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VAT Newsletter

Q2 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
Founding Partner

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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.

Press release by Ministry for Finance and Employment – 12/05/2022

The Ministry of Finance and Employment announced that the cashflow incentive relating to the postponement of payment of taxes to the Commissioner for Revenue as part of the 2020 Covid-19 assistance to businesses scheme, was being discontinued. As a result, all taxes, the payment of which was postponed under the scheme, have to be paid to the CfR in monthly instalments spread over a thirty-month period commencing June 2022 and ending in December 2024.

CfR alert re Importation of Bank Notes – 26/05/2022

The CfR wished to clarify that the importation of bank notes (CN Code 49070300) was subject to a reduced VAT rate of 5%. However, where the importation of bank notes constitutes a financial transaction concerning bank notes in circulation used as legal tender, then it should be treated as exempt from VAT, in which case the declarant must add the code X001 in the additional information field of the National Import System in order to benefit from the exemption.

Administrative Review Tribunal

No decisions were released during this period.

Court of Appeal (Civil, Inferior)

Case No 54/2015LM – Kurt Galea Pace vs Kummissarju ghat-Taxxi fuq il-Valur Mizjud – 22/06/2022

Appellant had appealed the decision of the Administrative Review Tribunal which had ruled that the appeal lodged by appellant against assessments issued to him by the Commissioner covering years 2009 to 2013 for an amount of EUR 132,884 was invalid on grounds that the appeal application was filed beyond the statutory thirty-day time window that the law allows for the valid filing of a VAT appeal. Appellant was contesting this decision arguing that since he was personally never officially notified with the assessments, the appeal could not have been declared invalid.

On the other hand, the respondent Commissioner argued that the appeal was not on a question of law as stipulated in Article 47(1) of the VAT Act but was questioning the facts which facts had already been examined by the Tribunal in arriving at its decision. The Court fully agreed with the respondent and dismissed the appeal declaring it null and void.



TAXUD news

Database for the collection of e-commerce payment data – 6 April 2022

In an effort to combat e-commerce VAT fraud the Council adopted a legislative package in terms of which payment service providers shall be required to transmit information on cross-border payments originating from Member States and the beneficiary of these cross-border payments. The information will then be centralised in a European database called the Central Electronic System of Payment information (CESOP) where it will be stored, aggregated and cross-checked. Access to CESOP will be provided to accredited anti-fraud experts from the Member States via the Eurofisc network. The transmission of data is planned to commence on 1 January 2024.

Recommendations to improve VAT revenue collection – 7 April 2022

The Commission published its Screening and Diagnostic Report of VAT Administration in the EU containing a series of recommendations to help Member States to improve their VAT revenue collection, control procedures and processes. Whilst EU VAT revenue losses, EUR 134 billion in 2019, are still a major concern yet it is hoped that the implementation of the recommendations together with sharing of best practices would lead to a significant improvement in VAT revenue collection.

Guidance for Member States in the area of energy taxation – 25 April 2022

By letter addressed to the Member States' Finance Ministers, Economy Commissioner Paolo Gentiloni provided guidance to Member States in the area of energy taxation by clarifying the applicable rules under EU law. In order to cushion the impact of rising energy prices particularly on households and the most vulnerable, a coordinated EU response is key to safeguarding the Single Market and avoiding further divergencies across Member States. Whilst noting that over the last months Member States have lowered taxation on energy by introducing reduced VAT rates under the current EU legal framework, it is nevertheless to be reminded that any measures contemplated should be guided by the key principles of effectiveness, consistency and equity of policy measures.

Update on the VAT revenue generated under the e-commerce schemes – 23 May 2022

According to the figures published by the Commission, the VAT revenue collected from the non-Union and Union One Stop Shop schemes, for the first six months since their introduction in July 2021, totalled EUR 6.8 billion. On the other hand, the revenue generated for the same period relating to the Import One Stop Shop scheme amounted to EUR 2 billion of which EUR 700 million were attributable to the abolition of the VAT exemption on imports of goods with a value not exceeding EUR 22.



Optional Reverse Charge Mechanism to stay in place until 2027 – 13 June 2022

Finance Ministers meeting in ECOFIN adopted a directive amending Council Directive 2006/112/EC, extending up to 31 December 2026, the application of the Optional Reverse Charge mechanism and the Quick Reaction mechanism set out respectively in Art. 199a and Art. 199b which were to expire on 30 June 2022. This became necessary following the failure by Member States to unanimously agree on the Commission proposal COM (2018) 329 final of 25 May 2018 for the abolition of the transitory provisions and the introduction of a definitive VAT regime based on the destination principle, which was planned to come into force on 1st July 2022. It is now evident that the definitive regime will be postponed indefinitely but, certainly to a date later than 31 December 2026.

Evaluation – VAT administrative cooperation and fight against fraud – 27 June 2022

The Commission launched a call for evidence to hear the public's views on the issue of "VAT administrative cooperation and fight against fraud" focussing on administrative enquiries made by Member States regarding taxpayers not established within their territory and cooperation between tax and customs authorities. The call, which closes on 25 July 2022, will provide useful feedback to enable the Commission to further develop and fine-tune this initiative.

Summary report on Public Consultation on the VAT in the Digital Age initiative – 28 June 2022

The Commission published a summary report on the Public Consultation it carried out in connection with the "VAT in the Digital Age" initiative. The consultation, which was open for fifteen weeks closed on 5 May 2022. The report summarises the responses to seventy-one questions received from a total of 193 respondents regarding the issues set out in the questionnaire namely the "Digital Reporting Requirements"; the "VAT treatment of the Platform economy"; a "single VAT registration in the EU".

For further reading:

<https://circabc.europa.eu/ui/group/cb1eaff7-eedd-413d-ab88-94f761f9773b/library/b43f3354-d93f-476c-b2bc-9c6ec1a5b4ab/details>

VAT Committee Meetings

No VAT Committee meetings were held during this calendar quarter.

VAT Expert Group Meetings

The VEG met on 10 June 2022 for its 31st Meeting with the following agenda:

- Single VAT registration (transfer of own goods)
- E-invoicing and the need for EU standards and interoperability.
- VAT and the platform economy (focus on specific issues)
- Information points (update on state of play of actions by the VEG)

For further reading use the link:

https://circabc.europa.eu/ui/group/cb1eaff7-eedd-413d-ab88-94f761f9773b/library/30da4485-a1b6-4126-b665-d794a19d5304?p=1&n=10&sort=modified_DESC



UPDATES ON ECJ DECISIONS

Case C-637/20 – DSAB Destination Stockholm AB – 28/04/2022

(RE: Art. 30a of Council Directive 2006/112/EC – Concept of voucher – Concept of multi-purpose voucher – Sale of card entitling the cardholder to a number of tourist services for a limited period)

DSAB Destination Stockholm AB (“DSAB”), a Swedish company, sold cards that entitled the cardholder a right of admission to around sixty tourist attractions as well as ten rides on buses and/or boats for a limited period of time and up to a certain value. Different VAT rates applied on the different services, ranging from 25% to 6% and 0%. The card served as a means of payment for admission to a venue, with the provider of the admission service then receiving a consideration from DSAB calculated on a percentage of the normal admission fee.

The Swedish tax authority took the view that the DSAB card did not classify as a voucher within the meaning of the VAT Directive in that the value limit was high in relation to the validity period, which was very short, in a way that it would be impossible for the average cardholder to take advantage of all the benefits by way of discounts when compared to the normal prices of the attractions and as such, it could not be regarded as being exchangeable for goods or services.

The Supreme Administrative Court of Sweden, where the dispute ended up, decided to stay the proceedings to ask the ECJ (the “Court”) whether a card such as that at issue in the proceedings which gave the cardholder the right to receive various services at a given place for a limited period of time and up to a certain value constituted a voucher and in such circumstances, specifically a multi-purpose voucher within the meaning of Art 30a of the VAT Directive.

The Court remarked that any instrument that contained an obligation to be accepted as consideration or part thereof for a supply of goods or services, and secondly that indicated the goods or services to be supplied and the identity of the supplier, including the terms and conditions, classified as a voucher within the meaning of Art. 30a of the Directive. Where the place of supply of the goods or services to which the voucher relates and the VAT due on those goods or services are known at the time of issue of the voucher, then that voucher would classify as a single purpose voucher. By default, vouchers which do not classify as single purpose vouchers classify as multi-purpose vouchers. It was apparent that the card at issue in the main proceedings cannot be defined as a single-purpose voucher in that at the time of issue the services to be supplied and the applicable VAT rate could not be known to the issuer. As a result, by default the card constituted a multi-purpose voucher. The Swedish tax authority’s arguments that the card could not be regarded as a voucher were dismissed as being irrelevant.



UPDATES ON ECJ DECISIONS

The Court ruled that Article 30a of the VAT Directive must be interpreted as meaning that a card such as that at issue in the main proceedings constituted a voucher within the meaning of sub-article (1) and a multi-purpose voucher within the meaning of sub-article (3) of that provision.

Case C-570/20 – BV – 05/05/2022

(RE: Directive 2006/112/EC – Penalties – National legislation which provides for an administrative and a criminal penalty for the same acts – Principle “nebis in idem” – Limitations to the principle “nebis in idem” – Charter of Fundamental Rights of the EU)

BV, a sole trader, who practised as an accountant, was audited by the competent tax authority which found that for the years 2009 to 2011, BV had concealed the majority of the income he had received. The tax authority issued assessments to BV which carried a 40% administrative penalty on the underdeclared sales. In addition, BV was charged in the criminal court, found guilty of tax evasion and sentenced to a term of twelve months imprisonment. BV challenged this decision in the Court of Appeal invoking the nebis in idem principle enshrined in Art. 50 of the Charter of Fundamental rights of the European Union (the “Charter”), namely that a person cannot be punished twice for the same offence. It is noted that French law allows for the application of both administrative and criminal penalties related to tax evasion, however depending on the degree of seriousness and severity of the charges.

The French Court of Cassation stayed proceedings and referred questions to the ECJ for a preliminary ruling as to whether the fundamental right in Art. 50 of the Charter precludes a situation whereby the limitation of duplication of the proceedings and penalties of a criminal nature in the event of tax evasion and fraud provided in national legislation is based on the restrictive interpretation of the legal provisions defining the conditions for the application of that duplication emerging from settled (national) case-law. Secondly, whether it precluded national legislation which does not ensure, in such double penalty cases, by means of clear and precise rules, that all penalties imposed do not exceed the seriousness of the offence identified.



UPDATES ON ECJ DECISIONS

As a start the Court cited Art. 50 of the Charter, namely that no person is to be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law. However, according to settled case-law a limitation of the fundamental right set out in Art. 50 may be justified in terms of Art. 52(1) of the same Charter insofar as, subject to the principle of proportionality, such limitation is necessary and meets objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

On a close examination of the facts at issue, it is apparent that the French national legislation complies with the fundamental right guaranteed by Art. 50; is intended to ensure the collection of all the VAT due, a matter of such importance that merits the application of the limitation in Art. 52(1) in that it legitimately meets an objective of general interest. Based on the principle of proportionality, it must be ensured that the duplication of proceedings and penalties, does not exceed what is necessary to attain the objectives legitimately pursued by that legislation, with the understanding that when there is a choice between several appropriate measures, recourse must be had to the least onerous and the disadvantages caused must not be disproportionate to the aims pursued.

The Court ruled that Art. 50 read in conjunction with Art. 52(1) of the Charter must be interpreted as not precluding a situation whereby the duplication of proceedings and penalties of a criminal nature in the event of fraudulent concealment or omission from a VAT return is applied to the most serious cases based on settled case-law interpreting restrictively the legal provisions set out in the national legislation but it precludes national legislation which does not ensure, in cases of duplicity, by means of clear and precise rules, that all the penalties imposed do not exceed the seriousness of the offence identified.



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.

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