

VAT Newsletter Q.2

2024

STRUCTURE

URGENT

Debit

Credit

3.574,00

Malta Tax and Customs Administration News

Legal Notice 231 of 2023 published on 6th October 2023 introduced a new reduced rate of 12% applicable to certain specified services as from 1st of January 2024.

Pursuant to its publication the MTCA issued a series of guidelines aimed to facilitate the interpretation and practical application of the new rate to the specified pertinent services.

The final guideline published on the 1st of April 2024 concerned the application of the new reduced rate to the Supply of Custody of Securities.

1

Guidelines on the Application of the 12% VAT rate on the Supply of Custody of Securities

These guidelines mainly provide a definition as to what the terms "Securities" and "Custody" should be understood to mean for the purposes of the application of the reduced rate. The term "Securities" is defined as "any tradable financial instrument included in the Second Schedule to the Investment Services Act (Chapter 370, Laws of Malta)", whilst "Custody" is defined as Control of Assets, Depositary Services (for Collective Investment Schemes) and any other Services concerning securities. The guideline clarifies when the exemption in terms of Item 3 of Part Two of the Fifth Schedule of the VAT Act shall apply, as opposed to when the reduced "VAT rate of 12% is applicable".

[Guidelines >](#)

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Malta Tax and Customs Administration News



2

MOSS Returns (pre 1st July 2021) deadline for submission of Payments

The Commissioner for Tax and Customs has notified taxpayers that the deadline for the submission of late Mini One Stop Shop (MOSS) VAT returns or corrections to previously submitted MOSS VAT returns shall be the 20th of July 2024. Any MOSS VAT returns and respective payments submitted after this date will be blocked. Such matters will need to be dealt with the respective Member State of consumption.

3

Clarification regarding Article 74 of the VAT Act.

By virtue of the Budget Implementation Act XII, various amendments were made to the VAT Act (Chapter 406 of the Laws of Malta). One of the said amendments was the repealing of Article 74 which referred to interest, in its entirety and replacing such article with a general anti-abuse provision. The MTCA's clarification noted that the treatment of interest under the VAT Act is being aligned with that applied to interest under the Income Tax Acts.

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Administrative Review Tribunal

16/2011/1

ADMINISTRATIVE REVIEW TRIBUNAL

09/05/2024

XXX vs Kummissarju tat-Taxxa fuq il-Valur Mizjud.

The case at hand involved an appeal against an assessment raised by the Commissioner, for the period 01.07.2023 – 31.10.2005 in connection with an over declaration of the input tax claimed by the applicant. The applicant argued that such assessment should not have been issued as the applicant had paid all the VAT due.

On its part, the Commissioner maintained that the documents provided by the applicant did not reconcile with the VAT returns submitted and further purchase ledgers and profit and loss calculations requested were not made available for verification by the applicant. This left the Commissioner with no option other than to proceed with the raising of the assessments on what information was in his possession.

On the basis of the arguments put forward by both parties, the Court arrived at the conclusion that the applicant did not adhere to the statutory obligations necessary to benefit from an input VAT credit. Failure to provide the correct documents as enshrined in the law, precludes the taxpayer from benefitting from an input tax credit.

The Court thus dismissed the applicant's claim and confirmed the assessments raised by the Commissioner.

Administrative Review Tribunal

122/2012

ADMINISTRATIVE REVIEW TRIBUNAL

09/05/2024

XXX vs Kummissarju tat-Taxxa fuq il-Valur Mizjud.

The case at hand also involved an appeal by the applicant against an assessment issued by the Commissioner for the periods covering 01.09.2004 – 31.08.2006 pursuant to the failure by the applicant to furnish the documentation necessary to support the input tax credit claim.

The applicant, in defence, claimed that they had not been informed prior to the investigation to provide supporting documentation such as fiscal receipts and invoices. However, this did not seem to have been the case since as per witness statements by MTCA officials it transpired that various meetings were held with both the applicant and his accountant and also an additional number of requests by the MTCA to the applicant were done, however ignored.

The Court analysed the case at hand and decided that the assessment brought by the MTCA against the applicant was valid and has a legal basis and thus was being confirmed.

Local News
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Local News

Court of Appeal

18/2018LM

COURT OF APPEAL (INFERIOR JURISDICTION)

14/06/2024

BMER Contracting Limited (C 73180) vs il-Kummissarju tat-Taxxi u Dwana'

The case at hand involved an appeal filed before the Court of Appeal in its Civil Inferior jurisdiction by BMER Contracting Limited ("the Company") against assessments issued by the Commissioner in its regard.

The assessments covering periods from 1st November, 2015 to 31st January, 2016 and 1st August, 2016 to 31st October, 2016 amounted to respectively €125,280 and €86,421.35.

The Company felt aggrieved by the issuance of such assessments for two reasons: primarily on the grounds that according to the Company this assessment had no legal basis. The Company explained that it bought machinery with the scope of expanding its economic activity in the construction industry and in respect of which it held all receipts related to such purchases and which receipts were all presented to the MTCA within the given time. Yet, they were informed by the MTCA that they were not going to issue any VAT refund. This was followed by a request from the MTCA to pay back a refund previously paid to the Company. The Company explained that the only evidence it could produce to support such purchases was the invoices it had in hand since it had paid for the machinery in cash and could not provide any bank statements to support its purchase.

Court of Appeal



The MTCA, in its defence, argued that whilst the Company did register for VAT as an Article 10 VAT registered person and stated its economic activity as “construction of residential and non-residential buildings”, the Company failed to provide the necessary documentation to the MTCA upon their request. The MTCA stated that the Company failed to clarify its economic activity and failed to provide the requested documents, and in turn, the MTCA denied the request from the Company to claim input VAT.

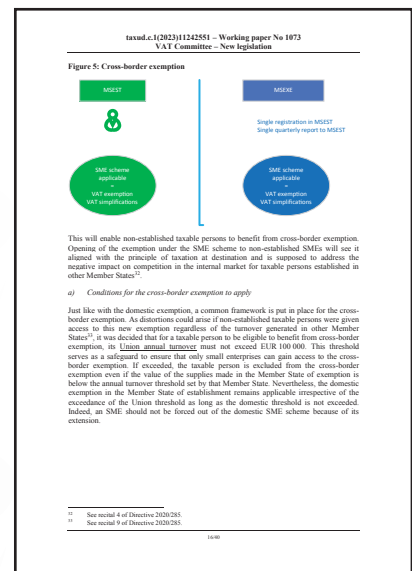
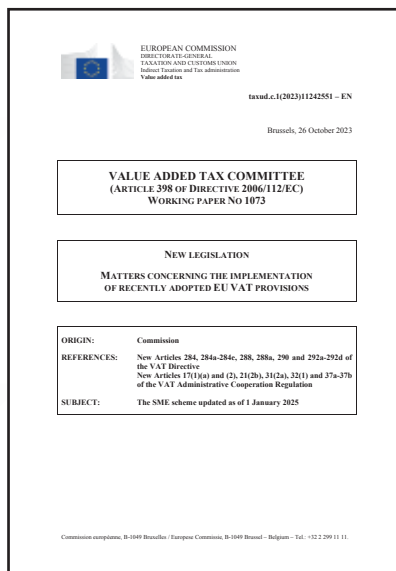
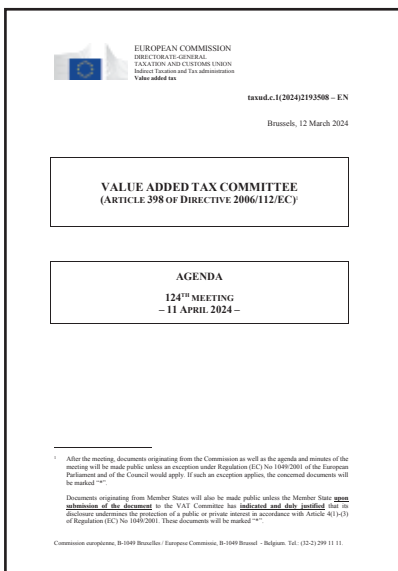
The Administrative Review Tribunal (“ART”), in its decision decided that the assessments issued by the MTCA are to be confirmed and adhered to by the Company. The ART in its decision took into consideration the Credit Control Exercise Report carried out by the MTCA where it was stated that from the information provided by the Company, the economic activity could not be ascertained to be taxable or exempt without credit. In addition, there was a lack of explanation as to why no supplies were being declared by the Company and hence the Company could not be entitled to claim back input VAT. Even though the MTCA was presented with tax invoices, in the absence of a detailed economic activity, the MTCA was not in a position to confirm that input VAT claimed was intended to be used for the course of the economic activity.

By its decision, the Court of Appeal confirmed the decision of the Administrative Review Tribunal.

VAT Committee Meetings

The VAT Committee held its 124th meeting on 11th of April 2024 with the following extensive agenda:

In our view, Point 5.1 on the agenda is the pick of the topics discussed, namely Working Paper No. 1073 by the Commission regarding a follow-up on the new SME's scheme that shall kick in on 1st January 2025. The Commission Legal Services provide a deep insight into the various aspects of the scheme both from a legal and a practical perspective. For further reading:



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VAT Expert Group Meetings

The VEG held its 36th meeting on the 6th of June 2024 with the following items on the agenda table:

VAT after ViDA

Progress updated by the VEG informal working group

Destruction of goods and VAT treatment of donations

Exchange of Views

VEG No 117:

VAT in the Digital Age (ViDA)

- *Single VAT Registration*
- *Implementation*
- *First analysis*

Information Points

ViDA package

Update on the state of play

New SME scheme

Implementation – Updated

Miscellaneous

Group on the Future of VAT Meetings

The GFV held its 45th meeting on the 28th of May 2024 with the following agenda:

Destruction of goods and VAT treatment of donations

Exchange of Views



Information Points

ViDA package

Update on the state of play and implementation

Ongoing reflection in the VEG on “VAT after ViDA”

New SME scheme

Implementation – Update

Miscellaneous



CJEU Decisions

Latest selection update

C-89/23

Companhia Uniao de Credito Popular SA v Autoridade Tributaria e Adnaneira

This ruling from the Court of Justice of the European Union deals with the interpretation of the exemption applicable to the granting and the negotiation of credit and the management of credit by the person granting it as established in Article 135(1)(b) of Council Directive 2006/112/EC (“the VAT Directive”).

Companhia Uniao de Credito Popular (“CUCP”) was a pawnbroker that granted loans which were guaranteed by immovable property. When the borrowers did not reclaim the pledged goods or were late by more than three months in their repayments, CUCP auctioned the goods and, in return CUCP earned a commission of 11% of the auction price without accounting for VAT, based on the assumption that the auction is linked to the loan and therefore also benefits from the exemption.

The national court seeking guidance, wanted to clarify whether the 11% commission allotted to the lender for the sale of pledged goods is eligible for the exemption provided for in Article 135(1)(b) of the VAT Directive, and whether such sale may be regarded as an ancillary service to the activity of lending secured by a pledge?

The Court ruled that the sale of the goods and the granting of the loan are purely distinct supplies and therefore are not to be regarded as ancillary services. In turn, the sale of the goods does not benefit from the exemption laid down in Article 135(1)(b) of the VAT Directive.

EU News

EU News

CJEU Decisions

Latest selection update

C-533/22

SC Adent Ltd & CO.KG v Agenția Națională de Administrare Fiscală, Agenția Națională de Administrare Fiscală

Direcția Generală Regională a Finanțelor Publice Ploiești

Administrația Județeană a Finanțelor Publice Argeș,

Adient Ltd & Co. KG, based in Germany (“Adient Germany”), is part of the Adient Group, a global supplier to the automotive industry. On June 1, 2016, Adient Germany contracted with SC Adient Automotive Romania SRL (“Adient Romania”) to provide comprehensive manufacturing and assembly services for car seat covers, including ancillary and administrative services. Adient Germany supplies the raw materials, retains ownership throughout the process, and uses the VAT number assigned by Romanian authorities for transactions within Romania and the EU.

During a tax inspection, the tax authorities concluded that Adient Romania should have collected VAT on services provided to Adient Germany, as these services were deemed to have been supplied in Romania. It was determined that Adient Germany had a fixed establishment in Romania through its branches, requiring Adient Romania to collect VAT. The tax authorities imposed additional VAT obligations on Adient Romania, who in turn contested the decision. After the initial complaint was rejected, Adient Romania appealed to the national Court of Appeal in Romania.

CJEU decisions

Latest selection update

Adient Romania argued that Adient Germany did not meet the conditions for having a fixed establishment in Romania, emphasising that its employees and technical resources were not under Adient Germany's direct control. However, the tax authorities maintained that Adient Germany had sufficient resources in Romania to conduct regular taxable activities, fulfilling the criteria for a fixed establishment.

The authorities' stand was supported by evidence that Adient Romania's logistics and quality control employees were engaged in activities benefiting Adient Germany.

The national Court raised eight questions with regards to the applicability of a fixed establishment in relation to both Article 44 of Council Directive 2006/112/EC ("VAT Directive") and Article 192a of the same Directive.

After close consideration of the facts of the case, the European Court of Justice ruled that:

- 1** Article 44 of the VAT Directive must be interpreted as meaning that a group affiliation is not sufficient to constitute a fixed establishment. The mere fact that one is simply part of the same corporate group or has a contractual link does not establish a fixed establishment.
- 2** Article 44 of the VAT Directive must be interpreted as meaning that the subsequent supply of goods and related activities do not determine the existence of a fixed establishment for receiving services.
- 3** Article 44 and 192a of the VAT Directive must be interpreted as meaning that a fixed establishment is not present if the human and technical resources are used for both providing and receiving services or if they are only involved in preparatory and ancillary tasks.

Should you require further information please contact:

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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.

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