Zampa Debattista

Russell Bedford
taking you further

Entrust your VAT matters to us

VAT Newsletter
Q4 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*

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Matthew Zampa
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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.

Charles Vella
Senior VAT Advisor
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Charles joined the firm in 2014, following his retirement from the public service.

He is an expert in the field of VAT, having served at the VAT department since the introduction of VAT in Malta, occupying a number of senior positions including that of Director Legal and International Affairs and that of Director General VAT.

Charles has brought in invaluable experience and has contributed significantly to the development, growth and consolidation of the VAT team in particular and of the Zampa Debattista firm in general.

LOCAL NEWS

CfR Notice regarding compromise fine arrangements – 17/12/2021

The notice sets out the new conditions under which the Commissioner may enter into an agreement with a person charged with (criminal) offences under the VAT Act, whereby following the payment of a compromise penalty calculated in terms of Article 84 of the VAT Act, the Commissioner shall withdraw the court charges or the court case if already commenced and all criminal liability of the offender in connection with that offence shall be extinguished.
For further reading:
https://cfr.gov.mt/en/vat/legislation-and-LNs/Documents/Govt.%20Notice%201621%20-%2017th%20Dec%202021.pdf

Notice by Office of CfR – Collection of Supplementary information (Intra-Stat declarations) and Recapitulative Statements

By publication of this notice and individual letters sent to non-compliant taxable persons, the Office of the CfR, solicited defaulters to furnish the missing Intra-Stat declarations and recapitulative statements, failing which the Office was to proceed with action not excluding Court charges in terms of Article 76 of the VAT Act. Taxable persons who carry out intra-Community supplies from Malta and/or make intra-Community acquisitions in Malta are required to file an intra-Stat declaration form. Furthermore, businesses making exempt intra-community supplies and/or services reported in Box 1 of the VAT return should file a recapitulative statement.
For further reading:
https://cfr.gov.mt/en/News/Documents/Intrastat%20Notice%20to%20Stakeholders.pdf

Administrative Review Tribunal

Appeal No. 225/12/VG – XXX vs Il-Kummissarju tat-Taxxa fuq il-Valur Mizjud – 12/10/2021

The Tribunal dismissed the appeal lodged by company XXX regarding an assessment issued to it by the Commissioner amounting to EUR 28,199 in administrative penalties and EUR 9,760 interest. The administrative penalties and interest were generated as a consequence of the transferring of input VAT credit claimed by company upon the purchase of a yacht from a tax period in which it was originally claimed to a tax period where it should have been claimed in accordance with the input VAT deduction rules. XXX had initially claimed the relative Input VAT on the basis of a pro-forma invoice which they later had to replace with an original tax invoice bearing a later date, as a result of which the input VAT credit had to be posted in the corresponding later tax period by the Commissioner. The Tribunal agreed with the Commissioner that the input VAT credit should have been claimed on the basis of a tax invoice and not a pro-forma invoice.

Appeal No: 117/13VG - XXX vs Direttur Ġenerali (Taxxa fuq il-Valur Miżjud) – 12/10/2021

Appellant XXX had referred a question to the Tribunal in terms of Article 44 of the VATA contesting the administrative penalties and interest charged to him as a result of reporting input VAT credit in the wrong tax periods, and which administrative penalties and interest were set-off from the refund due, resulting in the total absorption of the refund. The Tribunal did not accept plaintiff's arguments that the wrong reporting was due to a failure in the company's accounting system and consequently dismissed the appeal and confirmed the administrative penalties and interest.

LOCAL NEWS

Appeal No. 32/14VG - XXX vs Direttur Generali (Taxxa fuq il-Valur Mizjud) – 12/10/2021

The appeal by XXX, a company that operated a restaurant, was in respect of assessments amounting in total to EUR 26,502 raised to it by the Commissioner for tax periods between 2007 and 2011, following an investigation triggered as a result of the declared low outputs and high inputs. Furthermore, following the upholding of a preliminary plea by the Commissioner in terms of Article 48(5) of the VAT Act, the plaintiff was precluded from producing the documentation that was not furnished to the Commissioner at investigation/review stage. On the basis of the evidence and submissions, the Tribunal dismissed the appeal application and confirmed the assessments.

Appeal No. 54/15VG - XXX vs Kummissarju tat-Taxxa fuq il-Valur Mizjud – 26/10/2021

The appeal was in respect of assessments served on XXX by the Commissioner amounting to EUR 132,884 for tax periods in years 2009 to 2013. The Commissioner raised a preliminary plea contesting the validity of the appeal in that, according to him it was filed beyond the statutory time limit of thirty days from the notification of the assessment notices. The Court, after deliberating on the evidence and submissions of the parties upheld the Commissioner's plea and declared that the appeal application was null and void.

Court of Appeal (Civil, Inferior)

Case No 91/2012LM & Case No: 160/2012LM – XXX vs Il-Kummissarju tat-Taxxa fuq il-Valur Mizjud – 17/12/2021

XXX filed two separate Court of Appeal applications to appeal against two separate decisions by the Administrative Review Tribunal concerning (a) an appeal application against assessments raised by the Commissioner in terms of Article 32 of the VATA, and (b) a question made to the Tribunal in terms of Article 44 of the VAT Act in connection with the non-payment of refunds allegedly due by the Commissioner to XXX. After considering the evidence and the submissions made by the parties, the Court of Appeal rejected both applications as it considered them not to be based on points of law and proceeded to confirm entirely the decisions of the Administrative Review Tribunal.

EU NEWS

TAXUD news

VAT GAP: EU Countries lost €134 billion in VAT revenue in 2019

On the 2nd of December 2021, the Commission published its annual VAT Gap report which measures the overall difference between the expected VAT revenue and the amount actually collected in EU Member States. It is estimated that in 2019 Member States lost an estimated EUR 134 billion in VAT revenue, which though being EUR 6.6 billion less than the preceding year still was cause for concern given that it represents revenues lost to VAT fraud and evasion, VAT avoidance and optimisation practices, bankruptcies and financial insolvencies, as well as miscalculations and administrative errors. The study noted that while some revenue losses are impossible to avoid, decisive action and targeted policy responses by the Member States could make a real difference, particularly when it comes to non-compliance.

Commission welcomes ECOFIN agreement on new rules governing VAT rates in the EU

On the 7th of December 2021, the Commission welcomed the agreement reached by EU finance Ministers, at the meeting of the ECOFIN Council in Brussels, to update the current rules governing VAT rates for goods and services. The new legislation aims to provide governments with more flexibility in the rates that they can apply and ensuring more equality between EU Member States. The scope of the new legislation is threefold, namely (i) updating the list of goods and services found in Annex III to the VAT Directive, to which all Member States may apply reduced VAT rates; (ii) remove the possibility by 2030 for Member States to apply reduced rates and exemptions to goods and services deemed detrimental to the environment and to the EU's climate change objectives; and (iii) make derogations and exemptions for specific goods and services, currently in place in certain Member States for historical reasons, available to all countries to ensure equal treatment and avoid distortions of competition.

COVID-19: Commission decides to extend customs and VAT waiver

On the 22nd of December 2021, the Commission published a decision whereby, following a request by 23 EU Member States, it extended up to 30 June 2022 the temporary waiver of customs duties and VAT on the importation of medical devices and protective equipment used in the fight against COVID-19 in these Member States. The current waiver was set to expire on 31 December 2021.

EU NEWS

VAT Committee Meetings

The VAT Committee held its 119th Meeting on 22 November 2021. Due to the current Covid-19 protocols the meeting was held on-line. A number of interesting papers were discussed of which we have selected the following two:

Working Paper 1025 – by the Commission – referring to the implications following the CJEU decision in case C-812/19 Danske Bank regarding a principal establishment and branch of a company situated in two different Member States.

The VAT Committee has already had the opportunity to consider numerous concerns connected to the application of Article 11 of the VAT Directive's VAT grouping rules. The decision of the CJEU in the case C-7/13 Skandia America had sparked those discussions. However, following the decision in case C-812/19 Danske Bank, the Commission services believe it is worthwhile to examine the outcome of that case in order to determine whether the previously agreed guidelines, based on the Skandia America decision, are still relevant and to look at the wider implications of that decision. The delegations were invited to express their opinion on the Commission services analysis set out in the working paper.

Working Paper 1027 – by the Commission – regarding the interaction between the VAT Group, the new provisions on e-commerce and the OSS schemes.
In the paper, the Commission services presented the issues linked to the interaction between the rules covering VAT Grouping, the new e-commerce rules and the OSS schemes, with a view to inviting the delegations to discuss them and give an opinion for the purpose of hopefully reaching a common approach and avoiding as much as possible inconsistencies in the application of the new provisions.

For further reading of the 119th Meeting of the VAT Committee papers, follow the link:
https://circabc.europa.eu/ui/group/cb1eaff7-eedd-413d-ab88-4f761f9773b/library/f6ade3b9-ef89-4b4d-905e-8232aa8a126?p=1&n=10&sort=modified_DESC

VAT Expert Group Meetings

The VEG met on 7 December 2021 for its 30th Meeting.

The focal point of the meeting was the report on the outcome of the work of the Sub-group "Platform economy" and a presentation by a rapporteur. The report gives a detailed insight on the analysis carried out by the sub-group concerning among other, the nature and place of supply carried out by platforms, the roles of platforms, the input from business, and the deemed supplier model. It was concluded that the work of the sub-group "Platform economy" provided for an extremely useful exchange of opinions between stakeholders that should provide useful material for the Commission's future work in the area of platform economy.

For further information on the VEG meeting follow the link:
https://circabc.europa.eu/ui/group/cb1eaff7-eedd-413d-ab88-94f761f9773b/library/1ffd7f32-e6d5-42f0-8f05-f1f035b1555e?p=1&n=10&sort=modified_DESC

UPDATES ON ECJ DECISIONS

Case C-154/20 – Kemwater ProChemie – 09/12/2021

(RE: Art. 168 of the VAT Directive – Right to deduct Input Tax – Material conditions governing the right of deduction – Supplier's status as taxable person – Burden of proof – Refusal of the right of deduction where the true supplier has not been identified – Conditions)

Kemwater ProChemie ("KPC"), a commercial company established in the Czech Republic had deducted input VAT in respect of advertising services received during 2010 and 2011. According to the documents held by KPC, those services had been supplied to it by Viasat Services, another Czech company. However, the Czech tax authority subsequently found that the managing director of Viasat Services had no knowledge that his company had made the said supplies to KPC, and so proceeded to issue tax assessments to recover the tax irregularly claimed.

The national Supreme Administrative Court, where the dispute was taken up, decided to stay the proceedings to ask the ECJ (the "Court") whether it was compatible with the pertinent VAT Directive provisions that the exercise of the right of deduction was conditional on the taxable person fulfilling the obligation to prove that the taxable supply was made by another specific taxable person, and if in the affirmative whether in failing to fulfil that evidentiary obligation the right of deduction should be refused without the necessity of establishing that the taxable person knew or could have known that by acquiring the goods he was participating in tax fraud.

The Court recalled that the right to deduct VAT was subject to compliance with both material and formal conditions. Regarding the material conditions, for the right of deduction to be exercised the claimant must be a taxable person acting as such whilst the goods/services must have been supplied by another taxable person acting as such and the goods/services in question must be used by the claimant for the purposes of his taxed activities. On the other hand, the detailed rules governing the exercise of the right of deduction, such as being in possession of an invoice drawn according to those rules was a formal condition.

In its settled case law, the Court had consistently held that the right of deduction, being a fundamental principle of the VAT Directive aimed to ensure tax neutrality for businesses, cannot be refused where a formal condition has not been met so long as the material conditions were met. That would not be the case, however, if non-compliance with a formal condition effectively prevents the production of conclusive evidence that the material requirements have been satisfied. On their part, the tax authorities cannot restrict themselves to merely examining invoices, but they must also take account of the additional information provided by the taxable person and require the taxable person himself to produce evidence that they consider necessary to determine whether the deduction requested should be granted. On the basis of the facts at issue, it was evident that KPC had failed to produce conclusive evidence that the services in respect of which it was exercising its right of deduction had effectively been supplied to it by another taxable person acting as such, and consequently the tax authority, considering that a material condition was not satisfied, was correct in refusing the claim for deduction of input VAT.

The Court thus ruled that the right to deduct input VAT must be refused, where, the true supplier of the goods/services concerned was not identified, and where the taxable person making the deduction had failed to adduce proof that the supplier had the status of a taxable person, taking into account the factual circumstances and the evidence produced by him containing information necessary to verify that the true supplier had the status of a taxable person was lacking. Furthermore, the tax authority, in refusing the input VAT deduction, was not required to prove that the taxable person had committed VAT fraud.

UPDATES ON ECJ DECISIONS

Case C-389/20 – Elvospol s.r.o. – 11/11/2021

(RE: Article 90 of VAT Directive – Reduction of the taxable amount for VAT purposes – Total or partial non-payment of the price on account of the debtor's insolvency – conditions imposed by national legislation for the adjustment of output VAT – non-compliance)

Elvosopol, a Czech Republic company, had supplied goods to Mont, another CZ company, that subsequently became insolvent and applied for dissolution. Given the situation Elvosopol, carried out adjustments to its VAT returns to adjust the taxable amounts related to the supplies made to Mont and in respect of which it received no payment. The tax authority refused these adjustments claiming that the unpaid claim for Elvosopol arose on the 29 November 2013 whilst the Court insolvency decision was on 19 May 2014 and thus was in breach of national legislation regulating adjustments for unpaid claims.

The referring Supreme Administrative Court of the CZ, stayed the proceedings and asked the Court whether Article 90(1) and (2) of the VAT Directive precluded national legislation that includes a condition preventing taxpayers from making a correction to the amount of output tax in respect of the value of an unpaid/partly paid claim if that claim arose less than six months before a court decision declaring the other taxpayer insolvent?

The Court recalled that Article 90(1) of the VAT Directive, allowing taxable persons to carry out adjustments where consideration for the supply had not been received or received partially embodies one of the fundamental principles of the VAT Directive according to which the taxable amount is the consideration actually received and the corollary of which is that the tax authorities may not collect an amount of VAT exceeding the tax which the taxable person received. On the other hand, Article 90(2) provides that in the case of total or partial non-payment, Member States may derogate from the obligation to reduce the amount for VAT purposes provided in Article 90(1).

The Court has stated that that option to derogate, which is strictly limited to situations of total or partial non-payment, is based on the notion that, in certain circumstances and because of the legal situation prevailing in the Member State concerned, non-payment of consideration may be difficult to establish or may only be temporary. It follows that the exercise of that option to derogate must be justified if the measures taken by the Member States for its implementation are not to undermine the objective of fiscal harmonisation pursued by the VAT Directive, and it cannot allow the Member States to exclude altogether reduction of the taxable amount for VAT purposes in the event of non-payment. In that regard, the Court has held that that option to derogate is intended only to enable Member States to counteract the uncertainty associated with recovery of the sums owed.

In the light of the foregoing, the Court ruled that Article 90 of the VAT Directive must be interpreted as precluding a national provision which makes adjustment of the amount of VAT subject to the condition that the partially or totally unpaid claim must not have arisen during the six-month period preceding the declaration of insolvency of the debtor company, where it is not ruled out under that condition that such a claim may ultimately be definitively irrecoverable.

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.

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