

Qorti ta' l-Appell  
(Kompetenza Inferjuri)

Imħallef Anthony Ellul

Appell numru:- 149/2012

**Eurochange Financial Services Limited**  
(appellata)

**Vs**

**Kummissarju tat-Taxxa fuq il-Valur Miżjud**  
(appellant)

15 ta' April, 2019

1. **Is-sentenza titratta appell minn sentenza tat-Tribunal ta' Revizjoni Amministrattiva tad-9 ta' Mejju 2017 li biha ġie deċiż u ddikjarat li s-servizzi prestati mis-soċjetà rikorrenti skont ftehim li sar mal-Bank Ċentrali ta' Malta huma eżenti bla kreditu *ai termini* ta' l-Artikolu 3(3) u (4) tat-Tieni Taqsima tal-Frames Skeda tal-Kap. 406 tal-Liġijiet ta' Malta.**

2. Fl-ewwel stadju:

2.1. Permezz ta' appell preżentat fl-24 ta' Frar 2011 *a tenur* tal-artikolu 44 tal-Att dwar it-Taxxa fuq il-Valur Miżjud (Kap. 406), is-soċjetà rikorrenti Eurochange Financial Services Limited, irreferiet lill-Bord ta' l-Appelli l-kwistjoni li ġejja:

*'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 Part Two of the Fifth Schedule to the VAT Act?'*

Issottomettiet inoltre li l-kwistjoni għandha tiġi deċiża kif ġej:

*'The services of cash processing which the appellant proposes to provide, including the authentication, sorting, counting and packaging of bank notes and coins, as described in the attached Doc C, are to be treated as*

*exempt without credit supplies in terms of item 3(4) of Part Two of the Fifth Schedule to the VAT Act.'*

- 2.2. Wara d-dhul fis-seħħ tal-Att dwar il-Ġustizzja Amministrattiva (Kap.490), il-każ għadda quddiem it-Tribunal ta' Revizjoni Amministrattiva;
- 2.3. Permezz ta' twegiba datata 27 ta' Ġunju 2012 l-intimat wieġeb illi ma jaqbil mal-interpretazzjoni tar-rikorrenti u li l-provvista tas-servizz li r-rikorrenti qiegħda jew ser tipprovdi huwa taxxabli billi:
- (a) huwa servizz li mhuwiex "*specific and essential*" għall-provvista ta' servizzi bankarji għaliex jista' jsir minn persuna li mhix liċenzjata mill-MFSA. A tenur tal-ġurisprudenza tal-Qorti tal-Ġustizzja Ewropea, li trid li eċċezzjonijiet jiġu nterpretati restrittivament, sabiex servizz ikun eżenti mingħajr kreditu jrid ikun "*specific and essential*" għall-provvista ta' servizzi bankarji;
  - (b) dan is-servizz jista' u qiegħed jingħata anki f' diversi ħwienet ta' negozju taxxabli b'magni li kemm jivverifikaw jekk karta tal-flus hix falza jew le, kif ukoll jeżistu magni li jgħoddu l-flus u oħrajn jippakkegġaw il-flus tal-karti u muniti. Dan jirriżulta minn deċiżjoni mogħtija mill-Bord tal-Appelli dwar l-Eko-Kontribuzzjoni fl-ismijiet ***Interserv Ltd. vs Kummissarju tat-Taxxa fuq il-Valur Miżjud*** mogħtija fit-12 t' April 2012;
  - (c) jekk jitqies li dawn il-provvisti jitqiesu li huma eżenti mingħajr kreditu, ikun qiegħed jinħoloq tgħawwiġ fil-kompetizzjoni għal ditti li jistgħu jwettqu dan is-servizz u li japplikaw it-taxxa fuq il-valur miżjud mal-prezz tal-provvista ta' dawn is-servizzi.

Żied inoltré li l-pożizzjoni tiegħu hija konfortata minn interpretazzjoni mogħtija mill-HMRC f' każ simili fejn dan is-servizz ġie meqjus simili għall-provvista ta' ikel fil-landi. Jgħid ukoll li f' kull każ, it-twettieq tal-Kap. 406 huwa mħolli f' idejħ mill-legislatur b' dan illi l-opinjoni tal-Kummissarju tal-Pulizija u dik tal-MFSA ma tistax tegħleb dik tiegħu.

- 2.4. B' sentenza mogħtija mit-Tribunal ta' Revizjoni Amministrattiva fid-9 ta' Mejju 2017, it-talba tas-soċjetà rikorrenti ġiet milqugħa b' dan illi ġie dikjarat li s-servizzi prestati minnha ai termini tal-ftehim milħuq mal-Bank Ċentrali ta' Malta huma eżenti bla kreditu ai termini tal-artikolu 3(3) u (4) tat-Tieni Taqsim tal-Ħames Skeda tal-Kap. 406 tal-Liġijiet ta' Malta.

3. Mis-sentenza appella l-Kummissarju tat-Taxxi. Essenzjalment jilmenta li:
- it-Tribunal għamel interpretazzjoni żbaljata fir-rigward tas-servizzi mogħtija mis-soċjetà appellata, liema nterpretazzjoni konsegwentement wasslet għal deċiżjoni żbaljata dwar jekk tali servizzi humiex eżenti bla kreditu ai termini tal-Artikolu 3(3) u (4) tat-Tieni Taqsima tal-Ħames Skeda tal-Kap. 406 tal-Liġijiet ta' Malta;
  - it-Tribunal kien legalment inkorrett fejn qal li, meta attività simili għal dik żvolta mill-appellata mertu tal-appell odjern tiġi żvolta mill-Bank Ċentrali, l-istess hija eżenti a tenur tal-artikolu 3(3) u (4) tat-Tieni Taqsima tal-Ħames Skeda tal-Kap. 406 u li għalhekk għandha titqies eżenti l-appellata ukoll meta tiżvolgi l-istess servizzi; attivitajiet simili żvolti mill-Bank Ċentrali, *qua* awtorità pubblika, m'humix taxxabli *a priori* in kwantu mhux meqjusa attività ekonomika a tenur tal-artikolu 5(3) tal-Kap. 406, dan ukoll fid-dawl tal-fatt li tali servizzi jitwettqu mill-Bank Ċentrali mingħajr korrissettiv;
  - l-appellata, li m'hijiex il-Bank Ċentrali u lanqas ma hija awtorità pubblika, ma tistax tibbenefika minn tali eżenzjoni partikolarment stante li tali eżenzjonijiet huma l-eċċezzjoni u għalhekk għandhom jiġu nterpretati b' mod restrittiv; u li
  - d-deċiżjoni tat-Tribunal tista' tohloq sitwazzjoni ta' tgħawwiġ fil-kompetizzjoni.
4. L-appellata da parti tagħha tikkontendi li: (i) l-aggravju tal-appellant għandu jiġi dikjarat null billi huwa, tista' tgħid esklussivament, imsejjes fuq l-allegat żball fl-istħarriġ fattwali li għamel it-Tribunal dwar in-natura tas-servizzi offruti mis-soċjetà appellata li huma mertu ta' dan l-appell u għalhekk ma jagħtix lok għal appell; u (ii) bla preġudizzju u fil-mertu, id-deċiżjoni tat-Tribunal hija korretta u għandha tiġi rikonfermata.

### **Konsiderazzjonijiet:**

5. L-appellant jilmenta li *"t-Tribunal għamel interpretazzjoni żbaljata wkoll meta kkonkluda illi dawn is-servizzi "meta mwettqa mill-Bank Ċentrali ta' Malta jitqiesu li huma eżenti bla kreditu ai termini tal-Artikolu 3(3) u (4) tat-Tieni Taqsima tal-Ħames Skeda tal-Kap. 406 tal-Liġijiet ta' Malta" u illi b' hekk "dawn jibqgħu hekk ikkunsidrati, u għandhom hekk jibqgħu jiġu kkonsidrati, anke jekk il-persuna li effettivament twettaqhom ma hijiex il-Bank Ċentrali ta' Malta."* L-appellant jikkontendi iżda li:
- (i) meta tali funzjoni tiġi mwettqa mill-Bank Ċentrali ta' Malta ma titqiesx attività ekonomika bl-applikazzjoni tal-artikolu 5(3) tal-Kap. 406. L-

imsemmija dispożizzjoni ma tapplikax għall-appellata li mhijiex awtorità pubblika, dan ukoll fid-dawl tal-fatt li tali servizzi jitwettqu mill-Bank Ċentrali mingħajr korrispettiv;

- (ii) l-appellata, li mhijiex il-Bank Ċentrali u lanqas ma hija awtorità pubblika, ma tistax tibbenefika minn tali eżenzjoni partikolarment stante li tali eżenzjonijiet huma l-eċċezzjoni u għalhekk għandhom jiġu nterpretati b' mod restrittiv; u li
- (iii) id-deċiżjoni appellata tista' toħloq sitwazzjoni ta' tgħawwiġ fil-kompetizzjoni għad-ditti li jistgħu jwettqu dan is-servizz u li japplikaw it-taxxa fuq il-valur miżjud mal-prezz tal-provvista ta' dawn it-tipi ta' servizzi.

6. Sabiex din il-Qorti tindirizza din il-lanjanza, jeħtieġ qabel xejn li ssir referenza għar-*ratio* tat-Tribunal li wasslu għall-konklużjoni li s-servizzi prestati mill-appellata taħt il-ftehim li għandha mal-Bank Ċentrali ta' Malta huma servizzi eżenti bla kreditu in kwantu jinkwadraw taħt l-Artikolu 3(3) u (4) tat-Tieni Taqsima tal-Fames Skeda tal-Kap.406 tal-Ligijiet ta' Malta.

7. It-Tribunal beda billi għamel analiżi legali ta' dawn id-dispożizzjonijiet fid-dawl tal-Ġurisprudenza tal-Qorti tal-Ġustizza tal-Unjoni Ewropea. *Inter alia* kkunsidra li:

- *'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** ... 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';*

- *'l-Qorti tal-Ġustizzja Ewropea wara referenza preliminari fl-ismijiet **Sparekassernes Datacenter (SDC) u Skatterministeriet C-2/95** mogħtija fil-5 ta' Gunju 1997 ... 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 ... 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.***

*Għalkemm 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 għall-kaz in ezami wkoll';*

- *'Stabbilit għalhekk li the identity of the persons involved is immaterial in determining whether the service in question is exempt from VAT taħt 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-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 tterminu transactions appozitament fid-dawl tal-fatt li l-Kummissarju tat-Taxxi jshaq 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";

- 'A tenur tal-gurisprudenza tal-Qorti tal-Gustizzja Ewropea in materia ... 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** 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**. 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**. 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**<sup>24</sup> – **Commissioners of Customs & Excise and CSC Financial Services Ltd. C-235/00** decizjoni wara referenza preliminari mghotija fit-13 ta' Dicembru 2001.'
- '... jirrizulta b'mod car li servizzi li ma joholqu l-ebda bidla fir-relazzjoni u posizzjoni legali bejn il-persuni involuti, bhalmha 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.'

8. Stabbilit dan, it-Tribunal għadda mbagħad sabiex japplika dawn il-prinċipji u nsenjamenti għall-mertu tal-każ u kkonkluda li ġej:

*'Minn ezami tal-ftehim milhuq bejn is-socjetà Rikorrenti u l-Bank Centrali ta' Malta jirrizulta b'mod car li l-Bank effettivament qed jagħmel outsourcing ta' servizzi minnu prestati lill-klijenti tiegħu, liema klijenti huma istituzzjonijiet finanzjarji ohra, bhal ad eżempju 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 rrwol tas-socjetà Rikorrenti, ossia jekk hijjex 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' 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 ġej:- (b) li jzomm u jamministra attiviti ta' riserva; ... (e) jipprovdi għac-cirkulazzjoni ta' karti tal-flus euro; (f) jipprovdi għac-cirkulazzjoni ta' muniti euro mahrugin għal u għan-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 loggettivi tiegħu u jaqdi l-funzjonijiet tiegħu, il-hidmiet tal-Bank ghandhom jinkludu dan li ġej - (a) li jiftah kontijiet u jaccetta u jagħmel depoziti kif provdut f'dan l-Att, u f'kazijiet speċjali, bl-approvazzjoni minn qabel tal-Bord, li jiftah kontijiet għal u jaccetta depoziti minn persuni ohra; u middisposizzjonijiet 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 jagħmel awtentikazzjoni tal-flus, muniti u karti, li jkun u/jew huma intizi li jkun in cirkolazzjoni.*

*Li gara għalhekk fil-kaz in ezami huwa li l-Bank Centrali ta' Malta inkariga lis-socjetà Rikorrenti sabiex **minflok** twettaq a favur tal-klijenti tiegħu fost ohrajn servizzi ta' depozitu u għid 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-Taxxi. Ladarba dawn is-servizzi huma meqjusa bhala transazzjonijiet ezenti bla kreditu għall-finijiet ta' l-Artikolu 3 tat-Tieni Taqsima tal-Hames Skeda tal-Kap.406 tal-Ligijiet ta' Malta, dawn jibqgħu hekk ikkunsidrati, u għandhom hekk jibqgħu jigu ikkunsidrati, anke jekk il-persuna li effettivament twettaqhom ma hijjex 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 għandhom jigu ipprestati 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 għandhom jitwettqu mill-Bank Centrali ta' Malta,*

*altru ghalhekk milli semplici servizz ta' trasport jew stock taking kif pretiz mill-Kummissarju tat-Taxxi. 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 'l 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 Ċentrali ta' Malta u l-klijent tiegħu għaliex il-bilanc fil-kont tal-klijent iwarja skond l-ammont li jigi depożitat minn zmien għal zmien, l-ammont li jingibed minn zmien għal zmien u l-ammont, jekk ikun hemm, ta' flus li in segwitu għall-verifika jirrizultaw li huma foloz. B'hekk, jigi ribadit, dawn iz-zewg servizzi partikolari prestati mis-socjetà Rikorrenti ai termini tal-ftehim mal-Bank Ċentrali ta' Malta għandhom jitqiesu bhala transazzjonijiet eżenti bla kreditu ai termini ta' l-Artikolu 3(3) u (4) tat-Tieni Taqsima tal-Hames Skeda tal-Kap.406 tal-Ligijiet ta' Malta ...'*

9. Isegwi li dik il-parti tad-deċiżjoni appellata kwotata fl-aggravju tal-appellant, fejn it-Tribunal wasal għall-konklużjoni li s-servizzi ta' depożitu u għbid ta' flus u ta' awtentikazzjoni ta' flus mwettqa mill-appellata għandhom jitqiesu eżenti għaliex meta l-istess jigu *'mwettqa mill-Bank Ċentrali ta' Malta jitqiesu li huma eżenti bla kreditu ai termini ta' l-Artikolu 3(3) u (4) tat-Tieni Taqsima tal-Hames Skeda tal-Kap.406 tal-Ligijiet ta' Malta'* mhijiex sempliċement kunsiderazzjoni *obiter* izda l-istess tiffirma l-bażi tar-*ratio* tat-Tribunal.
10. Jisthoqq għalhekk li din il-parti tal-aggravju, li tikkonċerna punt ta' dritt, tiġi kkunsidrata ulterjorment.

### **L-artikolu 5(3) tal-Kap. 406**

11. L-artikolu 5(3) tal-Kap. 406 jipprovdi kif ġej:

*'l-attivitajiet ta' awtorità pubblika li tkun qiegħda taġixxi fl-eżerċizzju tal-funzjonijiet lilha assenjati bil-liġi ma għandhomx jitqiesu li jkunu attivitajiet ekonomiċi ħlief meta u sa dak il-limitu kif hemm provdut fl-Ewwel Skeda u ħlief meta dak it-trattament bħala persuni mhux taxxabli ikun iwassal għal tgħawwiġ sinifikanti fil-kompetizzjoni'*

12. Il-fatt illi l-eżerċizzju tal-funzjonijiet assenjati bil-liġi l-Bank Ċentrali m'għandhomx jitqiesu attività ekonomika *a tenur* tal-artikolu 5(3) tal-Kap. 406, ifisser **biss** li fl-eżerċizzju tal-imsemmija funzjonijiet l-Bank Ċentrali, mhux meqjus *'persuna taxxabli'* għall-finijiet tal-Att dwar it-Taxxa fuq il-Valur Miżjud. Jekk hu hekk, mhwiex il-każ li *'servizzi ta' depożitu u għbid ta' flus u servizzi ta' awtentikazzjoni ta' flus ... meta mwettqa mill-Bank Ċentrali ta' Malta jitqiesu li huma eżenti bla kreditu ai termini ta' l-Artikolu 3(3) u (4) tat-Tieni Taqsima tal-Hames Skeda tal-Kap.406 tal-Ligijiet ta' Malta'* kif riportat fid-deċiżjoni appellata b' referenza għax-xhieda tar-rappreżentant tal-appellant.

13. Bla dubju, eżenzjoni fiskali hija eċċezzjoni mit-taxxabilità b'dan illi persuna trid neċessarjament titqies taxxabbli biex wieħed ikun jista' jiddibatti u jiddetermina jekk japplikawx għaliha eżenzjonijiet partikolari. Loġikament, jekk l-funzjonijiet imwettqa mill-Bank Ċentrali *a priori* mhumiex meqjusa taxxabbli skont il-Kap. 406, m'huwiex każ ta' eżenzjoni iżda li l-persuna ma tkunx taxxabbli.
14. Iżda l-appellanti fl-ebda waqt ma tippretendi li għaliex ċertu funzjonijiet tal-Bank Ċentrali ġew *outsourced* lilha, dawk il-funzjonijiet m'għandhomx jitqiesu attivitajiet ekonomiċi *a tenur* tal-artikolu 5(3) tal-Kap. 406 Liġijiet ta' Malta. **Fil-verità, lanqas id-deċiżjoni appellata ma timplika dan.** Il-pożizzjoni tal-appellata, hi li **bħala persuna taxxabbli**, it-*transactions* li tagħmel huma fin-natura tagħhom **attivitajiet bankarji** u għalhekk eżenti mingħajr kreditu *a tenur* tal-artikolu 3(3) u (4) tat-Tieni Taqsima tal-Ħames Skeda tal-Kap. 406;
15. Ix-xhieda ta' Roderick Sultana,<sup>1</sup> li rrefera għaliha t-Tribunal kienet is-segwenti:

*IX-xhud:* Jiena se ngħid il-posizzjoni tal-Kummissarju rigward it-talba li għamlet il-kumpannija. Il-posizzjoni tal-Kummissarju hija din, skond il-Kap. 406 kollox huwa taxxabbli ħlief dak li huwa msemmi fil-ħames skeda. Issa fit-tieni parti, fil-partita tlieta tat-tieni parti tal-ħames skeda li todd, tissortja jew tawtentika xi flus ma jfissirx li qed tagħmel transazzjoni msemmija f' din l-iskeda. Il-mod ta' kif qed jara l-Kummissarju illi fit-transazzjonijiet imsemmija mill-kumpanija fl-ebda mument ma jkun qed ikun hemm bidla fin-natura legali u finanzjarja ta' dawn il-muniti.

...

*Li tisser li dawn il-muniti mintix qed tirċevihom biex inti tiddepożithom f'account ta' xi ħadd ieħor. Mintix qed ittihom lili biex niddepożithom għandi jgħidli minix qed naġixxi bħala bank jew bħala aġenzija bankarja b' dan il-każ.*

...

*... wieħed irid iħares lejn l-attività li qed issir.*

...

*It- Tribunal:* Kontro-eżami.

*Dr Antoine Fiott:* Skont il-Kummissarju jekk **Bank** jaċċetta depożitu ta' flus, dak huwa servizz eżenti?

*IX-Xhud:* Li **Bank** jaċċetta depożitu ta' flus? Iva.

*Dr Antoine Fiott:* Li **Bank** iżomm dak id-depożitu għan-nom tal-klient tiegħu hemm il-bidla legali li qed tirreferi għaliha inti suffiċjenti biex tirrendi dak is-servizz eżenti għax inti qed tikkondizzjona l-eżenzjoni mal-bidla natura legali.

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<sup>1</sup> Fol. 55 – 59.



Ix-Xhud: Li **Bank** jaċċetta dak id-depożitu, iva. Imma wiehed irid jara li din il-kumpanija m' ihiex qed taċċetta dak id-depożitu, din il-kumpanija qed taqbad dawn il-flus minn point A u toħodhom go account li għandu l-Bank, l-klijent tagħha stess go point B. Li taqbad il-flus u jgħorru min point A għal point B dik m'hijiex transazzjoni fejn qed tbiddel in-natura legali.

...

It-Tribunal: Issa pero jekk fhimtek sew qabel għedtli li meta inti għandek deposit in a commercial bank, it's exempt with credit x'spjegajtli qabel kont qed tgħid xi ħaġa fuq il-commercial bank li kont qed taqra.

Ix-Xhud: Dik toħroġ mis-servizz ta' kreditu u bankarji oħrjan, toħroġ mill-partita tlieta.

It-Tribunal: U rreferajt għaliha.

Ix-Xhud: Iva.

It-Tribunal: Issa mbagħad jiena ergajt għamiltlek id-domanda, l-fatt illi l-Eurochange f'din l-istorja kollha hija agent tas-Central Bank, tbiddilx il-posizzjoni u jekk le għaliex.

Ix-Xhud: Għaliex il-Eurochange mhuwiex **bank**.

It-Tribunal: Huwa agent tas-Central Bank.

Ix-Xhud: Il-Kummissarju mhux qed iqisu li qed jagħmel attività kif qed jagħmel **bank normali. Dan qed jaċċetta flus on behalf tas-Central Bank daqshekk u qed jgħoddhom.**

Udr. Antoine Fiott: Qed jaċċetta d-depositu Sur Sultana. Meta bank jaċċetta d-depożitu bħala posizzjoni tal-Kummissarju tikkonferma li dak huwa servizz eżenti.

Ix-Xhud: **Bħala bank?** Iva.'

16. Huwa manifest għalhekk li fix-xhieda li rrefera għaliha t-Tribunal, Roderick Sultana kien qiegħed jirreferi għall-attività bankarja b'mod ġenerali. Huwa minnu li saret ukoll referenza għall-attività partikolari tal-Bank Ċentrali li eventwalment ġiet *outsourced* lill-appellata, iżda x-xhud kien qiegħed jiġi mistoqsi u jwieġeb dwar in-natura tas-servizz partikolari u jekk l-istess jaqgħux fil-parametri tal-eżenzjoni. Il-fatt li d-dmirijiet tal-Bank Ċentrali, bħala awtorità pubblika, ma kinux taxxabbli *a priori*, kien lil' hinn mis-sens tax-xhieda in kwistjoni.
17. Jidher għalhekk li t-Tribunal wasal għall-konklużjoni li t-*transactions* prinċipali li tagħmel l-appellata skont il-ftehim li hija għandha mal-Bank Ċentrali, huma eżenti mingħajr kreditu *a tenur* tal-artikolu 3(3) u (4) tat-Tieni Taqsima tal-Ħames Skeda tal-Kap. 406 **għaliex qies li fin-natura tagħhom huma attivitajiet bankarji.**

## **Allegata distorsjoni tal-Kompetizzjoni.**

18. Hija ukoll infondata dik il-parti tal-aggravju tal-appellant fejn jilmenta, b' mod ġeneriku, li d-deċiżjoni appellata tista' toħloq sitwazzjoni ta' tgħawwiġ fil-kompetizzjoni.
19. Filwaqt li jirrizulta li l-artikolu 5(3) tal-Kap. 406, kwotat aktar 'l fuq, jipprovdi li l-attivitajiet ta' awtorità pubblika li tkun qiegħda taġixxi fl-eżerċizzju tal-funzjonijiet lilha assenjati bil-liġi ma għandhomx jitqiesu li jkunu attivitajiet ekonomiċi ħlief meta u sa dak il-limitu kif hemm provdut fl-Ewwel Skeda u ħlief meta dak it-trattament bħala persuni mhux taxxabli ikun iwassal għal tgħawwiġ sinifikanti fil-kompetizzjoni, **dik id-disposizzjoni ma tapplikax għall-każ tal-lum.**
20. L-attivitajiet li qiegħda twestaq l-appellata huma attività ekonomika skont il-Kap. 406. **Il-punt huwa jekk tali attività ekonomika hijiex eżenti bla kreditu mill-ħlas ta' taxxa fuq il-valur miżjud a tenur tal-artikolu 3(3) u (4) tat-Tieni Taqsima tal-Flames Skeda bis-saħħa tal-artikolu 9(1)(a) tal-Kap. 406.**
21. Hekk kif ingħad fid-deċiżjoni wara referenza preliminari fl-ismijiet ***Sparekassernes Datacenter (SDC) v Skatteministeriet***, datata 5 ta' Ġunju 1997:
- 'As regards the alleged risk of distortion of competition ... it must be emphasised that SDC supplies and invoices services to banks which use its services. In contrast, in the case of financial institutions which perform their services directly, there is no exchange of services nor, therefore, any invoicing. As the Advocate General points out in point 57 of his Opinion, **the difference involved is one of liability to tax and not one of exemption under points 3 and 5 of Article 13B(d) of the Sixth Directive, which is quite neutral since it arises from the actual nature of the transactions.***<sup>2</sup>
22. Għandu jkun paċifiku għalhekk illi, għalkemm wieħed dejjem għandu jzomm f' moħħu l-prinċipji bażiċi li jirregolaw il-liġi tal-VAT, l-eżenzjoni in kwistjoni tiddependi min-**natura tat-transazzjoni nnifisha.**

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<sup>2</sup> Para 26 - 28 tad-deċiżjoni – enfażi ta' din il-Qorti.

## **Interpretazzjoni restrittiva tal-eżenzjonijiet fiskali.**

23. L-appellat jilmenta li *'l-appellata, li mhijiex il-Bank Ċentrali u lanqas ma hija awtorità pubblika, ma tistax tibbenefika minn tali eżenzjoni partikolarment stante li tali eżenzjonijiet huma l-eċċezzjoni u għalhekk għandhom jiġu nterpretati b' mod restrittiv;*
24. Diġa ġie stabbilit li l-eżenzjonijiet japplikaw għall-persuni taxxabbli. Eżenzjonijiet li huma l-eċċezzjoni u għandhom jiġu nterpretati b'mod restrittiv.
25. L-artikolu 9 tal-Kap. 406 jipprovdi li:
- '9.(1) Għandhom ikunu eżentati mit-taxxa –*
- (a) il-provvisti li għalihom tapplika t-Taqsima Wieħed jew it-Taqsima Tnejn tal-Ħames Skeda; ...'*
26. Id-dispożizzjoni applikabbli li tinsab fit-Tieni Taqsima tal-Ħames Skeda tal-Kap. 406, tirreferi għas-segwenti:
- '(3) Operazzjonijiet, inkluż negozjar, dwar kontijiet ta' depożitu u korrenti, ħlasijiet, trasferimenti, djun, cheques u strumenti negozjabbli oħra, iżda eskluż il-ġbir u l-factoring ta' djun.***
- (4) Operazzjonijiet, inkluż negozjar, dwar flus li jiċċirkolaw, karti tal-flus u muniti li normalment jintużaw bħala flus validi.'***
27. Il-verżjoni tal-liġi bl-Ingliż tipprovdi:
- '(3) Transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, butexcluding debt collection and factoring.*
- (4) Transactions, including negotiation, concerning currency, bank notes and coins normally used as legal tender.'*
28. Il-qorti tosserva:
- it-titolu tal-artikolu 3 tat-Tieni Taqsima tal-Ħames Skeda tal-Kap. 406 m'huwiex limitat għall-banek iżda jirreferi għal-*'Servizzi ta' kreditu, bankarji u oħrajn'*;
  - l-eżenzjoni m'f'f' termini ġeneriċi; u
  - fejn il-liġi riedet teskludi ċertu transazzjonijiet partikolari, bħal *debt collection* u *factoring*, iprovdiet espressament.

29. Id-disposizzjonijiet in kwistjoni ġew *transposed* mid-Direttiva tal-Kunisill dwar is-sistema komuni ta' taxxa fuq il-valur miżjud, illum Direttiva tal-Kunsill 2006/112/KE tat-28 ta' Novembru 2006, li fl-artikolu 135 tipprovdi kif ġej:

*'1. L-Istati Membri għandhom jeżentaw it-transazzjonijiet li ġejjin:*

...

*(d) transazzjonijiet, inkluż negozjar, li jikkonċernaw kontijiet ta' depożitu u kontijiet kurrenti, pagamenti, trasferimenti, debiti, ċekkijiet u strumenti oħrajn negozzjabbli, imma eskluża l-kollezzjoni tad-debitu;*

*(e) transazzjoniet, inkluż negozjar, li jikkonċerna l-munita, karti tal-flus u muniti użati bħala valuta legali, bl-eċċezzjoni ta' oġġetti tal-kollezzjoni, jiġifieri, deheb, fidda u muniti oħrajn tal-metall jew karti tal-flus li normalment m'humiex użati bħala valuta legali jew muniti b'interess numismatiku;'*

30. F' dan il-kuntest, hi rilevanti l-opinjoni tal-*Advocate General Ruiz-Jarabo Colober* fl-Opinjoni fit-12 ta' Lulju 2001 fil-kuntest tar-referenza preliminari fl-ismijiet ***Commissioners of Customs & Excise vs CSC Financial Services Ltd.*** *Inter alia*, qal li:

- ***'it is the transactions that are exempt, not the persons who carry them out.'***<sup>3</sup>
- *'the word used is 'transactions' which derives from the Latin word transactus, the participle of the verb transigere, which in turn, originates from agree. Literally, this means 'cause to pass through something' ... I find that the exemption can have no other rationale 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 system 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';*<sup>4</sup>
- *'for the Court of Justice, the exemption applies to activities which, involving a change in a legal position, genuinely perform the function of the tax-exempt operation, which means that they actually constitute that operation';*<sup>5</sup>

31. Rilevanti hi s-sentenza tal-Qorti Ewropea fil-każ **Bookit Ltd vs Commissioners for the Majesty's Revenue of Customs** tas-26 ta' Mejju, 2016 li osservat:

*"32. First, it must be observed that the provisions of Article 135(1)(b) to (g) of the VAT Directive reproduce, without any essential amendment, the exemptions which were previously laid down in Article 13B(d), points 1 to 6 respectively, of the Sixth Directive 77/388. The case-law relating to the latter provisions therefore*

<sup>3</sup> Para 19 tal-Opinjoni – enfazi ta' din il-Qorti.

<sup>4</sup> Para 23 – 24 tal-Opinjoni.

<sup>5</sup> Para 28 tal-Opinjoni.

remains of relevance for the interpretation of the equivalent provisions of the VAT Directive.

33. In accordance with the Court's settled case-law, the exemptions laid down in Article 135(1) of the VAT Directive constitute autonomous concepts of EU law whose purpose is to avoid divergences in the application of the VAT system as between one Member State and another (see, *inter alia*, judgments of 10 March 2011, *Skandinaviska Enskilda Banken*, C-540/09, EU:C:2011:137, paragraph 19 and the case-law cited, and of 22 October 2015, *Hedqvist*, C-264/14, EU:C:2015:718, paragraph 33 and the case-law cited).

34. **It is also settled case-law that the terms used to specify those exemptions are to be interpreted strictly, since they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person** (see, *inter alia*, the judgment of 28 July 2011, *Nordea Pankki Suomi*, C-350/10, EU:C:2011:532, paragraph 23, and 22 October 2015, *Hedqvist*, C-264/14, EU:C:2015:718, paragraph 34 and the case-law cited).

35. In that context, it must be recalled that Article 135(1)(d) of the VAT Directive provides that the Member States are to exempt 'transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection'.

36. The transactions exempted under that provision are defined in terms of the nature of the services provided and not in terms of the person supplying or receiving the service. Accordingly, **the exemption is not subject to the condition that the transactions be effected by a certain type of institution or legal person, where the transactions in question relate to the sphere of financial transactions** (see judgment of 28 October 2010, *Axa UK*, C-175/09, EU:C:2010:646, paragraph 26 and the case-law cited).

37. In this case, it is common ground that only the exemption provided for in Article 135(1)(d) of the VAT Directive in favour of 'transactions ... concerning ... payments [and] transfers' is capable of being of relevance to the main proceedings.

38. In that regard, the Court has previously held that **a transfer is a transaction consisting in the execution of an order for the transfer of a sum of money from one bank account to another**. It is characterised in particular by the fact that it involves a change in the legal and financial situation existing, on the one hand, between the person giving the order and the recipient and, on the other, between those parties and their respective banks; and, in some cases, between those banks. Moreover, the transaction which produces the change is solely the transfer of funds between accounts, irrespective of its cause. Thus, a transfer being only a means of transmitting funds, the functional aspects are decisive for the purpose of determining whether a transaction constitutes a transfer within the meaning of Article 135(1)(d) of the VAT Directive (see, to that effect, the judgments of 5 June 1997, *SDC*, C-2/95, EU:C:1997:278, paragraph 53, and of 28 July 2011, *Nordea Pankki Suomi*, C-350/10, EU:C:2011:532, paragraph 25).

39. Further, the wording of Article 135(1)(d) of the VAT Directive does not in principle preclude a transfer from being broken down into separate services which then constitute 'transactions concerning' transfers within the meaning of that provision (see, to that effect, judgment of 5 June 1997, *SDC*, C-2/95, EU:C:1997:278, paragraph 64). While it is not inconceivable that the exemption

at issue may extend to services which are not transfers per se, **the fact remains that that exemption can relate only to transactions which form a distinct whole, fulfilling in effect the specific, essential functions of such transfers** (see, to that effect, judgment of 5 June 1997, SDC, C-2/95, EU:C:1997:278, paragraphs 66 to 68).

40. It follows from the foregoing that, in order to be characterised as a transaction concerning transfers within the meaning of Article 135(1)(d) of the VAT Directive, the services at issue must, viewed broadly, form a distinct whole, fulfilling in effect the specific, essential functions of a transfer and, therefore, having the effect of transferring funds and entailing changes in the legal and financial situation. In that regard, a service exempted under the VAT Directive must be distinguished from the supply of a mere physical or technical service. To that end, it is relevant to examine, in particular, the extent of the liability of the supplier of services, in particular the question whether that liability is restricted to technical aspects or whether it extends to the specific, essential aspects of the transactions (see, to that effect, judgments of 5 June 1997, SDC, C-2/95, EU:C:1997:278, paragraph 66, and of 28 July 2011, *Nordea Pankki Suomi*, C-350/10, EU:C:2011:532, paragraph 24).

41. It must also be stated that, since the functional aspects are decisive to the determination of whether a transaction concerns a transfer for the purposes of Article 135(1)(d) of the VAT Directive, the test that makes it possible to distinguish a transaction that has the effect of transferring funds and bringing about changes in the legal and financial situation within the meaning of the case-law cited in paragraphs 38 to 40 of this judgment, which falls within the scope of the exemption concerned, from a transaction that does not have such effects and therefore, is outside its scope, **is whether the transaction under consideration causes the actual or potential transfer of ownership of the funds concerned, or fulfils in effect the specific, essential functions of such a transfer** (see, to that effect, judgment of 28 July 2011, *Nordea Pankki Suomi*, C-350/10, EU:C:2011:532, paragraph 33).

42. In that regard, while the fact that the service provider concerned may directly debit and/or credit itself an account, or again act by means of accounting entries in accounts belonging to the same account holder, allows, in principle, the conclusion that that condition is met and that the service under consideration is exempted (see, to that effect, judgment of 13 March 2014, *ATP PensionService*, C-464/12, EU:C:2014:139, paragraphs 80, 81 and 85), the mere fact that that service does not directly involve such a task does not however mean that the possibility of its being within the scope of the exemption at issue should be immediately ruled out, given that the interpretation described in paragraph 38 of this judgment does not presuppose any particular method for effecting transfers (see, to that effect, judgment of 13 March 2014, *ATP PensionService*, C-464/12, EU:C:2014:139, paragraph 80).

43. Further, according to the Court's settled case-law, the considerations relating to transactions concerning transfers are also applicable to transactions concerning payments (see, to that effect, judgments of 5 June 1997, SDC, C-2/95, EU:C:1997:278, paragraph 50, and of 28 July 2011, *Nordea Pankki Suomi*, C-350/10, EU:C:2011:532, paragraph 26)".

32. Skont il-kuntratt iffirmat bejn Central Bank of Malta u l-kumpannija appellata, is-servizz li tagħti l-appellata hu deskritt li jikkonsisti fis-segwenti:

"2.4 The Parties agree that during the Contract period, Eurochange shall be responsible to provide the following services:

- 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) authentication according to specific procedures and standards of all deposited euro coins, amounting to about four hundred thousand coins (400,000) coins annually. Should the deposited coins exceed this quantity, they are to be processed nevertheless, and the annual fee due to Eurochange 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 1".

33. Mill-affidavit ta' Mark Gatt, id-direttur manigerjali tas-soċjetà appellata, jirriżulta li bis-saħħa tal-kuntratt li kkonkludiet mal-Bank Ċentrali, l-appellata:-

- taċċetta depożiti ta' *Euro coin bags* minn banek kummerċjali u toħroġilhom '*deposit slip*' tal-Bank Ċentrali '*said to contain*', filwaqt li tibgħat rendikont tad-depożitu lill-Bank Ċentrali biex dan ta' l-aħħar jakkredita l-*call account* tal-bank kummerċjali rispettiv;
- tiftaħ l-imsemmija *Euro coin bags*, teżaminhom, tnaqqi dawk li jkunu mqabrin jew muniti ta' xi pajjiż barrani u terġa' tippakkja l-muniti tal-Ewro fi stoċċijiet biex jerġgħu jġu ċirkolati;
- tinforma lill-Bank Ċentrali b'kull diskrepanza li ssib fl-ipproċessar tal-boroż depożitati biex il-Bank Ċentrali jaġġusta l-bilanċ tal-kont tal-bank kummerċjali involut. Il-Bank Ċentrali jagħmel dan mingħajr ebda verifika ulterjuri;
- tagħti *withdrawals* ta' muniti fid-denominazzjoni mitluba lill-banek kummerċjali li jfirmaw '*withdrawal slip*' tal-Bank Ċentrali relattiva. Konsegwentement, l-appellata tinforma l-Bank Ċentrali biex jaġġorna l-*call account* ta' dak il-bank kummerċjali bis-somma li tkun inġibdet.

34. Fix-xhieda tiegħu tal-5 ta' Frar 2013, Mark Gatt ikkonferma li minkejja li l-*coinage* kollu tal-Bank Ċentrali jibqa' fizikament fil-pussess tal-appellata, il-flus isiru proprjeta tal-Bank Ċentrali. Dan jirrifletti dak li tipprovdi klawżola 4.5 tal-kuntratt.

35. Il-każ Inġliż ***Nationwide Anglia Building Society*** (LON/93/2308A) kien jirrigwarda servizz mogħti minn *Securicor* li kienet tiġbor il-flus li jkunu f'kontenituri u tpoġġihom fl-ATMs ta' *Nationwide* li jkunu f'postijiet differenti.

Wara tiġbor il-kontenituri użati u tgħodd il-flus kontanti li jkun għad fadal filhom, u tagħmel rikonċiljazzjoni. F'dak il-każ il-konkluzjoni tat-Tribunal kienet:

*"In no part of this cycle is there any dealing with money as money. Nationwide's bank balance is exactly the same at the end. The service performed by Securicor could just as well relate to any other goods, which might be counted, packed, delivered, collected and reconciled. The money is not used as money; **it remains Nationwide's money throughout. The dealing with money takes place when the customer withdraws money from the ATMs**".*

36. Rilevanti hu l-każ ta' **Barclays Bank** (LON/87/111) (ara fol. 23) li fih HM Revenue & Customs tal-Ingilterra sab li:

*'while it is clear that Securicor was not acting as a banker carrying out the general activities of a bank which dealt with a whole variety of financial transactions, we reach the conclusion that **Securicor did, in providing the credit checking service and the change service, perform services which were normally performed by a bank as an integral part of its banking activities.***

*Consistent with the judgment in Sparekassernes Datacentre ECJ case ... simply doing something a bank would do is **not** sufficient for exemption. Any supply must be exempt in its own right.*

*We see the service of collection, counting and sorting as a taxable supply, as in these circumstances the money is no different to actual goods. For example banknotes and coins can be delivered to premises in the same way as, say, tinned food. Tinned food and money can be counted and sorted in exactly the same way. **This distinguishes the service as "money as 'goods'" and is a taxable supply. However, where the service is the notification that money is to be credited/debited to an account and the account is automatically amended without further checking or amendment, the Court of Appeal in First Data Resources Ltd ("FDR") ([2000] STC 672) says that the supply is exempt. This is because the transaction has changed the legal and financial situation**.'*

37. Fil-każ tal-lum, it-Tribunal wasal għall-konkluzjoni li:-

*'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 għandhom jiġu ipprestatu mis-soċjetà rikorrenti ai termini tal-Klawsola 2.3 (originarjament 2.4) (b) u (c) tal-ftehim, jikkostitwixxi elementi essenzjali tal-funzjonijiet li ai termini tal-Liġi għandhom jitwettqu mill-Bank Ċentrali ta' Malta, altru għalhekk milli sempliċi servizz ta' trasport jew stock taking kif pretiż mill-Kummissarju tat-Taxxi ... B'hekk, jiġi ribadit, dawn iż-żewġ servizzi partikolari prestatu mis-soċjetà Rikorrenti ai termini tal-ftehim mal-Bank Ċentrali ta' Malta għandhom jitqiesu bħala transazzjonijiet eżenti bla kreditu ai termini ta' l-Artikolu 3(3) u (4) tat-Tieni Taqsima tal-Flames Skeda tal-Kap.406 tal-Liġijiet ta' Malta ...'.*

38. M'hemmx dubju li meta l-appellata taċċetta d-depożiti, tawtentikahom u tirrilaxxa flejjes (*withdrawals*) lill-banek kummerċjali, u mbagħad jiġu *credited* il-kontijiet bankarji li l-banek kummerċjali għandhom mal-Bank Ċentrali fuq tagħrif li tagħti l-appellata mingħajr ma jsiru verifiki ulterjuri, isseħħ *transaction*. Il-flus isiru tal-



Bank Ċentrali, tant li l-banek kummerċjali jirċievu wkoll imgħax fuq id-depożiti li jagħmlu (ara affidavit ta' Mark Gatt). Għalhekk m'huwiex korrett l-appellant meta jargumenta li s-servizz li tagħti l-appellata ma jbidilx is-sitwazzjoni tal-Bank Ċentrali.

39. Izda b' daqshekk m'huwiex awtomatiku li tali servizzi għandhom jitqiesu li huma eżenti bla kreditu taħt l-Artikolu 3(3) u (4) tat-Tieni Taqsim tal-Frames Skeda tal-Kap.406 tal-Liġijiet ta' Malta. Iridu jitqiesu ukoll is-servizzi l-oħra pprestat mill-appellata fil-kuntest tal-ftehim li hija għandha mal-Bank Ċentrali. Id-deċiżjoni tal-**Barclays Bank** appena ċitata tkompli kif ġej f'dan ir-rigward:-

*'Where the supplies include collection, counting, sorting and holding as well as banking/transfers we see some elements of these services as taxable and some exempt. This issue is then one of supply – whether:*

- *one element is ancillary to the other; or*
- *if none of the supplies predominate, then which element is at the core of the supply (FDR)?*

*Having carefully reviewed services which include the above elements as a single composite supply in light of SDC, FDR and the ECJ decision in the case of **Card Protection Plan Ltd ("CPP") (Case C-349/96)** we have decided that the counting sorting and holding of money is the predominate element, or core of the supply. In essence, the bank is paying for independent verification of the money, which includes counting and sorting of it.'*

40. F' dan il-kuntest it-Tribunal iddeċieda li:

*'Skond il-ftehim bejn il-Bank Ċentrali ta' Malta u s-socjetà Rikorrenti, l-istess socjetà għandha tippresta servizzi oħra 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 għas-servizzi l-oħra ta' depozitu, għid u awtentikazzjoni ta' flus u huma effettivament mehtiega biex daww is-servizzi principali jitwettqu fl-intier tagħhom u a sodisfazzjoni tal-klijent.***

*Fir-rigward ta' servizzi ancillari l-Advocate General Damaso Ruiz-Jarabo Colomer fl-Opinjoni tiegħu 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.***

*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 initizi 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-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.'*

41. Il-fatt li Eurochange qeghda taghti servizz li normalment jinghata minn bank, ma jfissirx li b'daqshekk biss ghandha jedd għall-eżenzjoni taht it-Tieni Taqsima tal-Hames Skeda (ara każ *Sparekassernes Datacenter*).
42. Skont ma xehed Mark Gatt, il-flus jibqgħu fil-pussess ta' Eurochange. Wiehed jista' jghid li Eurochange ghandha parti essenzjali sabiex isseħh transazzjoni skont l-imsemmija disposizzjonijiet, u cjoe għat-trasferiment tal-proprjeta tal-minuti minghand il-banek għal għand Central Bank u vici versa. F'dan ir-rigward jidher li:
  - i. Fil-każ ta' depożitu ta' muniti, it-trasferiment tal-proprjeta jseħh mhux mad-depożitu iżda meta Central Bank jikkredita l-kont tal-bank li jkun għamel id-depożitu. Madankollu Central Bank ma jagħmel ebda verifiki u joqgħod fuq it-tagħrif li tagħtih Eurochange.
  - ii. Fil-każ ta' żbank wiehed jista' jikkonkludi li t-trasferiment tal-proprjeta jsir hekk kif Eurochange tikkonsenja l-muniti lill-bank li jkun talabhom. Fil-fatt m'hemmx prova li Eurochange titlob l-awtorizzazzjoni ta' Central Bank qabel tikkonsenja l-flus lill-banek li qabel ikunu ddepożitaw somma flus. Mark Gatt xehed li l-banek kummercjali jgharrufhom kemm iridu jigbdu muniti u ta' liema denominazzjoni u fil-fatt jiffirmaw 'withdrawal slip' u jigbdu l-flus. Wara, "Il-Eurochange tibghat rendikont tal-'withdrawal' li jkun sar

*lill-Bank Centrali, biex dan jiddebita il-'Call Account' ta' dak il-bank kummercjali li jkun ghamel il-'withdrawal'".<sup>6</sup>*

43. Il-qorti taççetta li l-proċess ta' awtentikar u għadd tal-muniti hu ancillari għas-*supply* imsemmi fil-paragrafu preċedenti.
44. Għalhekk m'huwiex korrett l-appellant li fir-rikors tal-appell argumenta li s-servizz li tagħti l-appellata "*ma jalterawx is-sitwazzjoni legali tal-Bank Ċentrali*". Fil-fatt qiegħed ivarja, għaliex twassal għat-trasferiment tal-proprjeta tal-muniti.
45. Wieħed jista' għustament jargumenta li m'huwiex biżżejjed li wieħed jillimita ruħu għal *transaction* u ma jikkunsidrax iċ-ċirkostanzi kollha. F'dan il-każ l-appellata qegħda tagħti servizzi oħra, fosthom ta' *storage* u pakeġġar tal-muniti.
46. Fis-sentenza **Card Protection Plan v Commissioners of Customs and Excise** (CC-349/96) tal-25 ta' Frar 1999, il-Qorti Ewropea qalet:

*"29. .... it follows from Article 2(1) of the Sixth Directive that every supply of a service must normally be regarded as distinct and independent and, second, that a supply comprises a single service from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system, the essential features of the transaction must be ascertained in order to determine whether the taxable person is supplying the customer, being a typical consumer, with several distinct principal services or with a single service.*

*30. There is a single supply in particular in cases where one or more elements are to be regarded as constituting the principal service, whilst one or more elements are to be regarded, by contrast as ancillary services which share the tax treatment of the principal service".*

47. It-Tribunal ikkonkluda x'inhum s-servizz principali u l-oħrajn li kienu ancillari għalih. Servizz li jaqa' taht l-eżenzjoni li tissemma f'artiklu 3 tat-Tieni Taqsima tal-Flus Skeda tal-Kap. 406. Ladarba l-appell tal-appellant gie limitat biss għall-aggravju li ma seħħet l-ebda *transaction* skont artiklu 3(3) u (4), hu dwar dak l-ilment biss li din il-qorti għandha tiddeċiedi dwaru. Fil-fatt m'hemm l-ebda aggravju dwar il-fatt li t-Tribunal ikkonkluda li s-servizzi l-oħra (bħal *storage* u pakeġġar tal-muniti) kienu ancillari għal dak principali.

### **Għal dawn il-motivi tiċħad l-appell bl-ispejjeż kontra l-appellant.**

Anthony Ellul.

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<sup>6</sup> Fol. 31.