



MALTA

**Fit-Tribunal ta' Revizjoni Amministrattiva
Magistrat
Dr.Gabriella Vella B.A., LL.D.**

Rikors Nru. 149/12VG

XXX

Vs

Kummissarju tat-Taxxa fuq il-Valur Mizjud

Illum 9 ta' Mejju 2017

It-Tribunal,

Ra r-Rikors ipprezentat mis-socjetà XXX fl-24 ta' Frar 2011 quddiem il-Bord ta' l-Appelli dwar it-Taxxa fuq il-Valur Mizjud, in segwitu trasferit quddiem dan it-Tribunal, permezz ta' liema a tenur ta' l-Artikolu 44(c) tal-Kap.406 tal-Ligijiet ta' Malta, irreferiet l-kwistjoni *are the services of cash processing which the appellant proposes to provide, consisting of the authentication, sorting, counting and packaging of bank notes and coins as described in the attached Doc. C, to be treated as exempt without credit supplies in terms of Part Two of the Fifth Schedule to the VAT Act?* u titlob li jigi determinat illi *the services of cash processing which the appellant proposes to provide, consisting of the authentication, sorting, counting and packaging of bank notes and coins as described in the attached Doc. C, to be treated as exempt without credit supplies in terms of Part Two of the Fifth Schedule to the VAT Act;*

Ra d-dokumenti annessi mar-Rikors promotur;

Ra d-dokumenti esebiti mis-socjetà Rikorrenti markati Dok. "G" u Dok. "H" permezz ta' Nota pprezentata fit-13 ta' Gunju 2012 a fol. 10 sa' 13 tal-process;

Ra r-Risposta tad-Direttur Generali (Taxxa fuq il-Valur Mizjud) permezz ta' liema jopponi ghat-talba tas-socjetà Rikorrenti u jitlob li l-istess tigi michuda, bl-ispejjez kontra taghha, stante li l-provvista tas-servizzi indikati mis-socjetà Rikorrenti u li hija tippretendi li hi ezenti minghajr kreditu, hija fil-fatt taxxabbli u dana billi: (a) is-servizz in kwisjtoni ma huwiex *specific and essential* ghall-provvista ta' servizzi bankarji; (b) is-servizz jista' u qieghed jinghata anki f'diversi hwienet ta' negozju taxxabbli b'makni illi jghoddu l-flus, u ohrajn jippakkeggaw

il-flus tal-karti u muniti; (c) jekk jitqies li dawn il-provvisti huma ezenti minghajr kreditu, ikun qieghed jinholoq tghawwig fil-kompetizzjoni ghal ditti li jistghu jwettqu dan is-servizz u li japplikaw it-taxxa fuq il-valur mizjud mal-prezz tal-provvista ta' dawn is-servizzi; u (d) it-twettiq tal-Kap.406 tal-Ligijiet ta' Malta huwa mholti f'idejn il-Kummissarju tat-Taxxi mill-Legislatur kif espress fl-Artikolu 3 tal-Kap.406 tal-Ligijiet ta' Malta u l-opinjoni tal-Kummissarju tal-Pulizija u dik ta' l-MFSA ma jistghux jghelbu awtomatikament l-opinjoni tal-Kummissarju tat-Taxxi li jrid iwettaq il-provvedimenti tal-Kap.406 tal-Ligijiet ta' Malta li huwa Ligi speċjali;

Ra d-dokumenti annessi mar-Risposta tad-Direttur Generali (Taxxa fuq il-Valur Mizjud) a fol. 15 sa' 24 tal-process;

Ra l-affidavit ta' Mark Gatt, rapprezentant tas-socjetà Rikorrenti, u d-dokumenti annessi mieghu esebiti mis-socjetà Rikorrenti permezz ta' Nota ipprezentata fid-29 ta' Ottubru 2012 a fol. 29 sa' 50 tal-process;

Sema' x-xhieda ta' Mark Gatt¹ u ta' Roderick Sultana² moghtija waqt is-seduta tal-5 ta' Frar 2013;

Ra li b'Digriet moghti fid-9 ta' Mejju 2013³, it-Tribunal ordna l-isfilz tax-xhieda moghtija minn Frank Borg in rappresentanza tad-Direttur Generali (Taxxa fuq il-Valur Mizjud) waqt is-seduta tad-9 ta' Mejju 2013;

Ra n-Nota ta' Sottomissjonijiet tas-socjetà Rikorrenti pprezentata fid-29 ta' Mejju 2013 a fol. 67 sa' 74 tal-process u ra d-dokumenti annessi ma' l-imsemmija Nota a fol. 75 sa' 109 tal-process;

Ra n-Nota Responsiva tad-Direttur Generali (Taxxa fuq il-Valur Mizjud) ipprezentata fit-18 ta' Gunju 2013 a fol. 112 sa' 113 tal-process;

Sema' t-trattazzjoni orali finali da parte tad-difensuri tal-partijiet kontendenti;

Ra l-atti kollha tal-kawza;

Ikkonsidra:

In forza ta' skrittura privata datata 30 ta' Settembru 2010⁴, is-socjetà Rikorrenti dahlet fi ftehim mal-Bank Centrali ta' Malta sabiex verso konsiderazzjoni ta' €74,000 fis-sena *inclusive of VAT if this is applicable, inter alia* tipprovdi s-segweni servizzi: (a) *storage of about one hundred (100) million euro coins, plus or minus five (5) million euro coins, i.e. up to a maximum of one hundred and five (105) million euro coins of various denominations;* (b) *provision of facilities for the credit institutions to withdraw and deposit euro coin bags;* (c)

¹ Fol. 52 sa' 54 tal-process.

² Fol. 55 sa' 60 tal-process.

³ Fol. 63 tal-process.

⁴ Fol. 33 sa' 45 tal-process.

authentication according to specific procedures and standards of all deposited euro coins, amounting to about four hundred thousand coins (400,000) per month, plus or minus 50%, but not exceeding four million and eight hundred thousand (4,800,000) coins annually. Should the deposited coins exceed this quantity, they are to be processed nevertheless, and the annual fee due to XXX as mentioned in Clause 5.1 should be adjusted pro rata; (d) counting and packaging of coins into rolls, in readiness for reissue, within twenty days from date of deposit; and (e) daily detailed reporting to the Bank of the activities undertaken to be submitted on same day basis as specified in Annex 15.

Il-ftehim in kwistjoni gie emendat in forza ta' ftehim ulterjuri datat 1 ta' Awwissu 2011⁶ fejn fost affarijiet ohra s-socjetà Rikorrenti u l-Bank Centrali ta' Malta ftehm li *the name of the contract – li originarjament kien contract for the provision of euro coin services - is replaced by the following “Agency Contract for the provision of Euro Coin Services”*, li l-Klawsola 2.4 (c) tal-ftehim originali, hawn appena citata, tigi sostitwita bis-segwenti Klawsola numerata mill-gdid bhala 2.3(c) – *authentication according to specific procedures and standards of all deposited euro coins, amounting to about four hundred thousand coins (400,000) per month, plus or minus 50%. Should the deposited coins exceed this quantity, they are to be processed nonetheless* u fid-dawl ta' tali emenda giet emendata wkoll il-Klawsola 5.1 li tittratta dwar il-hlas dovut lis-socjetà Rikorrenti ghas-servizzi prestati minnha fis-sens illi *in consideration of the Services provided in terms of Clause 2.3(b), (c) [as amended above] (d) and (e), the Bank shall pay XXX the rate of €0.0075 per coin processed for the first four million and eight hundred thousand (4,800,000) coins processed annually and the rate of €0.0070 per coin processed for amounts of coins in excess of four million and eight hundred thousand (4,800,000) coins annually. The above agreed upon rates are to be considered as inclusive of VAT if this is applicable.*

Min-Nota ta' Sottomissjonijiet tas-socjetà Rikorrenti jirrizulta li l-istess socjetà tippretendi li l-provvista ta' servizzi a tenur ta' l-imsemmi ftehim hija ezenti bla kreditu specifikatament ai termini ta' l-Artikolu 3(3) u (4) tat-Tieni Taqsima tal-Hames Skeda tal-Kap.406 tal-Ligijiet ta' Malta, ossia *qua: (3) operazzjonijiet, inkluz negozjar, dwar kontijiet ta' depozitu u korrenti, hlasijiet, trasferimenti, djun, cheques u strumenti negozjabbli ohra, izda eskluż il-gbir u l-factoring ta' djun; (4) operazzjonijiet, inkluz negozjar, dwar flus li jiccircolaw, karti tal-flus u muniti li normalment jintuzaw bhala flus validi.* Id-Direttur Generali (Taxxa fuq il-Valur Mizjud), illum Kummissarju tat-Taxxi, però ma jaqbilx ma' tali pretensjoni u jqis li s-servizzi prestati a tenur tal-ftehim mal-Bank Centrali ta' Malta ma humiex ezenti mill-VAT.

Mill-iskambju ta' korrisondenza bejn Dunstan Magro ghan-nom tas-socjetà Rikorrenti u rapprezentant tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud⁷, liema korrisondenza effettivament tipprecedi l-konkluzjoni attwali tal-ftehim bejn is-socjetà Rikorrenti u l-Bank Centrali ta' Malta, jirrizulta li l-posizzjoni tal-

⁵ Klawsola 2.4 tal-ftehim.

⁶ Fol. 46 sa' 48 tal-process.

⁷ Esebta flimkien mar-Rikors promotur.

Kummissarju kienet fis-sens illi *although the financial institution* [ossia s-socjetà Rikorrenti] *is licensed under the FIA 1994, the operation of counting, sorting and packing of case* [recte: coins] *is not the kind of service which is part of the core banking activity – it could be done for other trade*⁸, liema posizzjoni giet imtennija b'e-mail ohra minghand Alfred Caruana Pettett, in rappreżentanza tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud, lil Dunstan Magro datata 5 ta' April 2010 u baqghet hekk invarjata, kif jirrizulta minn e-mail ulterjuri ta' Alfred Caruana Pettett datata 20 ta' Dicembru 2010, in segwitu għall-ittra ta' Dottor Antoine Fiott lill-Kummissarju tat-Taxxa fuq il-Valur Mizjud datata 24 ta' Mejju 2010.

Il-posizzjoni tad-Direttur Generali (Taxxa fuq il-Valur Mizjud) tinsab esposta f'iktar dettal fir-Risposta tiegħu għar-Rikors tas-socjetà Rikorrenti w' appuntu minnha jirrizulta s-segwent: *l-esponent qiegħed jibbaza l-argument illi s-servizz, biex ikun ezenti mingħajr kreditu, irid ikun “specific and essential” għall-provvista ta' servizzi bankarji skond diversi decizjonijiet tal-Qorti tal-Gustizzja Ewropea li dejjem sostnew illi eccezzjonijiet għandhom jigu interpretati strettament. Fil-kuntest tat-talbiet tar-rikorrenti, il-verifika, l-għadd tal-karti tal-fuls u tal-muniti, l-ippakkeggjar tagħhom ma huwiex essenzjali għall-provvista ta' tranzazzjonijiet ta' natura bankarja ezenti mingħajr kreditu, għaliex dawn jistghu jsiru minn persuni jew ditti li mhumiex licenzjati biex jagħtu servizzi ta' natura bankarja skond licenzja mahruga mill-MFSA; il-makkinarju li jivverifika, jghodd, u jippakkja karti tal-flus u muniti jista' jintuza minn persuni u ditti li mhumiex persuni li jahdmu esklużivament fl-ambitu ta' servizzi bankarji ezenti bi kreditu. Dan johrog minn decizjoni recenti tal-Bord ta' l-Appell ta' l-Eko-Kontribuzzjoni (Kap.473) – kaz numru 3/2011, *Inserv Ltd.* – fejn hemm deskrizzjoni dettaljata ta' apparat li jista' jagħmel dan ix-xogħol ... u li mkien ma huwa indikat tali apparat huwa għall-uzu esklussiv ta' ditti bankarji jew li jagħtu servizzi lilhom. ... l-esponent ihossu konfortat ukoll minn interpretazzjoni li l-HMRC jagħti f'kazi simili, u qiegħed jehmez kopja ta' l-interpretazzjoni ta' l-HMRC dawr il-punti fir-rikors bhala Dok. 2. Il-parti rilevanti hija dik mill-paragrafu 2.5.2 u speċjalment dak li hemm fil-pagna 24 fejn dan is-servizz huwa meqjus mill-HMRC bhala simili għall-provvista ta' ikel fil-landi*⁹.

Min-Nota Responsiva tad-Direttur Generali (Taxxa fuq il-Valur Mizjud) jidher li tul is-smigh tal-proceduri l-istess Direttur Generali varja l-posizzjoni minnu originarjament assunta fil-konfront tal-pretensjonijiet tas-socjetà Rikorrenti u spustaha għal fuq binarju iehor.

In effetti fejn għall-ewwel il-kontestazzjoni principali tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud kienet inkwadrata fuq **il-kwalifika tal-persuna li tippresta s-servizzi in kwistjoni**, tant illi specifikatament issottometta li *l-verifika, l-għadd tal-karti tal-fuls u tal-muniti, l-ippakkeggjar tagħhom ma huwiex essenzjali għall-provvista ta' tranzazzjonijiet ta' natura bankarja ezenti*

⁸ E-mail ta' Alfred Caruana Pettett datat 30 ta' Marzu 2010 formanti parti minn Dok. "B" anness mar-Rikors promotur.

⁹ Para. 4 sa' 7 tar-Risposta tad-Direttur Generali (Taxxa fuq il-Valur Mizjud).

minghajr kreditu, ghaliex dawn jistghu jsiru minn persuni jew ditti li mhumieix licenzjati biex jaghtu servizzi ta' natura bankarja skond licenzja mahruqa mill-MFSA; il-makkinarju li jivverifika, jghodd, u jippakkja karti tal-flus u muniti jista' jintuza minn persuni u ditti li mhumieix persuni li jahdmu eskluzivament fl-ambitu ta' servizzi bankarji ezenti bi kreditu¹⁰, fin-Nota Responsiva d-Direttur Generali **jiffoka iktar fuq in-natura tas-servizz innifsu milli fuq il-persuna li tkun qed tippresta dak is-servizz**. Bhala fatt, fir-rigward jissottometti li l-kontroparti qed issostni li l-attivitajiet ta' XXX Financial Services Limited huma ezenti taht il-paragrafi (3) u (4) tal-Partita 3 tat-Taqsima Tnejn tal-Hames Skeda illi huma it-trasposizzjoni tal-paragrafi 135(d) u 135(e) tad-Direttiva tal-Kunsill 2006/112/EC. Dawn il-paragrafi jipprovdu ghall-ezenzjonijiet dwar is-segwent: (d) transazzjonijiet, inkluz negozjar, li jikkoncernaw kontijiet ta' depozitu u kontijiet kurrenti, pagamenti, trasferimenti, debiti, cekkijiet u strumenti ohrajn negozjabbli, imma eskluza l-kollezzjoni tad-debitu; (e) transazzjonijiet, inkluz negozjar, li jikkoncerna l-munita, karti tal-flus u muniti wzati bhala valuta legali, bl-ecezzjoni ta' oggetti tal-kollezzjoni, jigifieri, deheb, fidda u muniti ohrajn tal-metall jew karti tal-flus li normalment m'humiex uzati bhala valuta legali jew muniti b'interess numismatiku. ... illi dawn l-ezenzjonijiet huma specifi ghal dawn it-tranzazzjonijiet u/jew negozjar partikolari fejn, normalment, xi istituzzjoni taghti servizz bankarju jew finanzjarju fejn is-servizz li jinghata jrid ikun bhala tali, cioè, jekk wiehed qed jitkellem fuq **transazzjoni li tikkoncerna l-munita, karti tal-flus u muniti wzati bhala valuta legali**¹¹, il-flus iridu jkun trattati bhala "flus" u mhux bhal kwalunkwe oggett tangibbli iehor. Tant hu hekk, illi l-ligi teskludi mill-ezenzjoni muniti li ma humiex uzati bhala valuta legali. Illi, biex wiehed jaghti ezempju konkret, transazzjoni li tikkoncerna munita jew flus tfisser meta jsir negozju fihom bhal meta wiehed jixtri jew isarraf flus ghal raguni ta' kambju ecc..., fejn allura l-bank jiccargja 'selling rate' u possibilment xi charges ohra jew, meta jsiru transazzjonijiet u negozjar fis-swieq tad-derivatives tal-flus bhal meta jsir negozju fuq options u futures ta' flus. Illi wiehed ma jridx jinsa li l-ligi qed tipprovdi ghal ezenzjonijiet fuq **'transazzjonijiet, inkluz negozjar'**¹². Illi wiehed jifhem li il-kelma 'transazzjoni' Transaction tfisser meta qed tixtri jew tbiegh; taghmel business deal, u mhux kwalunkwe servizz li wiehed jista' jimmagina ... - 'an instance of buying and selling'. Illi anke l-ligi taghmel differenza ghax meta trid tghid 'supply of a service' u meta trid tghid 'transaction'. ... XXX Financial Services Limited qieghda taghmel xi negozju dwar flus mal-Bank Centrali? Zgur illi **counting, sorting and packaging of coins for a consideration**¹³ mhux transazzjoni/negozju fi flus. ... kull ma qed taghmel XXX Financial Services Limited huwa, sabiex il-Bank Centrali jkun jista' jaghti s-servizzi lill-klijenti tieghu, XXX Financial Services Limited giet inkarigata mill-istess Bank Centrali sabiex tipprovdi l-infrastruttura mehteiga u s-servizzi ta' logistika sabiex il-Bank Centrali ikun jista' jipprovdi s-servizz tieghu. ... kif inhu imsemmi fil-kuntratt li gabet in-naha l-ohra, il-Bank Centrali mhu ser ihallas ta' ebda

¹⁰ Para. 4 tar-Risposta tad-Direttur Generali (Taxxa fuq il-Valur Mizjud).

¹¹ Enfasi tad-Direttur Generali (Taxxa fuq il-Valur Mizjud).

¹² Enfasi tad-Direttur Generali (Taxxa fuq il-Valur Mizjud).

¹³ Enfasi tad-Direttur Generali (Taxxa fuq il-Valur Mizjud).

servizz bankarju jew finanzjarju konsistenti f'transazzjonijiet jew negozjar imsemmija fl-ezenzjoni. ... il-kontro-parti qed tghid ukoll illi *XXX Financial Services Limited* izzomm **'accounts for the banks and makes credit and debit entries in those accounts to record the deposits and withdrawals'**¹⁴. Mhux bilfors taghmel hekk! dan mhux xejn hlief rendikont ta' x'boroz ikunu gabu u x'boroz ikunu hargu l-banek klijenti tal-Bank Centrali, jigifieri **ezercizzju ta' stock control**¹⁵. Izda b'hekk ma jfissirx illi dawn ghandhom xi kont bankarju ma' *XXX Financial Services Limited*. Dan ifisser li lill-appellat qed jirrizultalu l-invers ta' dak li qed tallega s-socjetà appellanti stante li m'hijiex attività li taqa' taht l-ezenzjoni prevista fil-Hames Skeda ghax ma hemm l-ebda transazzjoni jew noegzjar mill-Bank Centrali.

Wara li kkonsidra l-provi prodotti, is-sottomissjonijiet avanzati u l-gurisprudenza tal-Qorti tal-Gustizzja Ewropea esebita, it-Tribunal hu tal-fehma li s-socjetà Rikorrenti gustament issostni li s-servizzi minnha prestati taht il-ftehim li ghandha mal-Bank Centrali ta' Malta huwa servizzi ezenti bla kreditu in kwantu jinkwadraw taht l-Artikolu 3(3) u (4) tat-Tieni Taqsima tal-Hames Skeda tal-Kap.406 tal-Ligijiet ta' Malta.

Jibda biex jigi osservat li huwa principju fundamentali li *VAT applies to all supplies of goods and services effected for consideration within the territory of a Member State by a taxable person. Dispensation is the exception and, like every mitigation of the obligation to pay tax, must be restrictively interpreted. On the contrary, any exclusion from an exception, in so far as it implies a return to the general rules, escapes the principle of strict interpretation.* Dan il-principju gie enuncjat (jew ahjar ribadit) mill-Advocate General Damaso Ruiz-Jarabo Colober fl-Opinjoni moghtija fit-12 ta' Lulju 2001 fil-kuntest tar-referenza preliminari fl-ismijiet **Commissioners of Cutoms & Excise and CSC Financial Services Ltd, C-235/00**. Fl-imsemmija Opinjoni l-Advocate General kompli josserva li *nor should the fact be overlooked that the provision of which the High Court seeks and interpretation [f'dak il-kaz l-Artikolu 13B(d)(5) tal-Sixth VAT Directive – li llum tinsab trasposta fl-Art.135(f) tal-Council Directive 2006/112/EC] embodies an economic incentive with a negative tinge, which is defined exclusively by reference to criteria of an objective nature. It is the transactions which are exempt, not the persons who carry them out, even if the latter are the beneficiaries*¹⁶.

It-tifsira jew ahjar l-elucidazzjoni ta' din l-osservazzjoni ta' l-Advocate General tirrizulta b'mod car mid-decizjoni tal-Qorti tal-Gustizzja Ewropea wara referenza preliminari fl-ismijiet **Sparekassernes Datacenter (SDC) u Skatterministeriet C-2/95** moghtija fil-5 ta' Gunju 1997, ghal liema decizjoni ghamlet referenza s-socjetà Rikorrenti fin-Nota ta' Sottomissjonijiet taghha u hija decizjoni altru milli ghal kollox irrelevanti ghall-kaz in ezami kif pretiz mid-Direttur Generali (Taxxa fuq il-Valur Mizjud) fin-Nota Responsiva tieghu.

¹⁴ Enfasi tad-Direttur Generali (Taxxa fuq il-Valur Mizjud).

¹⁵ Enfasi tad-Direttur Generali (Taxxa fuq il-Valur Mizjud).

¹⁶ Enfasi tat-Tribunal.

F'dik id-decizjoni hi u tittratta l-kwezit dwar *the persons effecting the transactions concerned and the way in which those transaction are effected*, nascenti mir-referenza li saritilha, il-Qorti tal-Gustizzja Ewropea osservat illi ***the transactions exempted under points 3 and 5 of Article 13B(d) are defined according to the nature of the services provided and not according to the person supplying or receiving the services***¹⁷. Those provisions make no reference to that person. The fact that the identity of the persons effecting the transactions is irrelevant in determining the transactions exempt under points 3 and 5 of Article 13B(d) is confirmed by points 1 and 2 of Article 13B(d), which refer to 'the persons granting it' and to 'the person who is granting the credit'. In paragraph 13 of its judgment in Case C281/91 Muys' en De Winter's Bouw-en Aannemingsbedrijf [1993] ECR I-5405 the Court stated that where the identity of the lender or the borrower is not specified, the expression 'the granting and the negotiation of credit' in point 1 of Article 13B(d) of the Sixth Directive is in principle sufficiently broad to include credit granted by a supplier of goods in the form of deferral of payment. The Court also considered that the wording of that provision in no way suggested that the scope of that provision was limited only to loans and credits granted by banking and financial institutions. As regards, more specifically, the legal form of the company supplying or receiving services, referred to in the sixth question, it must be concluded that, ***if the identity of the persons involved is immaterial in determining whether the service in question is exempt from VAT under points 3 and 5 of Article 13B(d), the type of legal person represented by the operators concerned is a fortiori immaterial***¹⁸. ... Fl-imsemmija decizjoni l-Qorti osservat ukoll illi ***the exemption provided for by points 3 and 5 of Article 13B(d) is not subject to the condition that the service be provided by an institution which has a legal relationship with the end customer. The fact that the transaction covered by those provisions is effected by a third party but appears to the end customer to be a service provided by the bank does not preclude exemption for the transaction***¹⁹.

Ghalkemm is-servizzi mertu ta' l-imsemmija decizjoni huma differenti mis-servizzi mertu ta' dawn il-proceduri, it-Tribunal huwa tal-fehma li l-principji hemm enuncjati japplikaw ghall-kaz in ezami wkoll.

Stabbilit ghalhekk li *the identity of the persons involved is immaterial in determining whether the service in question is exempt from VAT* taht l-Artikolu 13(B)(d) tal-Sixth Vat Directive (illum l-Artikolu 135 tal-Council Directive 2006/112/EC) u konsegwentement taht l-Artikolu 3 tat-Tieni Taqsima tal-Hames Skeda tal-Kap.406 tal-Ligijiet ta' Malta, u li ma hemmx il-htiega li jkun hemm relazzjoni guridika diretta bejn min qed jippresta s-servizz u l-end user (fil-kaz in ezami l-klijenti tal-Bank Centrali ta' Malta), jehtieg issa jigi determinat jekk is-servizzi li s-socjetà Rikorrenti ghandha tippresta ai termini tal-ftehim milhuq mal-Bank Centrali ta' Malta jikkostitwixxux ***transactions*** ai termini ta' l-

¹⁷ Enfasi tat-Tribunal.

¹⁸ Enfasi tat-Tribunal.

¹⁹ Enfasi tat-Tribunal.

esenzjonijiet in kwistjoni, ossia l-Artikolu 3(3) u (4) tat-Tieni Taqsima tal-Hames Skeda tal-Kap.406 tal-Ligijiet ta' Malta. It-Tribunal josserva li huwa qed juza t-terminu *transactions* appozitament fid-dawl tal-fatt li l-Kummissarju tat-Taxxi jishaq fuq il-fatt li *ictu oculi* li *fil-verzjoni bil-Malti tal-Kap.406 il-kelma "transazzjonijiet" imsemmija fid-Direttiva tal-Kunsill, kif ukoll kif korrettament trasposta fil-ligi ta' Malta fil-verzjoni bl-Ingiliz bhala "transactions", din giet trasposta fil-ligi ta' Malta fil-verzjoni bil-Malti bhala "Operazzjonijiet"*²⁰.

A tenur tal-gurisprudenza tal-Qorti tal-Gustizzja Ewropea in materia – senjatament dwar l-eenzjonijiet kontemplati fl-Artikolu 13B(d)(3) u (5) tal-Sixth Vat Directive (illum Artikolu 135 tal-Council Directive 2006/112/EC) – *in order to be characterized as exempt transactions for the purposes of Article 13B(d)(3) and (5), the services provided by a data-handling centre must, viewed broadly, form a distinct whole, fulfilling in effect the specific, essential functions of a service*²¹ described in those two provisions. As regards, more specifically, transactions concerning transfers within the meaning of Article 13B(d)(3) of the Sixth Directive, it is clear from the judgment in SDC that **the services provided must have the effect of transferring funds and entail changes of a legal and financial character**²². The Court held at paragraph 66 of its judgment in SDC that **a service exempt under the Sixth Directive must be distinguished from a mere physical or technical supply, such as making a data-handling system available to a bank and that, in this regard, the national court must examine in particular the extent of the data handling centre's responsibility vis-à-vis the banks, in particular the question whether its responsibility is restricted to technical aspects or whether it extends to the specific, essential aspects of the transactions**²³. In principle, the same analysis applies, *mutatis mutandis*, with regard to transactions in securities within the meaning of Article 13B(d)(5) of the Sixth Directive. As the Court emphasized at paragraph 73 of its judgment in SDC, trade in securities involves acts which alter the legal and financial situation as between the parties and are comparable to those involved in the case of a transfer or a payment. **The supply of a mere physical, technical or administrative service, which does not alter the legal or financial situation would not, therefore, appear to be covered by the exemption laid down in Article 13B(d)(5) of the Sixth Directive**²⁴ – Commissioners of Customs & Excise and CSC Financial Services Ltd. C-235/00 decizjoni wara referenza preliminari mgħotija fit-13 ta' Dicembru 2001.

Minn din is-silta, li kjarament tagħmel referenza għal giurisprudenza precedenti tal-Qorti tal-Gustizzja Ewropea, jirrizulta b'mod car li servizz prestat jikkwalifika bhala *exempt transaction* a tenur ta' l-Artikolu 13B(d) tal-Sixth Vat Directive (illum Artikolu 135 tal-Council Directive 2006/112/EC) u per konsegwenza a

²⁰ Nota Responsiva a fol. 112 sa' 114 tal-process.

²¹ Enfasi tat-Tribunal.

²² Enfasi tat-Tribunal.

²³ Enfasi tat-Tribunal.

²⁴ Enfasi tat-Tribunal.

tenur ta' l-Artikolu 3 tat-Tieni Taqsima tal-Hames Skeda tal-Kap.406 tal-Ligijiet ta' Malta, biss kemm-il darba dak is-servizz ikun jikkostitwixxi **a distinct whole, fulfilling in effect the specific, essential functions of a service** u mhux **a mere physical or technical supply**²⁵. Tifsira iktar cara ta' dan il-kuncett tirrizulta mill-Opinjoni ta' l-Advocate General Damaso Ruiz-Jarabo Colomer già iktar 'l fuq citata, fejn appuntu josserva li: *the exemption can have no rationale other than that of liberating from the tax regime transactions which, in view of their frequency and habitual nature, are a central component of the financial systems and, therefore, of the economic activities of the Member States. The aim pursued is to avoid a burden on certain services which would be liable to hamper the functioning of the market. That being the aim of the provision, in my opinion the only transactions to be exempted must be those whose exclusion is essential in order to attain that result, in other words those which are capable of altering a legal position by the creation, changing or extinguishment of rights and obligations. Neutral operations, having no impact ad extra, can be taxed, because taxation of them has no authority impact on the financial system*²⁶.

Min din l-Opinjoni jirrizulta b'mod car li servizzi li ma joholqu l-ebda bidla fir-relazzjoni u posizzjoni legali bejn il-persuni involuti, bhalma huma ad ezempju servizzi ta' mera support tekniku jew amministrattiv, ma jistghux jitqiesu bhala trnsazzjoni ezenti a tenur ta' l-Artikolu 13B(d) tal-Sixth Vat Directive, illum Artikolu 135 tal-Council Directive 2006/112/EC), u per konsegwenza ta' l-Artikolu 3 tat-Tieni Taqsima tal-Hames Skeda tal-Kap.406 tal-Ligijiet ta' Malta.

Minn ezami tal-ftehim milhuq bejn is-socjetà Rikorrenti u l-Bank Centrali ta' Malta jirrizulta b'mod car li l-Bank effettivament qed jaghmel *outsourcing* ta' servizzi minnu prestati lill-klijenti tieghu, liema klijenti huma istituzzjonijiet finanzjarji ohra, bhal ad ezempju banek lokali ohra. Ghalkemm il-ftehim originali gie emendat bi ftehim ulterjuri bejn is-socjetà Rikorrenti u l-Bank Centrali ta' Malta konkluz fl-1 ta' Awwissu 2011, b'dana illi fost affarijiet ohra l-ftehim originali gie kklassifikat bhala *Agency Contract for the provision of Euro Coin Services*, meta l-qofol tal-ftehim in kwistjoni jigi kkunsidrat u analizzat bir-reqqa jidher li hawn iktar si tratta ta' *outsourcing* ta' servizzi originarjament prestati mill-Bank Centrali ta' Malta milli agenzja fis-sens strett tal-kelma. In verità r-rwol tas-socjetà Rikorrenti, ossia jekk hijiex agent tal-Bank Centrali ta' Malta jew inkella semplicement inkarigata biex twettaq servizzi originarjament imwettqa mill-Bank Centrali ta' Malta stess, huwa kemm xejn immaterjali stante li kif iktar 'l fuq osservat l-identità tal-persuna/entità li effettivament twettaq is-servizz in kwistjoni hija immaterjali u lanqas hemm in-necessità li jkun hemm relazzjoni guridika diretta bejn il-persuna/entità li tippresta s-servizz u l-klijent ahhari.

Fil-fehma tat-Tribunal il-fatt li l-ftehim bejn is-socjetà Rikorrenti u l-Bank Centrali ta' Malta effettivament huwa *outsourcing* tas-servizzi prestati mill-istess Bank Centrali ta' Malta jirrizulta kkonfermat mill-Att dwar il-Bank Centrali ta'

²⁵ Enfasi tat-Tribunal.

²⁶ Enfasi tat-Tribunal.

Malta (Kap.204 tal-Ligijiet ta' Malta) kif kien in vigore fiz-zmien tal-konkluzzjoni tal-ftehim ossia, fit-30 ta' Settembru 2010. A tenur ta' l-Artikolu 5 tal-Kap.204 tal-Ligijiet ta' Malta, kif applikabbli fiz-zmien in kwistjoni, *skond it-Trattat u l-Istatut, il-hidma tal-Bank ghandha tinkludi dan li gej:- (b) li jzomm u jamministra attivi ta' riserva; ... (e) jipprovidi ghac-cirkulazzjoni ta' karti tal-flus euro; (f) jipprovidi ghac-cirkulazzjoni ta' muniti euro mahrugin ghal u ghan-nom tal-Gvern...* A tenur ta' l-Artikolu 17 tal-Kap.204 tal-Ligijiet ta' Malta kif applikabbli fiz-zmien in kwistjoni, *skond it-Trattat u l-Istatut, sabiex jilhaq l-oggettivi tieghu u jaqdi l-funzjonijiet tieghu, il-hidmiet tal-Bank ghandhom jinkludu dan li gej - (a) li jiftah kontijiet u jaccetta u jaghmel depoziti kif provdut f'dan l-Att, u f'kazijiet speċjali, bl-approvazzjoni minn qabel tal-Bord, li jiftah kontijiet ghal u jaccetta depoziti minn persuni ohra; u mid-disposizzjonijiet tat-Taqsima X tal-Kap.204 tal-Ligijiet ta' Malta li tittratta fost affarijiet ohra dwar muniti u karti tal-flus foloz, johrog b'mod car li l-Bank Centrali ta' Malta ghandu wkoll id-dover u l-obbligu li jaghmel awtentikazzjoni tal-flus, muniti u karti, li jkunu u/jew huma intizi li jkunu in cirkolazzjoni.*

Li gara ghalhekk fil-kaz in ezami huwa li l-Bank Centrali ta' Malta inkariga lis-socjetà Rikorrenti sabiex **minflok** twettaq a favur tal-klijenti tieghu fost ohrain servizzi ta' depozitu u gbid ta' flus u servizzi ta' awtentikazzjoni ta' flus, servizzi dawn li meta mwettqa mill-Bank Centrali ta' Malta jitqiesu li huma ezenti bla kreditu ai termini ta' l-Artikolu 3(3) u (4) tat-Tieni Taqsima tal-Hames Skeda tal-Kap.406 tal-Ligijiet ta' Malta, fatt dan li johrog car mill-kontro-ezami ta' Roderick Sultana in rappreżentanza tal-Kummissarju tat-Taxxi²⁷. Ladarba dawn is-servizzi huma meqjusa bhala transazzjonijiet ezenti bla kreditu ghall-finijiet ta' l-Artikolu 3 tat-Tieni Taqsima tal-Hames Skeda tal-Kap.406 tal-Ligijiet ta' Malta, dawn jibqghu hekk ikkunsidrati, u ghandhom hekk jibqghu jigu ikkunsidrati, anke jekk il-persuna li effettivament twettaqhom ma hijiex il-Bank Centrali ta' Malta. B'mod partikolari s-servizz ta' *provision of facilities for the credit institutions to withdraw and deposit euro coin bags* u s-servizz ta' *authentication ... of all deposited euro coins* li ghandhom jigu ippreparati mis-socjetà Rikorrenti ai termini tal-Klawsola 2.3 (originarjament 2.4) (b) u (c) tal-ftehim, jikkostitwixxu elementi essenzjali tal-funzjonijiet li ai termini tal-Ligi ghandhom jitwettqu mill-Bank Centrali ta' Malta, altru ghalhekk milli semplici servizz ta' trasport jew stock taking kif pretiz mill-Kummissarju tat-Taxxi²⁸. Dawn l-istess servizzi huma *capable of altering a legal position by the creation, changing or extinguishment of rights and obligations*, posizzjoni u relazzjoni din li kif già oservat iktar '1 fuq mhux necessarjament tkun bejn il-provditur attwali tas-servizz u l-beneficarju ta' l-istess. Hemm bidla fil-posizzjoni legali tar-relazzjoni bejn il-Bank Centrali ta' Malta u l-klijent tieghu ghaliex il-bilanc fil-kont tal-klijent ivarja skond l-ammont li jigi depozitat minn zmien ghal zmien, l-ammont li jingibed minn zmien ghal zmien u l-ammont, jekk ikun hemm, ta' flus li in segwitu ghall-verifika jirrizultaw li huma foloz. B'hekk, jigi ribadit, dawn iz-zewg servizzi partikolari prestat mis-socjetà Rikorrenti ai termini tal-ftehim mal-Bank Centrali ta' Malta ghandhom

²⁷ Xhieda moghtija waqt is-seduta tal-5 ta' Frar 2013, fol. 55 sa' 60 tal-process.

²⁸ Vide xhieda ta' Roderick Sultana in rappreżentanza tal-Kummissarju tat-Taxxi moghtija waqt is-seduta tal-5 ta' Frar 2013, fol. 55 sa' 60 tal-process u Nota Responsiva tal-Kummissarju tat-Taxxi a fol. 112 sa' 114 tal-process.

jitqiesu bhala transazzjonijiet ezenti bla kreditu ai termini ta' l-Artikolu 3(3) u (4) tat-Tieni Taqsima tal-Hames Skeda tal-Kap.406 tal-Ligijiet ta' Malta.

Skond il-ftehim bejn il-Bank Centrali ta' Malta u s-socjetà Rikorrenti, l-istess socjetà ghandha tippresta servizzi ohra li huma *storage of about one hundred (100) million euro coins, plus or minus five (5) million euro coins, i.e. up to a maximum of one hundred and five (105) million euro coins of various denominations; counting and packaging of coins into rolls, in readiness for reissue, within twenty days from date of deposit; and daily detailed reporting to the Bank of the activities undertaken to be submitted on same day basis as specified in Annex 1*, liema servizzi huma ancillari ghas-servizzi l-ohra ta' depozitu, gbid u awtentikazzjoni ta' flus u huma effettivament mehtiega biex dawk is-servizzi principali jitwettqu fl-intier tagghom u a sodisfazzjoni tal-klijent.

Fir-rigward ta' servizzi ancillari l-Advocate General Damaso Ruiz-Jarabo Colomer fl-Opinjoni tieghu già iktar 'l fuq citata osserva li *the term 'ancillary service' has been considered by the Court of Justice, which defined it as one that 'does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied'. It is not a decisive factor in determining whether a particular operation is exempt from tax, but it provides sufficient guidance for choosing the direction to take. By definition, something which is ancillary to an operation is not a necessary part thereof, but is useful in that it completes and enhances it. If the exemption at issue here is objective, it should in principle apply only to the operation described in the legal provision, and not to others that are merely conducive to the performance of it. The principle that tax exemptions must be strictly interpreted allows that conclusion which is applicable even to activities that are necessary in order to facilitate the supply of the tax-exempt services. There must be something else, which is to be inferred from the ultimate purpose pursued by tax exemptions. **If a particular class of legal operations is exempted from VAT in order to achieve a specific purpose, exemption can be available only for those ancillary operations which fulfil the same purpose. In the words of the Court of Justice itself, the exemption applies only to ancillary services which fulfil the specific essential functions of the operations described in the provision establishing the exemption; they must be services which in themselves constitute an exempt operation***²⁹.

Meta l-kaz in ezami u b'mod partikolari s-servizzi ancillari prestati mis-socjetà Rikorrenti jigu kkunsidrati fid-dawl ta' dawn l-osservazzjonijiet, ghandu jsegwi li dawk is-servizzi ancillari in kwantu inizji u necessarji biex jintlahaq l-iskop wara s-servizzi principali, liema servizzi principali huma ezenti bla kreditu, ghandhom ukoll jitqiesu li huma ezenti bla kreditu taht l-Artikolu 3(3) u (4) tat-Tieni Taqsima tal-Hames Skeda tal-Kap.406 tal-Ligijiet ta' Malta.

Fid-dawl ta' dan kollu osservat ghalhekk jirrizulta li kif gustament pretiz mis-socjetà Rikorrenti s-servizzi minnha prestati ai termini tal-ftehim milhuq mal-

²⁹ Enfasi tat-Tribunal.

Bank Centrali ta' Malta huma ezenti bla kreditu ai termini ta' l-Artikolu 3, senjatament is-subartikoli (3) u (4), tat-Tieni Taqsima tal-Hames Skeda tal-Kap.406 tal-Ligijiet ta' Malta u ghaldaqstant it-talba taghha ghandha tigi milqugha.

Ghal dawn ir-ragunijiet it-Tribunal jaqta' u jiddeciedi billi jiddikjara li s-servizzi prestati mis-socjetà Rikorrenti ai termini tal-ftehim milhuq mal-Bank Centrali ta' Malta huma ezenti bla kreditu ai termini ta' l-Artikolu 3(3) u (4) tat-Tieni Taqsima tal-Hames Skeda tal-Kap.406 tal-Ligijiet ta' Malta.

L-ispejjez ta' dawn il-proceduri ghandhom jigu sopportati interament mill-Kummissarju tat-Taxxi.

A tenur ta' l-Artikolu 5(3) tad-Disa' Skeda tal-Kap.406 tal-Ligijiet ta' Malta, it-Tribunal jordna li kopja ta' din id-decizjoni tigi komunikata lill-partijiet kontendenti.

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