrative Review Tribunal

Appeal No 233/12/1 VG – XXX u XXX vs Kummissarju tat-Taxxi fuq il-Valur Mizjud

By decision published on 18th February 2021 the Tribunal ruled that the VAT due in the assessments under appeal raised by the CfR and served on the appellant for basis years 2005 to 2008 was to be recalculated on the basis of the revised amounts mutually agreed between appellant and the CfR following an objection against tax assessed under the Income Tax Act. In his application, the plaintiff had requested the full revocation of the VAT assessments on grounds that the CfR had refused to consider his explanations regarding the alleged under-declared income whilst the CfR had rebutted that plaintiff had failed to provide him with the requested bank accounts and statements information, citing professional secrecy in that the said bank accounts contained both personal and clients' money. However, the Tribunal dismissed plaintiff's "professional secrecy" arguments but considered that once the CfR had agreed to reduce the alleged underdeclared income for income tax purpose it would be appropriate to adjust the VAT assessments on the same lines by reference to those amounts. As a result, the Tribunal ordered the CfR to revoke the VAT assessments under appeal and re-issue them on the basis of a revised underdeclared turnover amount of EUR 272,315, on which EUR 49,106 shall be due, with the addition of the pertinent administrative penalties and interest.

Appeal No. 24/14 VG – XXX vs id-Direttur Generali (Taxxa fuq il-Valur Mizjud)
Preliminary decision – 25/02/2021

XXX filed an appeal against VAT assessments issued to it by the Commissioner for years 2008 to 2010 amounting to EUR 131,467 inclusive of administrative penalties and interest on grounds that the company was not furnished with any information regarding the methodology used by the Commissioner in arriving at the amounts of underdeclared tax at issue. On his part, the Commissioner replied that the company had failed to provide all the information that the TCU had formally requested for the purpose of carrying out their investigation, and as such in terms of Art. 48(5) of the VAT Act the company was now precluded from producing any documentation, information or records in connection with the assessments under appeal. The plaintiff company submitted that at the time it found itself in troubled waters pursuant to the illicit activity of its managing director who defrauded it of significant large amounts on the basis of falsified documentation and shady deals. Following his forced resignation, the company was restructured and undertook laborious audits and internal investigations to establish the correctness of the company's transactions. Whilst remarking that although some of the documentation that was already in possession of the company could have been furnished to the Commissioner, on the other hand, given the difficult circumstances the company found itself in, the Tribunal considers that the first proviso of Art. 48(5) should not apply. As a result, the Tribunal dismissed the Commissioner's preliminary objection and ordered the resumption of the hearing of the appeal on its merit, with the company not precluded from producing any documentation, information or records connected with the assessments under appeal.

Appeal No. 39/15 VG – XXX vs Kummissarju tat-Taxxi
Preliminary decision – 25/02/2021

This ruling was in respect of a preliminary plea raised by the Commissioner invoking the application of the first provision of Art. 48(5) of the VAT Act to preclude the plaintiff XXX from producing any documentation, information or records relating to the assessments under appeal. XXX had filed an appeal against the assessments served on it by the Commissioner covering years 2012 and 2013 for the amount of EUR 511,660 in under-underdeclared tax plus administrative penalties and interest. According to the Commissioner, XXX had failed to furnish the requested records and information that were required for the purpose of carrying out input credit controls. The Tribunal remarked that on the basis of the evidence given by the VAT inspectors who attempted on not less than three occasions to deliver the notice of production of documents to XXX (XXX had left the premises from which it operated) it was not convinced that such notices had effectively been delivered to XXX to the level required at law. As a result, the Tribunal whilst dismissing the Commissioner's plea, ordered the resumption of hearing of the appeal without the application of the first proviso of Art. 48(5) thus enabling XXX to produce any information, records and documentation related to the assessments under appeal.

EU NEWS

TAXUD news

12th March 2021 – New guidelines on VAT published

New guidelines on VAT, particularly resulting from the 116th and 117th Meetings of the VAT Committee, have been published on the DG TAXUD website. In keeping up with issues discussed during the mentioned VAT Committee meetings, a number of guidelines are devoted to Brexit and the interpretation and application of the new rules pertaining to the Quick Fixes package. The guidelines updated up to 5th March 2021 can be accessed by following this link:

https://ec.europa.eu/taxation_customs/sites/taxation/files/guidelines-vat-committee-meetings_en.pdf

March 2021 – Guide to the VAT One Stop Shop ("OSS")

Following-up on the publication of the "Explanatory Notes on VAT e-commerce" in September 2020, DG TAXUD recently uploaded the "Guide to the VAT OSS" on its web portal. The VAT OSS Guide is intended to provide an enhanced understanding of the EU legislation relating to the OSS, together with the functional and technical application for the special schemes that will kick in on 1 July 2021, as adopted by the Standing Committee on Administrative Cooperation. The guide, which is not legally binding but solely intended to serve as a practical and informal tool about how EU law and specifications are to be enforced based on the views of DG TAXUD. It is pertinent to point out that the guide is still under development, and hence it is neither an exhaustive list nor a final guide, but merely portrays the state of play at a certain point in time based on the knowledge and experience available. Going forward, it is expected that there will be the need of additional elements to be included. This enlarged One Stop Shop, represents the key element for the implementation of the three simplification schemes for B2C supplies of goods/services of the VAT e-commerce package. The "Explanatory notes on the new VAT e-commerce rules" and the "VAT OSS guide" are available at:

https://ec.europa.eu/taxation_customs/business/vat/ressources_en
https://ec.europa.eu/taxation_customs/sites/taxation/files/oss_guidelines_en.pdf

VAT Committee Meetings

The VAT Committee did not meet during this calendar quarter.

VAT Expert Group Meetings

On 24th February 2021, the VEG held its 29th Meeting during which it was invited by the Commission to discuss the results of a Staff Working document it had published, titled "the Evaluation of the Special Scheme for Travel Agents". The purpose of the document was to present the outcome of the evaluation and informing the VEG about the next steps being contemplated by the Commission to modernise and reform the special scheme. In particular, the VEG experts were invited to (a) express their views on the evaluation results; (b) comment on possible ways to address the key identified issue namely the inefficiency of the special scheme as a result of its shortcomings; (c) share any relevant data that might contribute to the assessment of possible reform options. The agenda also included information point updates on (a) the state of play of the VAT e-commerce package and (b) sub-group "Platform economy" update by the rapporteur.

For further reading you may visit:
https://circabc.europa.eu/ui/group/cb1eaff7-eedd-413d-ab88-94f761f9773b/library/b04e3282-fa03-4e19-a86a-c2e38febd9c5?p=1&n=10&sort=modified_DESC

UPDATES ON ECJ DECISIONS

Case C-812/19 – Danske Bank A/S (Sweden Branch) – 11/03/2021

Danske Bank A/S ("Danske"), a company with the principal establishment located in Denmark, carried also its activity in Sweden where it maintained a Branch (the "Branch"). Danske was part of a Danish VAT group registered in terms of the Danish VAT Act, but the Branch did not form part of any Swedish VAT group. To carry out its activities in the Scandinavian countries, Danske used an electronic platform (common to all Danske's establishments) in respect of which it charged the Branch a fee. In this respect, the Branch submitted a request for an advance ruling to the Swedish Revenue Law Commission to determine whether, for Swedish VAT purposes, the Danish VAT group were to be regarded as a taxable person separate from the Branch, and whether it had to pay Swedish VAT as recipient of the services (the platform costs). The Swedish Revenue Law Commission ruled that since Danske, the principal establishment, was part of a Danish VAT group, it had to be regarded as a taxable person separate from the Branch in Sweden and consequently the platform costs represented a supply of service made to the Branch in respect of which the Branch had to account for Swedish VAT, a decision which was challenged by the Branch.

The referring Swedish Supreme Administrative Court asked the ECJ (the "Court") whether "a Swedish branch of a bank established in a Member State other than Sweden constituted an independent taxable person where the principal establishment supplied services to the branch and imputed the costs thereof to the branch, if the principal establishment was part of a VAT group in the other Member State, while the Swedish branch was not a member of any Swedish VAT group".

By reference to its settled case law, the Court recalled that in case of a supply between the principal establishment of a company situated in one Member State and a branch of that company located in another Member State, it is held that such a supply would be taxable only if there was a legal relationship between the provider of the service and the recipient pursuant to which there was a reciprocal performance. In the absence of any legal relationship between a branch and a principal establishment, reciprocal performance between the two entities constituted non-taxable internal flows. For the purpose of establishing whether such a legal relationship exists it is necessary to ascertain that the branch performs an independent economic activity. In that respect, the branch would be regarded as independent only if it bears the economic risks arising from the business. In the present case, however, account is also to be taken of the fact that the principal establishment forms part of a VAT Group whereas the branch, situated in another Member State, is not part of a VAT group in that Member State. In that regard, the Court referred to a judgment in a settled case which had established that the services supplied by a principal establishment in a third country to its branch located in a Member State constituted taxable transactions when the branch formed part of a VAT group in that Member State. According to the Court, the principle set out in that judgment can similarly be applied to the case at issue.

The Court thus ruled that for VAT purposes, the principal establishment of a company, situated in a Member State and forming part of a VAT group set up in terms of Art. 11 of the VAT Directive, and the branch of that company, established in another Member State, must be regarded as separate taxable persons where the principal establishment provided that branch with services and imputed the costs thereof to the branch.

Case C-907/19 – Q GmbH – 25/03/2021

Q, a company established in Germany, in the business of developing, marketing and placing insurance products on the market, entered into a contract with F, an insurer for the provision of three services, namely the granting of a user licence for a particular insurance product, the placing of insurance contracts for F (which contracts were concluded between F and the policyholders) and the management of those insurance contracts including the settlement of claims. The services were provided against a remuneration payable by F to Q in the form of brokerage fees. A dispute with the Tax Office arose following that Q had treated the services as exempt in terms of Art. 135(1)(a) of the VAT Directive whilst the Tax Office took the view that the services were separate with only the mediation service possibly exempt under the said provision. Furthermore, even if it were to be considered as a single supply, the granting of the licence is evidently the predominant element and as such it should be treated as taxable.

UPDATES ON ECJ DECISIONS

The referring German Court asked the ECJ whether "a service related to insurance and reinsurance transactions that is performed with exemption from tax by insurance brokers and insurance agents within the meaning of Art. 135(1)(a) of the VAT Directive exist if a taxable person who carries out intermediary work for an insurance company also provides that insurance company with the mediated insurance product".

The Court observed that first and foremost it was necessary to establish whether the transactions by Q gave rise, for the purposes of VAT, to two or more distinct supplies or to one single supply made up of two of more elements, with one element being the principal supply and the other ancillary supplies. However, invoking Art. 267 of the TFEU , the Court declared that the classification of the facts at issue in the main proceedings, namely whether they constitute two or more supplies or one single supply, falls within the competence of the national referring court. But given that the role of the Court is to provide the national court with an interpretation of EU law which will be useful for the decision which it has to take in the dispute standing before it, the Court felt it necessary to examine whether the granting of the licence for an insurance product, which according to the national referring court constituted the principal supply, actually falls within the exemption set out in Art. 135(1)(a). Upon a scrutiny of the facts at issue, the Court held that the granting of a licence for an insurance product does not fulfil the elements necessary for the exemption to apply, namely constituting an "insurance and reinsurance transaction" and "a related service performed by insurance brokers and insurance agents", and consequently it cannot benefit from the Art. 135(1)(a) exemption.

In the light of the foregoing considerations the Court ruled that Art. 135(1)(a) of Directive 2006/112 must be interpreted as meaning that the VAT exemption does not apply to services provided by a taxable person, which include the supply of an insurance product to an insurance company and, accessorily, the placement of that product on behalf of that company and the management of insurance contracts concluded, in the event that the referring court categorises those services as a single supply for VAT purposes.

DISCLAIMER

While every effort was made to ensure that the contents of this newsletter are accurate and reflect the current position at law and in practice, we do not accept any responsibility for any damage which may result from a change in the law or from a different interpretation or application of the local law by the authorities or the local courts.

The information contained in the newsletter is intended to serve solely as a guidance and any contents of a legal nature therein do not constitute or are to be interpreted as legal advice. Consulting your tax practitioner is recommended in case you wish to take any decision connected to contents of this newsletter.