VAT Newsletter

Q4 – 2024

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Local *News*

Malta Tax and Customs **Administration News**

The Malta Tax and Customs Administration has issued guidelines on the application of the 0% VAT rate on sanitary items used for female sanitary protection and certain medical items used to compensate and overcome cancer in humans. The guidelines provide definitions through CN codes on which the 0% VAT rate may be applied .

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Legal Notices

On the 17th of December 2024, Act XXXVIII of 2024 was published together with ten Legal Notices which amend various Schedules of the Malta VAT Act, whilst also repealing Subsidiary Legislation 406.04. The scope for the introduction of this legislative package is to transpose the VAT SME Directive and the VAT Rates Directive into national legislation, with effect from 1st January 2025.

Legal Notices 354 of 2024 and 355 of 2024 have also been published which provide for a zero-rated exemptions for sanitary items essential for women's health, and certain medical accessories essential to compensate and overcome cancer in humans.

Each Legal Notice together with Act XXXVIII of 2024 may be accessed through the following links:

- Act XXXVIII of 2024
- Legal Notice 344 of 2024
- Legal Notice 345 of 2024
- Legal Notice 346 of 2024
- Legal Notice 347 of 2024
- Legal Notice 348 of 2024
- Legal Notice 349 of 2024
- Legal Notice 350 of 2024
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- Legal Notice 352 of 2024
- Legal Notice 353 of 2024
- Legal Notice 354 of 2024
- Legal Notice 355 of 2024

Administrative **Review Tribunal**

No VAT decisions were published during this calendar quarter.

Court of Appeal *(Civil and Superior Jurisdiction)*

1. 364/23/1 RGM – Court of Appeal (Superior Jurisdiction) – 21/10/2024 – Steward Malta Management Ltd (C-70624) v. Il-Kummissarju tat-Taxxi.

In 2018, Steward Healthcare International Limited bought the shares of the company Vitals Global Limited. Following such acquisition, the Steward group carried out an audit where it was discovered that there existed shortages in relation to VAT declarations.

After various discussions with the Commissioner for Tax and Customs ("CfTC"), an agreement was reached and drawn up regarding the modality of payment of the VAT due. The balance which was due was that of €30,800,063.11, which was agreed to be paid through a set-off from a credit the Company had worth €4,710,383.00 in addition to quarterly payments amounting to €511,190.13 each.

Whilst a copy of such agreement was presented which contained the signature of the Steward group representative, a representative from the MTCA stated that he had not seen the signed agreement, he had never received an official letter requesting the set-off, and the payment was not made, therefore the agreement was considered to have never taken effect.

Following the lack of payments, the MTCA sent an official letter to the plaintiff which stated that should the plaintiff continue not to pay the VAT due an executive title would be instituted against the plaintiff in accordance with Article 59 of Chapter 406 of the Laws of Malta. The plaintiff challenged the executive title and instituted proceedings against the defendant stating that the executive title does not have any effect, should not have been issued and that it was issued in bad faith. The plaintiff argued that the defendant had no right to issue an executive title against it in terms of Article 59 of Chapter 406 of the Laws of Malta since the plaintiff filed an action upon receiving the notice that an executive title has been affected against it, since the same article states that the CfTC can issue the executive titled "unless the contrary is proved".

The Court of Appeal (Superior Jurisdiction) held that "unless the contrary is proved" did not have the intention to mean that whenever the CfTC issues an executive title against a taxpayer, the taxpayer may stop such executive title by simply filing a case against the Commissioner. The scope behind such legislation is to secure that the Commissioner collects the VAT due to him.

The Court of Appeal (Superior Jurisdiction) dismissed the appeal of the plaintiff on all grounds.

2. 347/21/2 TA – Court of Appeal (Superior Jurisdiction) – 04/11/2024 – Suzanne Mifsud u b'digriet tas-16 ta' Novembru 2023 il-kunjom Mifsud ġie mibdul għal Attard v. Il-Kummissarju tat-Taxxi u, għal kull interess li jistgħu jkollhom: Citypro Limited (C-26902) u Edgar Mifsud.

The Commissioner for Tax and Customs ("CfTC") had issued a notice to notify the plaintiff to pay the Malta Tax and Customs Administration the sum of €16,891.59 which constituted the payment of VAT, and interests accumulated according to Article 59 of Chapter 406 of the Laws of Malta, however the notice was never received by such plaintiff.

In turn, the CfTC issued a notice in the government gazette and two other local newspapers, naming the plaintiff and the amount which was due to the CfTC. At the time, the plaintiff was the Director of the Company, together with her then husband. However, during the same period, the Civil Court (family section) pronounced the personal separation of the parties and assigned the shares of the Company to the husband.

The CfTC then issued a judicial letter demanding payment from the spouses in their capacity as Directors of the Company, which instigated the plaintiff to open this Court case. The plaintiff argued that she was not director of the Company as was pronounced by the Civil Court (family section) in its sentence.

As was noted during the Court proceedings, the plaintiff did not have access to the control of the Company finances or the Company's property, and she did not have the authority to make use of such funds.

The Court concluded that by virtue of Article 66(5) of Chapter 406 of the Laws of Malta, the plaintiff is not responsible for the payment of VAT and interests to the CfTC.

EU *News*

VAT: EU and Norway Strengthen Administrative Cooperation, Combating Fraud and Recovery of Claims.

On the 2nd of October 2024, the EU and Norway amended their 2018 agreement on VAT cooperation to introduce new tools for combating VAT fraud and assisting in the recovery of claims.

The updated agreement aligns with EU regulations and directives on administrative cooperation and mutual assistance in tax recovery. Key enhancements include the exchange of information, participation in joint administrative inquiries, simultaneous controls, and Eurofisc cooperation.

The extension of these tools aims to improve collaboration between EU Member States and Norway, while ensuring compliance with data protection laws. Both parties emphasized the importance of this step in strengthening their partnership and tackling VAT fraud.

Commission Welcomes General Approach on VAT in the Digital Age

On the 5th of November 2024 the European Commission welcomed the Council's general approach on its VAT in the Digital Age proposals, aiming to enhance the EU's VAT system by embracing digitalisation, improving fraud resilience, and addressing platform economy challenges. The package introduces three key measures:

1. Real-time Digital Reporting: It introduces e-invoicing for cross-border transactions, aiding timely VAT reporting and fighting fraud, while streamlining operations and supporting business growth.
2. Platform Economy: Operators in passenger transport and short-term accommodation will be responsible for collecting and remitting VAT under the deemed-supplier model, ensuring a level playing field between online and traditional services, and easing the burden on hosts and drivers.
3. Simplified VAT Registration: Expands the "VAT One Stop Shop" to reduce the need for multiple VAT registrations across Member States.

The next expected steps include re-consultation with the European Parliament before adoption by EU Finance Ministers.

New Web Portal: VAT Rules for Small Enterprises

The special VAT scheme for small enterprises will come into force as from 1st January 2025. The scope behind the introduction of such scheme is to enable small enterprises to make (exempt) cross-border supplies in Member States other than the Member State of establishment.

This scheme will be eligible for small enterprises with a total annual turnover of no more than €100,000 in all Member States, whilst also meeting the criteria the that the maximum €80,000 annual threshold is not exceeded at a domestic level.

This scheme allows small enterprises to:

- Sell goods and services without charging VAT to their customers, and
- In turn elevates their VAT compliance obligations

In an effort to help small enterprises to determine how such scheme is being implemented in each Member State, the Commission has launched an online web portal which houses such information.

VAT Committee Meetings

The VAT Committee held its 125th meeting on the 18th of November 2024 with the following extensive agenda:

1. Consultations on questions brought forward by Portugal and Czech Republic on VAT Grouping, on the exemption for particular transactions relating to international trade brought forward by Poland, and on special arrangements for second-hand goods brought forward by Germany.
2. Addressing questions concerning the application of EU VAT provisions such as the treatment of two-way contracts for difference for electricity, VAT rules applicable to electronic interfaces facilitating intra-Community distances sales of goods and the qualification as electronically supplied services of sales of skins in the secondary market for VAT purposes.

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VAT Expert Group Meetings

The VEG held its 37th meeting on the 4th of October 2024 with the following agenda tabled:

1. VAT after ViDA: Progress update by the VEG informal working group
2. VEG No 120: Evaluation of the E-Commerce Package – Results from the OSS/IOSS statistics for 2023
3. VEG No 121: ViDA Package – SVR/IOSS implementation – Follow up of the Helsinki Workshop (confidential).
4. Information points:
   a) ViDA Package – update on the state of play
   b) Travel and Tourism Package – update on the state of play
   c) Implementation of the new SME scheme – update on the state of play
   d) VAT part of the Customs reform – update on the state of play

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Group on the Future of VAT Meetings

The GFV held its 46th meeting on the 9th of October 2024 with the following agenda:

1. FISCALIS Project Group on E-invoicing and digital reporting – sharing of knowledge and exchange of best practices on implementation: Presentation of objectives, scope and timeline by the Project leader.
2. GFV No 138: Evaluation of the E-commerce Package – Results from the OSS/IOSS statistics for 2023
3. GFV No 139 REV: ViDA Package – SVR/IOSS implementation – Follow up of the Helsinki workshop (confidential)
4. Information Points:
   a) ViDA Package – update on the state of play
   b) Travel and Tourism Package – update on the state of play
   c) Implementation of the new SME scheme – update on the state of play
   d) VAT part of the Customs reform – State of play

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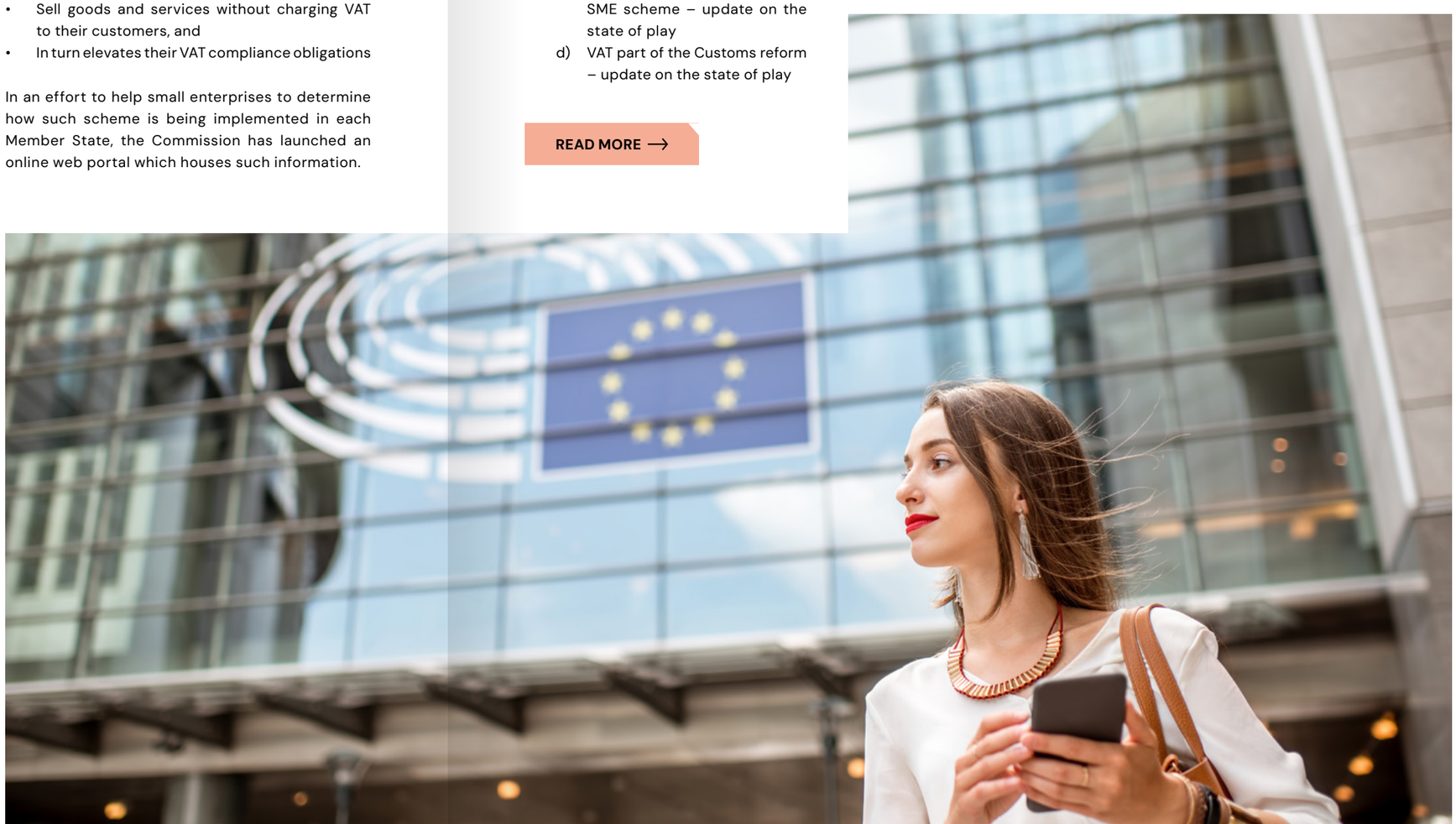

CJEU Decision – *Latest Selection Update*

C-622/23 – rhtb: project gmbh vs. Parkring 14-16 Immbolienverwaltung GmbH

On the 28th of November 2024, the ECJ published its judgement on the following case which concerned the concept of remuneration with regards to a service contract which was terminated by the customer.

Rhtb and Parkring had concluded a contract for services by virtue of which rhtb was to carry out building construction works. After works had started, Parkring informed rhtb that it no longer wished it to carry out that project for reasons which were not attributable to rhtb.

In turn, rhtb requested from Parkring the payment of the agreed amount, less the costs saved on account of the unjustified termination of the contract for the services in question. Parkring did not affect payment to rhtb and in turn, rhtb lodged an application before the court of instance seeking payment, including VAT arguing that Parkring had unjustifiably withdrawn from the contract and that Parkring was therefore liable for the contractually agreed amount. On the other hand, Parkring disputed that it only was liable to pay only the part of the payment which corresponds to the works carried out.

The dispute continued and the national Court decided to stay proceedings and refer the case for a preliminary ruling as the national Court needed guidance as to whether the amount due should be regarded as remuneration for VAT purposes, since rhtb was no longer required to provide its services since the contract was terminated and therefore the condition that there must be a direct link between the consideration received and the service supplied would not be satisfied.

The question which the national Court put forward for the European Court of Justice is:

1. Must Article 2(1)(c) of the VAT Directive, read in conjunction with Article 73 of that directive be interpreted as meaning that the amount which a customer owes to a contractor even where the work has not been (fully) carried out, but the contractor was ready to provide the service and, through circumstances attributable to the customer (for example, cancellation of the work), was prevented from doing so, is subject to VAT?

The Court discussed how a supply of services is carried out for consideration when there is a legal relationship between the provider of the service and the recipient pursuant to which there is a reciprocal, performance, the remuneration received by the provider of the services constituting the actual consideration for an identifiable service supplied to the recipient. That is the case if there is a direct link between the service supplied and the consideration received.

It follows that, a predetermined amount received by an economic operator where a contract for the supply of services for a certain period is terminated early by its customer, or for a reason attributable to the customer, must be regarded as the remuneration for a supply of services for consideration and subject to VAT.

By application of the above, the same should apply for a supplier who had began supplying the services concerned and was prepared to perform it to completion for the amount contractually provided for as the supply of services constituted a right to benefit from their fulfilment by the recipient – even if the recipient no longer wishes to avail itself of that right, and on the other hand given that the supplier had already began work it provide that the supplier was prepared to perform that contract to completion. The ECJ concluded and decided that article 2(1)(c) of Council Directive 2006/112/EC must be interpreted as meaning that the amount contractually due following the termination, by the recipient of a supply of services, of a contract validly concluded for that supply of services, subject to value added tax, which the supplier had begun providing and which it was prepared to complete, must be regarded as constituting the remuneration for a supply of services for consideration, within the meaning of Directive 2006/112/EC.

C-475/23 – Voestalpine Gleserei Linz GmbH vs. Administrația Judeteana a Finanțelor Publice Cluj, Directja Generală Regională a Finanțelor Publice Cluj-Napoca.

On the 4th of October 2024, the ECJ published its judgement on the following case which concerned the right to deduct VAT on the acquisition of goods by a taxable person, which were made available free of charge to a subcontractor for the purpose of carrying out works for the same taxable person.

VGL, a company which was established in Austria, produced moulded parts in Romania, in the course of its economic activity. VGL was also VAT registered in Romania. VGL then concluded a framework contract with Austrex, established in Austria, under which Austrex was able to use the services of a subcontractor, namely GEP, established in Romania.

VGL makes available to Austrex, pursuant to a right of use transferable to GEP, a building located in Romania which VGL owns. VGL additionally makes available, free of charge, for the use of GEP, which processes the parts produced by VGL, a crane which VGL acquired and installed on the grounds of that building.

The relevant tax authorities raised an advanced tax inspection on VGL on the filing of a Vat return which indicated a negative balance with the option of a refund. The tax authority found out that VGL had not drawn up accounting statements indicating the income and the expenditure incurred in the course of its activity in Romania, and that the building in which GEP carries on its activities had been made available to Austrex free of charge. In the light of those factors, the tax authority took the view that VGL had not adduced evidence that the acquisition of the crane had been made for the purposes of its economic activity and refused the deduction of the VAT relating to that acquisition.

VGL challenged such decision, and the Court decided to stay proceedings and refer the following questions to the ECJ for a preliminary ruling:

1. Do the provisions of Directive 2006/112 on the right to deduct VAT preclude a national practice whereby, if a company purchases goods which it then makes available to a subcontractor free of charge so that the subcontractor may carry out activities for the first company, that company is refused the right to deduct the VAT on the goods purchased, on the grounds that [that] purchase is deemed not to be for the purposes of its own taxable transactions but for the purposes of the subcontractor's taxable transactions?
2. Do the provisions of Directive 2006/112 on the right to deduct VAT preclude a national practice whereby a taxable person is refused the right to make deductions on the grounds that he or she has not kept separate accounts for his or her permanent establishment in Romania, thus preventing the tax authorities from verifying the costs of the labour used for the cast products of which the owner is [that taxable person], let alone the entire processing activity carried out in Romanian territory?

The Court discussed how Article 168 of the VAT Directive provides that in so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled to deduct from the VAT which it is liable to pay the VAT due or paid in respect of supplies to it of goods or services, carried out or to be carried out by another taxable person. The Court continued to state that in order to enjoy the right of deduction, two conditions must be met. Firstly, the person must be a taxable person and secondly that the goods or services relied on to confer entitlement to that right must be used by the taxable person for the purposes of its own taxed output transactions and, as inputs, those goods or services must be supplied by another taxable person.

It follows that VGL has the right to deduct VAT paid for the acquisition of the crane which it made available free of charge to its contractual partner, since without the crane the processing of moulded parts would not have been possible, therefore the acquisition was essential for completing the processing and consequently in the absence of such acquisition, VGL would not have been able to carry out its economic activity, consisting of selling moulded parts.

C-475/23 – Voestalpine Gleserei Linz GmbH vs. Administraţja Judeteana a Finanțelor Publice Cluj, Directja Generală Regională a Finanțelor Publice Cluj-Napoca.

(Contd.)

With regards to the second question raised by the national Court, the ECJ held that the right of deduction cannot be limited and not allowed if the substantive requirements are satisfied, even if the taxable person has failed to comply with some of the formal requirements. Therefore, the taxable person cannot be prevented from exercising its right of deduction on the ground that it did not keep sufficiently detailed accounts if the tax authority is in a position to carry out its review and to verify that the substantive requirements are satisfied.

The Court concluded and decided that:

1. Article 168(a) of Council Directive 2006/112/EC must be interpreted as precluding a national practice whereby, where a taxable person has acquired goods which that taxable person then makes available free of charge to a subcontractor, in order for that subcontractor to carry out work for that taxable person, that taxable person is denied the deduction of the VAT relating to the acquisition of those goods, in so far as the making available of those goods does not go beyond what is necessary to enable that taxable person to carry out one or more taxable output transactions or, failing that, to carry out its economic activity, and the cost of acquiring those goods is part of the cost components of either the transactions carried out by that taxable person or the goods or services which that taxable person supplies in the course of its economic activity.
2. Article 168(a) of Directive 2006/112 must be interpreted as precluding a national practice whereby a taxable person is denied the deduction of input VAT on the ground that that taxable person has not kept separate accounts for its fixed establishment in the Member State in which the tax inspection is carried out where the tax authorities are in a position to determine whether the substantive conditions of the right of deduction are satisfied.

Zampa Partners founded in 2014, started as an accounting and assurance firm and has since grown into a leading business advisory firm. Over the years, it has broadened its expertise to provide a comprehensive range of services, including VAT, tax, financial advisory, and internal and external audits. With a commitment to technical excellence and delivering practical solutions, Zampa Partners assists businesses across a variety of sectors in navigating complex financial and regulatory challenges.

Should you require further information on the above please contact Brandon Gatt on brandon@zampapartners.com

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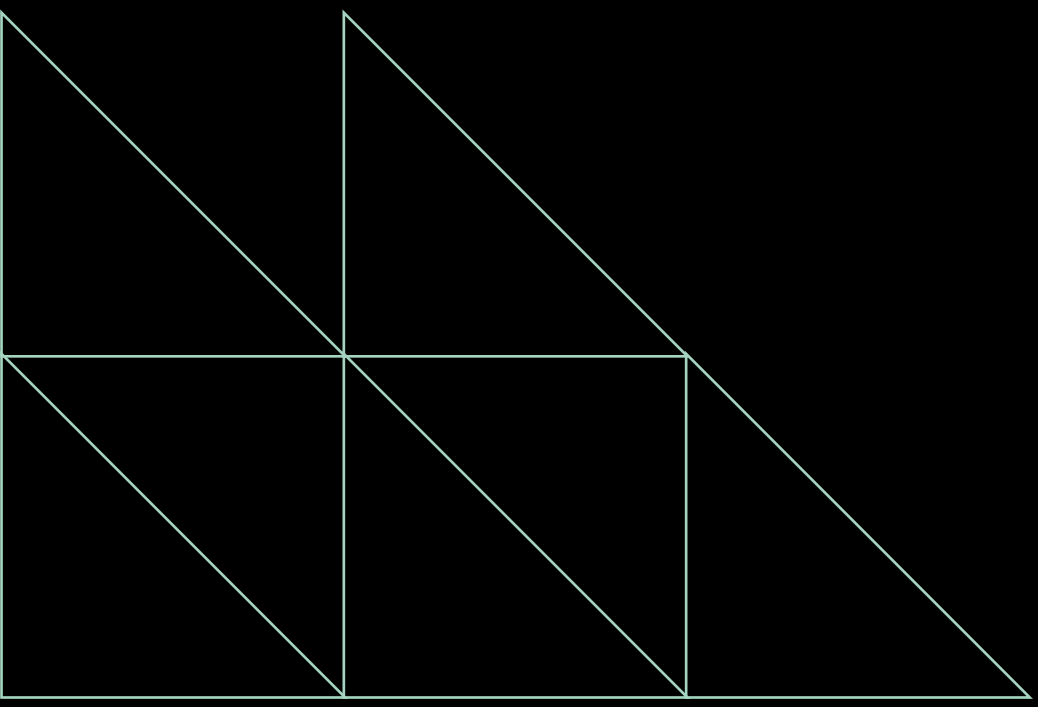

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