

VAT UPDATE

The last couple of months have seen various VAT related developments both at international and local levels. These included amendments to the VAT Directives, some key pronouncements by the European Court and a number of new Legal Notices.

We set out below some brief comments on a selection of these developments.

INTERNATIONAL & EU DEVELOPMENTS

VAT refunds

Taxable persons operating on a cross border basis have been granted an additional time frame within which they are to submit their claims for refunds of VAT incurred in other EU Member States during 2009. The deadline has officially been extended from 30 September 2010 to 31 March 2011 and will apply retrospectively from 1 October 2010. This change has been introduced by Council Directive 2010/66/EU (implemented in Malta by virtue of L.N. 36 of 2011).

Invoicing

Council Directive 2010/45/EU has amended the EU rules on invoicing. The Invoicing Directive seeks to harmonise VAT invoicing rules, provide legal certainty, encourage e-invoicing and reduce administrative burdens whilst assisting EU Member States in combating VAT fraud.

The Invoicing Directive has to be transposed into national legislation by 1 January 2013

KEY ECJ PRONOUNCEMENTS

The European Court of Justice has decided a number of VAT-related cases over the last couple of months. These have resulted in a number of key pronouncements some of which we are highlighting below.

Everything Everywhere Ltd formerly T-Mobile (UK) Ltd (C276/09)

In this case, the ECJ shed further light on the issue of composite supplies from a VAT perspective, confirming that notwithstanding the general rule that every transaction should be considered to be distinct and independent, in certain instances several formally distinct services could constitute a single supply which should not

be effectively split. Thus, in this case, the payment handling service was deemed ancillary to the principal supply of mobile telephone services since it did not constitute for customers an aim in itself. Furthermore, the ECJ concluded that the fact that the supplies were invoiced / priced separately is an indicative but not decisive factor in determining whether a single composite supply exists. Such determination, the ECJ ruled, must be made on a case-by-case basis taking into consideration the essential features of the transactions and the particular circumstances thereof.

Bacino Charter Company (C116/10)

This case concerned the applicability of the exemption relating to chartering of sea-going vessels that are used for navigation on the high seas and provide transport of travellers for reward or the pursuit of commercial, industrial or fishing activities. The ECJ decided by denying this exemption to chartering of vessels, which the charterer uses for pleasure purposes. This decision could be particularly relevant for yacht leasing structures.

RBS Deutschland Holdings (C-277/09) & Weald Leasing (C-103/09)

These two cases follow closely the *Halifax* case (Case C-255/02) and are concerned with the distinction between abusive practices and tax planning. The ECJ confirmed, inter alia, that if there is more than one way in which to carry out a transaction, a business would not be considered as having acted abusively merely because it chose that option which results in a lower or postponed tax liability.

LOCAL DEVELOPMENTS

New place of supply rules coming into force on 1 January 2011

The second set of changes to the VAT Act enacted by means of Legal Notice 133 of 2009 came into force with effect from 1 January 2011. The main amendments set out a new place of supply rule for the following services:

- The place of supply of services in respect of admission to cultural, artistic, sporting, scientific, educational, entertainment or similar activities when provided to taxable persons shall be the place where those events actually take place.



- The place of supply of services and ancillary services, relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities, such as fairs and exhibitions, including the supply of services of the organisers of such activities, supplied to a non-taxable person shall be the place where those activities actually take place. Previously this rule also applied to supplies made to taxable persons.

Invoicing requirements

Legal Notice 444 of 2010 has amended the tax invoice requirements under the Twelfth Schedule to the VAT Act. As a result of these amendments, the provisions of the Schedule are better aligned with those of the EU VAT Directive (Directive 2006/112/EC) since the amendments have removed certain requirements which went beyond those imposed by the Directive. The amendments have however fallen short of fully implementing the provisions of Council Directive 2010/45/EU mentioned above.

Letting of immovable property

Legal Notice 286 of 2010 removed the exemption without credit in respect of the letting of immovable property by a taxable person in the course of an economic activity for a period not exceeding thirty days. Therefore, this is now a taxable supply. However, this new amendment does not apply to (i) the letting of space for artistic and cultural activities (ii) the letting of premises used as garages, stores or similar uses and (iii) the letting of premises for the purposes of habitation which are not required to be licensed by the Malta Travel and Tourism Services Act. This latter exempt supply carries greater weight in the light of a recent local judgement wherein it was decided that the hosting of foreign students in a college is not required to be licensed under the above-mentioned Act.

Furthermore, as announced in the Government Budget for 2011, the VAT rate on licensable accommodation has been increased from 5% to 7% as from 1 January 2011. This change was brought into effect by Legal Notices 499 and 523 of 2010. This necessitated a change in the format of the VAT return and this has been amended accordingly by means of Legal Notice 37 of 2011.

Management services by investment and fund managers

The VAT exemption without credit relating to supplies of

management services to investment schemes has been recently amended. Such “schemes” are now defined by reference to the Investment Services Act and the Special Funds (Regulation) Act. This amendment has been extended to include management services provided by foreign fund managers and fund administrators. Furthermore, guidelines have been issued to help clarify the term “management” and what supplies should be considered as “essential for the core activity” of the scheme and thus as falling within the scope of the exemption without credit.

Small undertakings exemption

By virtue of Legal Notice 524 of 2010, as from 1 January 2011, taxable persons whose turnover does not exceed €7,000 will not be entitled to register under article 11 of the VAT Act as an exempt small undertaking. Furthermore, any taxable person whose turnover does not exceed this amount and who is registered under article 11 will be de-registered by the Commissioner. Such small undertakings are still entitled to register for VAT purposes under articles 10 and 12 of the VAT Act.

KEY LOCAL COURT PRONOUNCEMENTS

Ballut Blocks Services Limited vs il-Kummissarju tat-Taxxa fuq il-Valur Mizjud (2010) and George Sciberras vs il-Kummissarju tat-Taxxa fuq il-Valur Mizjud (2011)

Both these cases were in respect of the assessment process in terms of the VAT Act. In the first case, the court ruled that the Commissioner is not entitled to effectively extend the 6-month period for confirming a provisional assessment by re-issuing a provisional assessment. In the second case, the court ruled that unless a provisional assessment is confirmed or cancelled within the statutory 6-month period, a new provisional assessment (and subsequently a formal assessment) cannot be issued for the same tax period and the same merits.

NEW PUBLICATIONS

We are pleased to announce the publication of “A guide to VAT in the 27 EU Member States, Norway and Switzerland” and “VAT Refund Guide 2010”. Relative details of the publications, including an order form, can be accessed at <http://www.pwc.com/mt/newvatguides>.

The notes are designed to keep readers abreast with financial and tax developments. They are not intended to be a definitive or comprehensive analysis of the subject and should not be acted upon without prior consultation with the Partners or Senior Consultants of the firm. For further details please do not hesitate to contact:

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