

Zampa
Debattista



Russell Bedford
taking you further

Entrust your VAT matters to us



VAT Newsletter

Q3 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 (DiplIFR).

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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Editor:

Charles Vella

Contributors:

Christabel Spiteri

Eduard Sorin Maxim

Valentina Bruno

230, Second Floor
230 Works Business Centre
Eucharistic Congress Road
Mosta MST 9039
Malta

+356 2235 0000
info@zampadebattista.com

zampadebattista.com

Should you require further information please contact:



Matthew Zampa
Partner
mz@zampadebattista.com



Charles Vella
Senior VAT Advisor
cv@zampadebattista.com

Legal Notice 358 of 2021 – 10/09/2021

This legal notice provides for an exemption with credit, backdated as from 1st January 2021, on the supply of goods/services and importations made in Malta by the European Commission or an agency or body established under European law insofar as the goods or services are used or to be used by the European Commission or agency or body established under European law for the execution of tasks assigned in response to the Covid-19 pandemic. The regulations transpose the provisions of Council Directive (EU) 2021/1159 of 13th July 2021 amending Directive 2006/112/EC as regards temporary exemptions on importations and certain supplies, in response to the Covid-19 pandemic.

Administrative Review Tribunal

No decisions were published by the Tribunal during this calendar quarter.

Court of Appeal (Civil, Inferior)

Appeal No. 126/2013/1 LM – Palm Court Limited vs Direttur Generali, Taxxa fuq il-Valur Mizjud – 30/07/2021

This appeal was against a preliminary ruling by the Administrative Review Tribunal which had upheld a plea by the Commissioner to block, in terms of Article 48(5) of the VAT Act, the presentation of documents and records by the plaintiff company during the appeal proceedings before it concerning assessments raised by the Commissioner on plaintiff company. The Court dismissed the appeal declaring it frivolous and vexatious in that it was filed in the court registry well after the expiration of the statutory thirty-day time window allowed at law to file a court appeal case.

Appeal No. 147/2012/1 LM – San Lawrenz Leisure Resort Limited vs Kummissarju tat-Taxxa fuq il-Valur Mizjud – 15/09/2021

The Court dismissed the appeal and confirmed in total the decision of the Administrative Review Tribunal, which had ruled that the appeal lodged by the plaintiff company against assessments issued by the Commissioner was unjustified and as such the assessments were confirmed. The dispute was in connection with input VAT deducted by the plaintiff company in relation to the construction and finishing of residential units adjacent to the resort, a number of which were intended to be offered for sale.



TAXUD news

There were no VAT related announcements during this calendar quarter.

VAT Committee Meetings

The VAT Committee did not meet during this calendar quarter.

VAT Expert Group Meetings

The VEG did not meet during this calendar quarter.

However, a sub-group of the VEG met on 6th July 2021 to resume discussions on particular issues, focussing on the options related to the VAT treatment of the platform economy. For further details, click on the following link:

https://circabc.europa.eu/ui/group/cb1eaff7-eedd-413d-ab88-94f761f9773b/library/2f38001c-d2ec-4670-9f20-d6a42dfa6a30?p=1&n=10&sort=modified_DESC



UPDATES ON ECJ DECISIONS

Case C-695/19 – Radio Popular Electrodomésticos SA – 08/07/2021

[RE: Art. 135(1)(a) of the VAT Directive –Exemption – Insurance transactions and related services – Art. 174(2) – Right of deduction – Proportional deduction – Extended warranties on household appliances and other equipment – Definition of financial transactions]

Radio Popular (“RP”), a Portuguese limited liability company, offered its customers an option to extend the manufacturer’s warranty whenever they purchased household electrical appliances or electronic devices and equipment. RP acted as an intermediary in that the underlying insurance contract, when concluded, was between the insurance undertaking as insurer and the customer taking up the option as the insured. RP treated the sale of the extended warranties as exempt insurance services but nevertheless deducted in full the Input VAT incurred between 2014 and 2017.

Following an audit, the Tax Authority concluded that RP should have apportioned the input VAT deduction to take account of the exempt warranty extension sales and so proceeded to issue assessments amounting to EUR 356K to recover the VAT deducted by RP plus interest.

The Tax Arbitration Tribunal of Portugal, where the dispute was taken up, decided to stay the proceedings to enquire with the ECJ (the “Court”) whether transactions involving intermediation in the sale of extended warranties by a person whose principal activity is the sale of household appliances to consumers constitute financial transactions and whether if treated as such they were to be excluded from the calculation of the deductible proportion.

The Court observed that it was not disputed that transactions involving intermediation in the sale of warranty extensions, such as those at issue in the main proceedings, fall within the scope of Art. 135(1)(a) of the VAT Directive and hence are exempt from VAT. Referring to settled case law, the Court recalled that that may also be the case when such services related to insurance are not performed by an insurance agent or broker but by another person. As a result, the Court dismissed RB’s argument that the sale of extended warranties constituted ancillary financial transactions falling within the meaning of Art. 135(b) and/or (c) of the VAT Directive.

Moving on to the second question, the Court noted that whereas Art. 174(2)(b) and (c) of the VAT Directive limits the exclusion from the calculation of the deductible proportion to the turnover that is attributable to incidental financial transactions and to transactions specified in points (b) to (g) of Art. 135(1) only, it therefore follows that the turnover attributable to transactions specified in point (a) of Art. 135(1) are not covered and hence cannot be excluded from the calculation of the deductible proportion.

The Court ruled that the pertinent provisions in the VAT Directive must be interpreted as meaning that they do not apply to transactions involving intermediation in the sale of warranty extensions that are performed by a taxable person in the course of its main activity consisting in the sale to consumers of household appliances and electronic equipment with the consequence that the amount of turnover relating to those transactions must not be excluded from the denominator of the fraction used to calculate the deductible proportion referred to in Art. 174(1) of that directive.

UPDATES ON ECJ DECISIONS

Case C-294/20 – GE Auto Service Leasing GmbH – 09/09/2021

[RE: Art 3, 6 and 7 of the Eight Directive 79/1072/EEC – Procedures for refund of value added tax for taxable persons not established within the Member State of refund – refusal of refund claim – documents justifying the right to a refund – failure to present supporting documents within the established time limits]

GE Auto Service Leasing, a German car leasing company, submitted an application to the Spanish Tax Administration requesting a refund of VAT paid by it in Spain during the years 2005 and 2006. A dispute arose when, following a number of failed attempts by the Tax Authority to obtain evidence and supporting documents relating to the refund application from the applicant, it was concluded that the refund claim should be refused.

The referring Spanish Court had decided to stay proceedings and to refer questions for a preliminary ruling to the ECJ (the “Court”), namely as to whether, following the refusal of a refund claim by the tax authority, it would be lawful for the applicant to present the documents supporting his entitlement to the refund at the administrative review or the judicial appeal stages where he had previously failed to present them within the set time limits, without any reasonable justification, to the tax authority when repeatedly requested to do so. Furthermore, whether to consider that in so doing the applicant had abused his right to a refund and whether in failing to furnish the documentation necessary to justify his claim to the tax authority he had actually forfeited his right to a refund.

The Court recalled that in line with its settled case law, it must be emphasized that the right to a refund, much the same as the right of deduction, constitutes a fundamental principle of the EU common VAT system in that it sets to ensure VAT neutrality for businesses and as such it cannot be limited in its application. Furthermore, the right of a refund in a Member State other than that of establishment, regulated in the Eight Directive ¹ corresponds to the right of deduction in the Member State of establishment, regulated by the Sixth Directive ². Moreover, according to settled case law, it has been consistently held that the fundamental principle of VAT neutrality requires that the deduction of VAT or a VAT refund are to be granted even where certain formal requirements had been omitted so long as the material requirements are met. However, the outcome would be totally different when the omission of a formal requirement has the effect of preventing the evidence necessary to assess whether the material requirements had effectively been met.

The Court noted that the dispute in the main proceedings was not about failure to comply with formal requirements that prevent the furnishing of proof that the material requirement of the right to a refund had been met but rather about the date on which that proof can be legally provided. According to the Court, being a matter of procedural autonomy of a Member State, the VAT directive does not preclude national legislation by virtue of which a refund claim may be denied on grounds of non-furnishing or late furnishing of the documentation necessary to justify the refund request, provided that the measures in place do not infringe the principle of equivalence (i.e., domestic situations are regulated in a similar way) and the principle of effectiveness (i.e., do not render excessively difficult or impossible to exercise rights conferred by the Union legal order), which is a matter for the national referring court to decide.

¹ Substituted by Council Directive 2008/9/EC

² Re-casted in Council Directive 2006/112/EC

UPDATES ON ECJ DECISIONS

In the light of the foregoing considerations the Court ruled that the pertinent VAT directive provisions must be interpreted as not precluding national legislation on the basis of which a refund of VAT is rejected when the taxable person requesting the refund had not submitted to the competent tax administration, within the established deadlines, not even when requested, all the documents and information necessary to prove his right to that refund, regardless of whether that taxable person, voluntarily submits the documentation and information later during the administrative review or judicial appeal stages provided that the principles of equivalence and effectiveness are respected, which is a matter for the national referring court to establish.

Regarding the second question the Court ruled that Union law must be interpreted in the sense that the action by the taxable person to furnish the related documentation requested by the tax authorities at the administrative review stage does not amount to an abuse of Union law by that taxable person.

Our Comment

We have been following this case with interest given that we have a similar situation in Malta whereby in terms of Art. 48(5) of the VAT Act a taxable person is precluded from furnishing documentation at a later stage after the issue of provisional assessments or before the Tribunal or any Court of law, in support of a claim (e.g., an input vat credit) when he fails to furnish records and documents, without a reasonable excuse, to the Commissioner within thirty days from the date of notification. Regretfully, the decision was not the one we expected or hoped for, but nevertheless it has to be accepted. Therefore, it is strongly recommended that taxpayers must ensure to furnish, within thirty days from notification, the records and documentation requested by the Commissioner.

Should you need assistance when dealing with the Office of the CfR our VAT Team is always ready and available to assist you.



DISCLAIMER

Whilst every effort has been made to ensure that the material content of this newsletter is correct at the time of editing, accurately reflecting the current position at law and in practice, we do not accept any responsibility or liability for any damage which may result from a change in the law or from a different interpretation of local law by the competent authorities or the local courts or Tribunal.

The material contained in this newsletter is intended solely for information purposes and to stimulate further research. As such any content of a legal nature contained therein does not and should not be interpreted as legal advice. Consulting a VAT expert advisor is strongly recommended in case you may wish to take a decision which is connected to the content of this newsletter.