Zampa Debattista

Russell Bedford
taking you further

Entrust **your VAT matters to us**

VAT Newsletter
Q2 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 Notices 187 to 194 of 2021 – 27/04/2021

These legal notices established the 1st of July 2021 as the date of commencement of the new e-Commerce rules for the implementation of the One Stop Shop special schemes, namely the non-Union OSS, the Union OSS and the Import OSS.

Legal Notice 222 of 2021 – 25/05/2021

This legal notice established the 1st of July 2021 as the date of commencement of the new entry threshold for small enterprises engaged in economic activities other than the supply of goods, which has been raised from EUR 24,000 to EUR 30,000 (ref. Legal Notice 463 of 2020).

Legal Notice 241 of 2021 – 11/06/2021

This legal notice amends the Thirteenth Schedule to the VAT Act to remove the obligation on taxable persons to issue fiscal receipts in respect of supplies of goods or services in terms of the One Stop Shop and the Import One Stop Shop simplification schemes or supplies of goods or services that by reference to the place of supply rules fall to be taxed outside Malta.

CfR Guidelines: VAT Import OSS Intermediary Conditions – 15/04/2021

The guidelines establish the criteria applicable to persons, established in Malta, who intend to act as intermediaries in terms of the Import OSS. The scope of the guidelines is to ensure the correct and straightforward application of the Import OSS scheme in respect of which an intermediary, among other, would be jointly and severally liable for the payment of VAT attributable to the different EU Member States in relation to distance sale of goods imported from outside the EU in consignments of an intrinsic value not exceeding EUR 150. An application by a person established in Malta to act as intermediary must fulfil all the conditions set out in the guidelines in order for the CfR to approve the applicant to act as intermediary.

For further reading see:
https://cfr.gov.mt/en/vat/guidelines_to_certain_VAT_Procedures/Documents/Guidelines%20IOSS%20Intermediary%20conditions.pdf

CfR Explanatory Note: Increase in Threshold for Small Traders – 27/05/2021

The explanatory note contains the conditions that a taxable person, established in Malta, must meet to qualify for registration under Article 11 of the VAT Act. Persons registered under Article 11 are relieved of the obligation to charge VAT on their supplies but do not hold a right of deduction of Input VAT. Apart from a change in the "entry" threshold for persons carrying out "other economic activities", which has been raised from EUR 24,000 to EUR 30,000, as well as a change in the "exit" threshold now set at EUR 19,000 (the threshold that a person registered under Article 10 must not exceed in order to apply to be registered under Article 11), the guidelines give further information about the changes to some of the conditions necessary for an Article 11 registration, such as the shortening of the period that a person must stay registered under Article 10 prior to be permitted to switch to an Article 11 registration.

The guidelines are available via the following link:
https://cfr.gov.mt/en/vat/guidelines_to_certain_VAT_Procedures/Documents/Explanatory%20Note%20-%20Small%20Traders%20Threshold_EN.pdf

LOCAL NEWS

Administrative Review Tribunal

Appeal No 32/17/VG – XXX vs Kummissarju tat-Taxxi fuq il-Valur Mizjud - 13/04/2021

The Tribunal rejected a preliminary plea by plaintiff company (Interim Management Services Ltd) to declare the assessments issued to it by the Commissioner as null and void on the grounds that the liquidator of the company had not been involved in the investigation and review stages which eventually led to the issuance of the assessments being appealed. In the light of this ruling, the Tribunal ordered the continuation of the proceedings based on the merits.

Appeal No. 51/16/VG – XXX vs Commissioner for Value Added Tax - 13/04/2021

The Tribunal ruled against a preliminary plea raised by the Commissioner who had claimed that the appeal application against the assessments and subsequent demand note issued to plaintiff, Alexandr Ltd, was invalid at law on grounds that the Tribunal was not the competent forum to decide grievances related to demand notes, that the appeal application was filed beyond the statutory thirty day period and that plaintiff was in breach of Article 48(5) of the VAT Act in that he failed, without a reasonable excuse, to produce the documentation related to the pertinent tax periods when requested by the Commissioner. In dismissing the Commissioner's pleas, the Tribunal ordered the continuation of the proceedings based on the merits.

Appeal No. 71/14/VG – XXX vs Kummissarju tat-Taxxi – 13/04/2021

The Tribunal upheld a preliminary plea by the Commissioner who had invoked the application of Art. 48(5) of the VAT Act since plaintiff had failed to produce, without a reasonable excuse, the pertinent documentation requested by the Commissioner in connection with the investigation. As a result, the Tribunal ordered the resumption of the proceedings based on the merit with plaintiff being precluded to produce any documentation relating to the assessments under appeal during the proceedings as stipulated in Art. 48(5) of the VAT Act.

Appeal No. 190/12/VG – XXX vs Kummissarju tat-Taxxa fuq il-Valur Mizjud - 13/04/2021

The Tribunal rejected a preliminary plea raised by the Commissioner who had claimed that whereas the appeal application was in respect of a payment/set-off issue and demand notices had been duly served, the Tribunal was not the competent forum to decide on such matters. Consequently, the Tribunal ordered the resumption of the hearing of the appeal application based on the merits.

Appeal No. 70/14/VG – XXX vs Kummissarju tat-Taxxi - 13/04/2021

The Tribunal found in favour of a preliminary plea by the Commissioner in terms of the application of Art. 48(5) of the VAT Act and consequently ordered the resumption of the proceedings based on merit with the plaintiff being precluded from producing any documentation relating to the assessments under appeal during the proceedings.

Appeal No. 94/13/VG – XXX vs Direttur Generali (Taxxi fuq il-Valur Mizjud) 22/04/2021

The plaintiff had appealed against assessments totalling EUR 197,304 covering years 2006 to 2010 issued by the Commissioner on grounds that they had not been issued according to the terms provided in Art. 32 of the VAT Act and as such demanded their cancellation. After examining the facts at issue and the evidence produced the Tribunal ruled that whilst the assessments for tax period for 2006 were invalid due to being time-barred the remaining assessments were validly issued at law and hence ordered the continuation of the proceedings based on the merits of the case.

LOCAL NEWS

Appeal No. 103/13/VG – XXX vs Direttur Generali (Taxxa fuq il-Valur Mizjud) - 22/04/2021

The Tribunal examined preliminary pleas in connection with an appeal application regarding the validity of the assessments, issued by the Commissioner to the plaintiff for the amount of EUR 505,262 for period 2006 to 2007, on grounds that they had been issued in breach of Art. 32 of the VATA. The Tribunal found that the assessments relating to 2006 were statute barred and hence ordered their cancellation whilst the assessments relating to 2007 were found to have been validly issued. As a result, the Tribunal ordered the resumption of the hearing of the proceedings in the course of which plaintiff was precluded from producing documentation in support of his case, as provided in Art. 48(5) of the VAT Act (as invoked by the Commissioner).

Appeal No. 34/15/VG – XXX vs Kummissarju tat-Taxxa fuq il-Valur Mizjud - 06/05/2021

The plaintiff filed an application to appeal against assessments for tax periods 2008 to 2013 amounting to EUR 26,210 issued by the Commissioner following a credit control exercise. The Tribunal found in favour of the Commissioner on grounds that the plaintiff did not produce sufficient evidence in support of the Input VAT claims and as a result confirmed the assessments under appeal to be valid and as a result ordered the plaintiff to settle the amounts due.

EU NEWS

TAXUD news

Commission proposes to exempt vital goods and services distributed by the EU in times of crisis – 12/04/2021

The Commission published a proposal to exempt from VAT goods and services made available by EU bodies and agencies to Member States and citizens during times of crisis. The initiative will maximise the efficiency of EU funds used in the public interest to respond to crises, such as natural disasters and public health emergencies. It will also strengthen EU-level disaster and crisis management bodies, such as those falling under the EU's Health Union and the EU Civil Protection Mechanism.

Commission decides to extend Customs and VAT waiver for imports of medical and protective equipment needed to fight the pandemic – 20/04/2021

The Commission decided to extend the temporary waiver of customs duties and Value-Added Tax (VAT) on imports from non-EU countries of medical devices and protective equipment used in the fight against COVID-19, which had been due to expire at the end of this month, until 31 December 2021. The prolongation takes into consideration the challenges that Member States still face in combatting the COVID-19 pandemic, and the fact that the importation of these goods remains significant. The measure will continue to support Member States financially in getting equipment such as masks or ventilators to the medical staff and patients that need them most, free of duties and VAT.

VAT Committee Meetings

The 118th Meeting of the VAT Committee was held (remotely) on 19/04/2021. The agenda included a number of interesting discussion papers based on questions raised by the Member States as follows:

- Poland – Question on call-off stocks (WP 1007)
- Belgium – Question on calculation of the threshold (WP 1010)
- Italy – Question on the recharging of electric vehicles (WP 1012)
- Romania – Case law – video chat services (WP 1013)

In addition, the Commission introduced a paper with updates on "the VAT aspects of centralised clearing for Customs upon importation", whilst the VAT Expert Group featuring as guests, ran a presentation with their comments on a selection of CJEU cases.

Full details are available on the following link:
https://circabc.europa.eu/ui/group/cb1eaff7-eedd-413d-ab88-94f761f9773b/library/2758c8d8-09cf-4ec1-8872-a5c9b16a56b9?p=1&n=10&sort=modified_DESC

VAT Expert Group Meetings

The VEG did not meet during this calendar quarter.

UPDATES ON ECJ DECISIONS

Case C-58/20 K and Case C59/20 DBKAG – 17/06/2021

[RE: Art. 135(1)(g) of the VAT Directive – Exemptions – Management of special investment funds- Outsourcing – Services provided by a third party]

The dispute at issue in the main proceedings in the two cases was common and concerned the exemption set out in Art. 135(1)(g) of the VAT Directive regarding the management of special investment funds. In the K case, the Court was asked whether the term "management of special investment funds" also covered tax related responsibilities entrusted by the investment management company ("IMC") to a third party, consisting of ensuring that the income received by the unit holders from investment funds is taxed in accordance with the law. In the DBKAG case, the question referred was whether the term "management of special investment funds" also included the granting by a third party licensor to an IMC of the right to use specialist software specifically designed for the management of special investment funds which is run on the technical infrastructure of the IMC and can perform its functions only subject to the minor participation of the IMC and conditional on ongoing recourse to market data provided by the IMC.

Referring to its settled case law, the Court recalled that in general terms, management services performed by a third-party manager in the context of a special investment scheme may fall within the scope of the Art. 135(1)(g) exemption. However, in order to classify as such, the services must, when viewed broadly, form a distinct whole fulfilling in effect the specific, essential functions of the management of special investment funds. To decide on this, the Court had to assess whether the condition relating to the distinct or autonomous character and the condition relating to the specific and essential character of the services had been satisfied to the level required for the exemption to apply. After analysing the information contained in the order for reference, the Court was satisfied that in principle, the services provided by third parties to the IMC under both scenarios represented services which formed a distinct whole fulfilling in effect the specific, essential functions of the management of the special investment funds.

In the light of the foregoing the Court ruled that Article 135(1)(g) of the VAT Directive must be interpreted as meaning that the provision of services by third parties to management companies of special investment funds, such as tax-related services consisting in ensuring that the income received from the fund by the unit-holders is taxed in accordance with national law and the grant of a right to use software which is used exclusively to carry out calculations which are essential for risk management and performance measurement, fall within the scope of the exemption provided for in that provision if they are intrinsically connected to the management of such funds and if they are provided exclusively for the purpose of managing such funds, even if those services are not outsourced in their entirety.

Case C-593/19 – SK Telecom Co Ltd – 15/04/2021

[RE: Point (b) of the first paragraph of Art. 59a of the VAT Directive – Determination of the place of supply of telecommunications services – Roaming of third-country nationals on mobile communications networks with the European Union – Option for Member States to transfer the place of supply of telecommunications services to their territory]

SK Telecom ("SK"), a company established in South Korea, supplied mobile phone services to its customers, also established in South Korea, by way of roaming services in Austria whenever these customers were temporarily staying on Austrian territory. These services were provided through the use of an Austrian mobile communications network, in respect of which the Austrian service provider invoiced SK a user fee plus Austrian VAT at 20%. In turn, SK invoiced its customers in South Korea for these roaming charges. A dispute arose when a request by SK to be refunded the VAT charged to it by the Austrian service provider was refused by the Austrian Tax Authorities as according to them the mobile roaming services at issue were taxable in Austria, where the services were used and enjoyed.

UPDATES ON ECJ DECISIONS

The referring Austrian Court had asked the ECJ whether point (b) of the first paragraph of Art. 59a of the VAT Directive must be interpreted as meaning that roaming services supplied by a mobile phone operator established outside the EU to its customers, also established outside the EU, allowing them to use the national mobile telecommunications network of the Member State in which they are temporarily staying, must be considered to be effectively "used and enjoyed" within the territory of that Member State , for the purpose of that provision, so that that Member State may consider the place of supply of those roaming services to be situated within its territory when those services are not subject to a tax treatment, in that non-EU country, that is comparable to the charging of VAT.

The Court recalled that the logic underlying the place of supply of services rules contained in the VAT Directive is that services should be taxed as far as possible at the place where they are consumed. In this regard, it is common ground that the place of supply of the roaming services at issue in the main proceedings should be taxed in the third country in which the customer, a non-taxable person, is established. Nevertheless, by way of derogation, point (b) of the first paragraph of Art. 59a of the VAT Directive, allows Member States to consider the services as being provided within their territories insofar as the effective use and enjoyment of those services takes place within their territory. Once a Member State had opted to apply the "use and enjoyment" provision within its territory, all that had to be ensured was that the services at issue (in this case the mobile roaming services) were effectively used and enjoyed within its territory. In this regard, the Court considered that the roaming services at issue were distinct and independent from other mobile services supplied by SK to its customers (as a matter of fact invoiced separately) and had a specific purpose, namely, to allow SK customers the possibility to have mobile network connectivity during their stay on Austrian territory and as a result deemed to having been used and enjoyed in Austria. According to the Court, not taxing the roaming services at issue in Austria once Austria had opted to adopt the provision, irrespective of whether or not they were taxed in the third country of the customer, would be in conflict with the main scope of the "use and enjoyment" provision in the VAT Directive which is to avoid non-taxation within the EU.

In the light of the foregoing considerations the Court ruled that point (b) of the first paragraph of Art. 59a of the VAT Directive must be interpreted as meaning that roaming services supplied by a mobile phone operator established in a third country to its customers who are also established in that third country, allowing them to use the national mobile communications network of the Member State in which they are temporarily staying, must be considered to be "effectively used and enjoyed" within the territory of that Member State, for the purposes of that provision, so that that Member State may consider the place of supply of those roaming services to be situated within its territory where, regardless of the tax treatment to which those services are subject under the domestic tax law of that third country, the exercise of such an option has the effect of preventing the non-taxation of those services within the European Union.

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.