



MALTA  
INSTITUTE  
OF TAXATION



## **MALTESE TAX LAW UPDATE**

*(Update 27)*

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Almost 20 Legal Notices that should be of interest to tax practitioners have been published this quarter.

Keeping abreast of international developments is becoming particularly challenging. In its meeting of 5 December 2017 ECOFIN published 3 legislative instruments relating to VAT. Changes to the VAT Act and subsidiary legislation are expected soon.

International Tax Practitioners should follow closely a number of developments relating to the digital economy because this quarter witnessed a number of important pronouncements which include an important gaming guidance note.

Tax implications of the introduction of the Beneficial Ownership Register requirement should be carefully considered too.

The Court of Magistrates presided by Magistrate Frendo Dimech deserves to be commended for its excellent decision in *Pulizija v. Carmel Spiteri Kumpilazzjoni* 943/10. The Court held that a person could not be held liable for 'misappropriation' of VAT when VAT had not been physically collected but had merely been accrued for.

The cut-off date for Update 27 is 1/02/18. Therefore, Legal Notices 37 and 38 amending the National Interest Deduction System (published on 2 February 2018) will be discussed in the Update 28. The same applies to LN 39, the Acquisition of the Second Immovable Property to be used as Sole Residence (Exemption) Order, 2018 which will be discussed in the next update too.

**Robert Attard**  
01/02/2018

None

## **L.N. 306 of 2017 INCOME TAX ACT (CAP. 123) INCOME TAX MANAGEMENT ACT (CAP. 372) Audit Report Waiver and Deduction Rules, 2017**

Rule 3 prescribes that when a qualifying company does not avail itself of the audit report waiver provided for in the second proviso to article 19(4)(a) of the Income Tax Management Act, it may claim a deduction against its income of 120% of the audit fees incurred.

The deduction applies to the first two accounting periods of a newly registered company whose sole shareholders are individuals in possession of eligible educational qualifications who have set up the new company within three years of obtaining the said qualifications.

The deduction claimed may not exceed €700 in each accounting period. A qualifying company is a company as defined in the Income tax Act whose annual turnover does not exceed €80,000 or a pro rata amount if the relevant accounting period is other than twelve months. Eligible educational qualifications refer to the successful completion of a course of study at MQF level 3, or higher, as recognized by the Malta Qualifications Recognition Information Centre.

The rules came into force as from year of assessment 2018.

## **L.N. 341 of 2017 INCOME TAX ACT (CAP. 123) Income Tax Exemption (Philanthropic Work) Notice, 2017**

The Minister for Finance has named the Migrant Offshore Aid Station Foundation (MOAS) and St. John Rescue Corps – Malta as organisations engaged in philanthropic work, and thus exempt from income tax.

## **L.N. 342 of 2017 DUTY ON DOCUMENTS AND TRANSFERS ACT (CAP. 364) Exemption of Duty in Terms of Article 23 (Amendment) Order, 2017**

This LN extends the purview of the reduced rate of duty to certain deeds when the final deed in relation to the transfer is made by the 31<sup>st</sup> December 2018 and the notice of the final deed in relation to such transfer is

given to the Commissioner for Revenue by the 28<sup>th</sup> February 2019.

## **L.N. 344 of 2017 INCOME TAX ACT (CAP.123) INCOME TAX MANAGEMENT ACT (CAP. 372) Cooperation with Other Jurisdictions on Tax Matters (Amendment) Regulations, 2017**

The main changes are driven by Beneficial Ownership Register requirements. A definition of the term 'beneficial owner' has been added. The term "beneficial owner" has been defined as meaning any natural person who ultimately owns or controls the customer and, or the natural person on whose behalf a transaction or activity is being conducted and includes:

- In the case of an entity, any natural person who ultimately owns or controls that body corporate or body of persons through direct or indirect ownership of twenty-five per centum (25%) plus one or more of the shares or ownership interests in that entity, or through control via other means, other than a company that is listed on a regulated market which is subject to disclosure requirements consistent with European Union law or equivalent international standards which ensure adequate transparency of ownership information. A shareholding of 25% plus one (1) share or more, or the holding of an ownership interest or voting rights of more than 25% in the customer shall be an indication of direct ownership when held directly by a natural person, and of indirect ownership when held either by a natural person through one or more entities or through a trust or asimilar legal arrangement, or a combination thereof. If, after having exhausted all possible means and provided there are no grounds of suspicion, no beneficial owner has been identified, the beneficial owner shall be the natural person who hold the position of senior managing official;
- In the case of express trusts: (i) the settlor; (ii) the trustee(s); (iii) the protector, if any; (iv) the beneficiaries, or where the individuals benefiting from the trust have yet to be determined, the class of persons in whose main interest the trust is set up or operates; and (b) in

the case of express trusts: (i) the settlor; (ii) the trustee(s); (iii) the protector, if any; (iv) the beneficiaries, or where the individuals benefiting from the trust have yet to be determined, the class of persons in whose main interest the trust is set up or operates; and (v) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means; (c) in the case of legal entities such as foundations, and legal arrangements similar to trusts, the natural person(s) holding equivalent or similar positions to above.

**L.N. 345 of 2017 INCOME TAX ACT (CAP. 123)  
Double Taxation Relief (Taxes on Income)  
(Ukraine) Order 2017**

This LN transposes Malta's tax treaty with the Ukraine into Maltese law. The Treaty is largely based on the OECD Model. The following matters should be noted:

- The Treaty comes into force with effect from 28 August 2017;
- The definition of the term 'Ukraine' is defined as the 'the territory of the Ukraine' without any references to the current dispute;
- The PE article refers to 'a warehouse or other structure used as a sales outlet' but the term PE is deemed to exclude facilities used only for storage, display or delivery;
- Profits from the operation of ships and aircraft include income from the rental on a bareboat basis of ships and aircraft and the use of containers used for transport of goods;
- Double taxation is eliminated prevalently by the credit method;

**L.N. 371 of 2017 DUTY ON DOCUMENTS AND TRANSFERS ACT (CAP. 364) Duty on Transfers (Exemption No. 2) Order, 2017**

This Order provides that in the case of a transfer of immovable property subject to the Order, duty is charged at the reduced rate of 2.50% or part thereof of the value of the consideration for the transfer of the property or of the value of the property, whichever is the greater.

The Order applies to a transfer inter vivos of immovable property when:

- (a) the transfer is made on or after the 10th October, 2017 but before the 1st January, 2019 to a person who does not require a permit by the Minister for the purposes of the Immovable Property (Acquisition by Non-Residents) Act;
- (b) the property is situated within an urban conservation area or is scheduled by the Planning Authority in terms of planning laws;
- (c) together with the notice referred to in article 51 of the Duty on Documents and Transfers Act, there shall be submitted to the Commissioner for Revenue a certificate issued by the PA certifying that the property falls within a development area known as an Urban Conservation Area (UCA), or is a scheduled property in accordance with article 57 of the Development Planning Act or any Act which may be substituted therefor;
- (d) the notice referred to in article 51 of the Duty on Documents and Transfers Act, shall be submitted to the Commissioner for Revenue on or before 28th February 2019;
- (e) no relief was claimed under this Order in respect of any previous transfer of the said property;
- (f) no relief is claimed under article 32C of the Duty on Documents and Transfers Act.

The relief granted under the Order shall be forfeited in the case of an illegal development.

**376 of 2017 – Civil Code (Second Schedule)  
(Register of Beneficial Owners - Associations)  
Regulations, 2017**

**375 of 2017 – Civil Code (Second Schedule)  
(Register of Beneficial Owners - Foundations)  
Regulations, 2017**

**374 of 2017 – Companies Act  
(Register of Beneficial Owners) Regulations, 2017**

**373 of 2017 – Trusts and Trustees Act  
(Register of Beneficial Owners) Regulations, 2017**

**372 of 2017 – Prevention of Money Laundering  
and Funding of Terrorism Regulations, 2017**

Strictly speaking, the above-captioned legal notices are not tax legal notices but the obligation to maintain a Beneficial Ownership Register must be read in the context of the rule providing that the Register is accessible to national tax authorities.

## **L.N. 347 of 2017 VALUE ADDED TAX ACT (CAP. 406) Value Added Tax Act (Amendment of Fifth Schedule) Regulations, 2017**

This LN adds another exempt item namely:

“(c) food supplied in terms of item 9 of Part One of this Schedule, where such food is served for consumption by any person in the same establishment, shall be considered as food supplied in the course of catering.”

## **L.N. 348 of 2017 VALUE ADDED TAX ACT (CAP. 406) Value Added Tax Act (Amendment of Fourteenth Schedule) Regulations, 2017**

This LN implements new measures relating to Vouchers adding a new item to the Fourteenth Schedule.

The term “voucher” is defined as meaning an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services and where the goods or services to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument.

The term “single-purpose voucher” is defined as meaning a voucher 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. The term “multi-purpose voucher” is defined as meaning a voucher, other than a single-purpose voucher.

Each transfer of a single-purpose voucher made by a taxable person acting in his own name shall be regarded as a supply of the goods or services to which the voucher relates. The actual handing over of the goods or the actual provision of the services

in return for a single-purpose voucher accepted as consideration or part consideration by the supplier shall not be regarded as an independent transaction.

Where a transfer of a single-purpose voucher is made by a taxable person acting in the name of another taxable person, that transfer shall be regarded as a supply of the goods or services to which the voucher relates made by the other taxable person in whose name the taxable person is acting.

Where the supplier of goods or services is not the taxable person who, acting in his own name, issued the single-purpose voucher, that supplier shall however be deemed to have made the supply of the goods or services related to that voucher to that taxable person.

The actual handing over of the goods or the actual provision of the services in return for a multi-purpose voucher accepted as consideration or part consideration by the supplier shall be subject to VAT pursuant to article 4 of the Value Added Tax Act, whereas each preceding transfer of that multi-purpose voucher shall not be subject to VAT.

Where a transfer of a multi-purpose voucher is made by a taxable person other than the taxable person carrying out the transaction subject to VAT pursuant to the voucher rules, any supply of services that can be identified, such as distribution or promotion services, shall be subject to VAT.

Without prejudice to item 1 of the Seventh Schedule to the Value Added Tax Act, the taxable amount of the supply of goods or services provided in respect of a multi-purpose voucher shall be equal to the consideration paid for the voucher or, in the absence of information on that consideration, the monetary value indicated on the multi-purpose voucher itself or in the related documentation, less the amount of VAT relating to the goods or services supplied.

## **L.N. 377 of 2017 INCOME TAX MANAGEMENT ACT (CAP. 372) Tax Refunds and Registration Procedure (Amendment) Rules, 2017**

New rules relating to Trusts have been introduced.

An interpretative article has been added.

The word “trust” is taken to mean a trust, the trustee of which has made an election in terms of the provisions of 27D(1) ITA (trust be treated as a company). The term “trustee” has been defined as any trustee of a trust where such trustee is resident in Malta. “Shareholder” has been defined as including a partner or member of any body of persons that has elected to be treated as a company in terms of article 27(6) ITMA.

A person who wishes to be registered with the Commissioner for the purposes of the refund rules must advise, in writing, the company or trustee, as the case may be, from which he expects to receive a dividend or a distribution of profits in relation to which he wishes to make a claim to be registered and the company or the trustee, as the case may be, shall forthwith effect registration.

Where the company or the trustee, as the case may be, as a result of such registration may be deemed to be a payor of investment income, the said company or trustee shall not be obliged to register the said person who, after having been requested by the said company or trustee, has not provided the company or trustee with security, including a bank guarantee, for the tax that may be payable by it. The trustee is required to register only those beneficiaries whom he expects shall be entitled to receive distributions out of profits of the trust.

The registration by the company or by the trustee applies for the year of assessment in which registration with the Commissioner is duly effected and for all subsequent years of assessment until such time that the person notifies the company or the trustee, as the case may be, of his wish to cancel his registration and such de-registration is effected by the Commissioner. For each applicable year of assessment following the registration and until such time that the cancellation of registration is notified in accordance with the provisions of the rules, it shall be deemed that:

The registered shareholder or the registered

beneficiary, as the case may be, intends to make a claim in relation to the tax assessable in relation to each of the said years of assessment;

The relevant registration has been renewed for each of the said years of assessment with the original details on the application and, if applicable, as amended by any new details notified in writing by the company or the trustee, as the case may be, to the Commissioner;

C. In the case of a company, the registered shareholder expects to receive a dividend out of the profits earned in relation to each of the said years of assessment; and

In the case of a trust, the registered beneficiary expects to receive a distribution out of the profits attributable to the trust in relation to each of the said years of assessment

The company or the trustee, as the case may be, shall effect the said registration in such manner as shall be determined by the Commissioner.

A person shall only be entitled to make a claim if, at the time of making the claim, he is registered in terms of the rules and that registration was made not later than the date on which the first provisional tax payment instalment of the company or the trust, as the case may be, for the relevant year of assessment falls due or the date on which the company or the trustee, as the case may be, makes a payment of tax in respect of that year of assessment whichever is the earlier.

Where the period commencing from the first day of the accounting period ending in the year preceding the relevant year of assessment and the date on which the first provisional tax payment instalment falls due is less than one hundred and twenty days, the said registration must have been made not later than the date on which the second provisional tax payment instalment of the company or the trustee, as the case may be, for the relevant year of assessment falls due or the date on which the company or the trustee, as the case may be, makes a payment of tax in respect of that year of assessment (other than the payment in respect of the first provisional tax payment for that same year of assessment) whichever is the earlier:

Where a company or trustee, as the case may be, registers a person in terms of the rules, the company or the trustee, as the case may be, shall also provide the following information:

(a) details of the profit entitlement of all other shareholders of the company or beneficiaries of the trust, as the case may be, irrespective of whether such shareholders or beneficiaries have required registration in terms of the rules indicating separately any entitlement to any profit entitlement of a fixed amount; (b) such details on the ultimate beneficial owners of the company or of the beneficiaries of the trust as shall be determined by the Commissioner; and (c) such other information as the Commissioner may require

Any change to the details of a registration made in terms of the rules, including any change to the profit entitlement where applicable, shall be notified to the Commissioner in such manner as the Commissioner may determine.

Where the change relates to a change in a person's profit entitlement relative to a company or trust and as a result of such change, the profit entitlement of a person who is registered in terms of the rules is reduced and the profit entitlement of another person who may or may not be registered in terms of the rules is increased by a corresponding amount or percentage, the registration of the latter person in terms of the rules in respect of such increase in profit entitlement shall take effect from the date of the change.

A person who wishes to cancel his registration in terms of the rules relative to a company or a trust shall inform in writing such company or the trustee of such trust, as the case may be, and the company or trustee shall de-register him by completing such forms as the Commissioner may determine and delivering the said form to the Commissioner in such manner as the Commissioner may determine. Such de-registration shall have effect upon its notification to the Commissioner.

All registrations, changes and cancellations of registrations shall be made by the relevant company

or trustee, as the case may be, upon a written request by the relevant shareholder or relevant beneficiary of the trust, as the case may be.

## **L.N. 378 of 2017 INCOME TAX ACT (CAP. 123) Qualifying Employment in Aviation (Personal Tax) (Amendment) Rules, 2017**

LN. 378 adds a rule providing that should income from a qualifying contract of employment exceed the sum of €5,000,000, no further tax would be charged on income from a qualifying contract of employment in excess of €5,000,000.

## **L.N. 379 of 2017 INCOME TAX ACT (CAP. 123) Capital Gains (Amendment) Rules, 2017**

Most of the changes introduced by LN 379 refer to the determination of the value of the acquisition of immovable property acquired causa mortis. The value of property acquired before 25 November 2003 may be adjusted in terms of the Adjustments to Declared Value of Immovable Property Rules, 2005.

A new rule, Rule 4A has been added. Rule 4A governs transfer of shares that have been admitted for trading on an alternative trading platform. In the computation of the capital gains derived by an original shareholder from a transfer of shares that is made in consequence of the admission of those shares for trading on an alternative trading platform, the amount on which tax is chargeable shall be the amount computed in accordance with the Act and the other provisions of these rules multiplied by the percentage indicated in the second column of the following table, depending on the level of public participation in the company in which the shares are held:

| Level of public participation  | Taxable portion |
|--------------------------------|-----------------|
| Less than 10%                  | 100%            |
| At least 10% but less than 15% | 75%             |
| At least 15% but less than 20% | 50%             |
| At least 20% but less than 25% | 25%             |
| 25% or more                    | 0               |

The rules incorporate definitions of the terms 'alternative trading platform', 'level of participation' and 'original shareholders'.

"Alternative trading platform" is defined as meaning an alternative trading platform, as defined in Commission Regulation (EU) No 651/2014 of 17 June, 2014, that is operated by a stock exchange recognized under the Financial Markets Act.

"Level of public participation" is defined as meaning the percentage of equity shares held by persons who are not original shareholders at the end of the day of the transfer in question.

"Original shareholder" is defined as meaning:

- (i) a person who was a shareholder of the company before any shares in that company were admitted for trading on an alternative trading platform;
- (ii) the spouse, a direct descendant or the spouse of a direct descendant of an original shareholder described in the other sub-paragraphs;
- (iii) a trust or a company, partnership, foundation or other legal person whose beneficiaries are, to the extent of more than 50%, original shareholders described in the other sub-paragraphs or which is owned and controlled, directly or indirectly, to the extent of more than 50%, by such original shareholders; or
- (iv) a shareholder in a company who acquired his shares from an original shareholder described in the other sub-paragraphs by means of a transfer causa mortis or any other transfer to which sub-rule (1) was not applicable.

The remaining amendments are mainly clarifications addressing computational issues.

#### **L.N. 9 of 2018 VALUE ADDED TAX ACT (CAP. 406) Value Added Tax Act (Amendment of Fifth Schedule) Regulations, 2018**

LN 9 adds another exempt item to the list exempt without credit items in Part Two of the Schedule. The new exemption refers to:

"(v) the letting to players of rooms or other spaces lawfully designated for the playing of poker."

#### **L.N. 22 of 2018 INCOME TAX ACT (CAP. 123) Tax Rebate (Pensioners) (Amendment) Rules, 2018**

This LN amends S.L. 123.174, Tax Rebate (Pensioners) Rules. Tax rebates are being revised upwards. The €210 rebate has been increased to €615. The €150 rebate has been increased to €405. The €45 rebate has been increased to €75. The €75 rebate has been increased to a €150 maximum rebate.



## 2. BILLS

None that we are aware of

## 3. JUDICIAL DECISIONS

### 3.1 JUDGMENTS OF THE ART

#### **Rikors Nru. 135/11VG xxx Vs Kummissarju tat-Taxxi Interni**

In this Income Tax Appeal, the ART revised an assessment by revoking a part of it and upholding the rest. The ART held that part of the assessment was time-barred. In addition, it disagreed with a part of the back duty exercise. The ART confirmed the assessment with respect to some funds that appellant singled out as being capital outside the scope of tax. According to the ART, appellant had failed to bring sufficient evidence to prove the funds originated from gifts. The judgment has been appealed from by both parties.

#### **Decree in Rik Nru. 43/16VG**

In the course of an Income Tax Appeal, the Commissioner for Revenue summoned appellant's father as its witness. Citing Article 34 (4) (i) of ITMA, appellant objected to the summons arguing that his father was a competent but not a compellable witness. Appellant argued that his father could be called as witness only by him and not by the tax authorities. The Revenue argued that a distinction had to be drawn between 'ordinary cases' and exceptional cases when family members were partners in business. According to the Revenue, in this extraordinary case, appellant's father could be compelled to testify in his capacity as appellant's business partner. Appellant remarked that the law was written in terms which left the ART with no room for manoeuvring. The ART held for appellant concluding that taxpayer's father could not be forced to testify.

#### **Rikors Nru. 161/12VG J G Ironmongery Ltd. Vs Kummissarju tat-Taxxi Interni**

Whilst confirming an assessment to duty on documents, the ART found that the Notary who published the deed had failed to remit to the Revenue the tax collected from the parties. Consequently, the ART ordered a police investigation.

#### **Rikors Nru. 231/11VG Joseph Aquilina u Rose Anne Aquilina Vs Kummissarju tat-Taxxi**

An assessment to duty was reversed because it transpired that the Architect appointed by Government had used incorrect measurements.

#### **Rikors Nru. 276/12VG David Grech Vs Kummissarju tat-Taxxi Interni**

This appeal to an assessment to duty on document was dismissed because it had been filed late. Nonetheless, the ART solicited the Revenue to take into consideration conclusions reached in a previous judgment with merits that were connected to this case.

#### **Rikors Nru. 134/12VG XXX Vs Kummissarju tat-Taxxa fuq il-Valur Mizjud Rikors Nru. 177/12VG XXX Vs Kummissarju tat-Taxxa fuq il-Valur Mizjud**

Appellant, a prospective supplier of goods and services had applied for a VAT number but because of appellant's past, the VAT Department had asked appellant for a guarantee. Appellant felt that the VAT Department's request amounted to an unreasonable imposition and filed a reference appeal. The ART dismissed the appeal because it held that, in the circumstances, the VAT Department had acted reasonably.

#### **Rikors Nru. 241/12VG XXX Vs Kummissarju tat-Taxxa fuq il-Valur Mizjud**

The ART dismissed a VAT Appeal because it held that the whole appeal was based on a suspicious unstamped document which had mysteriously appeared in the file after the VAT inspectors had examined the case.

## 3.2 LEGISLATIVE CHANGES

No important judgments.

## 3.3 JUDGMENTS OF THE CONSTITUTIONAL COURT

No important judgments.

## 3.4 JUDGMENTS OF THE COURT OF APPEAL

No important judgments.

## 3.5 JUDGMENTS OF THE CRIMINAL COURTS

### Pulizija v. Carmel Spiteri Kumpilazzjoni 943/ 10

The accused was charged for failure to pay VAT due by a company of which he was a director, company secretary and shareholder. In the acts of the proceedings it transpired that the VAT which had been allegedly misappropriated was VAT which had not been collected but merely accrued for. The Magistrate acquitted the accused on the basis that charges

for misappropriation must be based on a receipts basis (i.e. the concept of misappropriation is a criminal law concept based on the notion of 'taking'; a person could not be held to guilty of misappropriation if he did not 'take' any funds but merely accrued for them as the law bound him to do).



## 3.6 JUDGMENTS OF THE CJEU

### **C-462/16 Finanzamt Bingen-Alzey v Boehringer Ingelheim Pharma GmbH & Co. KG.**

The CJEU held that In the light of the principles defined by the Court in the judgment of 24 October 1996, Elida Gibbs (C-317/94, EU:C:1996:400, paragraphs 28 and 31), regarding the determination of the taxable amount for value added tax and having regard to the principle of equal treatment under EU law, Article 90(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the discount granted, under national law, by a pharmaceutical company to a private health insurance company results, for the purposes of that article, in a reduction of the taxable amount in favour of that pharmaceutical company, where it supplies medicinal products via wholesalers to pharmacies which make supplies to persons covered by private health insurance that reimburses the purchase price of the medicinal products to persons it insures.

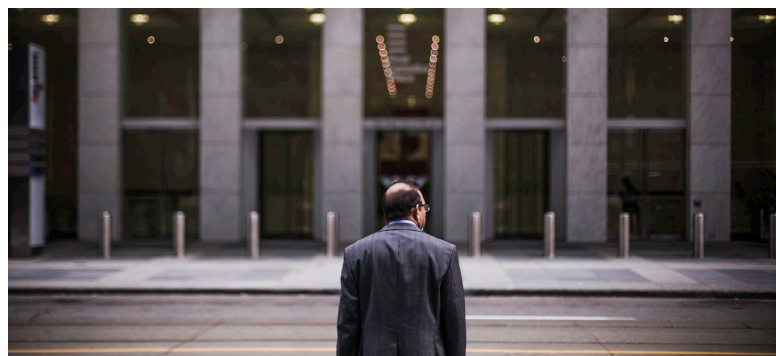
### **Case C-500/16 Caterpillar Financial Services sp. z o.o. Dyrektor Izby Skarbowej w Warszawie**

The CJEU held that the principles of equivalence and effectiveness, read in the light of Article 4(3) TEU, must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which allows a request for a refund of an overpayment of value added tax to be refused where that request was submitted by the taxable

person after the expiry of the five-year limitation period, although it follows from a judgment of the Court, delivered after the expiry of that period, that the payment of the VAT which is the subject of that request for a refund was not payable.

### **Case C-463/16 Stadion Amsterdam CV v Staatssecretaris van Financiën**

It was held that the VAT Directive must be interpreted as meaning that a single supply, such as that at issue, comprised of two distinct elements, one principal, the other ancillary, which, if they were supplied separately, would be subject to different rates of value added tax, must be taxed solely at the rate of value added tax applicable to that single supply, that rate being determined according to the principal element, even if the price of each element forming the full price paid by a consumer in order to be able to receive that supply can be identified



## 4. OTHER

### 4.1 GAMING

On 21 November 2017 the Commissioner for Revenue issued a guideline identifying those supplies related to gambling which, when supplied in Malta in terms of Part Two of the Third Schedule to the Value Added Tax Act, which are to be treated as exempt without credit. The English text of the guidance note is being reproduced hereunder:

#### *Supplies related to gambling*

With effect from 1st January, 2018, the supplies related to gambling approved by the Minister

for the purposes of Item 9 of Part Two of the Fifth Schedule to the Value Added Tax Act, and which (in addition to Government lotto and lotteries and the supply of agency services related thereto), shall therefore be exempt without credit for Malta VAT purposes, are the following:

- i. The provision of any facilities for the placing of bets and wagers, including the services of book makers, betting exchanges and any equivalent facilities. The 'placing of bets and wagers' refers to gambling on the outcome of an event, which outcome is

unknown at the time of the placing of the bet or wager. The term 'event' includes, but is not limited to: a sporting event, both real life or virtual; a competition; a lottery; the performance of an index; and a natural phenomenon. For the purposes of this guideline, 'placing of bets and wagers' shall exclude gambling on the outcome of: (a) casino-type table games such as blackjack, poker and roulette; and (b) any games of chance, the outcome of which is determined by a random generator.

ii. The granting of the right to participate in a lotto or lottery, including Grand Lottery, Super 5, scratch cards, keno and any other lottery-type games;

iii. The granting of the right to participate in a bingo game; iv. The provision to players of devices or equipment for the playing of casino-type games of chance, the outcome of which is determined by a random generator, including tables for the playing of roulette, blackjack, baccarat, poker when played against the house, and slot machines. The terms "devices or equipment" refers to game tables, machines and other similar objects which are physically located in such premises or location, including a studio, which is licensed, or otherwise recognised, by the Malta Gaming Authority, whether accessed by the player physically or remotely. For the avoidance of doubt, "devices or equipment" excludes "amusement machines" as defined in Chapter 438 of the Laws of Malta, and "remote gaming equipment" as defined in S.L. 438.04; and

v. Supplies which are strictly required, related and essential to, and which form part of an underlying gambling or betting transaction falling within paragraphs (i) - (iv) above, as shall from time to time be determined by the Malta Gaming Authority. The Commissioner may substitute, alter or withdraw these guidelines at any time.

## **1. Taxable value of gambling and betting services.**

### **1.1 Consideration**

For the purposes of determining the taxable value of gambling and betting services that fall within the scope of article 4 of the Value Added Tax Act, the term "consideration" shall be construed as follows:

- (i) Where the supplier receives a commission or participation fee (typically referred to as the 'rake'), the said commission or fee (including when the commission/fee is settled using bonus credit) shall be regarded as the consideration for the service, which shall be deemed to be inclusive of the VAT chargeable under the Value Added Tax Act.
- (ii) In all other cases, the consideration received

by the operator shall, for the purposes of determining the taxable value, be an amount equivalent to the revenue of the supplier, i.e. the total stakes/bets placed by players (including bets placed using bonus credit) less the winnings and other amounts paid out to players in connection with that bet (including bonus credit comprised within the bets placed - refer to section 1.2(ii) below). The consideration determined as aforesaid shall be deemed to be inclusive of the VAT chargeable under the Value Added Tax Act.

### **1.2 Exclusions**

(i) Any amount of the commission or fee received by a supplier, or of the stakes/bets placed by the player, in relation to supplies which fall within the scope of article 4 of the Value Added Tax Act, which is immediately allocated by the supplier to a jackpot pool is to be deducted for the purposes of determining the taxable value.

(ii) Bonuses and other incentives which are provided by the supplier are considered to constitute a rebate or price reduction allowed by the supplier to the customer in terms of item 3 of the Seventh Schedule of the Value Added Tax Act, and as such should be excluded from the taxable value of the supply when such bonuses have been included within the consideration received by the supplier for the purposes of 1.1 above, by the aggregation of the amount of that bonus to the winnings and other amounts paid out to players in connection with that bet.

## **2. Periodic determination of the taxable value**

In principle, the taxable value of a supply is to be determined on a transaction per transaction basis. However, the VAT Department acknowledges the particular nature of gambling and betting services, and the practical difficulties that could arise in the application of this principle. The taxable value of those gambling and betting services falling within the scope of article 4 of the Value Added Tax Act shall be determined on the last day of a given tax period, by reference to the aggregate taxable value of transactions during that tax period. In other words:

- (i) Where the supplier receives a commission or participation fee, the taxable value shall be the overall result of the commissions or fees from supplies falling within the scope of article 4 of the Value Added Tax Act generated during a VAT period, less any permitted deductions for that same period, as determined in accordance with section 1 above;
- (ii) In all other cases, the taxable value shall be the revenue of the supplier determined in accordance

with section 1.1(ii) above deriving from supplies falling within the scope of article 4 of the Value Added Tax Act generated during a VAT period, less any permitted deductions for that same period, as determined in accordance with sections 1.1(ii) and 1.2 above. Should, in a given VAT period, the taxable value determined pursuant to these guidelines result in a negative figure, that negative amount shall be carried forward to the subsequent VAT period or periods in succession and offset against the taxable value as determined pursuant to these guidelines for the subsequent VAT period or periods in succession. For the avoidance of doubt, a negative figure shall in no way be construed as an entitlement of the supplier to any refund of, or adjustment to, output VAT paid, or reported, in any prior period.

### 3. Issuance of fiscal receipts

A person who makes supplies of gambling and betting services that fall within the scope of article 4 of the Value Added Tax Act and which are not exempt pursuant to item 9 of Part Two of the Fifth Schedule to the Value Added Tax Act is exempt from the obligation to issue fiscal receipts in terms of article 51 and the Thirteenth Schedule to the Value Added Tax Act. These guidelines shall be applicable to the determination of the taxable value of gambling and betting services as from 1st January, 2018, and are restricted to the determination of the taxable value for the purposes of the Value Added Tax Act.

## 4.2 AMENDMENTS TO VAT DIRECTIVE

On 5 December 2017 Council Directive 2017/2455 amending several articles in the VAT Directive was published. Council Directive 2017/2455 amends rules on place of supply governing electronically supplied services (in the case of supplies to a non-taxable person where that person is established, has his permanent home or usually resides). The Directive changes the rules on distance sales too. Some of the changes must be adopted by the Member States by 1st January 2019 while other changes must be brought into force by 1st January 2020/21.

On 5 December 2017 Council Regulation 2017/2454 providing for measures on administrative cooperation and exchange of information in the VAT area was published. Parts of the Regulation must be transposed by 2021.

On 5 December 2017 Council Regulation 2017/2459 providing for simplifications to the requirement to prove customer's location for the purposes of the place of supply rules was published. In certain cases involving electronically supplied services it will be presumed that the customer is established, has his permanent address or usually resides at the place of installation of his fixed land line. In cases involving services supplied through mobile networks, it is presumed that the location of the customer is the country identified by the mobile country code of his SIM card.

## 4.3 THE DIGITAL ECONOMY

On 5 December 2017 the EU Council has agreed on EU input to discussions at international level on the taxation of profits in the 'digital economy'. In its conclusions, the Council calls for close cooperation with the OECD and other international partners. The Council suggests that the concept of 'virtual permanent establishment' be explored, together

with amendments to the rules on transfer pricing and profit attribution. The OECD is currently analysing business models of the digital economy. It is preparing an interim report to the G20, scheduled for April 2018. As concerns action at EU level, the Council calls on the Commission to assess thoroughly all options mentioned in the conclusions, including possible temporary measures'

## 4. OTHER

### 4.4 MALTA, REDUCED RATE OF VAT

On 10 January 2018 the European Commission, by way of derogation from Article 287(13) of Directive 2006/112/EC, authorised Malta to exempt from VAT taxable persons whose economic activity consists principally in supplies of services with a high value added (low inputs) and whose annual turnover is no

higher than EUR 20 000. The Commission's pronouncement shall apply from 1 January 2018 until 31 December 2020, or until the entry into force of a directive amending Articles 281 to 294 of Directive 2006/112/EC governing the special scheme for small enterprises, whichever date is earlier.

### 4.5 FLEXIBILITY, VAT RATES

On 18 January 2018 the European Commission proposed new rules to give Member States more flexibility to set VAT rates and to create a better tax environment to help SMEs flourish. Member States can currently apply a reduced rate of as low as 5% to two distinct categories of products in their country. A number of Member States also apply specific derogations for further reduced rates. In addition to a standard VAT rate of minimum 15%, Member States would now be able to put in place two separate reduced rates of between 5% and the standard rate chosen by the Member State, one exemption from VAT (or 'zero rate'); and one reduced

rate set at between 0% and the reduced rates. The current, complex list of goods and services to which reduced rates can be applied would be abolished and replaced by a new list of products (such as weapons, alcoholic beverages, gambling and tobacco) to which the standard rate of 15% or above would always be applied. To safeguard public revenues, Member States will also have to ensure that the weighted average VAT rate is at least 12%. The new regime also means that all goods currently enjoying rates different from the standard rate can continue to do so.

### 4.6 IRD GUIDELINE

In December 2017, the Revenue issued the following guidance note on the duty treatment of the Acquisition / transfer of UCA Property. The Guidance Note provides that in the case of a transfer intervivos of immovable property situated within an urban conservation area or scheduled by the Planning Authority in terms of article 57 of the Development Planning Act or any Act which may be substituted therefor, the duty otherwise chargeable in terms of the Duty on Documents and Transfers Act shall be chargeable at the rate of two euro and fifty cents on every one hundred euro or part thereof of the amount or value of the consideration for the transfer of the property or of the value of the property, whichever is the greater.

The reduced rate of duty applies to a transfer inter vivos of immovable property when -

(i) the transfer is made on or after the 10th October 2017 but before the 1st January 2019 to a person who does not require a permit by the Minister for the

purposes of the Immovable Property (Acquisition by Non-Residents) Act.

(ii) together with the notice referred to in article 51 of the Duty on Documents and Transfers Act, there shall be submitted to the Commissioner for Revenue a certificate issued by the Planning Authority certifying that the property falls within a development area known as an Urban Conservation Area" (UCA), or is a scheduled property in accordance with article 57 of the Development Planning Act or any Act which may be substituted therefor.

(iii) no relief was claimed under this scheme in respect of any previous transfer of the said property.  
(iv) no relief is claimed under article 32C of the Duty on Documents and Transfers Act.

The person who acquires the property must submit to the Commissioner for Revenue any information, forms and documentation that the Commissioner for Revenue may require by means of a notice in writing within the period, not being less than thirty days, specified in the notice.

The relief granted under this Scheme shall be forfeited in the case of a breach of the condition referred to above or if at any time during the period of ownership PA notifies the Commissioner for Revenue that illegal development has taken place on any part of the property and / or the property is not regenerated according to the characteristics of the area or restoration of the said property.

When the relief from duty under this Scheme is forfeited, the reduced rate of duty shall not apply and the duty chargeable on the transfer shall be the duty that would have been chargeable in accordance with the provisions of the Duty on Documents and Transfers Act had the relief under this Order not been claimed and availed of. Provided that the duty so chargeable shall not be less than the duty already paid when the property was acquired

In the event that duty on a transfer becomes chargeable, the excess, if any, of the amount of the duty so chargeable over the amount of duty that was paid on the deed of that transfer shall become payable to the Commissioner by the person to whom the transfer was made:

- (a) if the person who acquires the property fails, without reasonable excuse, to submit to the Commissioner for Revenue any information, forms or documentation requested in a notice in writing within the period, not being less than thirty days, specified in that notice, immediately upon the expiration of that period;
- (b) if PA notifies the Commissioner for Revenue that illegal development has taken place on any part of the property and the property is not regenerated according to the characteristics of the area or restoration of the said property, on the date PA issues such notification.

4.7  
**TAX POLICIES IN THE  
EUROPEAN UNION 2017**

The Commission has just published the above. The Survey 2017 presents the state of play of taxation in the Member States. The 104-page report is divided in 3 chapters. Chapter 1 provides a brief overview of recent taxation trends and a description of what makes a fair and efficient tax system. Recognizing that challenges are country-specific, Chapter 2 gives an overarching picture of how national taxation systems perform according to key indicators in the areas of investment, employment, tax compliance and inequality. Chapter 3 reviews most recent tax reforms in EU countries, ending by drawing some general tax policy options for the EU as a whole.

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