



VAT Newsletter

Q1 – 2025

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Local *News*

Malta Tax and Customs Administration News

On the 4th of February 2025, the Malta Tax and Customs Administration notified that applications for the VAT EXO Number (Point of Sale) can now be requested through a designated online portal which came into force on the 10th of February 2025.

The online portal to apply for the VAT EXO Number may be accessed through the following link:

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Legal Notices

No Legal Notices were published during this calendar quarter.

Local Court Decisions

Administrative Review Tribunal

XXX vs Kummissarju tat-Taxxi – 45/2021 – 23/01/2025

The case concerned an appeal filed by the defendant against a demand note issued by the Commissioner for Tax and Revenue (“CfTR”). This demand note required the defendant to pay VAT in her alleged capacity as a director of Eduworld Real Estate Limited (the “Company”).

The demand note was issued by the Malta Tax and Customs Administration (“MTCA”) on 7 April 2021. The MTCA requested a total amount of €75,677.88, representing VAT arrears, accrued interest, and administrative penalties. The demand related specifically to the defendant’s failure, as a company director, to submit VAT returns covering the periods from January 2018 to December 2020.

The defendant challenged the claim, arguing that she had neither been appointed nor acted as a director of the Company. She further contended that she had never signed documents evidencing such appointment, asserting that she became aware of her alleged directorship only upon receipt of the MTCA’s demand notice. However, the defendant did not provide sufficient evidence to support her claims regarding the non-existence of her directorship.

The MTCA relied on Article 66 of the Malta VAT Act, which explicitly provides that directors of a company are considered representatives of that company for VAT purposes. According to this provision, directors are liable,

jointly and severally, for all obligations imposed under the Act, to the same extent as the entity they represent. It further specifies that where a representative acts in good faith and is unaware of any breach, their liability shall be restricted to the value of funds or property under their management or control belonging to the entity.

In its judgment, the Court emphasised the lack of evidence submitted by the defendant to refute her alleged appointment as director. Consequently, the Court dismissed the defendant’s appeal and upheld the MTCA’s demand, ordering the defendant to pay the requested amount of €75,677.88, comprising the outstanding VAT, interest, and administrative penalties.

XXX vs Kummissarju tat-Taxxi – 63/2017VG – 23/01/2025

The case concerned an appeal filed by the defendant against an assessment issued by the Commissioner for Tax and Revenue (“CfTR”), following the CfTR’s rejection of the VAT returns submitted by the defendant for the period spanning from February 2016 to October 2016.

The CfTR’s assessment was issued in accordance with Article 48(5) of the Malta VAT Act, following the defendant’s failure to produce the documentation requested by the Malta Tax and Customs Administration (“MTCA”) within the thirty-day statutory deadline established in that article.

The assessment raised by the CfTR amounted to a total of €68,753.25, comprising €56,574 in VAT due, €11,460.72 in administrative penalties, and €718.53 in accrued interest.

In his defence, the defendant claimed that he was unable to read or comprehend the letter from the MTCA, and consequently

chose to disregard it. Furthermore, he argued that he could not produce the requested VAT documentation as the records were, according to him, in the possession of the Police at that time.

In response, the CfTR rejected both arguments. The CfTR contended that, given the defendant’s awareness of his inability to read or write, he had an obligation to seek appropriate assistance upon receiving the letter from the department. Moreover, testimony provided by Superintendent Johann Fenech clarified that, contrary to the defendant’s assertions, the VAT records were not held by the Police.

Having assessed the arguments presented by both parties, the Court concluded that the defendant lacked reasonable grounds for failing to comply with the CfTR’s request for documentation. The Court consequently upheld the assessment issued by the CfTR, maintaining the total liability of €68,753.25, including VAT arrears, administrative penalties, and interest.



Amand Paul Veranneman vs Kummissarju tat-Taxxi; u b’digriet tal- 20 ta’ Ottubru 2023, l-isem gie jaqra Kummissarju tat-Taxxi u Dwana; u b’digriet tal-21 ta’ Frar 2025 l-isem gie korrett ghal “Kummissarju tat-Taxxa u Dwana” – 5/2018SG – 28/02/2025

The case concerned an action initiated by the plaintiff against the Commissioner for Tax and Revenue (“CfTR”) subsequent to receiving a letter requesting payment of €36,815.15. The plaintiff contested this demand, claiming it was unjustified as he was unaware of both the amounts owed and the accumulation of interest and administrative penalties. The plaintiff also criticised the fairness of the MTCA’s procedure, highlighting that the demand, received in May 2018, related to VAT return periods dating back to May 2012 and May 2013. He argued that it was unreasonable and unfair for the Malta Tax and Customs Administration (“MTCA”) to issue a demand notice after such a significant lapse of time.

In response, the MTCA emphasised that the plaintiff had continuous access to his VAT ledger statements and could verify his outstanding balances at any time. Furthermore, the MTCA clarified that the notice was not an assessment but merely a request for payment of the amounts declared by the plaintiff himself in his VAT return submissions.

During the proceedings, the plaintiff raised the issue of prescription regarding the amounts demanded by the MTCA for the VAT return periods of May 2012 and May 2013. He cited Article 48 of the Malta VAT Act, which specifies a prescription period of six years, noting, however, that the same article does not explicitly mention a prescription period concerning the application of interest

and penalties. In its deliberations, the Tribunal referenced previously decided case law, applying the principle of *lex specialis*, which stipulates that, where the Malta VAT Act (the special law) does not explicitly provide for a time limit, reference should be made to the general law, namely the Civil Code. According to the Civil Code, the applicable prescription period for the imposition of interest is five years.

Consequently, the Tribunal ruled that the demands raised by the MTCA relating to the VAT return periods of May 2012 and May 2013 had prescribed. The Tribunal therefore directed the MTCA to revise its calculations and adjust the amounts being demanded from the plaintiff accordingly.

Further Judgments

The court delivered further judgments throughout this quarter, which may be accessed through the e-courts web-portal, with the following details:

1. [XXX vs Kummissarju tat- Taxxi – 117/2018 – 23/01/2025](#)
2. [XXX vs Dir Generali Dipartiment tat-Taxxa Fuq Valur Mizjud – 6/2015 – 23/01/2025](#)
3. [XXX vs Kummissarju tat-Taxxa fuq il-Valur Mizjud – 92/2012 – 23/01/2025](#)
4. [XXX vs Kummissarju tat-Taxxi – 72/2018 – 25/03/2025](#)
5. [XXX vs Kummissarju tat-Taxxi – 101/2018 – 25/03/2025](#)

Court of Magistrates (Criminal Judicature)

During the first quarter of 2025, the Court of Magistrates, acting in its capacity as a Court of Criminal Judicature, delivered ten VAT-related judgments. These judgments primarily addressed cases involving taxpayers who failed to issue fiscal receipts in accordance with the obligations set out in the Thirteenth Schedule of the Malta VAT Act, specifically concerning business-to-consumer transactions. For the purposes of this newsletter, three random judgments have been selected for detailed analysis. All three cases were presided over by Magistrate Dr. Yana Micallef Stafrace, who delivered the following judgments during this reporting period:

1. The Police vs Lindsey Jane Nickless – 15/01/2025

The case concerned charges brought against the defendant following a surprise inspection conducted at the defendant’s establishment, Cowain’s Cabin. The charges specifically related to the defendant, an employee, or another person acting on their behalf, failing to issue a fiscal receipt through a fiscal cash register or manual fiscal receipt books as approved by the Commissioner, in compliance with the provisions set out in Item 10 of the Thirteenth Schedule of the Malta VAT Act. Such omission constituted breaches of Articles 51, 77(a) and (e), as well as Articles 81 and 82 of the same Act.

The incident originated from a VAT inspection carried out on 7 December 2019 by VAT inspectors Ian Gauci and Daniel Muscat. During their inspection, the inspectors observed a transaction involving the sale of a beverage, whereby payment was made by a customer, but no fiscal receipt was issued by

the defendant. Upon request by the inspectors, the defendant subsequently issued a fiscal receipt and provided the X-reading from the cash register.

During testimony, the defendant claimed that a fund-raising event was being held at the establishment to assist with funeral expenses for a friend. However, according to the VAT inspectors’ testimony, there was no visible indication at the establishment that a fund-raising activity was taking place.

Upon examination, the Court concluded that the defendant did not meet the criteria outlined under Item 6(2) of the Fifth Schedule of the Malta VAT Act, which provides conditions under which certain organisations may be exempted from specific fiscal obligations. Consequently, the Court found the defendant guilty as charged and imposed a fine (multa) of €700.



2. Kawza tal VAT II–Puulizija vs Warren Kiomall – 21/01/2025

This case concerned charges brought against the defendant following a surprise inspection conducted at the defendant’s establishment, K10 Food & Drinks. The charges specifically related to the defendant, an employee, or another person acting on their behalf, providing goods or services to customers without being in possession of a fiscal cash register or manual fiscal receipt books approved by the Commissioner for Tax and Revenue (“CfTR”). These actions were alleged to be in violation of Items 1, 2, 3, and 10 of the Thirteenth Schedule of the Malta VAT Act, as well as Articles 51, 77(o) and (e), and Articles 81 and 82 of the same Act.

VAT Inspector Emanuel Darmanin testified that, on 25 November 2022, he witnessed a sale at the establishment amounting to €5.70, for which no fiscal receipt was initially issued. Following

their inquiry, the defendant subsequently issued a fiscal receipt upon insistence from the VAT inspectors. However, during cross-examination, Inspector Darmanin acknowledged that upon inspection of the receipt, it became apparent that it lacked the required EXO number.

VAT Inspector Chris Saliba, who was also present during the inspection, testified that no verification was conducted to confirm whether the defendant had applied for an EXO number. He stated that the primary issue of concern during the inspection was the failure to issue a fiscal receipt. During cross-examination, Inspector Saliba indicated that the defendant was not present at the time of inspection; instead, a shop assistant was operating the shop. Inspector Saliba further explained that they had initially stopped a customer outside the

shop and requested to view the fiscal receipt for items purchased from the defendant’s shop. When the customer was unable to produce a receipt, the inspectors decided to enter the premises to conduct further investigation.

The Court drew attention to the inconsistencies in the inspectors’ testimonies—one inspector asserting that he directly witnessed the transaction within the shop, while the other claimed the transaction was uncovered upon stopping a customer outside. In view of these conflicting testimonies, and considering that criminal proceedings require proof beyond reasonable doubt, the Court determined that the case against the defendant had not been conclusively established. Consequently, the Court acquitted the defendant of all charges.

3. II–Pulizija (Spettur Sergio Pisani) (Spettur Colin Sheldon) vs Clint Zarb – 05/03/2025

This case concerned charges brought against the defendant for failing to register for VAT purposes following the supply of taxable goods. Specifically, the defendant purchased a vehicle from a car dealer established in the United Kingdom in 2018, at a cost of €2,825.75, which he subsequently imported into Malta. The defendant contended that this transaction was carried out on behalf of a colleague and asserted that no profit was derived from the sale.

However, the vehicle was subsequently sold by the defendant in Malta for €6,800. Following multiple reports received by the Malta Tax and Customs Administration (“MTCA”) suggesting that the defendant was engaged in an economic activity, MTCA officials met with the defendant. During this meeting, officials clarified to

him the obligation to register for VAT purposes, given that he was engaged in taxable supplies subject to VAT.

The defendant claimed that the difference between the purchase price and the selling price was due to costs incurred in transporting the vehicle from the United Kingdom to Malta, including freight, insurance, and related expenses. However, he was unable to provide sufficient documentary evidence to substantiate these claims.

After evaluating the evidence, the Court concluded that the defendant failed to comply with Article 10 of the Malta VAT Act by neglecting to register for VAT purposes within the prescribed timeframe. Accordingly, the Court found the defendant guilty of the charges and imposed a fine (multa) of €3,000.

Further Judgments

The court delivered further judgments throughout this quarter, which may be accessed through the e-courts web-portal, with the following details:

1. [II–Pulizija vs Reuben Sacco \(Seduta tal–VAT\) – 249/2024 – 15/01/2025](#)

2. [II–Pulizija vs Maria Dolores Carabott – 3813/2023 – 15/01/2025](#)

3. [II–Pulizija vs Josepha \(Josepha–Joan\) Mangiafico – 8245/2023 – 21/01/2025](#)

4. [II–Pulizija vs Laura Mastrangelo – 8247/2023 – 21/01/2025](#)
5. [II–Pulizija vs Adrian Demanuele \(Seduta: VAT\) – 8292/2023 – 21/01/2025](#)

6. [II–Pulizija vs Norman Galea – 4010/2024 – 05/03/2025](#)

7. [II–Pulizija vs Jonathan Vella – 2453/2024 – 05/03/2025](#)

Court of Appeal (Civil and Superior Jurisdiction)

Easy Buy Limited vs Kummissarju tat-Taxxa fuq il-Valur Mizjud – Court of Appeal (Inferior Jurisdiction) – 12/03/2025 – 16/2011 LM

The appeal was lodged by Easy Buy Limited (“the appellant”) against the Commissioner for Tax and Revenue (“CfTR”) following a decision delivered by the Administrative Review Tribunal on 9 May 2024. The dispute concerned an assessment issued by the CfTR against the appellant, covering VAT periods from 1 July 2003 to 31 October 2005.

The provisional assessment amounted to €25,598 in VAT, excluding applicable administrative penalties and interest. This assessment resulted from a credit control exercise conducted by the Malta Tax and Customs Administration (“MTCA”), triggered by multiple VAT

returns submitted by the appellant declaring input VAT. Pursuant to Article 48(5) of the Malta VAT Act, the CfTR requested Easy Buy Limited to present supporting fiscal documentation. However, the appellant did not comply with this request. Consequently, the Administrative Review Tribunal found in favour of the CfTR, concluding that the assessment had been raised lawfully.

Easy Buy Limited, dissatisfied with the Tribunal’s ruling, appealed before the Court of Appeal (inferior jurisdiction). The appellant requested the Court to overturn the decision, asserting that they were not obliged to produce the

requested documentation since the statutory six-year retention period, as stipulated in Article 48(4) of the Malta VAT Act, had elapsed.

Upon reviewing the appeal, the Court of Appeal observed that the Tribunal had not contested the appellant’s plea regarding the expiration of the six-year retention period for documents. Accordingly, the Court determined that no question of law existed upon which the appellant could base their plea for appeal. In light of this, the Court of Appeal rejected the appeal lodged by Easy Buy Limited and upheld the original decision issued by the Administrative Review Tribunal.



EU News

Council Adopts New Legislation on Electronic VAT Exemption Certificate

The Council has recently adopted a significant legislative package aimed at modernising VAT compliance procedures through the introduction of an electronic VAT exemption certificate. This digital solution is designed to simplify tax processes and substantially reduce administrative burdens, replacing the existing paper-based certificate system. The legislative package amends both the EU VAT Directive and the VAT Implementing Regulation to promote greater flexibility, achieve cost reductions, and streamline the administration of VAT exemptions across the EU.

The electronic VAT exemption certificate will become mandatory as from 30 June 2032. Until that date, Member States have the option to continue using either paper-based certificates or their existing electronic systems. To ensure a seamless transition, the European Commission will provide the necessary technical assistance to facilitate the implementation of this digital framework.

Adoption of the VAT in the Digital Age Package

On 11 March 2025, the VAT in the Digital Age (ViDA) legislative package was formally adopted following reconsultation with the European Parliament. This comprehensive package is set to be implemented progressively, with full rollout scheduled by January 2035. Upon the ViDA package’s entry into force, Member States will be permitted, under specific conditions, to introduce mandatory electronic invoicing (e-invoicing). Moreover, significant enhancements to the Import One-Stop Shop (IOSS) framework will be introduced, offering Member States improved VAT compliance monitoring and control capabilities.

The implementation timeline for the ViDA package will unfold across four key milestones, as detailed below:

- With effect from 1st January 2027** – Minor legislative clarifications and alignment measures relating to the Import One-Stop Shop (IOSS) and One-Stop Shop (OSS) schemes will enter into force, ensuring improved coherence and consistency within the existing VAT frameworks.
- With effect from 1st July 2028** – The deemed supplier rules for digital platforms facilitating short-term accommodation rentals and passenger transport services will be introduced. Member States will, however, have the option to defer this implementation until 1 January 2030. Additionally, the single VAT registration mechanism will become operational, alongside the mandatory application of the reverse charge mechanism for non-identified suppliers. Moreover, an extension of the OSS scheme will be introduced, incorporating substantial enhancements to IT processes and investments, as well as the establishment of a new simplified scheme for transfers of own goods.
- With effect from 1st July 2030** – The Digital Reporting Requirements (DRR) will come into force, introducing mandatory digital reporting to enhance transparency, compliance, and efficiency in VAT administration across Member States.
- By 1st July 2035** – Member States that implemented domestic digital real-time transaction-based reporting obligations prior to 1 January 2024 will be required to align their national systems with the harmonised EU Digital Reporting Requirements. This alignment ensures consistency, interoperability, and streamlined compliance across all Member States.

European Commission
welcomes Court of Auditor’s
special report on VAT fraud

The European Commission welcomed the European Court of Auditors’ (ECA) special report on VAT fraud related to imports, which highlights the need for stronger protection of the EU’s financial interests. The report highlights the urgency of tackling VAT fraud, particularly within simplified import customs procedures. In response, the Commission recognizes the importance of the issue and details the measures it has implemented to combat VAT fraud, including legislative amendments and the introduction of new tools such as the Import One Stop Shop (IOSS) scheme. Additionally, it emphasizes its VAT in the Digital Age (ViDA) proposal, which aims to enhance the IOSS system by granting the Commission the authority to introduce special measures to prevent tax evasion and avoidance.

VAT Committee Meetings

Agenda 126th Meeting –
Published 21/03/2025

New legislation on matters concerning the implementation of recently adopted EU VAT provisions originating from the Commission, regarding:

- Changes in electronic invoicing rules applicable upon the entry into force of the VAT in the Digital Age Directive, and
- Changes applicable upon the entry into force of the VAT in the Digital Age Package making for the provision of IOSS monthly reports to be made per Member State of consumption.

The Working Papers which have emanated from such agenda are outlined below.

For further reading, the agenda may be accessed through the following link:

READ MORE →

Working Paper 1087 – Minutes of 124th Meeting –
01/04/2024 – Published 09/01/2025

This Working Paper presents the minutes recorded during the 124th meeting of the VAT Committee. During the meeting, the Chair of the Committee provided detailed updates regarding several key areas currently under review by the European Commission, specifically addressing the following topics:

- The implementation of the Single VAT Registration as part of the VAT in the Digital Age (ViDA) legislative package.
- Statistical analysis and updates regarding VAT e-commerce.
- Progress on the implementation of the SME VAT Scheme.
- Developments concerning VAT exemptions for International Organisations, including the introduction of electronic exemption certificates and related procedural enhancements.
- The adoption of Commission Decision (EU) 2024/775 of 4 March 2024, granting relief from import duties and VAT exemptions for goods imported for distribution or to be made freely available to persons fleeing Russia’s military aggression against Ukraine, as well as persons in need within Ukraine.
- Updates related to the Defence Package, specifically referencing documents COM(2024) 150 final and JOIN(2024) 10 final, both dated 5 March 2024.
- Discussions concerning VAT treatment and administration of Vouchers.
- Enhancements to the Taxes in Europe Database (TEDB), specifically relating to the VAT form.

For further reading, the working paper may be accessed through the following link:

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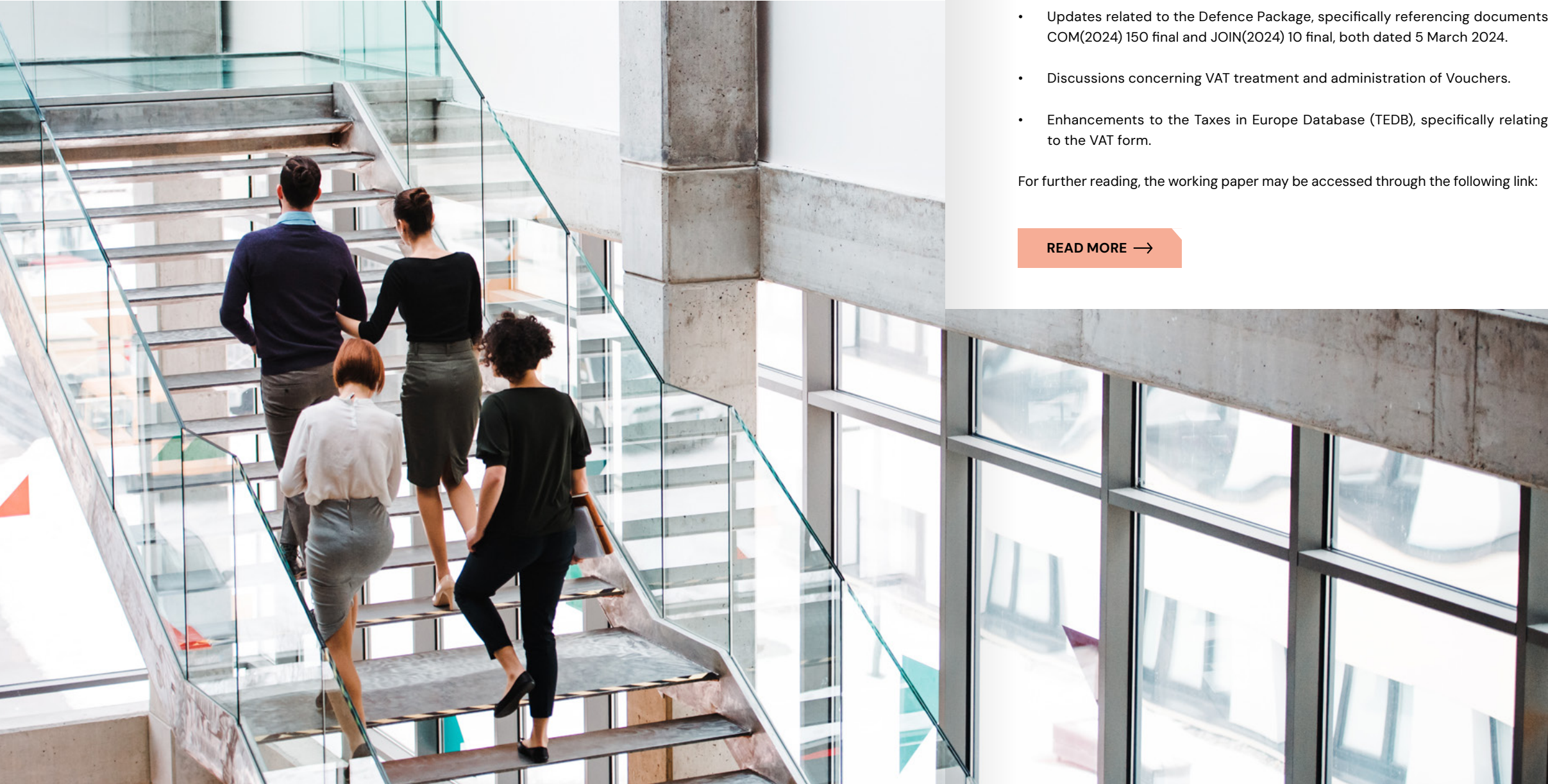
Working Paper 1099 – Minutes 125th
Meeting – 18/11/2024 – Published
27/01/2025

This Working Paper provides the minutes recorded during the 125th meeting of the VAT Committee. During the meeting, the Chair of the Committee delivered an overview of the latest developments and ongoing work undertaken by the European Commission, specifically addressing the following topics:

- Implementation updates concerning the VAT in the Digital Age (ViDA) legislative package, with particular emphasis on the Single VAT Registration (SVR) and Import One Stop Shop (IOSS).
- Review and analysis of VAT e-commerce statistics for the year 2023.
- Progress regarding the implementation of the SME VAT Scheme.
- Recent developments and discussions related to the VAT treatment of Vouchers.
- Adoption of the official list of gold coins for the year 2025.
- Updates relating to the Taxes in Europe Database (TEDB), specifically the VAT form.

For further reading, the working paper may be accessed through the following link:

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Working Paper 1102 – Minutes 125th Meeting – 11/03/2025 – Published 21/03/2025

Key updates on electronic invoicing in light of the VAT in the Digital Age (ViDA) Directive

This Working Paper captures key discussions held during the 125th VAT Committee meeting, with a particular focus on the evolving landscape of electronic invoicing under the VAT in the Digital Age (ViDA) Directive.

While the ViDA Package will be implemented progressively, the entry into force of the ViDA Directive triggers immediate amendments to Articles 218 and 232 of Council Directive 2006/112/EC, both of which govern the rules on electronic invoicing. These initial amendments will become applicable from the twentieth day following the Directive’s publication in the Official Journal of the European Union, and will remain in force until 1 July 2030, when they will be replaced by the new, harmonised framework introduced by ViDA.

The transitional amendments aim to facilitate a smoother legal and administrative shift towards full-scale digitalisation by setting clear rules during the interim period. Notably, they also provide a legal basis for Member States to introduce mandatory e-invoicing without requiring prior derogation from the Commission.

The Commission further outlined its expectations on the uniform interpretation and implementation of these transitional provisions by Member States, with the goal of ensuring legal certainty, technological consistency, and minimal disruption to businesses operating cross-border.

For further reading, the working paper may be accessed through the following link:

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Working Paper 1103 – Minutes 125th Meeting – 14/03/2025 – Published 21/03/2025

This Working Paper outlines the changes that will take immediate effect upon the entry into force of the VAT in the Digital Age (ViDA) Package, specifically those targeting enhancements to the Import One Stop Shop (IOSS) framework.

While the broader ViDA reforms will be introduced progressively, the measures concerning IOSS are applicable from the date the Directive enters into force, with a view to improving the security, transparency, and auditability of the regime. The key developments include:

- A mandate for the European Commission to adopt an Implementing Act, introducing special measures to reinforce the security and integrity of the IOSS system.
- Enhancements to control mechanisms, notably through the mandatory breakdown of IOSS monthly reports by Member State of consumption, thereby enabling tax authorities to better monitor cross-border compliance and revenue allocation.

These immediate improvements reflect the EU’s commitment to reinforcing trust in the IOSS system, particularly given its growing relevance in e-commerce and cross-border low-value consignments.

For further reading, the working paper may be accessed through the following link:

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VAT Expert Group Meetings

Agenda – 39th VEG Meeting – 19/03/2025

The agenda for the 39th Meeting of the VAT Expert Group were published on the 19th of March 2025. The agenda which is to be discussed during the 39th meeting is as per the following:

- Study on the Challenges of VAT beyond ViDA.
- Follow-ups and Updates on the implementation of the three pillars of the ViDA package.
- Information points regarding the implementation of the new SME scheme.

The Working Papers which have emanated from such agenda are outlined below.

For further reading, the agenda for the VAT Expert Group meeting may be accessed through the following link:

READ MORE →

Minutes – 124th VEG Meeting – 13/12/2024 – Published on 16/01/2025

On 16 January 2025, the VAT Expert Group (VEG) published the minutes of its 38th meeting, which was held on 13 December 2024.

During this session, the VAT Expert Group primarily discussed the various impacts of the VAT in the Digital Age (ViDA) legislative package. Members deliberated extensively on the VEG Report entitled “VAT after ViDA,” recommending further enhancement of the ViDA framework to effectively reduce administrative burdens and address legal uncertainties. Emphasis was placed on modernising the VAT system by ensuring alignment with technology-driven business models. Additionally, the report advocated for renewed efforts in key areas, notably the reform of VAT rules applicable to financial and insurance services and the advancement of the VAT and tourism package.

Furthermore, it was announced that a Fiscalis workshop will be organised in April 2025 to address the implementation of Digital Reporting Requirements (DRR). Concurrently, the European Commission is preparing a Working Paper for presentation to the VAT Committee, aiming to clarify applicable rules and mitigate potential infringement concerns.

Finally, the VEG confirmed that implementation work related to the ViDA package has officially commenced, including the development of comprehensive explanatory notes and the establishment of corresponding technical frameworks. Progress on the Import One Stop Shop (IOSS) and the Customs Reform Package was also highlighted, indicating that work in these areas is well underway.

For further reading, the minutes for this VAT Expert Group meeting may be accessed through the following link:

READ MORE →

Group on the Future of VAT Meetings

Agenda – 48th GVF Meeting – 19/03/2025

The agenda for the 48th Meeting of the Group on the Future of VAT were published on the 19th of March 2025. The agenda which is to be discussed during the 48th Meeting is as per the following:

- VEG’s Report on VAT after ViDA
- Study on the Challenges of VAT beyond ViDA
- Follow-ups and Updates on the implementation of the three pillars of the ViDA package.
- Information points regarding the implementation of the new SME scheme,

For further reading, the agenda for the Group on the Future of VAT meeting may be accessed through the following link:

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CJEU Decision – *Latest Selection Update*

Case C–277/24 – M.B. vs Dyrektor Izby Administracji Skarbowej we Wrocławiu – 27th February 2025

On 27 February 2025, the Court of Justice of the European Union (“CJEU”) issued its judgment in M.B. v Dyrektor Izby Administracji Skarbowej we Wrocławiu (Case C–277/24), concerning joint and several liability for VAT debts.



The case involved M.B., who was the chairperson of the management board of company “B. sp z o.o.” from August 2014 to January 2018. The company underwent a VAT inspection for the period June to October 2016. In August 2022, M.B. applied to the Polish tax authorities requesting to become a party in these tax proceedings, due to potential joint and several liability. The tax authority initially rejected this application. Subsequently, the appellate tax authority annulled this rejection, closing the procedure by highlighting procedural limitations within Polish law to explicitly grant such party status.

M.B. contested this decision before the Polish Regional Administrative Court (Wrocław), arguing her substantial interest given her prior management role and her potential joint and several liability for the company’s VAT debts. The national court questioned the compatibility of the Polish practice—which prevented third-party involvement in initial proceedings determining a company’s tax debt—with EU law principles of proportionality, the rights of defence, effective judicial protection, and fundamental rights under EU law.

In its ruling, the CJEU explicitly clarified that Article 205 of the VAT Directive was not applicable in this context, as Polish legislation was not determining VAT liability for specific transactions but for general company tax debts. Instead, the CJEU analysed Article 273 of the VAT Directive, read alongside Article 325(1) TFEU, the rights of defence, and proportionality.

The CJEU concluded that EU law does not preclude national legislation or practice whereby a third party potentially held jointly and severally liable for a legal person’s VAT debt is denied participation in the initial tax proceedings against that legal person. However, the Court stressed that such a third party must have effective procedural safeguards—including rights of defence and access to documentation—in any subsequent joint and several liability proceedings to adequately challenge factual findings and legal conclusions previously made by the tax authorities.

Thus, national practices are permitted, provided they do not impair the core of a third party’s rights of defence in subsequent proceedings where liability is specifically addressed.

Case C–640/23 – Direcția Generală Regională a Finanțelor Publice Galați – Administrația Județeană a Finanțelor Publice Vrancea, Direcția Generală de Administrare a Marilor Contribuabili vs Greentech – 13th March 2025

The case concerned the imposition of additional VAT liabilities on Greentech SRL by the Romanian tax authorities, following the reclassification of a transaction involving the sale of equipment by Greenfiber International SA to Greentech.

Initially, during a tax audit on Greenfiber, the transaction was treated as a supply of goods subject to VAT, with VAT correctly invoiced and paid, and input VAT deducted by Greentech. However, during a subsequent audit on Greentech, the same transaction was reclassified as a transfer of a partial totality of assets between related parties, falling outside the scope of VAT under national law. As a result, the authorities denied Greentech’s right to deduct the input VAT.

By the time this reclassification occurred, Greenfiber could no longer amend its invoice or VAT return, as the national limitation period for making such corrections had expired. This left Greentech unable to recover the VAT through the supplier, prompting the company to challenge the authorities’ position before the Romanian courts. The matter was referred to the Court of Justice of the European Union (“CJEU”) for a preliminary ruling.

In its judgment of 13 March 2025, the CJEU held that, under Articles 168 and 203 of the VAT Directive, a transaction definitively classified as outside the scope of VAT does not give

rise to a right of deduction, since the VAT paid is not considered “due.” However, the Court went on to stress that the principles of VAT neutrality and effectiveness require Member States to ensure that, where recovery of the VAT from the supplier is impossible or excessively difficult—for example, due to expired limitation periods—the purchaser must be able to apply directly to the tax authorities for reimbursement.

This judgment draws a clear distinction between:

- The right to deduct input VAT, which arises only in relation to transactions subject to VAT; and
- The right to reimbursement, which applies when VAT has been unduly invoiced and paid, and correction via the supplier is no longer possible.

The CJEU reaffirmed that while the denial of the deduction itself was lawful, national rules must still provide an effective mechanism for recovery in such situations to safeguard the integrity of the VAT system.

DISCLAIMER

While every effort was made to ensure that the content of this newsletter is accurate and reflects 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 guidance and any content of a legal nature therein does not constitute or should be interpreted as constituting legal advice. Consulting your tax practitioner is recommended in case you wish to take any decision connected to content of this newsletter.

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

VAT Newsletter

Q1 – 2025

