Zampa Debattista

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VAT Newsletter

Q3 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

Workshop for Payment Services Providers – 07/09/2022

The Office of the Commissioner for Revenue notified interested Payment Services Providers (PSPs) to apply for participation in a workshop organised by the EU Commission that was being held on 23/09/2022 for the purpose of introducing the obligations arising to PSPs as a result of the new provisions set out in Council Directives (EU) 2020/284 and (EU) 2022/283 as regards measures to strengthen administrative cooperation in order to combat VAT fraud.

Legal Notice 227 of 2022 - 14/09/2022

The Minister responsible for Finance ordered that with effect 01/09/2022 the rate of interest for unpaid VAT balances was being raised to 0.6% per month or part thereof from the current 0.33% per month or part thereof. However, with regard to VAT balances which became payable by taxable persons prior to 01/09/2022, the rate of 0.33% per month or part thereof shall continue to apply.

Administrative Review Tribunal

Case no. 25/2014 VG – XXX vs Direttur Generali (Taxxa fuq il-Valur Mizjud) – 07/07/2022

XXX filed a court application to appeal against the assessments for tax periods 01/08/2009 to 31/07/2011 amounting to EUR 21,609 served upon him by the Commissioner for Revenue claiming that the issuing of the assessments was ultra vires in that another set of provisional assessments (subsequently cancelled) had been issued for the same tax periods. On his part the Commissioner was claiming that the appeal was null in that it was filed beyond the statutory thirty-day period allowed at law for the lodgement of an appeal against assessments. As regards the serving of the assessment notices the Tribunal observed that the method adopted by the Commissioner, namely the mere posting of the notices by VAT inspectors in an address known to them, was not in accordance with Article 73 of the VAT Act, the provision that regulates the serving of notices. As such, the exact date of serving of the assessment notices could not be determined and hence the Commissioner's claim that the appeal was lodged "late" was neither factually nor legally tenable. Concerning plaintiff's claim regarding the nullity of the assessments, the Tribunal did not find that the existence of a previous set of provisional assessments, subsequently cancelled and superseded by fresh provisional assessments, was in breach of Article 32 of the VAT Act, the provision that empowers the Commissioner to raise assessments. In the circumstances, the Tribunal dismissed both preliminary pleas and ordered the continuation of the hearing of the case based on the merits.

Case no. 143/2012 VG – XXX vs Kummissarju tat-Taxxa fuq il-Valur Mizjud – 12/07/2022

XXX appealed the assessments issued to it by the Commissioner for a total amount of EUR 49,081 covering tax periods from 01/01/06 to 31/12/09 on grounds that the turnover and resulting output VAT worked out by the Commissioner were excessive. In addition, the plaintiff pointed out that the last two tax periods 01/07/09 to 31/12/09 were not notified as being under investigation by the VAT Department. In its defence, the plaintiff argued that the VAT Department wrongly based it workings on the stock value at the end of a particular year, namely EUR 5,000, as disclosed by the sole director of the company to the VAT Inspectors during an on-site inspection, which stock was subsequently adjusted upwards in the audited accounts. The Tribunal did not find these arguments plausible and took the view that the VAT Department's method of calculating the assessments appeared more credible. As regards the last two assessments the Tribunal conceded that plaintiff should not have been assessed for unnotified tax periods. In the light of the foregoing the Tribunal ruled that the assessments raised by the Commissioner should stand except for the assessments relating to the last two tax periods 01/07/09 to 31/12/09 which should be cancelled and withdrawn.

LOCAL NEWS

Court of Appeal (Inferior Jurisdiction)

Appeal no. 117/2013 LM – AX Construction Limited vs Direttur Generali (Taxxa fuq il-Valur Mizjud) – 28/09/2022

Appeal no. 117/2013 LM – AX Construction Limited vs Direttur Generali (Taxxa fuq il-Valur Mizjud) – 28/09/2022
The plaintiff company lodged an appeal against a decision of the Administrative Review Tribunal that had dismissed its appeal against assessments raised to it by the Commissioner for Revenue in connection with input VAT credits. The company complained that the Tribunal had erroneously applied the principles of law governing the rights of the taxpayer as applied to the facts of the case in merit. The defendant Commissioner, on the other hand counter argued that the appeal was based on an alleged misinterpretation of the facts at issue by the Tribunal, and hence was based on merit and not on a point of law. After examining the facts and considering the arguments brought forward by the parties, the Court found that the appeal was not based on a point of law but on matters of fact and as a result declared it to be null and void.

EU NEWS

Presidency of the Council of the European Union

On the first of July 2022, the Czech Republic took over from France the six-month rotating presidency of the Council of the European Union. This will be the second time since joining the EU in 2004, that the Czech Republic would be holding the presidency having first held it in 2009. Given the current global situation the work programme is mainly focused on dealing with the effects of the war in Ukraine, energy security, strengthening the European defence capabilities and cyberspace security, the strategic resilience of the European economy and the resilience of democratic institutions. Regarding VAT it is not expected that any dossiers currently being discussed in Council can be concluded by the end of the year.

TAXUD news

Commission waives Customs duty and VAT on the import of life-saving goods for Ukrainians – 1 July 2022

In terms of Commission Decision C (2022) 4469 final, a number of Member States[1] are being allowed to waive Customs duties and VAT on the importation from third countries of food, blankets, tents, electric generators and other life-saving equipment destined for distribution to persons fleeing the war in Ukraine and/or to persons in need within Ukraine. This concession shall apply as from 24/02/2022 and shall expire on 31/12/2022.

VAT Committee Meetings

No VAT Committee meetings were held during this calendar quarter.

VAT Expert Group Meetings

No VEG meetings were held during this calendar quarter. However, on 12 September 2022 pursuant to a call for applications, the Director General TAXUD published the list of the persons/organisations selected to serve as members of the VEG for a period of three years, commencing on 01 October 2022. The Malta Institute of Taxation has been re-appointed to serve for another term on the VEG, and is to be represented by Dr. Sarah Cassar Torreggiani, with Mr Chris Borg as alternate.

[1] Belgium, Bulgaria, Cyprus, Denmark, Germany, Latvia, Portugal, Spain and Sweden are (at their request) excluded from this concession.

UPDATES ON ECJ DECISIONS

Case C-267/21 – Uniqa Asigurari SA – 01/08/2022
(RE: Art. 56 of Council Directive 2006/112/EC – Supply of insurance services – Point of reference for tax purposes – Claims settlement services provided by third-party companies in the name and on behalf of the insurer)

Uniqa Assigurari ("Uniqa"), a Romanian insurance company, offered motor accident and medical expenses insurance policies that covered the insured against risks occurring outside Romania. To facilitate the servicing of these insurance policies Uniqa entered into a partnership agreement with twenty-six companies, all established outside Romania, that were engaged to handle all tasks and procedures relating to claims for compensation in connection with accidents occurring within the country where the partner companies were established. Uniqa did not reverse charge the services invoiced to it by these partner companies as according to it the place of supply in the country where the supplier was established (as per Art. 133(1) of the Romanian Tax Code). A dispute arose when the Romanian tax authorities claimed that Uniqa should have self-charged the VAT as the place of supply was Romania where it (the customer) was established and as a result Uniqa was served with assessments for a total amount of EUR 753K to cover the underdeclared tax from 01/01/2007 to 31/12/2011.

The Supreme Court of Cassation of Romania, where the dispute ended up, decided to stay the proceedings to ask the CJEU (the "Court") whether claims settlement services supplied by partner companies to an insurance company, in the name and on behalf of that company, fall to be classified in the category of services supplied by consultants, engineers, consultancy firms, lawyers, accountants and other similar services, including data processing and the provision of information referred to in Art. 59[2] of the VAT Directive.

The Court noted that whereas the dispute related to facts mainly occurring prior to 01/01/2010 the referring question should be reformulated to restore Art. 56(1)(c) as the legal point of reference. As a preliminary point the Court remarked that the provision does not refer to professions but to services supplied in the exercise of those professions. Consequently, it would be important to determine whether the claims settlement services provided in the name and on behalf of an insurance company came within the scope of supplies of services principally and habitually carried out as part of the professions listed in Art. 56(1)(c). After examining the facts underlying the dispute the Court took the view that the claim settlement services provided by the partner companies to Uniqa, acting in its name and on its behalf did not come within the scope of services that meet those characteristics.

The Court thus ruled that Art. 56(1)(c) of the VAT Directive[3] must be interpreted as meaning that claim settlement services provided by third-party companies, in the name and on behalf of an insurance company, do not come within the scope of the services of consultants, engineers, consultancy bureaux, lawyers, accountants and other similar services, as well as data processing and the provision of information referred to in that provision.

[2] Art. 59(c) replaced Art. 56(1)(c) with effect 01/0½010 (Council Directive 2008/8/EC regarding the place of supply of services rules)
[3] As prescribed up to 31/12/2009.

UPDATES ON ECJ DECISIONS

Case C-330/21 – The Escape Center BVBA – 22/09/2022

(RE: Art. 98 of Council Directive 2006/112/EC –Option for the Member States to apply a reduced rate of VAT to certain supplies of goods and services – Annex III point 14 – Concept of 'use of sporting facilities' – Fitness centres – Individual or group coaching)

The Escape Centre ("EC"), a Belgian company active in the field of fitness and training activities provided access to facilities within which persons can use equipment to improve their physical fitness where the equipment can be used either by individuals or by groups, with or without limited coaching. In addition, it offered personal training and group classes. EC charged VAT at the standard rate of 21% applicable in Belgium but following the outcome of a settled national court case involving an unrelated company, it decided that charging at the reduced rate of 6% would be more compatible with that ruling. Subsequently, it made a request with the tax authorities for a reimbursement of the difference between the VAT rates for the years from 2015 to 2018. The tax authorities refused the request.

The East Flanders Court of First Instance, where the case ended up, stayed proceedings and asked the CJEU whether Art. 98(2) read in conjunction with point 14 of Annex III of the VAT Directive is to be interpreted as meaning that the right to use sporting facilities is subject to the reduced rate of VAT only if no individual or group guidance is provided.

The Court observed that given the lack of a definition in the VAT Directive and the Implementing Regulation the concept of the 'use of sport facilities' must be given an autonomous and uniform interpretation. Recalling its interpretation in a settled case, the Court understood the concept of the 'use of sporting facilities' as meaning to consist of the right to use facilities for the practice of sport or physical education and their use for those purposes. There is no doubt that the provision of a right to access and use the sports facilities by EC falls within that concept, but it remains to be seen whether the concept covers also personal training and group classes. To determine this, it has to be established (by the national referring court) whether the personal coaching and group classes to which access to the fitness centre operated by EC confers entitlement are ancillary to the use of the facilities of that centre or to their actual use.

The Court ruled that Art. 98(2) read in conjunction with point 14 of Annex III of the VAT Directive must be interpreted as meaning that a supply of services consisting of permission to use sporting facilities in a fitness centre and the supply of individual or group coaching may be subject to a reduced rate of VAT where that coaching is linked to the use of those facilities and is necessary for the practice of sports and physical education or where that coaching is ancillary to the use of those facilities or to their actual use.

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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