



MALTA

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

Rikors Nru. 24/14VG

XXX

Vs

Id-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud)

Illum 25 ta' Frar 2021

It-Tribunal,

Ra r-Rikors ipprezentat mis-soċjetà XXX fit-18 ta' Frar 2014 permezz ta' liema titlob li t-Tribunal jiddikjara li t-talba tad-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud) avanzata permezz ta' l-istimi maħruġa fil-konfront tagħha għall-perijodi ta' taxxa 01.11.07-31.12.07, 01.01.08-31.01.08, 01.02.08-30.04.08, 01.05.08-31.07.08, 01.08.08-31.10.08, 01.11.08-31.01.09, 01.11.09-31.01.10, 01.02.10-30.04.10, 01.05.10-30.09.10, 01.10.10-31.12.10 hija nfondata fil-fatt u fid-dritt, bla preġudizzju li jekk ikun il-każ hija tħallas l-ammont kif minnha dikjarat, bl-ispejjeż kontra d-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud) u b'riserva għal azzjoni ulterjuri;

Ra r-Risposta tad-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud) permezz ta' liema jopponi għall-appell tas-soċjetà Rikorrenti mill-istimi maħruġa fil-konfront tagħha għall-perijodi ta' taxxa 01.11.07-31.12.07, 01.01.08-31.01.08, 01.02.08-30.04.08, 01.05.08-31.07.08, 01.08.08-31.10.08, 01.11.08-31.01.09, 01.11.09-31.01.10, 01.02.10-30.04.10, 01.05.10-30.09.10, 01.10.10-31.12.10 u jitlob l-istess jiġi miċhud, bl-ispejjeż kontra tagħha, u minflok l-imsemmija stimi jiġu kkonfermati stante li l-aggravji ta' l-appell tas-soċjetà Rikorrenti huma għal kollox infondati fil-fatt u fid-dritt. In linea preliminari d-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud) jinvoka l-applikazzjoni ta' l-Artikolu 48(5) tal-Kap.406 tal-Liġijiet ta' Malta fid-dawl tan-nuqqas ta' ko-operazzjoni da parte tas-soċjetà Rikorrenti u tal-fatt li, għal raġunijiet li taf hija biss, baqgħet inadempjenti fir-rigward tat-talbiet legittimi għas-sottomissjoni ta' dokumenti, dokumentazzjoni u data elettronika meħtieġa għall-finijiet ta' l-investigazzjoni li kienet qed titmexxa fil-konfront tagħha;

Ra d-dokumenti annessi mar-Risposta tad-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud) markati Dok. "A" sa' Dok. "G1" a fol. 13 sa' 37 tal-proċess;

Ra li b'Digriet datat 1 ta' Diċembru 2014¹, giet ordnata l-inverżjoni tal-provi fid-dawl ta' l-eċċezzjoni preliminari a tenur ta' l-Artikolu 48(5) tal-Kap.406 tal-Liġijiet ta' Malta sollevata mid-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud);

Sema' x-xhieda ta' Chris Farrugia, CEO ta' John's Group, mogħtija waqt is-seduta ta' l-1 ta' Diċembru 2014² u x-xhieda ta' Claudia Borg, uffiċjal tat-Tax Compliance Unit, mogħtija waqt is-seduta tat-12 ta' Marzu 2015³ u ra d-dokumenti esebiti minnha markati Dok. "CB" a fol. 59 sa' 84 tal-proċess, sema' x-xhieda ta' Jesmar Bilocca, Review Officer fi hdan id-Dipartiment tat-Taxxa fuq il-Valur Miżjud, mogħtija waqt is-seduta tas-27 ta' April 2015⁴ u sema' x-xhieda ta' Raymond Farrugia, Direttur tas-soċjetà Rikorrenti, mogħtija waqt is-seduta tat-30 ta' Jannar 2018⁵ u ra d-dokumenti esebiti mis-soċjetà Rikorrenti permezz ta' Nota pprezentata fit-22 ta' Mejju 2018 a fol. 111 sa' 131 tal-proċess u d-dokument ulterjuri esebiti mis-soċjetà Rikorrenti permezz ta' Nota pprezentata fit-2 ta' Mejju 2019 a fol. 137 sa' 140 tal-proċess;

Ra n-Nota ta' Sottomissjonijiet tal-Kummissarju tat-Taxxi relattivament għall-eċċezzjoni a tenur ta' l-Artikolu 48(5) tal-Kap.406 tal-Liġijiet ta' Malta a fol. 142 sa' 157 tal-proċess u ra n-Nota Responsiva tas-soċjetà Rikorrenti relattivament għal din l-istess eċċezzjoni a fol. 160 sa' 164 tal-proċess;

Sema' t-trattazzjoni orali finali da parte tad-difensur tas-soċjetà Rikorrenti u ra li d-difensur tal-Kummissarju tat-Taxxi ddikjarat li l-Kummissarju jistrih fuq dak li jirriżulta mill-atti proċesswali;

Ra li l-proċeduri tħallew għad-deċiżjoni dwar l-eċċezzjoni a tenur ta' l-Artikolu 48(5) tal-Kap.406 tal-Liġijiet ta' Malta sollevata mid-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud), illum Kummissarju tat-Taxxi;

Ra l-atti kollha tal-kawża;

Ikkonsidra:

Permezz ta' stimi datati 23 ta' Jannar 2014, maħruġa fil-konfront tas-soċjetà Rikorrenti għall-perijodi ta' taxxa 01.11.07-31.12.07, 01.01.08-31.01.08, 01.02.08-30.04.08, 01.05.08-31.07.08, 01.08.08-31.10.08, 01.11.08-31.01.09, 01.11.09-31.01.10, 01.02.10-30.04.10, 01.05.10-30.09.10, 01.10.10-31.12.10⁶, id-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud), illum Kummissarju tat-Taxxi, jesigi mingħand l-imsemmija soċjetà l-hlas tas-somma ta' €70,790 rappreżentanti taxxa fuq il-valur miżjud, flimkien ma' l-ammonti ulterjuri ta' €14,158 rappreżentanti taxxi amministrattivi u ta' €46,519.75 rappreżentanti imghaxijiet, komplessivament ammontanti għal **€131,467.75**.

Is-soċjetà Rikorrenti ħassitha aggravata bl-istimi maħruġa fil-konfront tagħha u interponiet dan l-appell minnhom permezz ta' liema titlob li t-Tribunal jiddikjara li t-talba tad-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud) avanzata permezz ta' l-istimi hekk maħruġa fil-konfront tagħha hija nfondata fil-fatt u fid-dritt, bla preġudizzju li jekk

¹ Fol. 53 tal-proċess.

² Fol. 54 sa' 57 tal-proċess.

³ Fol. 85 sa' 89 tal-proċess.

⁴ Fol. 91 sa' 94 tal-proċess.

⁵ Fol. 105 sa' 108 tal-proċess.

⁶ Fol. 33 sa' 37 tal-proċess.

ikun il-każ hija tħallas l-ammont kif minnha dikjarat. Hija tibbaża l-appell tagħha fuq is-segwenti aggravji: (i) *preliminarjament, ir-rikorrenti jissottomettu li huma m'għandhomx l-għarfien u l-informazzjoni kif ukoll il-metodologija u spjegazzjoni ta' kif l-intimat għamel il-komputazzjoni tiegħu. Illi jinkombi li l-istess intimat joffri l-informazzjoni li huwa uża sabiex wasal għal kalkoli tiegħu sabiex b'hekk ir-rikorrenti jkun f'posizzjoni li joġġezzjona (jew anke jaqbel jekk ikun il-każ) għall-informazzjoni li uża l-intimat biex wasal għall-istima tiegħu;* (ii) *sekondarjament u mingħajr preġudizzju għas-suespost, ir-rikorrenti jikkonferma li d-denunzji tiegħu kif komputati u formulati huma korretti u skond il-Liġi.*

Id-Direttur Ġenerali (Taxxa fuq il-Valur Mizjud), illum Kummissarju tat-Taxxi, jopponi għall-appell tas-soċjetà Rikorrenti mill-istimi maħruġa fil-konfront tagħha għall-perijodi ta' taxxa 01.11.07-31.12.07, 01.01.08-31.01.08, 01.02.08-30.04.08, 01.05.08-31.07.08, 01.08.08-31.10.08, 01.11.08-31.01.09, 01.11.09-31.01.10, 01.02.10-30.04.10, 01.05.10-30.09.10, 01.10.10-31.12.10 u jitlob li l-istess jiġi miċhud u minflok l-istimi kkonfermati stante li l-aggravji fuq liema hija tibbaża l-appell tagħha huma għal kollox infondati fil-fatt u fid-dritt. In linea preliminari l-Kummissarju tat-Taxxi jinvoka l-applikazzjoni ta' l-Artikolu 48(5) tal-Kap.406 tal-Liġijiet ta' Malta fid-dawl tan-nuqqas ta' ko-operazzjoni da parte tas-soċjetà Rikorrenti u tal-fatt li, għal raġunijiet li taf hija biss, baqgħet inadempjenti fir-rigward tat-talbiet legittimi tiegħu għas-sottomissjoni ta' dokumenti, dokumentazzjoni u data elettronika meħtieġa għall-finijiet ta' l-investigazzjoni li kienet qed titmexxa fil-konfront tagħha.

B'din id-deċiżjoni qed tiġi trattata u determinata l-eċċezzjoni preliminari sollevata mill-Kummissarju tat-Taxxi ai termini ta' l-Artikolu 48(5) tal-Kap.406 tal-Liġijiet ta' Malta.

L-Artikolu 48(5) tal-Kap.406 tal-Liġijiet ta' Malta jipprovdi li *l-Kummissarju jista', f'kull żmien matul iż-żmien speċifikat fis-subartikolu (4), jeħtieġ lil kull persuna li tipproduċi jew jista' jeleva mingħand kull persuna, inkluż terza persuna, id-dokumentazzjoni, dokumenti kontegġi u data elettronika meħtieġa li jinżammu minnha bis-saħħa ta' dan l-artikolu, u jagħmel kopji tagħhom: Izda, jekk ikun hemm evidenza li wara li tkun intalbet mill-Kummissarju b'avviż bil-miktub, il-persuna tkun naqset li tipproduċi mingħajr skużanti raġonevoli d-dokumentazzjoni, dokumenti, kontegġi u data elettronika sa' tletin jum mid-data tan-notifika ta' dak l-avviż, hija ma tkunx tista' tithalla tipproduċi dik id-dokumentazzjoni, dokumenti u kontegġi u data elettronika fi stadju aktar tard minn meta tkun inħarġet stima jew stimi proviżorji jew quddiem it-Tribunal, jew f'xi Qorti tal-Ġustizzja: Izda wkoll meta titqiegħed fiduċja fuq xi persuna oħra sabiex din twettaq xi biċċa xogħol, il-fatt li jkun hemm dik il-fiduċja jew xi dewmien jew inezattezzi mill-persuna li jkollha l-fiduċja ma jitqiesx li hija skużanti raġonevoli għall-għanijiet ta' dan is-subartikolu.*

Minn dan il-provvediment tal-Liġi jirriżulta ferm ċar li l-Kummissarju tat-Taxxi qed jinvoka l-applikazzjoni ta' l-ewwel *proviso* ta' l-Artikolu 48(5) tal-Kap.406 tal-Liġijiet ta' Malta fil-konfront tas-soċjetà Rikorrenti, u b'hekk l-eċċezzjoni hija mmirata biex l-imsemmija soċjetà tiġi prekluzata milli fil-mori ta' dawn il-proċeduri tissottometti u/jew tipproduċi dokumenti, dokumentazzjoni, kontegġi u data elettronika lilha mitluba fil-kors ta' l-investigazzjoni u in segwitu fil-proċess ta' Review, u minnha mhux sottomessa u prodotta.

Minn eżami akkurat ta' l-ewwel *proviso* ta' l-Artikolu 48(5) tal-Kap.406 tal-Liġijiet ta' Malta jirriżulta li sabiex il-projbizzjoni hemm kontemplata tiskatta jeħtieġ li jissussistu

numru ta' elementi: (i) illi l-Kummissarju tat-Taxxi jew rappreżentant tiegħu jkun talab, permezz ta' avviż bil-miktub, għal dokumenti, dokumentazzjoni, konteġġi u data elettronika meħtieġa għall-fini ta' investigazzjoni jew verifika fil-konfront tat-*taxpayer*; (ii) illi tali talba ssir fi żmien sitt snin minn tmiem is-sena li tali dokumenti, dokumentazzjoni, konteġġi jew data elettronika jkollhom x'jaqsmu magħha; (iii) illi t-*taxpayer* jiġi debitament u effettivament notifikat bl-avviż bil-miktub; (iv) illi t-*taxpayer* jonqos, mingħajr skużanti raġonevoli, milli jissottometti d-dokumenti, dokumentazzjoni, konteġġi u data elettronika mitluba fi żmien tletin gurnata min-notifika ta' l-avviż bil-miktub.

Mill-provi prodotti mill-Kummissarju tat-Taxxi, senjatament mix-xhieda ta' Claudia Borg, uffiċjal tat-Tax Compliance Unit (hawn iktar 'l quddiem indikata bhala t-TCU), u id-dokumenti minnha esebiti, jirrizulta li b'avviż datat **25 ta' Mejju 2012**⁷, it-TCU għarrfet lis-soċjetà Rikorrenti illi kienet se tinbeda investigazzjoni fil-konfront tagħha kemm fir-rigward ta' taxxa fuq l-*income* kif ukoll ta' taxxa fuq il-valur miżjud, għas-snin bażi 2006 sa' 2008 (snin ta' stima 2007 sa' 2009) u għal tali għan ġie ffissat appuntament għall-31 ta' Mejju 2012 u s-soċjetà giet mitluba tissottometti s-segwent:

Għas-snin bażi 2006 sa' 2008:

- *Copies of audited financial statements;*
- *Extended trial balances;*
- *Nominal, Sales and Purchases ledgers;*
- *Audit adjustments;*
- *Copies of statements of all bank accounts held by the Company;*
- *A letter from your bankers confirming the details of all bank accounts held, including any accounts that may have been closed during this period; u*

Għas-snin bażi 2009 u 2010:

- *Copies of the filed income tax returns (Y/A 2010 and 2011) - li già kienet intalbet tissottometti b'avviż datat 25 ta' April 2012*⁸.

Dan l-avviż ġie notifikat lis-soċjetà Rikorrenti iżda tramite rappreżentant tagħha ikkanċellat l-appuntament iffissat għall-31 ta' Mejju 2012 u minflok ġie ffissat appuntament ieħor għall-21 ta' Ġunju 2012.

Permezz ta' email datata **21 ta' Ġunju 2012**⁹, Claudia Borg għarrfet lil Elian Mallia, Financial Comptroller ta' John's Group li tagħha s-soċjetà Rikorrenti hija sussidjarja, li *as I already informed you on the phone, Mr. Arthur Turner called to cancel today's meeting which had to be held with you at 10:30a.m. and he also gave us an overview on Powerplan's affairs. This email is to let you know that the documents requested for basis years 2006 to 2008, in the Letter of notification dated 25 May 2012, are expected to be delivered by mid-next week, as agreed with Mr. Turner. Kindly ensure all documents are presented and we will inform you of further documents we may need at a later stage.* Elian Mallia irrisponda għal din l-email dakinhar stess tal-21 ta' Ġunju

⁷ Foll. 63 u 64 tal-proċess.

⁸ Fol. 62 tal-proċess.

⁹ Fol. 65 tal-proċess.

2012¹⁰ u għarraf lil Claudia Borg illi *I will liaise with Arthur to ensure that all requested details will be sent over to you by early next week.*

B'email oħra datata **27 ta' Lulju 2012**¹¹, indirizzata lil Elian Mallia, Claudia Borg infurmatu li *the following documentation was requested to Powerplan Ltd. and was to be delivered by 27th June 2012. In respect of basis years 2006 to 2008 you were to provide: copies of audited financial statements, extended trial balances, nominal, sales and purchases ledgers, audit adjustments, copies of statements of all bank accounts held by the company; a letter from your bankers confirming the details of all bank accounts held, including any accounts that may have been closed during this period. And for basis years 2009 and 2010: copies of the filed income tax returns (Y/A 2010 and 2011). Last Friday 20th July you provided: audited financial statements for 2006, 2007 and 2008; extended trial balances for 2006, 2007 and 2008; and audit adjustments for 2006, 2007 and 2008. The Sales and Purchases ledgers you provided were not readable and you had to provide explanations on how to understand the sheets you provided. You also said that you will be contacting the Central Bank for bank statements but you did not contact us with any of this information. As at today, the Nominal, Sales and Purchases ledgers, the bank statements and bank letters for years 2006 to 2008 and the pending tax returns for years 2009 to 2010 are still outstanding, one month after the first agreed delivery date. Kindly let us know why these documents were not delivered and if you intend to deliver them? Jidher li din l-email baqgħet bla risposta.*

B'email datata **23 ta' Awwissu 2012**¹², mill-ġdid indirizzata lil Elian Mallia, Claudia Borg għarfitu li *as listed in the email below (referenza għall-email datata 27 ta' Lulju 2012) the nominal, Sales and Purchases ledgers, the bank statements and bank letters for years 2006 to 2008 are still outstanding. Since theses have been due for long, all these are expected to be delivered by not later than Friday 31st August 2012. Elian Mallia rrispondiha dakinhar stess u nfurmaha li our auditors have now submitted Power Plans tax returns, for which copies are being attached*¹³.

B'email datata **26 ta' Frar 2013**¹⁴, indirizzata lil Elian Mallia, Claudia Borg talbet is-segwenti dokumenti, dokumentazzjoni, kontegġi u data elettronika, konsistenti f'informazzjoni già mitluba u f'informazzjoni ġdida: *from the audit work carried out to date, it resulted that the following documents need to be submitted in order to facilitate the continuation of the audit being performed. Tax return for Year of Assessment 2011; Copies of statements of all local and foreign bank accounts held by XXX in the years 2000-2010; Bank confirmation letters indicating details of all accounts held, including accounts that may have been closed during the above mentioned period; Copies of all agreements entered into by XXX with suppliers and/or service providers for the years 2000-2010; Copies of all agreements entered into by XXX in respect to commissions receivable; Rental agreements for storage space for petroleum products; sale details of Total lubricants; Contracts entered into for the construction of Petroleum Stations and details of income earned from such projects; Copies of agreements with Enemalta regarding rent of storage space for petroleum products; Audited financial statements, audit adjustments and extended Trial Balance for basis years 2009 and 2010; Daily*

¹⁰ Fol. 65 tal-proċess.

¹¹ Fol. 67 tal-proċess.

¹² Fol. 69 tal-proċess.

¹³ Email datata 23 ta' Awwissu 2012, fol. 69 u 70 tal-proċess.

¹⁴ Fol. 72 tal-proċess.

sales of petroleum products, in metric tonnes, made by TOTSA to Enemalta and Maltese bunkering companies for the years 2000-2010; Declaration of income for consultancy services for the years 2009 and 2010. As you well know our requests in the Notification Notice were not fully adhered to and thus you are being urged to collaborate and submit the above mentioned documents by not later than Wednesday 6th March 2013.

Claudia Borg rċeviet risposta għal din l-email mingħand l-Avukat Dottor David Farrugia Sacco, li b'email datata **6 ta' Marzu 2013**¹⁵ infurmaha li *I am directed by my clients to inform you that we are collating all information although we need some time. Could you kindly grant my clients an extension.* It-talba ta' l-Avukat Farrugia Sacco għan-nom tas-soċjetà Rikorrenti giet milqugħa u b'email datata **7 ta' Marzu 2013**¹⁶ l-imsemmija soċjetà ngħatat sa' l-20 ta' Marzu 2013 biex tissottometti d-dokumenti, dokumentazzjoni, kontegġi u data elettronika lilha mitluba. Minkejja l-estensjoni konċessa l-informazzjoni mitluba baqgħet ma ngħatatx u b'żewġ emails datati **1 ta' April 2013**¹⁷, indirizzati lil David Abdilla għan-nom tas-soċjetà Rikorrenti, Claudia Borg infurmatu li *this is a reminder of the documentation which is still outstanding for the audit of Powerplan Ltd. Kindly forward to us the details of the new financial controller of the group so she will be copied in future emails. Kindly indicate when you are going to deliver the following: 1. Supporting documentation to support the following expense found in the profit and loss account of Powerplan Ltd: Basis Year/Management fees: 2010 - €96,000, 2009 - €40,000, 2008 - €80,670, 2007 - €69,881, 2006 - 69,881, 2005 - €116,469, 2004 - €23,294; 2. The following bank statements are missing: Lombard account 01170104584 - Missing from 27/12/05 to 30/12/07, from 23/3/10 to 28/3/2010 and from 20/4/10 to 2/5/10; Lombard Savings a/c 3440104584 - missing from 01/12/2010 to 31/12/2010; Volksbank Malta a/c 4401237003 - missing from 01/07/2010 to 31/12/2010; BOV Current a/c 40016667141 - missing from 01/01/2009 to 31/12/2010; Lombard Fixed a/c 3520104584 - missing from 01/01/2000 to 31/12/2010; Lombard Loan a/c - 1261104584 - missing from 01/01/2000 to 31/12/2010; 3. A letter from your bankers confirming the details of all bank accounts held, including any accounts that may have been closed during the period January 2000 to December 2010; 4. Copies of the invoices issued by Powerplan Ltd. for commission received on storage fees paid by Trafigura and Totsa to MOBC or any other bunkering company. A copy of any agreements on commissions receivable on storage fees paid by Trafigura and Totsa; 5. Nominal activity 2008 to 2010; 6. Management accounts 2000-2002; 7. We are still waiting for the reply from your auditors regarding the tax return Y/A 2011 which is still outstanding; 8. In 2009 Aikon Ltd. declared in its financial statements an amount due to Powerplan of €891,227. In 2010 this amount increased to €1,000,000. How was this reflected in Powerplan's financial statements?*

B'email oħra datata **17 ta' April 2013**¹⁸, din id-darba indirizzata lil Lionella Grech, Financial Comptroller ta' John's Group b'effett minn April 2013 wara li r-riżenja ta' Elian Mallia minn din il-posizzjoni f'Marzu 2013, Claudia Borg, apparte li reġgħet talbet l-informazzjoni ġia mitluba permezz ta' korrispondenza precedenti, talbet ukoll għal iktar informazzjoni, senjatament: *following our telephone conversation I am sending you an email listing all the outstanding issues and documentation to be submitted in order to*

¹⁵ Fol. 73 tal-proċess.

¹⁶ Fol. 74 tal-proċess.

¹⁷ Fol. 77 u 78 tal-proċess.

¹⁸ Fol. 79 u 80 tal-proċess.

facilitate the continuation of the audit being performed. 1. Supporting documentation is to be provided in order to support the following expenses found in the profit and loss account of Powerplan Ltd.:

Basis Year	2010	2009	2008	2007	2006	2005	2004
	€	€	€	€	€	€	€
Travel	31,556	-	27,617	14,260	10,708	3,743	5,637
Professional fee	52,650	35,221	52,005	6,557	6,820	2,329	881
Consultancy fees	17,159	-	-	-	-	-	-
Management fees	96,000	40,000	80,670	69,881	69,881	116,469	23,294
Office expenses	18,768	32,250	-	-	-	-	-

2. The rental agreements for the following expenses must be provided: Basis Year/Rent: 2010 - €26,519; 2009 - /; 2008 - €12,115; 2007 - €18,111; 2006 - €13,892; 2005 - €12,926; 2004 - €16,073; 3. Why did the wages increase so much in 2010? And why were the wages zero in 2009? Basis Year/Wages - 2010 - €69,824; 2009 - /; 2008 - €34,622; 2007 - €24,864; 2006 - €17,282; 2005 - €16,264; 2004 - €13,820; 4. The tax returns of Years of Assessment 2011 and 2012 (Basis Years 2010 and 2011) are still outstanding...

L-unika risposta għal din l-email kienet email datata **22 ta' April 2013**¹⁹ mingħand Lionella Grech illi nformat lil Claudia Borg li *tax return for year of assessment 2011 has been filed end of last week by David Abdilla*. B'email datata **30 ta' April 2013**²⁰, indirizzata lil Lionella Grech, Tarcisio Mifsud, Head Tax Compliance Unit, talabha sabiex *kindly comply to our requests early as we need to proceed with our workings within established timeframes*. Din l-email giet segwita b'avviż datat **27 ta' Lulju 2013**²¹, fejn Tarcisio Mifsud għarref lis-soċjetà Rikorrenti li *as notified by our letter dated 25th May 2012, the Tax Compliance Unit has been entrusted to conduct a General Tax Audit of your business. In this letter you were asked to provide all relevant documentation in a complete, direct and timely manner and a preliminary meeting for this purpose was set for 31st May 2012. As you are well aware this meeting was not held and a request from your representative was made to postpone this meeting and the submission of the requested documentation for 21st June 2012. A further week was conceded from the Unit's end since again the meeting of the 21st June was not attended by your representative setting a deadline for the 27th June 2012. Notwithstanding all the extensions allowed, documentation started being produced on 20th July 2012, almost two months later following our original request, with certain important business records still not made available despite our constant requests and reminders during the past year. The outstanding documents mainly relate to: supporting documentation on the company's material expenses; missing bank statement for the company's bank accounts submitted; bank confirmation letter from the company's bankers; accounting information on group/inter-company balances. Despite the lapse of more than a year now no feedback was forthcoming from the company's end*

¹⁹ Fol. 81 tal-proċess.

²⁰ Fol. 82 tal-proċess.

²¹ Fol. 83 u 84 tal-proċess.

regarding the above outstanding documentation necessary for our tax audit. The above list of outstanding documentation/queries was also sent via e-mail on 17th April 2013 to Ms Lionella Grech, the new financial controller, subsequent to telephone conversations with the latter. A reminder to comply to the Unit's requests at your earliest was also sent to Ms Grech on 30th April 2013, however again to no avail. In view of the above please be informed that since no co-operation was found from your end to submit all the requested records for inspection, and important queries were never answered, the Tax Compliance Unit has no option but to proceed in accordance with the relevant provisions of the Income Tax Managements Act and issue the relative assessments accordingly. Dan l-avviż ukoll baqa' bla risposta u bla ebda azzjoni ulterjuri da parte tas-soċjetà Rikorrenti għas-sottomissjoni ta' l-informazzjoni mitluba.

Bħala fatt ir-rapport tat-TCU gie konkluz fit-**3 ta' Ottubru 2013**²² u fil-**5 ta' Novembru 2013**²³ inhargu l-istimi provizorji fil-konfront tas-soċjetà Rikorrenti għall-perijodi ta' taxxa 01.11.07-31.12.07, 01.01.08-31.01.08, 01.02.08-30.04.08, 01.05.08-31.07.08, 01.08.08-31.10.08, 01.11.08-31.01.09, 01.11.09-31.01.10, 01.02.10-30.04.10, 01.05.10-30.09.10, 01.10.10-31.12.10. In segwitu għall-ħruġ ta' l-istimi provizorji s-soċjetà Rikorrenti talbet Review ta' l-istess u b'avviż datat **17 ta' Diċembru 2013**²⁴, Jesmar Bilocca, Review Officer fi hdan id-Dipartiment tat-Taxxa fuq il-Valur Miżjud, talab lis-soċjetà Rikorrenti sabiex *with reference to your request for review for provisional assessments, which are dated 5th November 2013, you are kindly requested to provide the Department further arguments and proof in support of your reasons as to why you disagree with the provisional assessments in question. Moreover you are also requested to provide to the department the reason/s, preferably via email, as to why you failed to provide certain crucial information required by the Tax Compliance Unit. Email address and mobile numbers are also required. Information not submitted includes, but not only, the following: Hard copies of nominal ledger, suppliers and customers ledgers for the years 2007, 2009 and 2010; Missing bank statements for the company's bank accounts; Bank confirmation letter from the company's bankers...*

Għalkemm dan l-avviż gie notifikat lis-soċjetà Rikorrenti, hekk kif jirriżulta mid-dokumenti a fol. 28 u 29 tal-proċess, l-imsemmija soċjetà baqgħet ma kkomunikatx mar-Review Officer li għadda biex jirrakomanda l-ħruġ ta' stimi finali fil-konfront tagħha²⁵.

Mill-provi prodotti għalhekk jirriżulta li: (i) it-TCU diversi drabi interpellat lis-soċjetà Rikorrenti sabiex tissottometti dokumenti, dokumentazzjoni, kontegġi u data elettronika relattivi għall-investigazzjoni fil-konfront tagħha; (ii) dawn l-interpellazzjonijiet saru entro t-terminu prefiss fl-Artikolu 48(4) tal-Kap.406 tal-Liġijiet ta' Malta u ġew debitament notifikati lis-soċjetà Rikorrenti; (iii) iżda s-soċjetà Rikorrenti naqset milli ttipprovd i d-dokumentazzjoni kollha mitluba - hekk kif jirriżulta mid-dokument Dok. "CB" a fol. 59 tal-proċess. Jifdal għalhekk jiġi determinat jekk is-soċjetà Rikorrenti kellhiex skużanti raġonevoli għan-nuqqas ta' parte tagħha li tissottometti d-dokumenti, dokumentazzjoni, kontegġi u data elettronika **kollha** lilha mitluba mit-TCU.

Għall-finijiet ta' l-element ta' l-iskużanti raġonevoli, is-soċjetà Rikorrenti tikkontendi li *ir-raġuni preżentata mir-rikorrenti hija waħda ċara u li ġiet spjegata fil-kors tal-*

²² Fol. 14 sa' 20 tal-proċess

²³ Fol. 21 sa' 26 tal-proċess.

²⁴ Fol. 27 tal-proċess.

²⁵ Fol. 30 tal-proċess.

proċeduri. Il-kumpannija rikorrenti hija sussidjarja tal-kumpannija John's Group Limited, li tagħha kien hemm sitt azzjonisti u diretturi, ossia Anthony, Raymond, Saviour, Gaetano, Emanuel u George aħwa Farrugia. Illi l-kumpannija XXX kienet 'operata' prinċipalment minn George Farrugia. Dan ġie konstatat fil-kors tal-kawża fejn irriżulta b'mod ċar mix-xhieda ta' Christopher Farrugia fl-1 ta' Diċembru 2014 kif ukoll mix-xhieda ta' Raymond Farrugia fix-xhieda tiegħu tat-30 ta' Jannar 2018. Illi fis-sena 2010 id-diretturi tal-kumpannija ġew infurmati li seta' kien hemm fatturi li juru li flejjes tal-kumpannija ġew misapproprjati mid-direttur George Farrugia u martu Cathy. Illi f'eskalazzjoni sħiħa, George Farrugia rriżenja minn direttur tal-kumpannija. Il-kumpannija ewlenija John's Group Limited kienet interpellat lil George u martu Cathy Farrugia sabiex jirrifondu l-flus li ġew misapproprjati mill-kumpannija Rikorrenti izda dawn baqgħu inadempjenti. Illi konsegwentement fl-20 ta' April 2012 John's Group Limited intavolat kawża fil-Prim' Awla tal-Qorti Ċivili kontra George u martu Cathy Farrugia (Rk Nru 407/12GC) li intalbu jhallsu s-somma hekk likwidatat mill-Qorti lir-rikorrenti. Illi dak iż-żmien il-kumpannija ma setgħetx topera u fil-fatt waqfet topera peress li George Farrugia kien id-direttur li kien jamministra din il-kumpannija - u fid-dawl ta' dak li kien ġara kien impossibbli li wieħed jaqbad tarf ta' l-operat u dak bżonnjuż sabiex il-kumpannija titmexxa 'l quddiem. Kien hemm dokumentazzjoni nieqsa u servers li eventwalment ġew elevati biex konsegwenza ta' dan il-kumpannija ma kellhiex id-dokumentazzjoni kompluta, inkluż dik neċessarja biex tagħti lill-Kummissarju tat-Taxxa fuq il-Valur Miżjud, mertu ta' dawn il-proċeduri. Illi eventwalment inħarġu fatti li ma kienux magħrufa lid-diretturi ta' John's Group Limited u XXX dwar tixhim u kummissjonijiet li kienu allegatament thallsu minn George Farrugia lil kumpanniji u entitajiet governattivi fejn il-każ ġie kollokwament magħruf bħala 'l-iskandlu taz-żejt'. Illi fil-kors ta' dan kollu, il-Gvern tal-ġurnata kien ta' maħfra Presidenzjali (in atti) lil George Farrugia fl-10 ta' Frar 2013. Illi naturalment meta wieħed qiegħed jagħmel referenza għal maħfra Presidenzjali wieħed japprezza li mhix sitwazzjoni komuni. Illi dan kollu jixhed ċar dwar il-fatt li l-kumpannija XXX kienet f'sitwazzjoni straordinarja fejn ma kellhiex id-dokumenti, aċċess għal dak kollu li kien bżonnjuż għal dak li jirrigwarda kemm l-aspett finanzjarju kif ukoll l-aspett amministrattiv biex ġab il-kumpannija għar kubtejha fl-impossibilità li titmexxa. Din kienet ir-raġuni għaliex id-dokumenti mitluba ma setgħux jiġu provduti lill-intimat²⁶.

In sostenn ta' dak minnha pretiż is-soċjetà Rikorrenti ressqet bħala xhud lil Chris Farrugia, CEO ta' John's Group, li fix-xhieda li ta fl-1 ta' Diċembru 2014²⁷ iddikjara li: bażikament dorna l-kotba biex naraw ma' l-awdituri, għaliex safrattant konna qed inbiddu l-awdituri, dorna l-kotba u jirriżulta li l-ammont li l-vat qed titlob huwa fuq invoices ta' konsulenza li kienu jsiru ma' kumpaniji barra minn Malta, mhumiex ammont ta' bejgħ li kien isir f'Malta jew xi haġa li kien isir f'Malta u barra minn pajjiż ta' l-Unjoni Ewropea. ... Jien qabbadt lill-awditur [skond ix-xhud ċertu Robert minn Nexia] li ċċekkja u vverifika l-ammonti fejn qed iħejji rapport bl-annexes ta' l-invoices kollha li ovvjament għandna fil-pussess tagħna biex jesebixxieh il-Qorti biex juri l-income minn fejn kien ġej u kollox. ... Id-dipartiment meta kien qed jistaqsi għal ċerta documentation, konna għaddejjin minn transazzjoni ta' financial controller, naf li ingħata ħafna informazzjoni però kien hemm ħafna informazzjoni li d-dipartiment ma rċevieux minn naħa tagħna. Mistoqsi spjega lit-Tribunal, il-kumpannija għaddiet minn xi tibdil, kien hemm xi proċeduri legali l-Qorti fil-konfront ta' xi persuna? Chris

²⁶ Nota Responsiva tas-soċjetà Rikorrenti, fol. 160 sa' 164 tal-proċess.

²⁷ Fol. 54 sa' 57 tal-proċess.

Farrugia wieġeb *il-kumpannija fil-fatt fetħet kawża kontra persuna li kienet tmexxi l-kumpanija. ... Kien George Farrugia li kien il-managing director ta' Powerplan. ... Il-kumpannija fetħet kawża legali kontrib biex tiegħu lura xi flus li kien qed jissajfinja hu. ... Il-kawża kienet tirreferi mit-2004 sat-2010.*

Xehed ukoll wieħed mid-diretturi tas-soċjetà Rikorrenti ossia, Raymond Farrugia, li fix-xhieda li ta waqt is-seduta tat-30 ta' Jannar 2018²⁸ iddikjara li *aħna wara li George Farrugia kellu affarijiet oħra u kien telaq jigiġifieri mill-kumpannija, s'intendi aħna ma stajniex insibu rkaptu ta' l-affarijiet. ... fil-fatt konna ftaħnielu kawża. Mistoqsi nibdielek vis-à-vis l-audit tal-Powerplan, x'passi kontu ħadtu jekk jogħġbok? Intom kontu qabbadtu lil xi ħadd? Raymond Farrugia wieġeb dan kien imqabbad xi ħadd li imbagħad kien ġie nieqes u ma laħaqx lestihom però ma laħaqx iffirmahom. Mistoqsi ulterjorment u dawn huma l-audit ta' Powerplan, hux hekk? Raymond Farrugia wieġeb *iva dawk huma l-audits ta' Powerplan. Mistoqsi kif imxiet ulterjorment din il-kwistjoni, Raymond Farrugia wieġeb jidhirli li konna qabbadna lil xi ħaddieħor biex jibda kollox mill-ġdid għaliex dan mhux se jiffirma fuq ħaddieħor. ... Aħna imbagħad bħala CEO kien laħaq Chris Farrugia. ... Jien mingħalija kien tkellem ma', ma nistax niftakar x'jisimha din il-kumpanija. ... Tagħmel audits u dawn l-affarijiet. Mistoqsia jekk jiftakarx il-kunjom relatat ma' din il-kumpanija, huwa wieġeb Nexia BT. Mistoqsi issa però minbarra Nexia BT kien hemm konsulent ieħor. Tiftakar il-kunjom jekk jogħġbok? Jekk ma tiftakarx fil-każ imbagħad inġib id-dokumentazzjoni... Raymond Farrugia wieġeb mhux Anthony Debono hux. Għall-kumment le, awditur qegħdin ngħidu aħna, huwa wieġeb skużani ma nistax niftakar. Xprunat ulterjorment bil-mistoqsija min kien ta parir lill-kumpannija li l-vat għandha titħallas f'pajjiż u mhux ieħor eċċ? Min kien l-awditur li kien ta parir? Raymond Farrugia finalment ftakar li dan kien Matthew Zampa.**

Apparte mix-xhieda ta' Chris Farrugia u ta' Raymond Farrugia, is-soċjetà Rikorrenti ipprezentat ukoll Investigative Audit Report datat 20 ta' Jannar 2011²⁹ imhejji minn Joseph Azzopardi, Direttur ta' FST Consulting Limited, l-veracità ta' liema rapport ma ġietx kontestata mill-Kummissarju tat-Taxxi³⁰. F'dan ir-rapport ġie konstatat is-segwenti:

- **Investigative Work Undertaken** - *The investigation on XXX commenced with discussions with the management and other staff of the company, namely: Mr. Christopher Farrugia who was engaged with XXX and worked in close conjunction with Mr. George Farrugia over two years between 2008 to September 2010, the latter being the date of resignation of the said Mr. George Farrugia; Mr. Anthony Debono who for the last three years has been the chairman of the Board for the whole group and the five Farrugia brothers who are directors of the John's Garage Group; Mr. John Farrugia who is the general manager of the group; Mr. Donald Micallef who resigned from his post as financial controller of XXX in 2008; Mr. Alex Abela who for the last 12 years has been the statutory auditor of the XXX; and Mr. Philip Bonello who is employed in the finance department of XXX. A thorough investigation of all documentation of the company was undertaken within the premises of XXX. These included contracts, correspondence and other documents. Furthermore the personal computers used by Mr. George Farrugia and Mrs. Cathy Farrugia (wife of Mr. George Farrugia) were examined for further evidence of the activities of the*

²⁸ Fol. 105 sa' 108 tal-proċess.

²⁹ Fol. 113 sa' 120 tal-proċess.

³⁰ Verbal tas-seduta tat-22 ta' Mejju 2018, fol. 110 tal-proċess.

company. It was found that the major part of the electronic files in the said personal computers had been deleted, although the personal computers used by Mr. George Farrugia and his wife belonged to the company. Following this finding an IT expert was engaged to recover deleted material from the personal computers used by Mr. George Farrugia and his wife Mrs. Cathy Farrugia and also the company server.

- **IT Expert Report** - Mr. Geoffrey Farrugia is a graduate in computer science and was engaged as an IT expert to recover deleted material from the electronic hard drives of the XXX computer equipment. Mr. Geoffrey Farrugia worked in conjunction with Dr. Stephen Farrugia Sacco who acts as a Court appointed expert in similar circumstances. The hard drives of the computer equipment in question was copied onto other electronic media such that the original data on the hard drives was retained in its original state. The copies of the hard drives were used to extract deleted information belonging to XXX. In this way there is a trail of all the information used in compiling evidence included in this report. The copy of the report prepared by Mr. Geoffrey Farrugia is enclosed in Appendix file 1 Document 2. ...
- **XXX - Business activities and Administration** - The company commenced business as a distributor of Total lubricants sometime in 1995 which is till today a significant business stream of the company. In 1997 this was followed by the first contract for the renting of storage space for petroleum products from Enemalta. A Local Assistance Agreement between Total Malta and XXX was signed on the 1st July 1998 wherein Powerplan was to receive payment for services rendered to Total Malta. A copy of this agreement is found in Appendix File 1 Document 3. This agreement was terminated through a Settlement Agreement dated 2003 (vide Appendix File 1 Document 5). XXX signed an agreement with Total Oil Trading S.A. (Totsa) for the local representation in Malta in 2000 which was renewed every year up to end 2010. This agreement allowed XXX to have a commission on every metric tonne of petroleum, sold by Totsa to Enemalta. This contract was not renewed by Totsa for 2011. Vide Appendix 1 File 1 Document 6 and 7. The agreement for the rental of storage space from Enemalta and the distributorship of Total lubricants in Malta are still in operation. ...
- **Findings of the Investigative Audit - Discussions with Management and company staff** - During discussions held with Mr. Christopher Farrugia (current CEO of company) and Mr. Anthony Debono (Group Chairman) revealed the fact that they had suspected Mr. George Farrugia of channeling company business towards other entities outside the Group. Mr. Christopher Farrugia stated that the company used to receive a fax from Totsa almost every day for sales to oil bunkering companies in Malta on which Powerplan had an average commissions of one US dollar per metric tonne. The sales registered in the books of the company did not reflect the amount as indicated by the sales contracts received by the company via faxes from Totsa. Moreover Mr. Christopher Farrugia provided copies of two invoices found in Mr. George Farrugia's office which were on an Aikon Limited letterhead and referred to sale for Total oil to Maltese bunkering companies, which were identical to the ones issued by XXX for similar services. This confirmed the suspicion that Mr. Farrugia was defrauding the company and pushed the Board of Directors of the group to initiate the investigative audit. Discussions held with Mr. Donald Micallef (ex financial controller of the company) and Mr. John Farrugia (group general manager) iterated that they were not aware of any fraudulent activities carried on by Mr. George Farrugia. Mr. Alexander Abela, the company

auditor, stated that he had been the auditor of the company over the last twelve years. When questioned on his auditing work on the company, it was evident that he was not aware of any contracts between XXX and Totsa and that his audit centred on the accounting information made available to him without seeking further audit evidence from other sources. It is believed that a professional auditor working within the framework of International Standards on auditing would have surmised that the stated revenue of the company was not in line with the operation of the company. Mr. Philip Bonello who is the executive in the finance department commented that Mrs. Cathy Farrugia was the person in charge of the invoicing to Totsa and he was only entrusted to input the amounts made available to him in the company's accounting system.

- **Company documentation** - A search within the premises of the company revealed that contracts for the sale of petroleum to Maltese bunkering companies dated sometime back. There were also a number of contracts of sale of petroleum products directly to Enemalta although Mr. George Farrugia had informed Mr. Christopher Farrugia on a number of occasions that the company was tendering for such business but was not being awarded any contracts in this line of business. Examination of accounting records showed the revenue declared in Powerplan from Totsa related to the rental of storage facilities and only a fraction of the amounts due from Totsa for sale of petroleum products was ever included in the revenue of XXX.
- **Other data found in computer hardware of the company** - The electronic files within the company hardware revealed a lot of information which could not be found as hard copies within the premises of the company. The information found included the following: Additional contracts with Enemalta and Maltese bunkering companies as attachments to emails sent by Mr. and Mrs. George Farrugia; A list of invoices in the name of Aikon Limited to Totsa and to Trafigura B.V., a Dutch company carrying on a business similar to that of Totsa (vide Appendix File 4); A contract between Aikon Limited and Trafigura B.V. on the same lines as that between XXX and Totsa (vide appendix File 3 Document 97); Details of a Swiss bank account with BNP Paribas in the names of XXX which no one except Mr. John Farrugia, had any knowledge of (Vide Appendix File 1 Document 10); Details of a transaction involving the purchase and sale of Russian oil through an intermediary company controlled by Fabrizio Loioli. This Fabrizio Loioli was reported on the New York Times in May 2007 as having been involved in a scandal related to the sale of Iraqi oil in the oil-for-food program organised under the control of the United Nations. Further documents were found which indicate that Mr. George Farrugia was engaged in the international oil trading business through a company called Crystal Management Corporation registered in Panama and dealings with a Yugoslav by the name of Pavel Esov (vide Appendix File 5). ...
- **Aikon Limited Invoices** - The personal computers used by Mr. George Farrugia and Mrs. Cathy Farrugia contained a number of emails addressed to a number of personnel within Totsa and Trafigura B.V. with attachments of invoices on Aikon Limited and Powerplan letterheads. Other invoices were found addressed to Mercuria Energy Trading which is also an independent energy trading company. All the invoices referred to consultancy services related to sale of petroleum products to Enemalta. The list of invoices is included in Appendix File 4 and a copy of such invoices is also included in said appendix file. The total amount for invoices found is US dollars 1,569,733.38 covering a period 2004 to 2008. The list of invoices cannot

be considered as exhaustive since there are a number of gaps in the invoice numbers of the documents found. The bank details included in the individual invoices for Aikon Limited reveals that funds were channelled to the following bank accounts: Bank of Valletta PLC, 2 Lascaris Wharf, Malta US\$ Account No. 40013865739; and Wachovia Bank N.A., New York, Swift Code PNBPNY33, in favour of Banque Privee Edmond De Rothschild SA, Geneva, Account Number 2000193641387, Swift PRIBCHGG, For Further Credit to Account 700.296 Aikon. The invoices in XXX included bank details for the Wachovia Bank as above. It is noted that the financial statements of Aikon Limited (included in Appendix File 1 Document 1) indicate that turnover of the company was as follows: Year 2006 - Lm23,892 - €55,644; 2007 - Lm21,326 - €49,676; 2008 - €24,625. The amounts declared in the financial statements as in the above table are far less than the amounts as indicated by the list of invoices which had a total of some USD 1.56 million over a period of some five years. At a rate of USD/Euro of 1.3:1 the USD 1.56 million would equate to Euro 1.2 million which gives an average annual turnover of Euro 240,000. On the basis of the above analysis, the turnover as per Aikon Limited financial statements for the above periods appears to be grossly understated. The above analysis appears to indicate the following: The sole director in Aikon Limited is Intershore Fiduciary Services Limited and it is presumed that a mandate was given by said director to open both bank accounts as indicated above. This would also indicate that the director in Aikon was cognizant of the scope of the business of the company. It is also presumed that Intershore Fiduciary Services Limited, being a licensed fiduciary, undertook a know-your-client (KYC) exercise on Mr. George Farrugia prior to the registration of the company which should have indicated that Mr. George Farrugia was a full time employee and a director of XXX, a company that carries on a business identical to that undertaken by Aikon Limited. The fiduciary relationship between Intershore Fiduciary Services Limited and Mr. George Farrugia appears to have been used to veil a parallel operation in which Mr. George Farrugia had a distinct conflict of interest. As a director of XXX Mr. George Farrugia was obliged to act in good faith towards the interest of the company. Channelling business and funds away from XXX to Aikon Limited and using a fiduciary relationship to hide a parallel operation is definitely not in the interest of XXX. It appears that the sole director of Aikon Limited was an accomplice in this structure. Further to the above, Mr. Ray Stafrace, the auditor of Aikon Limited had visited Mr. George Farrugia at the XXX offices in Qormi and appears to have been cognizant of the fact that Mr. George Farrugia was a director of XXX. Mr. Christopher Farrugia had seen Mr. Ray Stafrace visit Mr. George Farrugia at the XXX offices in Qormi on a number of occasions. During his audit work of Aikon Limited, Mr. Ray Stafrace should have identified that through his directorship in XXX Mr. George Farrugia had a conflict of interest when conducting similar business through Aikon Limited. This fact could have possibly been highlighted through a qualification in the audit report of the financial statements of Aikon Limited. **Mr. George Farrugia and Ms. Cathy Farrugia were using the XXX letterhead to issue invoices in the name of the company for which payment was channeled outside the company. These amounts were not declared in the company's books, which appears to be a case of tax evasion**³¹. Mrs. Cathy Farrugia was a party to the above transactions and was a close accomplice in the activity of Mr. George Farrugia. In an email dated 10th November 2008, Thomas Duhamel from Totsa wrote to Mrs. Cathy Farrugia and Mr. George Farrugia regarding clarification on invoices of both XXX and Aikon

³¹ Enfasi tat-Tribunal.

Limited within the same email. Refer to Appendix File 3 Document number 9. Following from the above, **the financial statements of XXX prepared by the directors appear to constitute a misrepresentation to the company's auditor. In turn, the auditor appears to have conducted his audit work in a way which did not provide sufficient audit evidence on the true revenue of the company. If this is the case the auditor may have been negligent in carrying out his professional duty in line with the Accountancy Profession Act³².** As referred to in previous section a search for documents in the company premises and a search on the company's computers revealed a number of documents for sale of petroleum to bunkering clients and direct sales by Totsa to Enemalta. The list for such contracts is found in Appendix File 6 to 24. Year/Metric Tons/\$ - 2004 - 12,000 - 12,000; 2005 - 13,400 - 13,400; 2006 - 55,400 - 55,400; 2007 - 126,200 - 126,200; 2008 - 179,930 - 179,930; 2009 - 232,500 - 232,500; 2010 - 162,800 - 162,800 - Total Metric Tons 782,230; Total \$ 782,230. The documents refer to contract for sales to bunkering companies of petroleum products stored by Totsa in Malta on which XXX is due one dollar for each metric ton sold. The contracts were faxed to the XXX office or found in emails within the company's computer equipment. The table above clearly shows that the amounts shown are not necessarily exhaustive since for years 2004 to 2006 the amount of metric tons sold are far less than the sales for the following years. It is noted that a part of these amounts due to XXX were actually included in the company's books as shown in Appendix File 1 Document 14. However one could fairly assume that the contracts that are evidently missing for years 2004 to 2006 and interest due for amounts owed would more than equate to the amounts already invoiced by XXX.

- **Direct sales from Totsa to Enemalta** - An email from Mr. Emanuel Mizzi representing Enemalta Corporation addressed to Mr. George Farrugia dated 20 July 2010 contained an attachment with a spreadsheet outlining the sales by Totsa and Trafigura directly to Enemalta including dates, contract numbers and metric tonnage for each sale. The contents of the spreadsheet have been included in Appendix File 1 Document 15. As shown in the above spread sheet the total tonnage sold by Totsa and Trafigura for years 2004 to 2010 amounts to 6.083 million. If this tonnage is multiplied by \$1 (except for LPG and Propane on which \$2 commission is payable) the total amount due to XXX for the period in question would amount to US\$7.8 million. This figure of US\$7.828 million includes interest of 6.75% which is the rate paid by the Group for its financing facilities with local banks. The workings of the interest element in the above US\$7.828 million is included by Appendix File 1 Document 15 as above. The above contracts awarded to Totsa over the years was the subject of a parliamentary question in the Orizzont dated 18th January 2011 (Vide Appendix File 1 document 16) where Totsa was quoted as having sold US\$650 million in 2008, US\$332 in 2009 and US\$222 in 2010. The said US\$ amounts clearly indicate that Enemalta had acquired a considerable amount of metric tonnes from Totsa. ...
- **Final conclusions** - From the above findings and analysis the following conclusions appear to be in order: a. Mr. George Farrugia with the assistance of his wife Mrs. Cathy Farrugia was channelling company business to Aikon Limited to the detriment of XXX. Mr. George Farrugia as director of XXX was acting in bad faith towards the interest of the company he was a director in. Mr. George Farrugia and Mrs. Cathy Farrugia were during the time both employees of the company. b.

³² Enfasi tat-Tribunal.

*Intershore Fiduciary Services Limited as director in Aikon Limited was an accomplice to the fraudulent activity carried on by Mr. and Mrs. George Farrugia since they should have been cognizant that the activity of Aikon Limited was in direct competition with the business in XXX. c. Mr. Ray Stafrace as auditor of Aikon Limited was a further accomplice to this illegal activity since his duties as auditor include the reporting of any illegal activity undertaken by the director of Aikon Limited. d. **Mr. Alex Abela as auditor in XXX was not diligent enough in his duties prescribed by his appointment and should have been in a position to highlight the position of the lower level of revenue of the company at an earlier stage. The audit work carried out by the said auditor may not have been in line with what is normally required for an audit of a company such as XXX**³³. e. There is sufficient evidence that the monies channelled by Mr. George Farrugia and his wife Mrs. Cathy Farrugia amounted to millions of US\$. As a minimum it would be prudent to assume that from the direct Enemalta contracts and interests due on such amounts an amount of US\$7.828 million were invoiced through Aikon or some other corporate vehicle. A further amount of US\$782,230 was further channelled away from XXX by Mr. And Mrs. George Farrugia by way of sales to bunkering companies. Thus the minimum amount to be recovered by XXX from Mr. and Mrs. George Farrugia amounts to US\$8,610,514. During our investigation it was found that Aikon Limited had invoiced Totsa and Trafigura a minimum of US\$1.56 million from 2004 to 2010. f. The above recoverable amount does not include any gains made from the trading in oil products in the international markets although there are indications from correspondence found that Mr. George Farrugia was engaged in such dealings dating back to 2001. Furthermore, the directors of the company have heard that Mr. George Farrugia was paid directly by Totsa an amount of US\$2000 per month which was not negated by the official representing Totsa during our meeting in Geneva on the 1st November 2010, although there is no further proof in this regard. Also our recoverable amount referred to above does not include any amounts which may have been channelled outside XXX for the period 1995 to 2004 since no evidence to this claim was actually found during our investigation.*

It-Tribunal haseb fit-tul dwar dak li rrizulta mill-provi prodotti mis-soċjetà Rikorrenti b'mod partikolari mill-XXX Investigative Audit Report. Ghalkemm *prima facie* jista' jidher li s-soċjetà Rikorrenti kellha fil-pussess tagħha hafna mill-informazzjoni mitluba mit-TCU sa' mill-2011 (l-investigazzjoni nbdiel f'Mejju 2012 u intemmet f'Ottubru 2013 u l-proċess ta' Review skatta f'Novembru 2013 u ntemm f'Jannar 2014) u xi informazzjoni oħra - bħal ma huma *bank statements* u *bank confirmation letters* - setgħet faċilment tiġi ottenuta mis-soċjetà Rikorrenti u sottomessa lit-TCU, minn dak li irrizulta mill-XXX Investigative Audit Report, *inter alia* dwar: (1) il-financial statements tas-soċjetà Rikorrenti, ossia li *the financial statements of XXX prepared by the directors appear to constitute a misrepresentation to the company's auditor*, liema *financial statements* skond ma jirrizulta mit-Tax Audit Report tat-TCU kienu, flimkien mad-denunzji tat-taxxa fuq il-valur miżjud sottomessi mis-soċjetà Rikorrenti għall-perijodi formanti l-mertu ta' l-investigazzjoni, jikkostitwixxu l-bażi ta' l-istimi maħruġa fil-konfront tas-soċjetà Rikorrenti; u (2) *channelling of funds* minn George Farrugia ta' flejjes li kienu dovuti lis-soċjetà Rikorrenti bil-konsegwenza li dawn l-ammonti ma ġewx dikjarati fil-kotba ta' l-imsemmija soċjetà u b'hekk seta' kien hemm *a case of tax evasion*, ikun opportun u għaqli li dan il-każ jinstema' u jiġi trattat b'vizibilità sħiħa tad-

³³ Enfasi tat-Tribunal.

dokumentazzjoni u informazzjoni pertinenti għall-istess - dejjem naturalment mill-aspett tat-taxxa fuq il-valur miżjud - da parte ta' entrambe l-partijiet kontendenti, u maġġgħorment u b'mod partikolari da parte tas-soċjetà Rikorrenti li qed tikkontesta l-istimi maħurġa fil-konfront tagħha mill-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud).

Għaldaqstant, għal din ir-raġuni partikolari t-Tribunal iqis li fil-każ in eżami ma għandux japplika dak provdut fl-ewwel *proviso* ta' l-Artikolu 48(5) tal-Kap.406 tal-Liġijiet ta' Malta.

Għal dawn ir-raġunijiet it-Tribunal jaqta' u jiddeċiedi billi jiċċhad l-eċċezzjoni a tenur ta' l-Artikolu 48(5) tal-Kap.406 tal-Liġijiet ta' Malta sollevata mid-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud), illum Kummissarju tat-Taxxi, u jordna l-prosegwiment tal-kawża.

It-Tribunal jirriserva li jipprovdi dwar l-ispejjeż fid-deċiżjoni dwar il-mertu.

Ai termini tal-Partita 2(4) tad-Disa' Skeda tal-Kap.406 tal-Liġijiet ta' Malta, it-Tribunal jordna li kopja ta' din id-deċiżjoni tiġi komunikata lis-soċjetà Rikorrenti.

MAGISTRAT

DEPUTAT REĠISTRATUR