ZD | Zampa Debattista
Certified Public Accountants

VAT NEWSLETTER Q2-2018

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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.

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LOCAL NEWS

1.1 LEGAL NOTICE 162 OF 2018 PUBLISHED ON 22ND MAY 2018

This legal notice lays down the rules for VAT Group registration in Malta and implements a measure announced by the Minister for Finance in the 2018 Budget speech. With effect 1st June 2018, two or more persons established in Malta who are bound to each other by financial, economic and organisational links and with at least one of them being licensed or recognised in terms of the Banking, Financial, Gaming, Insurance, Lotteries and Other gaming, Retirement Pension and Securitisation Acts, may apply to be registered for VAT purposes as a VAT group. For further information you may wish to access the link:

http://www.zampadebattista.com/vat-grouping-malta-update/

ZD Comment: The scope of this measure is to reduce or eliminate VAT irrecoverable costs for operators in the Financial and Gaming sectors since under a VAT Group registration, transactions between members of the VAT group are disregarded for VAT purposes.

1.2 LEGAL NOTICE 163 OF 2018 PUBLISHED ON 22ND MAY 2018

By means of this Legal Notice the entry threshold for Small Businesses that carry supplies of services with a high value added, has been increased from €14,000 to €20,000 in a period of twelve calendar months, as from the 1st of July 2018. The increase in the threshold implements a measure announced in the Budget 2018 speech and shall apply up to 31st December 2020, unless it is renewed.

Explanatory notes published by the VAT Department explaining in detail how the new measure works in practice may be viewed on the following link:

https://cfr.gov.mt/en/vat/legislation-and-LNs/Documents/Explanatory%20Note%20-%20Small%20Traders%20Threshold_EN.pdf

1.3 NEW RELEASE OF THE VAT ON-LINE SUBMISSION OF VAT RETURNS - 25TH JUNE 2018

Notification by the Commissioner for Revenue of a new release of the VAT return in electronic format. More details are available on:

https://cfr.gov.mt/en/News/Pages/New-release-of-the-VAT-online-submission-of-VAT-returns-(Article-10).aspx

1.4 OTHER VAT ANNOUNCEMENTS BY THE COMMISSIONER FOR REVENUE

1.4.1 As from 2nd April 2018, the VAT Customer Care section was moved from the VAT Department Offices in Valley Road, Birkirkara to the Business First Offices in Mriehel. For further details see:

https://cfr.gov.mt/en/inlandrevenue/contact_us/Pages/Opening-Hours-VAT-Department.aspx

1.4.2 As from 2nd April 2018, no payment facility is available at the Cash Office of the VAT Department in Valley Road, Birkirkara. Payment can either be made on line using the link: http://cfr.gov.mt/en/Pages/Home.aspx or else by cheque payable to Maltapost plc. Generally, VAT returns with payment will not be accepted at the VAT Department but have to be filed at any Maltapost branch office together with accompanying relative payment. We are informed that Maltapost will only be processing up to five VAT returns from one individual at a time. The arrangement with Maltapost also covers submission of a Notice of Payment by Article 12 Registered persons; Payments of VAT Assessments; and, Payments for a correction to a VAT Return. Other payments, such as payment of administrative penalties can be made by cheque addressed to the Commissioner for Revenue and sent to P.O. Box No. 2296.

1.5 VAT APPEALS DECIDED BY THE ADMINISTRATIVE REVIEW TRIBUNAL ("TRIBUNAL")

In Cases **311/12** *XXX* vs *Kummissarju tat-Taxxa fuq il-Valur Mizjud*, **176/12** *XXX vs Kummissarju tat-Taxxa fuq il-Valur Mizjud* **132/12** *XXX vs Kummissarju tat-Taxxa fuq il-Valur Mizjud* published respectively on 22/05/2018, 05/06/2018 and 25/06/2018 the Tribunal decided in favour of the Commissioner for Revenue by dismissing the three respective appeals against VAT assessment issued by him to the appellants in terms of Article 32 of the VAT Act. The Tribunal observed that appellants failed to satisfactorily proof that the assessments served on them by the Commissioner were excessive. Consequently, the Tribunal ruled that the appeals against the said assessments do not merit to be upheld and thus ordered their confirmation. Furthermore, with regard to Case **311/12**, in the light of the evidence resulting during the proceedings, the Tribunal ordered that the decision be communicated to the Commissioner of Police to criminally investigate a particular tax invoice which was issued twice with different values.

1.6 COURT OF APPEAL (INFERIOR JURISDICTION) DECISIONS IN THE FIELD OF VAT

In case **236/2012** *Kirton and Co Ltd vs Kummissarju tat-Taxxa fuq il-Valur Mizjud* (decided on 23/04/2018) the Court confirmed a decision of the Administrative Review Tribunal which had found that the action by the Commissioner of VAT to withdraw an arrangement with appellant company concerning the refund of VAT paid by it on behalf of naval vessels of a particular country was neither arbitrary not illegal.

1.7 CIVIL FIRST HALL (CONSTITUTIONAL JURISDICTION) DECISIONS IN THE FIELD OF VAT

In a decision published on 25/06/2018 in case **68/2017** *Angelo Zahra vs L-Avukat Generali*, il-Kummissarju tat-Taxxi, il-Kummissarju tal-Pulizija the Court ruled among other, that the application of the provisions of Cap. 406 (the VAT Act) with regard to the imposition of administrative penalties and interest as applicable at the time was in breach of Article 1 of the First Protocol of the European Convention of Human Rights (right to peaceful enjoyment of property). Consequently, the Court ordered the administrative penalties and interest to be recalculated on the terms which started to apply as from 01/01/2009, thus resulting in an overall significant reduction.

2.0 EUROPEAN NEWS

2.1 110TH MEETING OF THE VAT COMMITTEE IN BRUSSELS -13/04/2018

VAT grouping was the main topic on the agenda, with the consultations by the representatives of Luxembourg and Malta in terms of Article 11 of the VAT Directive, the two latest Member States to introduce the concept of VAT group registration within their respective territories. Prior to introducing VAT group registration Member States are required to consult with the VAT Committee basically to ensure that the national legislation being introduced is in line with Article 11 of the VAT Directive. With regard to the Working Paper presented by Malta the Commission Legal services raised a number of questions for clarification which were satisfactorily addressed by the Malta representative. For further details please see our update on VAT Grouping in Malta on:

http://www.zampadebattista.com/vat-grouping-malta-update/

[*The VAT Committee is an advisory committee on value added tax set up in terms of Article 398 of the VAT Directive and consists of representatives of the Member States and of the Commission. It is chaired by a representative of the Commission and has its own rules of procedure. In addition to being consulted with regard to certain provisions in the VAT Directive its role is to answer questions concerning application of Community provisions on VAT which are raised either on its own initiative or else by representatives of the Member States. Any opinions and conclusions of the VAT Committee are not legally binding on Member States.*]

2.2 EU COMMISSION PROPOSALS – ACTION PLAN ON VAT

Following the adoption of the Action Plan for VAT (towards a single EU VAT area) launched in 2016 the Commission has made a series of proposals, in a chronological order, with the scope of completing the plan. The latest were published respectively on 25/05/2018 and 30/06/2018.

COM 2018(329) *final – Amending Council Directive 2006/11/EC as regards the introduction of the detailed technical measures for the operation of the definitive VAT system for the taxation of trade between Member States.*

The proposed amendments are numerous, as expected, given that the VAT Directive has to be extensively overhauled to enable the smooth operation of the definitive VAT system for the taxation of trade between Member States which is envisaged to become effective as from 1st July 2022.

Under the definitive VAT system, the taxation of goods traded between Member States shall take place in the Member State of destination with the taxable person making the supply liable to pay the VAT in that Member State unless his customer has the status of a Certified Taxable Person in which case the latter shall account for the VAT under the reverse charge mechanism.

COM 2018(298) final – *Amending Council Directive 2006/112/EC as regards the period of application of the optional reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud and of the Quick Reaction Mechanism.*

The amendment being proposed will extend the applicability of Articles 199a(1) and 199b of the VAT Directive, which were to expire on 31 December 2018, to 30 June 2022. The reverse charge mechanism and the quick reaction mechanism option available in virtue of these articles are useful and effective tools to assist Member States to effectively fight VAT evasion and fraud such as "Carousel and Missing Trader fraud". By their application supplies of goods taking place within a Member State pursuant to an intra-Community acquisition of those goods would be subject to reverse charge rather than being treated as a domestic supply under the normal VAT rules. Its application is limited to certain supplies of goods selected by the particular Member State which goods represent a high risk of susceptibility to fraud.

2.3 ECOFIN ADOPTS THE COMMISSION'S PROPOSAL ON NEW MEASURES TO COMBAT FRAUD IN THE EU - 22 JUNE 2018

The Commission has welcomed the political agreement reached by EU Member States on new tools to close loopholes in the EU's Value Added Tax (VAT) system. These inconsistencies can lead to large-scale VAT fraud causing losses of €50 billion for national budgets of EU Member States each year. Proposed by the Commission in November 2017, the new measures aim to build trust between Member States so that they can exchange more information and boost cooperation between national tax authorities and law enforcement authorities. Once in force, Member States will be able to exchange more relevant information and to cooperate more closely in the fight against criminal organisations, including terrorists. In a nutshell the new measures include:

- Strengthening cooperation between the Member States by placing an online system for sharing information with Eurofisc (a network of national EU Member States analysts working in different areas of fraud risk);

- Working with other law enforcement bodies on cross border activities suspected of leading to VAT fraud such as OLAF, Europol and the European Public Prosecutor Office boosting the capacity of cross checking national criminal records and other relevant information;

- Sharing of key information on imports and on vehicle registration by boosting and improving information sharing between customs and tax authorities;

- Access to car registration data by the national transport authorities to Eurofisc officials to enable them to better tackle VAT fraud in this sector.

Except for the last mentioned two, the implementation of which is deferred to 1 January 2020, the measures will come into force after twenty days from their publication in the EU's Official Journal (which should occur following the opinion of the European Parliament which is pending).

3.0 UPDATE OF THE LATEST CJEU DECISIONS IN FIELD OF VAT

3.1 CASE C-580/16 FIRMA HANS BÜHLER AG

On 19th April 2018 the CJEU released it decision on a referral by Austria as to whether Article 141(c) of Council Directive 2006/112/EC is to be interpreted as meaning that the requirement laid down in that provision is not met where the taxable person is resident and identified for VAT purposes in the Member State from which the goods are dispatched or transported, even if that taxable person uses the VAT identification number of another Member State for that specific intra-Community acquisition.

Article 141(c) of the VAT Directive provides that an intra-Community acquisition (in a triangular operation) shall be exempt from VAT if the goods acquired by the taxable person making the acquisition (the middleman in the triangular operation) are directly dispatched or transported from a Member State other than that in which he is identified for VAT purposes, to the person to whom he is to carry out the subsequent supply.

Firma Hans Bühler, established and identified for VAT purposes in Germany, carried out triangular operations by acquiring goods in Germany and selling them to taxable persons in the Czech Republic with the goods being transported directly from Germany to the Czech Republic. These transactions were carried out under an Austrian VAT registration number. The Austrian tax authorities took the view, that once the Austrian VAT registration number was used to carry out the intra-Community acquisition, Article 141(c) did not apply since Bühler was established and identified for VAT purposes in Germany, the Member State from which the goods were dispatched. They concluded that the transactions made under the Austrian VAT registration number were taxable in Austria.

The Court remarked that when interpreting EU law not only the wording but also the context and intentions have to be taken into consideration. If the middleman in a triangular chain transaction is registered for VAT purposes in several Member States, only the VAT Registration number under which the corresponding intra community acquisitions was made is to be taken into consideration for the evaluation of individual triangulation transactions. The application of the triangulation transaction simplification cannot be denied simply on grounds that the middleman is also registered for VAT purposes in the Member State of dispatch of the goods.

In the light of the above the Court ruled that the condition in Article 141(c) of the VAT Directive is also met where the taxable person uses the VAT identification number of another Member State for a specific intra-community acquisition in a triangular transaction, and that taxable person is resident and identified for VAT purposes in the Member State from which the goods were dispatched. The tax authorities of a Member State are precluded from not allowing the application of the triangulation simplification in the context of an intra-community acquisition made for the purpose of a subsequent supply in the territory of a Member State merely on the basis that a formal requirement, the submission of a recapitulative statement, was not submitted in good time.

3.2 CASE C-108/17 ENTECO BALTIC

On 20th June 2018 the CJEU released its decision on a referral by Lithuania regarding the interpretation of Article 143(1)(d) and Article 143(2)(b) of Council Directive 2006/112/EC.

These articles provide that an importation of goods would be exempt from VAT (subject to conditions set out by the Member State of importation) if it is followed by a supply or transfer of those goods to a taxable person in another Member State.

Enteco Baltic, a company established in Lithuania operated a wholesale fuel trading business. Basically, it imported fuels from Belarus which were then stored in warehouses in Lithuania belonging to third party companies, and then subsequently supplied to companies established in Poland, Slovakia and Hungary. In line with the Article 143 procedure, no VAT was paid on importation as this was payable by the customer making the intra-community acquisition in the second Member State.

Following an audit carried out by the Lithuanian customs authorities it was concluded that Enteco Baltic had not supplied fuels to the taxable persons specified in the import declarations or had failed to establish that the fuels had been transported and that the right to dispose of them as owner had been transferred to the persons specified in the VAT invoices.

This decision was challenged by Enteco Baltic, and the Lithuanian court hearing the case stayed the proceedings and referred a number of question to the CJEU, among which whether a tax authority can refuse the VAT exemption provided in Article 143, if at the time of importation, the goods were planned to be supplied to one VAT payer and therefore its VAT identification number was specified in the import declaration, but later, after a change in circumstances, the goods were transported to another taxable person (VAT payer) and the public authority was provided with full information about the identity of the actual purchaser. Additionally, if a Member State can be allowed to continue an administrative practice under which the assumption that (i) the right of disposal was not transferred to a specific contractual partner and (ii) that the taxpayer knew or could have known about possible VAT fraud committed by the contractual partner is based on the fact that the undertaking communicated with the contractual partners by electronic means of communication and that it was established when the investigation was carried out by a tax authority that the contractual partners did not operate at the addresses specified and did not declare the VAT on the transactions with the taxable person.

Having regard to the facts of the case, the pertinent legislation and settled case law the CJEU concluded that:

- A Member State is precluded from refusing the exemption merely on the basis that, at the time of importation, the goods were intended to be supplied to a taxable person in another Member State, which explains why the value added tax (VAT) identification number of that taxable person is specified in the import declaration, although, as the result of a subsequent change of circumstances, the goods were supplied to another taxable person (also liable for payment of VAT) and the authorities of the first Member State were provided with full information relating to the identity of the actual purchaser;

- The principle of legal certainty must be interpreted as meaning that it prevents the customs authority of a Member State from refusing to grant entitlement to exemption from import VAT to a taxable person, acting in good faith and without its having been established that he knew or ought to have known that he was participating in tax evasion, on the ground that one of the substantive conditions for the VAT exemption for an intra-Community supply following importation is no longer fulfilled, even though that condition had already been regarded as having been fulfilled by the competent authority of the same Member State following an inspection of the evidence and documents provided by the taxable person.

It is for the referring court to ascertain whether the facts of the case in the main proceedings make it possible to find that all those circumstances apply, and that all those conditions are fulfilled.

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