



MALTA TAX LAW UPDATE

Update 17

EDITOR'S NOTE

There is very little to report for this summer. There have not been any local major tax judgments and legislative tax amendments passed this summer will not result in huge changes in the tax landscape. In the meantime, the CJEU has delivered a number of interesting VAT judgments.

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INDEX

1.	LEGISLATIVE CHANGES.....	PAGE 3
1.1	ACTS OF PARLIAMENT.....	PAGE 3
1.2	LEGAL NOTICES.....	PAGE 3
1.3	BILLS.....	PAGE 4
2	JUDICAL DECISIONS.....	PAGE 4
2.1	JUDGMENTS OF THE CRIMINAL COURTS	PAGE 4
2.2	JUDGMENTS OF THE COURT OF APPEAL	PAGE 4
2.3	JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS	PAGE 4
2.4	JUDGEMENTS OF THE CJEU.....	PAGE 5

1. LEGISLATIVE CHANGES

1.1 Acts of Parliament

None.

1.2 Legal Notices

L.N. 227 of 2015 VALUE ADDED TAX ACT (CAP. 406) Value Added Tax Act (Amendment of Fifth Schedule) Regulations, 2015

This Legal Notice amends Part Two of the Fifth Schedule to the VAT Act (exemptions without credit). Henceforth, road assistance services provided for a fixed subscription, by a taxable person who undertakes to provide such assistance should the risk of breakdown or accident covered by that person materialise will be considered as an exempt supply of insurance services.

This Legal Notice amends Item 11 of Part Two dealing with health and Welfare. Henceforth, the supply of medical care by a person in the exercise of any profession regulated by the Psychology Profession Act (Cap. 471) will be treated as exempt without credit. Previously, the exemption referred exclusively to the Health Care Professions Act and did not refer to psychologists.

L.N. 228 of 2015 INCOME TAX ACT (Cap. 123) Double Taxation Relief (Taxes on Income)

(The Republic of Moldova) Order, 2015 (L.N. 151 of 2014)

This Legal Notice brings the double tax treaty into force with effect from 17 June 2015.

L.N. 295 of 2015 INCOME TAX MANAGEMENT ACT (CAP. 372) Income Tax (Rate of Interest) Rules, 2015

As from 1st January 2016 interest on late payment of income tax is due at the rate of zero point five four per cent (0.54%). Previously, the rate of interest was point seven five per cent (0.75%). There was a time when the rate of interest was of 1%.

L.N. 231 of 2015 VALUE ADDED TAX ACT (CAP. 406) Value Added Tax Act (Amendment of Tenth Schedule) Regulations, 2015

This Legal Notice amends the 10th Schedule dealing with deductions. The amendment involves item 8 which used to grant the Minister the right to prescribe alternative methods of partial attribution. The power previously vested in the Minister will henceforth be exercised by the Commissioner.

L.N. 241 of 2015 INCOME TAX ACT (Cap 123) Personal Retirement Scheme (Amendment No. 2) Rules, 2015

This Legal Notice amends the Personal Retirement Scheme Rules which provide for a tax deduction. The amendment changes the definition of 'qualifying scheme'. In the case of a long term contract of insurance, the contract must provide for programmed withdrawal arrangements as provided for in the Directives issued under the Special Funds (Regulation) Act.

L.N. 225 of 2015 INCOME TAX ACT (CAP. 123) Highly Qualified Persons (Amendment) Rules, 2015

This Legal Notice introduces time-limits within which the benefits of the HQPR may be availed of.

Any person who has availed himself of the benefit provided by the HQPR is eligible, upon application, for a one-time extension of five years to his qualifying period, subject to the continued adherence to the rules. The extension is not available to any person who was resident in Malta prior to the 1st of January 2008. The maximum qualifying period shall not exceed ten years of assessment.

No new determinations relating to HQPR status shall be issued after the 31st December 2020, and any determination issued must refer to any employment commencing by the 31st December 2021 and terminated by the 31st December 2025.

1.3 Bills

None that we are aware of.

2 Judicial Decisions

2.1 Judgments of the Criminal Courts

Numru. 830/2009 II-Pulizija (Spettur Maurice Curmi) vs ANTHONY BONE ANTHONY MIZZI

This judgment involved the crime of misappropriation and VAT. Accused were, qua directors, charged with trying to evade VAT on an importation, use of false documentation was alleged too. Two invoices, bearing different amounts, had been raised with respect to the same supply. Accused were acquitted of some of the charges but were found guilty of the VAT charges. Instead of applying a fine due because of the infringement of the VAT Act, the Court chose to apply a suspended sentence in terms of the Criminal Code.

Numru. 371/2010 II-Pulizija (Spettur Ivan Cilia) vs GAMIL MERGES

This case involved a charge of VAT fraud. After going through the elements of the offence, the Court found that the prosecution had not proven its case because the prosecution had failed to prove that accused had knowingly made use of a false document (evidence of the intentional element had not been produced).

2.2 Judgments of the Court of Appeal

Appell Numru: 54/2012 KUMMISSARJU TAT-TAXXI INTERNI Vs QUEST LIMITED (C-11694)

This case involved an appeal from a judgment of the Court of Magistrates. The first-tier judgment was in respect of an attempt to challenge a tax collection process. An issue arose with respect to a notification. The Court of Appeal concluded that our tax procedural law is based on British. A document notified at taxpayer's last known address (provided by taxpayer himself) was held to be valid.

2.3 Judgments of the European Court of Human Rights

CASE OF SATAKUNNAN MARKKINAPÖRSSI OY AND SATAMEDIA OY v. FINLAND

(Application no. 931/13)

This case involved the right to freedom of expression. Applicants published tax data drawn from official public sources. The Data Protection authorities stopped applicants' publication; applicants appealed the decision of the authorities and filed an appeal but they lost their appeal. The ECtHR considered the prohibition issued by the Data Protection Board as a prohibition from collecting, saving and processing such data to a large extent, with the result that an essential part of the information previously published could no longer be published.

The ECtHR held that there had been an interference with the applicant companies' right to impart information, as guaranteed by Article 10 § 1 of the Convention. Nonetheless, the ECtHR noted that the right to impart information is subject to the exceptions set out in Article 10 § 2 of the Convention. The ECtHR held that the interference was "prescribed by law" and it pursued the legitimate aim of protecting the reputation or rights of others, within the meaning of Article 10 § 2. It found that the interference was necessary in a democratic society. Applicant's claim under Article 10 was dismissed but its claim under Article 6 (fair hearing) was successful because the ECtHR held that the 6 year period within which the case had been decided was unreasonably long.

2.4 Judgments of the CJEU

Case C-526/13 Fast Bunkering Klaipėda UAB v Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

The Court held that the exemption relating to fuelling and provisioning of vessels used for navigation on the high seas is not, in principle, applicable to supplies of goods for the fuelling and provisioning to intermediaries acting in their own name, even if, at the date on which the supply is made the ultimate use of the goods is known and duly established and evidence confirming that is submitted to the tax authority in accordance with the national legislation. However when the exemption applies when the transfer to those intermediaries of the ownership in the goods concerned under the procedures laid down by the applicable national law took place at the earliest at the same time when the operators of vessels used for navigation on the high seas were actually entitled to dispose of those goods as if they were the owners (a matter which is for the national court to ascertain).

Case C-463/14 Asparuhovo Lake Investment Company OOD v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

The CJEU held that, in the VAT Directive, the term 'supply of services' includes subscription contracts for the supply of consulting services to an undertaking, in particular those of a legal, commercial or financial nature, under which a supplier has agreed to be available to the customer during the term of the contract. As regards subscription contracts for consulting services, the CJEU held that the chargeable event and the chargeability of the tax occur upon the expiry of the period in respect of which the payment has been agreed, irrespective of whether and how often the customer has actually made use of the supplier's services.

Cases C-108/14 and C-109/14 Beteiligungsgesellschaft Larentia + Minerva mbH & Co. KG V Finanzamt Nordenham (C-108/14) and Finanzamt Hamburg-Mitte v Marenave Schifffahrts AG (C-109/14)

The Court held that expenditure connected with the acquisition of shareholdings in subsidiaries incurred by a holding company which involves itself in their management and which, on that basis, carries out an economic activity must be regarded as belonging to its general expenditure and the value added tax paid on that expenditure must, in principle, be deducted in full, unless certain output economic transactions are exempt from value added tax, in which case the right to deduct should have effect only in accordance with the procedures laid down in Article 17(5) of that directive;

– the expenditure connected with the acquisition of shareholdings in subsidiaries incurred by a holding company which involves itself in the management only of some of those subsidiaries and which, with regard to the others, does not, by contrast, carry out an economic activity must be regarded as only partially belonging to its general expenditure, so that the value added tax paid on that expenditure may be deducted only in proportion to that which is inherent to the economic activity, according to the criteria for apportioning defined by the Member States, which when exercising that power, must have regard to the aims and broad logic of the Sixth Directive and, on that basis, provide for a method of calculation which objectively reflects the part of the input expenditure actually to be attributed, respectively, to economic and to non-economic activity, which it is for the national courts to establish.

- The second subparagraph of Article 4(4) of Sixth Directive 77/388, as amended by Directive 2006/69, must be interpreted as precluding national legislation which reserves the right to form a value added tax group, as provided for in those provisions, solely to entities with legal personality and linked to the controlling company of that group in a relationship of subordination, except where those two requirements constitute measures which are appropriate and necessary in order to achieve the objectives seeking to prevent abusive practices or behaviour or to combat tax evasion or tax avoidance, which it is for the referring court to determine.
- Article 4(4) of Sixth Directive 77/388, as amended by Directive 2006/69, may not be considered to have direct effect allowing taxable persons to claim the benefit thereof against their Member State in the event that that State's legislation is not compatible with that provision and cannot be interpreted in a way compatible with it.

Case C-584/13 Directeur général des finances publiques v Mapfre asistencia compania internacional de seguros y reaseguros SA and Mapfre warranty SpA v Directeur général des finances publiques

The CJEU held that that the supply of services whereby an economic operator which is independent of a second-hand motor-vehicle dealer provides, in return for payment of a lump sum, a warranty covering mechanical breakdowns which may affect certain parts of that vehicle constitutes an exempt insurance transaction within the meaning of that provision. It is for the referring court to determine whether, in the light of circumstances such as those of the cases in the main proceedings, the supply of services at issue in the main proceedings is such a supply. The provision of such a supply and the sale of the second-hand vehicle must, in principle, be considered to be distinct and independent supplies, to be treated separately from the point of view of VAT. It is for the referring court to determine whether, having regard to the specific circumstances of the cases in the main proceedings, the sale of a second-hand vehicle and the warranty provided by an independent economic operator to the dealer selling that second-hand vehicle covering mechanical breakdowns which may affect certain parts of that vehicle are so interconnected that they must be regarded as constituting a single transaction or whether, on the contrary, they are independent transactions.

Case C-183/14 Radu Florin Salomie, Nicolae Vasile Oltean v Direcția Generală a Finanțelor Publice Cluj

The Court held that principles of legal certainty and of the protection of legitimate expectations do not preclude a national tax authority from deciding, following a tax audit, to subject transactions to value added tax and to impose the payment of surcharges, provided that that decision is based on clear and precise rules and that that authority's practice has not been such as to give rise, in the mind of a prudent and well-informed trader, to a reasonable expectation that that tax would not be levied on such transactions, this being a matter for the referring court to determine. The surcharges applied in such circumstances must comply with the principle of proportionality. The VAT Directive precludes national rules under which the right to deduct input value added tax, due or paid on goods and services used in the context of taxed transactions, is refused to the taxable person, who must nevertheless pay the tax that he ought to have recovered, for the sole reason that he was not identified for value-added-tax purposes when he carried out those transactions, so long as he has not been duly identified for value added tax purposes and the tax return for the tax due has not been filed.

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