Zampa Debattista

Entrust your VAT matters to us

VAT Newsletter

Q1 2022

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.

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 – 2021 Annual average Exchange Rates of the Euro – 01/02/2022

The CfR published a list containing the average exchange rates of the major international denominations against the EURO for calendar year 2021 that are to be used for the purpose of tax computations and tax reporting.

https://cfr.gov.mt/en/News/Pages/2022/2021-Annual-Average-Exchange-.aspx

Government Notice No. 189 published in Government Gazette - 11/02/2022

It was notified that the Prime Minister had appointed Mr Joseph Caruana as Commissioner for Revenue with effect from 11/02/2022.

(Mr Marvin Gaerty, the former CfR has been assigned new duties within the Ministry for Finance reportedly consisting in leading a working group on the taxation sector).

Administrative Review Tribunal

There were no decisions released during this period.

Court of Appeal (Civil, Superior)

Case No 91/2012LM & Case No: 453/13/1 SM – XXX vs Direttur Generali tat-Taxxa fuq il-Valur Mizjud – 26/01/2022

XXX and its sole director, acting as its representative, had appealed a decision of the Civil Court (First Hall) that had dismissed their case and confirmed the validity of a demand note filed by the Commissioner to recover an amount of EUR 257,330 pursuant to the notification of VAT assessments upon XXX and its sole director. In their appeal application, the plaintiffs had requested the Court to declare that they had not received the notices of assessments and as a result any tax, penalties and interest being claimed by the Commissioner were not due. The Court whilst observing that plaintiff's grievances were substantially identical to those made in the appeal before the Court of first instance, was convinced, much the same as the Court of first instance, that on the basis of the evidence produced the notices of assessments had effectively been served to the plaintiffs in the manner prescribed by law. As a result, the Court rejected the appeal case and confirmed the decision of the Court of first instance in its entirety.

LOCAL NEWS

Court of Appeal (Civil, Inferior)
Case No 320/2012 – Ruben Farrugia vs Direttur Generali tat-Taxxa fuq il-Valur Mizjud – 23/03/2022

Mr Farrugia, who owned and managed a restaurant, appealed against a decision of the Administrative Review Tribunal that had found that the VAT assessments raised by the Commissioner for period from 2006 to 2010 amounting to EUR 51,890 were valid, except for the first two tax periods which were declared to be time-barred and hence null and void. In his appeal the plaintiff attacked the method used by the Commissioner, namely the consumption of wine and table disposable covers, to arrive at the estimated under-declaration of sales. The Court observed that as pointed out by the defendant Commissioner, the grievance was one of fact and not a point of law. After examining the evidence and considering the submissions by the parties the Court dismissed the appeal on grounds that it was not based on a point of law.

EU NEWS

TAXUD news

New proposed VAT exemption certificate (Annex II of CIR 282/2011)

On 13th January 2022, the Commission released a proposal to the Council, COM (2022)8 final, for an amendment to Council Implementing Regulation (EU) 282/2011 consisting in updating the VAT/excise duty exemption certificate set out in Annex II thereof, so as to include exemptions on supplies of goods or services used as part of measures taken at EU level in response to the Covid-19 pandemic (supplied as from 01/01/2021) and exemptions for goods and services used in activities carried out by the armed forces of one Member State in another Member State as part of defence efforts under the EU Common Security and Defence Policy (as from 01/06/2022).

Call for feedback on plans to bring the EU VAT rules into the digital age

On 21st January 2022, the Commission launched a public consultation ahead of a new legislative package it intends to propose later this year to adapt the way VAT is reported and collected in an increasingly digital oriented world. The consultation aims to seek feedback from businesses, academics, Member States and other interested parties. The legislative package shall include measures that have the scope of improving the current situation by maximising tax revenue, minimising tax fraud and reducing tax compliance administrative burdens. The measures include new digital reporting requirements for businesses across the EU, new rules for the platform economy, and a single registration for companies in the EU.

VAT revenues for Member States for on-line purchases under IOSS

On 15th March 2022, the Commission released the figures relating to the VAT revenue collected by the Member States for the six months ending 31 December 2021 through the Import One Stop Shop simplification scheme, covering distance sales of imported goods with an intrinsic value not exceeding EUR 150, one of the three e-commerce simplification schemes launched on 1st July 2021. According to the published figures Member States collected EUR 1.9 billion of which EUR 690 million alone related to VAT collected on packages of a value not exceeding EUR 22, which under the previous regime were VAT exempt. Figures for the other two e-commerce schemes, namely the Non-EU One Stop Shop and the EU One Stop Shop, have as yet not been released.

EU NEWS

VAT Committee Meetings

No VAT Committee meetings were held during this calendar quarter but on 28th February 2022, the VAT Committee published the following guideline that was unanimously agreed by the members outside a formal full meeting.

Document A – Taxud.c.1 (2022) 1657365 - no. 1036 – regarding a proposed solution to regularise double taxation under the Import OSS scheme.

Whereas it was brought to the attention of the VAT Committee that following the implementation of the e-commerce package on 1 July 2021 issues of double taxation were identified, it became essential for the VAT Committee to agree on a fast solution to address these issues at least on a short-term basis. Such double taxation arose as a result of the non-communication of the supplier's IOSS number or when the postal operator was unable to transmit the IOSS number to the Customs authority in the Member State of dispatch or even because some Member States are currently not in a position to correctly validate IOSS numbers communicated to them in a full customs declaration.

The temporary solution consists in a correction of VAT in the IOSS return by the seller in circumstances where the buyer had become liable for the payment of VAT at importation and the pre-conditions for the correction of the IOSS return are met. Furthermore, following the correction, the seller shall be required to reimburse the buyer the VAT charged on the sale of the good, provided the buyer is able to show that he had paid the pertinent VAT at importation

UPDATES ON ECJ DECISIONS

Case C-513/20 – Termas Sufurosas de Alcafache SA– 13/01/2022

(RE: Art. 132(1)(b) of the VAT Directive – Exemption for hospital and medical care – Closely related activities – Thermal treatment – Amount charged for compiling an individual file including the user's clinical history)

Termas Sufurosas de Alcafache SA ("Termas"), operated the Alcafache thermal baths, a primary care unit in Portugal. It did not form part of the Portuguese national health service and did not have the capacity to provide hospital care. For the years 2010 to 2012, Termas invoiced its users for a service called 'thermal registration' in respect of which it did not charge VAT. However, following an inspection, the tax authority took the view that the services were taxable and proceeded to issue an assessment on Termas to claim the VAT due on those services.

According to the facts at issue, for a traditional thermal treatment exceeding three days, Termas charged the client a 'thermal registration fee', which was valid for twelve months and covered the prescribed treatments, irrespective of whether those treatments were availed of or not. All thermal treatments had to be individually prescribed following a consultation with a qualified doctor from the thermal baths. The thermal registration service consisted of opening a case file for the user that contained that person's clinical history and entitled the user to purchase the prescribed thermal cure treatments that provided a therapeutic function for ailments associated with ENT, respiratory tract and rheumatology among other.

The Supreme Administrative Court of Portugal, where the dispute ended up, decided to stay the proceedings and refer a question for a preliminary ruling to the ECJ (the "Court") as to whether the thermal registration service at issue in the main proceedings fell within the concept of 'closely related activities' provided for in Article 132(1)(b) of the VAT Directive and may as such, be regarded as being exempt from VAT.

The Court recalled that since the concept of 'activities closely related' to hospital and medical care referred to in Article 132(1)(b) is not defined, it must be interpreted in the light of the context in which it is used and of the aims and scheme of the VAT Directive, with particular regard to the underlying objective of the exemption, namely to ensure that the benefits flowing from such care are not hindered by the increased costs in providing it, had it been subjected to VAT. Furthermore, such context must require, in any event, that the supply of goods or services concerned must be essential for the transactions exempted within the scope of hospital and medical care. In the present case, the activity at issue in the main proceedings, consisted inter alia in compiling an individual file which not only included the user's clinical history, setting out data relating to the user's state of health, but also the manner in which that care is administered in order to achieve the therapeutic objectives pursued.

The Court thus ruled that Article 132(1)(b) of the VAT Directive must be interpreted as meaning that an activity such as that at issue in the main proceedings falls within the exemption from VAT provided for in that provision as an activity closely related to medical care. It also confirmed that medical care and the activities closely related to it can be undertaken, under social conditions comparable with those applicable to bodies governed by public law, by a centre for medical treatment or diagnosis or by another duly recognised establishment of a similar nature with the meaning of that provision.

UPDATES ON ECJ DECISIONS

Case C-9/20 – Kollaustrasse – 10/02/2022

(RE: Point (b) of Article 66 of VAT Directive – chargeability of VAT -the time the payment is received – origin and scope of right of deduction – Article 167a – derogation – cash accounting – letting and subletting of property for industrial or commercial purposes)

Kollaustrasse ("K"), a civil law German company, self-leased a plot of land for industrial and commercial purposes, and having opted to apply VAT to the lease, was duly authorised by the tax office to account for it by cash-accounting. It transpired that whereas some rental payments had been deferred from the dates agreed in the rental contract, K paid the VAT to the tax office when it received payment and asserted its input VAT deduction in the corresponding financial years. This treatment was challenged by the tax office on grounds that according to them, the right of deduction had arisen on the agreed dates set out in the rental contract and not when the actual rental payments were received with the result that K was served with an assessment amounting to EUR 18K to reclaim the input VAT allegedly reported in the wrong tax period. Moreover, K could not adjust this amount in the appropriate tax returns referring to the period in which they should have been claimed, as such adjustment became time-barred under national law.

In those circumstances, the Finance Court of Hamburg, stayed the proceedings and referred two questions to the ECJ for a preliminary ruling and namely, whether Article 167 of the VAT Directive precludes a national law provision according to which the right of input tax deduction already arises at the time the transaction is performed notwithstanding that the tax becomes chargeable to the supplier only when the remuneration is received but has not been paid. Secondly, whether Article 167 precludes a provision under national law according to which the right of input VAT deduction cannot be asserted in the tax period in which the payment had been received and cannot be asserted in an earlier period due to the matter being time-barred.

The Court reminded that according to its settled case-law it would be necessary, when interpreting a VAT Directive provision, to consider not only its wording but also the context in which it occurs and the objectives pursued of which it is part. Article 167 is clear and unambiguous in that it establishes that the right of deduction shall arise at the time the deductible tax becomes chargeable. In principle, VAT on a supply becomes chargeable at the time when the goods are supplied or the services are performed (Article 63), but by way of derogation Member States may allow that it becomes chargeable, in respect of certain transactions or certain categories of taxable persons, by no later than the time the payment is received (point b. Article 66). As a result, a national provision that establishes that the tax becomes chargeable at the time other than that as provided in point b. of Article 66 of the VAT Directive would go beyond the scope of what the derogation aims to achieve.

The Court ruled that Article 167 of the VAT Directive must be interpreted as precluding national legislation which provides that the right of input tax deduction arises at the time the transaction takes place if, pursuant to a national derogation under point (b) of Article 66 of the VAT Directive the tax becomes chargeable to the supplier of the goods or services when the remuneration is actually received and not when it had been intended to be received.

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.

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