



MALTA

Fit-Tribunal ta' Revizjoni Amministrattiva
(Att dwar it-Taxxa fuq l-Income - Kap.123 tal-Ligijiet ta' Malta)
(Att dwar l-Amministrazzjoni tat-Taxxa - Kap.372 tal-Ligijiet ta' Malta)
Maġistrat
Dr. Gabriella Vella B.A., LL.D.

Rikors Nru. 15/2019VG

XXX

Vs

Kummissarju tat-Taxxi

Illum 3 ta' Marzu 2025

It-Tribunal,

Ra r-Rikors ipprezentat mis-soċjetà XXX fit-18 ta' Jannar 2019, permezz ta' liema titlob li t-Tribunal iħassar u jirrevoka l-Likwidazzjoni ta' Taxxa maħruġa fil-konfront tagħha mill-Kummissarju tat-Taxxi għas-sena ta' stima 2004 u id-deċizzjoni tal-Kummissarju tat-Taxxi datata 12 ta' Diċembru 2018, u konsegwentement jiddikjara li s-soċjetà XXX kienet intitolata titlob li ggħib t-tqagħbir ordinarju u t-telf li ġarrbet fis-sena stima 2002 (sena bażi 2001) u s-snin kollha ta' qabilha, 'il quddiem fis-sena stima 2004 għal skopijiet ta' kalkolazzjoni tat-taxxa tad-dhul tagħha għall-istess sena stima; bl-ispejjeż kontra l-Kummissarju tat-Taxxi;

Ra d-dokumenti annessi mar-Rikors promotur markati Dok. "A" sa' Dok. "G" a fol. 7 sa' 78 tal-proċess;

Ra r-Risposta tal-Kummissarju tat-Taxxi permezz ta' liema jopponi għall-appell tas-soċjetà Rikorrenti mil-Likwidazzjoni ta' Taxxa maħruġa fil-konfront tagħha għas-sena ta' stima 2004 u d-deċizzjoni tiegħu tat-12 ta' Diċembru 2018, u jitlob li l-istess jiġi miċhud, bl-ispejjeż kontra s-soċjetà Rikorrenti, u minflok l-imsemmija Likwidazzjoni ta' Taxxa u deċizzjoni jiġu kkonfermati stante li l-aggravji fuq liema l-imsemmija soċjetà tibbaża l-appell tagħha huma għal kollox infondati fil-fatt u fid-dritt;

Ra d-dokumenti annessi mar-Risposta tal-Kummissarju tat-Taxxi markati Dok. "KTT1" sa' Dok. "KTT5" a fol. 87 sa' 113 tal-proċess;

Ra li dawn il-proċeduri mixjin flimkien mar-Rikorsi fl-ismijiet "XXX v. Kummissarju tat-Taxxi" Rik. Nri. 9/2019, 10/2019, 11/2019, 12/2019, 13/2019, 14/2019, u 16/2019;

Sema' x-xhieda ta' Marco Borg, in rappreżentanza tal-Kummissarju tat-Taxxi, mogħtija waqt is-seduti tas-17 ta' Ottubru 2019¹, tat-30 ta' Jannar 2020², tat-12 ta' Marzu 2020³ u tal-15 ta' Ottubru 2020⁴ u ra d-dokumenti esebiti minnu ossia: (a) il-files tad-Dipartiment tat-Taxxi Interni fir-rigward tas-soċjetà Rikorrenti għas-snin ta' stima mertu tal-proċeduri odjerni u tal-proċeduri fl-ismijiet "XXX v. Kummissarju tat-Taxxi" Rik. Nri. 9/2019, 10/2019, 11/2019, 12/2019, 13/2019, 14/2019, u 16/2019 a fol. 141 sa' 1794 tal-proċess fl-ismijiet "XXX v. Kummissarju tat-Taxxi" Rik. Nru. 9/2019⁵; (b) id-dokumenti markati Dok. "GV1" sa' Dok. "GV5" a fol. 2259 sa' 2264 tal-proċess fl-ismijiet "XXX v. Kummissarju tat-Taxxi" Rik. Nru. 9/2019; u (ċ) id-dokumenti markati Dok. "MBX1" sa' Dok. "MBX7" a fol. 2280 sa' 2297 tal-proċess fl-ismijiet "XXX v. Kummissarju tat-Taxxi" Rik. Nru. 9/2019, sema' x-xhieda ta' Anthony Doublet mogħtija waqt is-seduta tat-12 ta' Marzu 2020⁶ u ra d-dokumenti esebiti minnu markati Dok. "AD1" u Dok. "AD2" a fol. 1806 sa' 2258 tal-proċess fl-ismijiet "XXX v. Kummissarju tat-Taxxi" Rik. Nru. 9/2019⁷, ra l-affidavit ta' Marco Borg, in rappreżentanza tal-Kummissarju tat-Taxxi, u d-dokumenti annessi miegħu markati Dok. "MB1" sa' Dok. "MB11" a fol. 160 sa' 273 tal-proċess fl-ismijiet "XXX v. Kummissarju tat-Taxxi" Rik. Nru. 10/19 u sema' x-xhieda ta' l-istess Marco Borg mogħtija waqt is-seduta tas-6 ta' Diċembru 2021⁸ u waqt is-seduta tat-22 ta' Marzu 2022⁹;

Ra li b'Digriet datat 14 ta' Ġunju 2021¹⁰, l-istadju tal-provi tas-soċjetà Rikorrenti ġie dikjarat magħluq;

Sema' s-sottomissjonijiet orali da parte tad-Difensuri tal-partijiet kontendenti;

Ra l-atti kollha tal-kawża;

Ikonsidra:

Permezz ta' Likwidazzjoni ta' Taxxa għas-sena ta' stima 2004 datata 5 ta' Diċembru 2018¹¹, il-Kummissarju tat-Taxxi jesigi mingħand is-soċjetà Rikorrenti h̄las tas-somma ta' €279 rappreżentanti taxxa addizzjonali (Formola Tard) u imghax. B'deċiżjoni datata 12 ta' Diċembru 2018¹², il-Kummissarju tat-Taxxi għarraf lis-soċjetà Rikorrenti li l-oġġezzjoni tagħha datata 4 ta' Diċembru 2013 għal-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2004 ma gietx milqugħa stante li: (1) *il-kumpanija talbet tqagħbir ordinarju miġġub mis-sena ta' qabel li ma kienetx intitolata titlob*; (2) *il-kumpanija talbet telf miġġub mis-sena ta' qabel li ma kienetx intitolata titlob*.

Is-soċjetà Rikorrenti ħassitha aggravata bil-ħruġ tal-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2004 fil-konfront tagħha u bid-deċiżjoni tal-Kummissarju tat-Taxxi datata 12 ta' Diċembru 2018, u interponiet dan l-appell minnhom. Hija titlob lit-Tribunal iħassar u jirrevoka l-Likwidazzjoni ta' Taxxa maħruġa fil-konfront tagħha mill-Kummissarju tat-

¹ Fol. 126 u 127 tal-proċess.

² Fol. 129 sa' 135 tal-proċess.

³ Fol. 142 sa' 148 tal-proċess.

⁴ Fol. 151 sa' 156 tal-proċess.

⁵ Minhabba n-natura ta' dawn il-files, l-istess b'ordni tat-Tribunal qed jinżammu fis-sigrieta.

⁶ Fol. 137 sa' 141 tal-proċess.

⁷ Dawn iż-żewġ files qed jinżammu fis-sigrieta.

⁸ Fol. 161A tal-proċess.

⁹ Fol. 164 sa' 172 tal-proċess.

¹⁰ Fol. 159 tal-proċess.

¹¹ Dok. "A" fol. 7 u 8 tal-proċess.

¹² Dok. "C" fol. 11 tal-proċess.

Taxxi għas-sena ta' stima 2004 u id-deċiżjoni tal-Kummissarju tat-Taxxi datata 12 ta' Diċembru 2018, u konsegwentement jiddikjara li s-soċjetà XXX kienet intitolata titlob li ggħib t-tqagħbir ordinarju u t-telf li għarrbet fis-sena stima 2002 (sena bażi 2001) u s-snin kollha ta' qabilha, 'il quddiem fis-sena stima 2004 għal skopijiet ta' kalkolazzjoni tat-taxxa tad-dħul tagħha għall-istess sena stima; bl-ispejjeż kontra l-Kummissarju tat-Taxxi.

Is-soċjetà Rikorrenti tibbaża l-appell tagħha mil-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2004 u mid-deċiżjoni tal-Kummissarju tat-Taxxi tat-12 ta' Diċembru 2018 fuq is-segwenti aggravji: (1) *l-istima tat-taxxa magħmula mill-intimat fuq id-dħul tas-soċjetà esponenti għas-sena stima 2004 hija nulla w invalida fil-liġi inkwantu l-istima tad-dħul taxxabbli u t-taxxa tad-dħul li għandha tithallas għall-istess sena kontenuti fl-istess stima, huma bbażati fuq l-istima tat-taxxa fuq id-dħul tas-soċjetà esponenti għas-sena stima 2002 weħidha magħmula mill-intimat stess, indipendentement minn jekk din ta' l-aħħar hijiex finali u konkluziva jew le*; (2) *l-istima ta' taxxa fuq id-dħul tas-soċjetà esponenti għas-sena ta' stima 2004, u d-deċiżjoni tat-12 ta' Diċembru 2018, saru arbitrarjament mill-intimat inkwantu huma ibbażati fuq il-konsiderazzjoni li l-istima ta' taxxa fuq id-dħul tas-soċjetà esponenti għas-sena ta' stima 2002 giet reża finali u konkluziva wara li s-soċjetà esponenti m'appellatx mid-deċiżjoni ta' rifjut t'ogġezzjoni. ... Is-soċjetà esponenti hija ta' l-umli fehma li anke jekk, dato ma non concesso, l-istima ta' taxxa għas-sena stima 2002 u id-deċiżjoni sussegwenti jagħmlu stat inkontrovertibbli fil-konfront tagħha f'dak li jirrigwarda d-dħul tagħha u t-taxxa relattiva dovuta minnha għas-sena stima 2002, dan ċertament m'għandux japplika ukoll għas-snin kollha ta' wara. Jirriżulta ċar mid-dispożizzjonijiet tal-Kapitolu 372 li l-unika ostakolu għall-poter ta' l-intimat qua Kummissarju tat-Taxxi li jhassar jew jagħmel stimi u stimi addizzjonali ta' taxxa (u saħansitra li jagħmel rifużjonijiet skond l-Artikolu 48 ta' l-istess Kapitolu 372) huwa jekk, billi jagħmel dan, ikun qiegħed jiftaħ kwistjoni li tkun giet deċiża b'appell u cioè b'deċiżjoni mill-Qrati Maltin, ossia minn dan it-Tribunal jew mill-Qorti ta' l-Appell. ... abbażi tal-proviso ta' l-istess Artikolu 38 (tal-Kap.372 tal-Liġijiet ta' Malta) anqas stima ta' taxxa finali u konkluziva wara deċiżjoni tal-Kummissarju tat-Taxxi fuq ogġezzjoni tat-taxpayer ma żżomm lill-istess Kummissarju milli jhassar l-istess stima u joħroġ stima oħra u/jew stima addizzjonali jekk ikun il-każ. Konsegwentement, l-eżistenza ta' l-istima ta' taxxa finali u konkluziva għas-sena stima 2002 anqas tipprekludi lill-intimat milli jhassarha u jagħmel stima oħra u/jew stima addizzjonali għall-istess sena stima jekk ikun sodisfatt li tabilhaqq kien hemm żball fl-istima ta' taxxa li tkun saret finali u konkluziva u għalhekk, wisq anqas tista' l-istess stima ta' taxxa, sempliċement għax hi finali u konkluziva, torbot idejn l-intimat fir-rigward ta' l-istimi ta' taxxa fuq id-dħul tas-soċjetà esponenti għas-snin sussegwenti bħal ma hija l-istima ta' taxxa fuq id-dħul tas-soċjetà esponenti għas-sena stima 2004 mertu tal-proċeduri odjerni. In vista ta' suespost, l-intimat anqas ma kellu jirrifjuta t-talba tas-soċjetà esponenti li għas-sena stima 2004 igħib 'il quddiem mis-sena stima 2002 u s-snin kollha ta' qabilha telf fin-negożju u tqagħbir ordinarju sempliċement għax l-istima tat-taxxa għas-sena stima 2002 saret finali u konkluziva*; (3) *m'huwiex minnu li s-soċjetà esponenti għamlet qligħ fis-sena bażi 2001, u wisq inqas huwa minnu li s-soċjetà esponenti għamlet biżżejjed qligħ fis-sena bażi 2001 biex it-telf fin-negożju u t-tnaqqis kapitali għas-snin bażi preċedenti kollha jkunu jistgħu jiġu paċuti fl-intier tagħhom, u dan kif se jiġi ppruvat ulterjorment fil-mori tal-proċeduri odjerni. Għalhekk ukoll l-intimat ma kellux jirrifjuta t-talba tas-soċjetà esponenti li għas-sena stima 2004 igħib 'il quddiem it-telf fin-negożju u t-tqagħbir ordinarju akkumulati matul is-sena stima 2002 u s-snin kollha ta' qabilha.*

Il-Kummissarju tat-Taxxi jopponi għall-appell tas-soċjetà Rikorrenti mil-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2004 u mid-deċiżjoni tiegħu tat-12 ta' Diċembru 2018 u jitlob li l-istess jiġi miċhud u minflok l-imsemmija Likwidazzjoni ta' Taxxa u deċiżjoni jiġu kkonfermati stante li l-aggravji fuq liema s-soċjetà Rikorrenti tibbaża l-appell tagħha huma infondati fil-fatt u fid-dritt filwaqt li d-deċiżjoni u Likwidazzjoni ta' Taxxa għas-sena ta' stima 2004 huma ġusti u jithoqqilhom konferma.

Fit-Tax Audit Report esebit bħala Dok. "KTT1" a fol. 87 sa' 101 tal-proċess, u partikolarment taht l-intestatura **Audit Findings and Conclusions** gie osservat u determinat is-segwenti: *Case of XXX was opened way back in 2009 due to the fact that the company was submitting the VAT returns but was not filing its income tax returns. The Tax Compliance Unit took into consideration the difficulties that the company was facing and granted various extensions for the submission of the income tax returns and for the production of documentation. In May 2010 the Company was requested to provide trade books together with other information pertaining to years ending June 2004, June 2005 and June 2006. After a number of postponements and extension of deadlines in July 2012, Mr. Azzopardi provided some of the information listed in table 4. After reviewing the documentation provided, this Unit sent an email requesting further explanation since the accounts in the nominal ledger provided did not tally with the figures reported in the financial statements. This Unit issued deadlines for the submission of the requested explanations/information but to no avail. Since the audit was well overdue, case was discussed with Head, Tax Compliance Unit to agree a way forward. This Unit agreed that the case had to be closed without further delay and therefore decided to limit the information/explanation/vouching to be presented. Mr. Azzopardi was requested to attend for an appointment in July 2013. The email listed the issues to be discussed namely casual labour, commissions, bad debts and losses brought forward from Y/A 2022. As per email dated 8th August 2013, this Unit issued a final deadline whereby Mr. Azzopardi was requested to provide all documentation/explanations/adjustments by not later than Monday 19th August 2013. On 16th August Ms Bianca Vella on behalf of the director of the company requested an extension of deadline to at least 28th August 2013 as she stated that being the festive season both auditors and Mr. Azzopardi were unavailable. This Unit once again granted an extension, however until 15th October 2013 this Unit did not receive any feedback. Given the circumstances this Unit felt that it should not grant any more extensions but should proceed by informing Mr. Azzopardi that this Unit was issuing assessments against which the company will have the right to object according to law. XXX is being assessed on the following: **Casual Labour** - The assessment is adding back the casual labour claimed from year basis 2004 to year basis 2009 by adding back the amounts claimed in the income tax computation on the grounds that valid receipts in respect of these expenses have not been presented. **Commissions claimed** - The assessment is reversing the commissions claimed in years ending June 04, June 05 and June 06 since the company failed to produce information/explanations requested to enable proper vouching. **Losses b/f and capital allowances b/f from Y/A 2002** - The assessment is also disallowing the capital allowances and trade losses brought forward from Y/A 2002 on the grounds that there was no valid objection against the assessment issued for Y/A 2002 and therefore such assessment was now final and conclusive.*

Fil-parti tat-Tax Audit Report intestata **Detailed Tax Audit Findings** gie osservat illi: *In letter dated 13th August 2009, the Directors of Sovereign Hotels were requested to attend for an appointment. In this letter they were also informed that according to this*

Unit's records, the company had failed to submit Income tax returns for Years of Assessment 2002 to 2009. **Sequence of main events** - In email dated 25th August 2009, Mr. Azzopardi was requested to file the Income Tax returns together with the Audited Financial Statements by not later than 17th September 2009. In email dated 16th September 2009, this Unit was informed that the company's auditors were engaged in the audit exercise relating to years of assessment 2002 to 2009 and that the audits had to be completed by the end of the year. Therefore, this Unit granted an extension and requested submission of returns by 4th December 2009. The deadline was not honoured. Nevertheless, this Unit understood the difficulties faced by the company and kept extending its deadlines. With regards to years of assessment 2002, 2003 and 2004, the co-directors were refusing to sign the financial statements of the company. An application in terms of Section 402 of the Companies Act requesting the court to order the signing of the said financial statements by another co-director was filed in March 2010. With regards to the other years, the company's auditors were finding difficulty with obtaining important information from HSBC. In April 2010 this Unit was provided with the unsigned audited financial statements for years ending June 2004 and June 2005, however income tax returns were not submitted. In email dated 23rd April 2010 Ms Alessandro requested submission of Income tax returns and pending audited financial statements by not later than 28th May 2010. In the same email Mr. Azzopardi was also informed that this Unit will accept the remaining documents in a piecemeal manner. Subsequently, on 4th May 2010, this Unit was provided with only the accounts for year ending June 2006. Case was discussed with Mr. Marvin Gaerty and on 11th May 2010 an email was sent to Mr. Azzopardi. Mr. Azzopardi was informed that an extension would be conceded based upon a formal declaration by his auditor detailing the expected date for the submission of the income tax returns and financial statements. The said email included also a list of the trade books/documentation to be submitted in respect of financial years ending June 2004, 2005 and 2006. ... In email dated 18th August 2010, this Unit issued a final deadline whereby the Company was requested to provide all documentation requested by not later than 15th September 2010. Subsequent correspondence addressed to this Unit highlighting company's difficulties was again addressed to this Unit and the deadline was not honoured. In December 2010, the Inland Revenue Department undertook a comprehensive exercise whereby persons who had not submitted income tax return for Y/A 2002 were issued with an assessment. XXX had not yet filed its returns and therefore an assessment was issued for this year. As per email dated 14th June 2011, this Unit was informed that the law suit filed on 8th March 2010 was decided upon and that the company's auditors were given instructions to sign the approved financial statements and income tax returns. XXX however did not submit its income tax returns soon after the delivery of the said judgement. Return for Y/A 2002 was eventually submitted to the Inland Revenue Department in March 2012. In April 2012, Mr. Azzopardi wrote a letter to CIR in which he referred to a letter dated 13th February 2012 claiming €392,872 as taxes and interest due for Y/A 2002. In the said letter the Director stated that he was objecting to the amount claimed on the grounds that the company had submitted its tax return and that no tax was due. This indicates that not even at this date did the Director try to file a formal objection against the assessment issued for Y/A 2002 which is required to be made on the prescribed form. In letter dated 13th February 2012, the Director of Sovereign Hotels Ltd was again asked to submit the documentation listed in email dated 11th May 2010. In July 2012 Mr. Azzopardi provided this Unit with a CD containing Nominal ledgers, purchases ledger, sales ledger, debtors' list, creditors' list and several bank statements and this Unit started working on the documentation produced. A trial balance was extracted from the

nominal ledger however the extracted figures could not tally with the amounts produced in the Financial Statements. An email was eventually sent on 2nd October 2012 in which this Unit requested the Company's Director to either explain the discrepancies or hand this Unit the accounts on which the Financial Statements were built. In the same letter Mr. Azzopardi was also requested to provide the following: Wages reconciliations (for Years ending June 04, 05, 06); Bank reconciliations (for years ending June 04, 05, 06); Deeds of acquisition and disposal of property which has been disposed during the period under enquiry. An appointment was set up for 18th October 2012 for the production of the above mentioned documents. However, this meeting was dishonoured and neither Mr. Azzopardi nor one of his representatives contacted this Unit requesting postponement or to justify non attendance. On 2nd November 2012 this Unit sent a final deadline to Mr. Azzopardi requesting submission of documents by not later than 12th November 2012. The Unit was informed that Mr. Azzopardi was abroad and that he will return to Malta on 19th November 2012. On 21st November 2012 by means of an email Mr. Azzopardi sent trial balances, wages reconciliations and VAT reconciliation for years ending 2004, 2005 and 2006. The trial balance showed the opening balance as per sage, the audit adjustments and final trial balance. Although the final trial balance agreed with the audited accounts, this Unit noticed that some of the figures in the opening balance as per sage did not agree with the accounts provided to this Unit which meant that this Unit was probably provided with a different set of accounts. This Unit waited for the submission of further information/documentation/explanations but to no avail. Since audit was well overdue, case was discussed with Head, Tax Compliance Unit. This Unit agreed that case had to be closed without further delay and therefore decided to again request information/vouching/explanation on just 4 items namely casual labour, bad debts, commissions and capital allowances/trading losses brought forward from Y/A 2002. XXX had utilised losses and capital allowances brought forward from Y/A 2002 (income tax return submitted in March 2012) even though the company had never filed a valid objection as prescribed by law which meant that the assessment was now final and conclusive and as a consequence of the said assessment the company did not have any capital allowances and trading losses balances to be brought forward to year of assessment 2003. With regards to casual labour this Unit agreed to request information from Y/A 2004 to date. An email was sent to Mr. Azzopardi on 28th June 2013 in which an appointment was scheduled for 18th July 2013. The email listed the issues to be discussed.

Casual Labour - From the accounts submitted, included with the wages, this Unit noticed persons which are not even registered with the Inland Revenue Department and therefore their salary could not have been paid through the FSS. The company also had an account specifically named "Casual Labour". In its income tax computation XXX did not add back any disallowable expenditure and therefore casual labour which is a non deductible expense was not added back. Explanations in this regard were requested in email dated 2nd October 2012 and in subsequent emails. This issue was discussed in meeting held on 18th July 2013 whereby Mr. Azzopardi confirmed that it was very difficult for a hotel to find chambermaids/employees who accepted to be registered workers and therefore he had no other option but to employ them as unregistered employees. The company therefore could not register such payments through the FSS system. Mr. Azzopardi was informed that unless wages were paid through FSS system or backed by valid receipts, for tax purposes the company could not claim the said expense and therefore it should have added back the casual labour as disallowed expenses for income tax purpose. In letter dated 1st August 2013 Mazars

listed the amount of casual labour paid by the company for basis year 2007 onwards. Point (a) in the email dated 12th July 2013 sent by Mr. Giglio to Mr. Azzopardi referred to employees and not subcontractors, however letter dated 1st August 2013 stated that the payments were usually backed by receipts. In this regard Mr. Azzopardi was therefore requested to either produce all receipts in respect of casual labour claimed from basis year 2004 to date or effect the necessary adjustments to the company's income tax returns. Mr. Azzopardi was also informed that this Unit will not accept any receipts made from unregistered persons. ... **Commissions claimed - vouching** - This Unit requested accounts relating to the commissions paid. These accounts have been duly submitted, however this Unit could not proceed with the selection of invoices for vouching as it required further information on the ledger year end adjustments due to the fact that these were very material. ... **Vouching - Bad debts** - In Year ending June 2005 XXX claimed the amount of Lm16,519 as bad debts. ... Mazars explained that Bluemed represents an agent who defaulted on invoices dating between 2000 and 2002 and that legal action had been effectively taken. The story of the Price Club is known and Mazars did not elaborate further. With regards to Incoming Travel, Mazars explained that this was a local company which had a history of problems. Vacancies Voyage was a foreign operator who never settled the final balance due. **Losses b/f and capital allowances b/f from previous year** - Mr. Azzopardi was reminded on the assessments issued for Y/A 2002 whereby all trading losses and capital allowances brought forward from previous years were set off against the assessed income and that there were no balances left to be carried forward to subsequent years. During meeting held in July, Mr. Charles Sciriha who attended appointment with the Company's Director stated that he was currently discussing the issue with the Inland Revenue Department to determine whether an objection can be accepted or otherwise. During this Unit's final notice, Mr. Azzopardi was informed that according to our records, assessment for Y/A 2002 has now become final and conclusive. Mr. Azzopardi was also requested to either present details/supporting documentation showing that the Inland Revenue was effectively considered the objection or else make the necessary adjustments. However, until the date of this report no feedback was provided.

A baži ta' dan it-Tax Audit Report il-Kummissarju tat-Taxxi hareġ Likwidazzjonijiet ta' Taxxa datati 8 ta' Novembru 2013 fil-konfront tas-soċjetà Rikorrenti u dana għas-snin ta' stima 2003, 2004, 2005, 2006, 2007, 2008, 2009 u 2010. Permezz ta' ittra ta' oġġezzjoni datata 4 ta' Diċembru 2013¹³, is-soċjetà Rikorrenti oġġezzjonat għal dawn il-Likwidazzjonijiet ta' Taxxa in baži għas-segwenti: 1. Unabsorbed capital allowances brought forward from year of assessment 2002 amounting to €806,935 are not being taken into consideration in the assessments. 2. Unabsorbed trading losses brought forward from year of assessment 2002 amounting to €766,559 are not being taken into consideration in the assessments. One must point out that in August of this year, my auditors, on behalf of the company, had requested an extension in the period of objection as disclosed in the enclosed letter. If the Inland Revenue Department accepts the extension request, which I feel should be acceptable given that it is based on reasonable cause, then any further assessments raised by the Department would be superfluous given that the above mentioned unabsorbed capital allowances and unabsorbed trading losses would fully absorb the assessments raised. 3. The income/(loss) from trade, business etc. after tax adjustments but before capital allowances for years of assessment 2005 up to and including 2009 are excessive. 4. The waived payables reported in the TIFD for years of assessment 2005 and 2007

¹³ Dok. "B" fol. 9 u 10 tal-proċess.

amounting to €797,370 and €18,126 respectively should be partly considered as exempt income given that this is a reversal of a capital balance. Based on the above mentioned grounds, please consider this letter as an objection letter for the assessments raised to the company for the years 2002 to 2009.

L-oġġezzjonijiet tas-soċjetà Rikorrenti ġew ikkunsidrati mid-Dipartiment tat-Taxxi Interni u in segwitu għal proċess ta' review tal-Likwidazzjonijiet ta' Taxxa in kwistjoni, inkluża l-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2004, ġie kkunsidrat u konkluz is-segwent¹⁴: **Work carried out at objection review stage** - During the objection review stage the taxpayer presented his accounting records in electronic format for basis years 2004, 2005 and 2006. A detailed review of the accounts was carried out and explanations were requested from the taxpayer, where necessary. Work carried out at review stage confirmed that the company had casual labour which was not declared in the FSS declarations. Throughout the objection stage, various requests were made to the taxpayer to present supporting documentation in respect of the commission payable claimed in the profit and loss account. However no documentation was presented. With respect to the reversal of the capital allowances and trade losses carried forward in YoA 2002 (brought forward in YoA 2003), no additional work was carried out since the assessment for YoA 2002 was considered final and conclusive. The following table details the basis of the assessment.

		Lm	€
Casual Labour	YA 2005 - 2010	285,304	664,580
Commissions	YA 2005 - 2007	60,824	141,682
Reversal of trade losses b/fwd	YA 2003	806,925	1,879,653
Reversal of capital allowances b/fwd	YA 2003	766,559	1,785,602
		1,919,622	4,471,516

Income tax objection review conclusion - It is recommended to confirm the assessment and issue a refusal as indicated in the Table 1. The revised income tax computation is attached in Appendix A - fol. 109 u 110 tal-proċess.

In segwitu għal dan ir-Review Report il-Likwidazzjonijiet ta' Taxxa għas-snin ta' sima 2003, 2004, 2005, 2006, 2007, 2008, 2009 u 2010 maħruġa fil-konfront tas-soċjetà Rikorrenti ġew ikkonfermati u nħarġu mill-ġdid fil-5 ta' Diċembru 2018.

Mit-Tax Audit Report fir-rigward tas-soċjetà Rikorrenti u mill-konsegwenti Review Report johroġ ċar li l-element li jifforma l-bażi tal-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2004 huwa l-element ta' *capital allowances and trade losses brought forward to Y/A 2003*.

Jirriżulta ferm ċar li b'dawn il-proċeduri s-soċjetà Rikorrenti qed tagħmel l-enneżimu tentattiv sabiex tikkonstesta u tipprova ixxejjen il-Likwidazzjoni ta' Taxxa għas-sena ta'

¹⁴ Income Tax Objection Review Report, Dok. "KTT4" a fol. 106 sa' 110 tal-proċess.

stima 2002 li kienet inħarġet fil-konfront tagħha mill-Kummissarju tat-Taxxi fit-28 ta' Diċembru 2010.

L-investigazzjoni li nfetħet fil-konfront tas-soċjetà Rikorrenti fl-2009 skattat minħabba in-nuqqas ta' l-imsemmija soċjetà f'li tissottometti l-prospetti tat-taxxa tagħha għas-snin ta' stima 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009 u 2010. Għalkemm l-ittra li biha s-soċjetà Rikorrenti ġiet infurmata bl-investigazzjoni fil-konfront tagħha da parte tat-Tax Compliance Unit kienet datata 13 ta' Awwissu 2009, mit-Tax Audit Report jirriżulta li sa' Diċembru 2010 kien għad ma hemm l-ebda interess attiv da parte ta' l-imsemmija soċjetà biex din l-investigazzjoni timxi, tant li għamlet iktar minn sena ma tagħmel xejn hlief titlob estensjonijiet taż-żmien u tagħti informazzjoni mhux kompluta, jekk mhux addirittura inaċċettabbli, għar-rikjesti tat-Tax Compliance Unit. Mill-istess Tax Audit Report in effetti jirriżulta li *in December 2010, the Inland Revenue Department undertook a comprehensive exercise whereby persons who had not submitted income tax return for Y/A 2002 were issued with an assessment. XXX had not yet filed its returns and therefore an assessment was issued for this year*¹⁵. Bħala fatt fit-28 ta' Diċembru 2010, il-Kummissarju tat-Taxxi ħareġ Likwidazzjoni ta' Taxxa fil-konfront tas-soċjetà Rikorrenti għas-sena ta' stima 2002.

Dan il-Kummissarju tat-Taxxi kellu kull dritt jagħmlu ai termini ta' l-Artikolu 31(3) tal-Kap.372 tal-Liġijiet ta' Malta: *Meta persuna ma tkunx bagħtet prospett ta' l-income għas-sena ta' stima 1999 jew għal xi sena sussegwenti u ma tkunx għamlet għażla taħt l-artikolu 12 jew, għalkemm tkun għamlet għażla bħal dik hija, wara li jkun ingħatalha avviż mill-Kummissarju sabiex tagħmel prospett kif provdut fl-artikolu 13, tonqos milli tippreżenta l-prospett, u l-Kummissarju jkun tal-fehma li dik il-persuna tkun sugġetta għall-ħlas tat-taxxa, huwa jista' jiddetermina l-ammont tat-taxxa li għandha tithallas minn dik il-persuna għal dik is-sena ta' stima fuq il-bażi ta' kalkolu li jsir b'dak il-mod u b'dak il-metodu kif il-Kummissarju jqis li jkun xieraq mingħajr preġudizzju għal xi responsabbiltà xort' oħra mġarrba minn dik il-persuna minħabba fin-nuqqas jew it-traskuraġni tiegħu li jibgħat prospett.*

Peress illi l-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2002 inħarġet ai termini ta' l-Artikolu 31(3) tal-Kap.372 tal-Liġijiet ta' Malta, ossia fi żmien meta s-soċjetà Rikorrenti kienet għadha ma ssottomettietx il-prospett ta' taxxa tagħha għal dik is-sena ta' stima, l-imsemmija soċjetà la kellha jedd togġezzjona u wisq inqas tappella minn dik il-Likwidazzjoni ta' Taxxa. Fir-rigward it-tieni proviso ta' l-Artikolu 33(2) tal-Kap.372 tal-Liġijiet ta' Malta jipprovdi li: **(2) Jekk xi Persuna tikkontesta l-istima hija tista' titlob lill-Kummissarju, b'avviż ta' oġġezzjoni bil-miktub, sabiex jerga' jeżamina u jirrive di l-istima magħmula dwarha. Din it-talba għandha ssemmi preċiżament ir-raġunijiet ta' l-oġġezzjoni tagħha għall-istima u għandha ssir fi żmien tletin jum mid-data tan-notifika ta' l-istima: ... Izda wkoll **ebda avviż ta' oġġezzjoni ma jista' jsir għar-rigard ta' xi stima kemm-il darba: (a) il-prospett għas-sena ta' stima rispettiva ma jkunx intbagħat skond ma hemm fl-artikoli 10 u 11 qabel jingħata l-avviż lill-Kummissarju****¹⁶ u l-Artikolu 36(a) tal-Kap.372 tal-Liġijiet ta' Malta, li daħal fis-seħħ fl-1 ta' Ġunju 2010, u b'hekk qabel il-ħruġ tal-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2002¹⁷ - jipprovdi li *d-dispożizzjonijiet li ġejjin għandu jkollhom effett għall-finijiet ta' kull appell magħmul taħt l-artikolu 35: (a) **it-Tribunal għandu sommarjament jiċċad kull appell quddiemu għal xi sena ta' stima***

¹⁵ Fol. 108 tal-proċess.

¹⁶ Enfasi tat-Tribunal.

¹⁷ Avviż Legali 336 ta' 2010.

u jikkonferma l-istima li dwarha jsir l-ilment kemm-il darba ma tingiebx quddiemu prova prima facie li, sad-data li fiha jkun sar l-appell, l-appellant ikun ipprezentat taht l-artikoli 10 u 11 prospett tal-income taxxabbli tiegħu għall-imsemmija sena ta' stima¹⁸.

Kien biss f'Marzu ta' l-2012, ossia **kwazi sentejn** wara l-hruġ tal-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2002, li s-soċjetà Rikorrenti ssottomettiet il-prospett ta' taxxa tagħha għal dik is-sena ta' stima. Huwa ferm evidenti li s-sottomissjoni tal-prospett ta' taxxa għas-sena ta' stima 2002 fl-2012, kienet ferm tardiva għall-finijiet ta' oġġezzjoni valida mil-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2002 u konsegwentement għalhekk japplika l-provvediment ta' l-Artikolu 38 tal-Kap.372 tal-Liġijiet ta' Malta, illi jipprovdi li: *Meta ebda oġġezzjoni valida jew appell ma jkun għew imressqin fiż-żmien stabbilit f'din it-Taqsima kontra stima jew ordni dwar l-ammont ta' income taxxabbli stabbilit b'dik l-istima jew dwar ir-rebate ta' taxxa mogġti skond l-artikolu 57 ta' l-Att dwar it-Taxxa fuq l-Income, jew meta l-ammont ta' l-income taxxabbli jew rebate ta' taxxa jkun sar ftehim fuqu taht l-artikolu 33(4), jew meta l-appell ikun għe rtirat jew ċedut, jew meta l-ammont ta' dak l-income taxxabbli jew rebate ta' taxxa jkun għe deċiż fuq oġġezzjoni jew appell, l-istima jew l-ordni kif magħmula jew miftehma jew deċiża f'appell, skond il-każ, tkun finali u konkluziva għall-finijiet kollha ta' dan l-Att dwar l-ammont ta' dak l-income taxxabbli jew rebate ta' taxxa: Izda ebda haġa f'din it-Taqsima ma żżomm lill-Kummissarju milli jagħmel xi refużjoni taht id-dispożizzjonijiet ta' l-artikolu 48 jew xi stima jew stima addizzjonali għal xi sena ta' stima li ma jimplikax li tinfetaħ xi kwistjoni li tkun għet deċiża fuq appell għas-sena.*

Huwa evidenti għalhekk illi l-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2002 maħruġa fil-konfront tas-soċjetà Rikorrenti hija finali u konkluziva u konsegwentement dan it-Tribunal bl-iktar mod assolut ma jistax u ma għandux jidhol fiha u wisq inqas jerga' jikkunsidraha.

Is-soċjetà Rikorrenti tikkontendi li l-Kummissarju tat-Taxxi kellu u għandu kull dritt ai termini tal-Liġi li jerga' jiftaħ il-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2002, sottomissjoni din li t-Tribunal assolutament ma jaqbilx magħha għaliex il-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2002 hija finali u konkluziva għall-Kummissarju wkoll. Fi kwalunkwe każ, is-soċjetà Rikorrenti persistentement tirrifjuta li tirrikonoxxi u taċċetta li d-dikjarazzjonijiet li għamlet fil-prospett ta' taxxa tagħha għas-sena ta' stima 2002, inkluz għalhekk *capital allowances* u *trading losses*, għew ikkunsidrati mid-Dipartiment tat-Taxxi għall-fini ta' dħul minnha dikjarat u għe li dan il-prospett, fi kliem Marco Borg in rappreżentanza tal-Kummissarju tat-Taxxi, għe kontra l-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2002.

Fir-rigward Marco Borg xehed li l-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2002 inħarġet fit-28 ta' Diċembru 2010, *imbagħad mis-sistema tal-kompjuter għandna li daħlet ir-return, liema return għet proċessata fit-30 ta' Marzu 2012. Jiġifieri din daħlet fit-30 ta' Marzu 2012 u għet acknowledged. ... Ahna ħriġnilu kont u dan kellu jhallas so much, imbagħad għamel it-telf, allura dawn għew qishom kontra xulxin. It-telf għe wara essenzjalment. ... Hareġ il-kont, daħlet ir-return. Ir-return għet kontra l-assessment mhux bil-maqlub. Ir-return ta' l-istess sena, aċċettajniha u bażikament inqata' l-ammont. Is-sena kienet 2002, l-assessment sar fl-2010, tmien snin wara. L-assessment kien jgħid li hareġ kont tat-taxxa li kellu jhallas ... imbagħad il-kumpanija Sovereign*

¹⁸ Enfasi tat-Tribunal.

fis-sena 2012, jiġifieri qed nitkellmu għaxar snin wara s-sena li suppost dahhalha, qal li kellu telf u dak it-telf mar kontra l-assessment u aċċettajnieh. Ahna r-return as such aċċettajniha u ma kkontestajnihiex. Marco Borg ippreżenta wkoll dokumentazzjoni - Dok. "MBX1" a fol. 2280 sa' 2287 tal-proċess fl-ismijiet "XXX v. Kummissarju tat-Taxxi" Rik. Nru. 9/2019 - li turi l-workings tad-Dipartiment fil-kuntest ta' dan ix-xenarju kollu.

Fic-ċirkostanzi għalhekk il-prospett ta' taxxa tas-soċjetà Rikorrenti għas-sena ta' stima 2002 sottomess minnha f'Marzu 2012, ġie kkunsidrat mill-Kummissarju tat-Taxxi fil-kuntest tal-posizzjoni taxxabbli tagħha f'dak iż-żmien fejn kien hemm pendenzi, inkluż il-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2002. Dak il-prospett u dak minnha hemm dikjarat f'dak iż-żmien ġie kkunsidrat mill-Kummissarju u hija bbenefikat mill-*capital allowances* u *trading losses* minnha dikjarati. Una volta li dak il-benefiċċju nascenti minn dak il-prospett ta' taxxa partikolari però ġie kollu utilizzat u dana dejjem fil-kuntest tal-posizzjoni taxxabbli tagħha sa' dak iż-żmien, ma tistax issa tippretendi li terġa' tiftaħ il-kwistjoni kollha, inkluż għalhekk il-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2002, biex tali *capital allowances* u *trading losses* jiġu allokatu w utilizzati skond kif jidhrilha hi u mhux skond kif meħtieġ li jsir ai termini tal-Liġi.

Fic-ċirkostanzi għalhekk fil-kuntest ta' l-element ta' *capital allowances and trade losses brought forward to Y/A 2003*, il-konsiderazzjonijiet u konsegwenti aġir tal-Kummissarju tat-Taxxi huma mhux biss korretti iżda anke legalment ġustifikati.

Fid-dawl ta' dan kollu osservat jirriżulta li l-appell tas-soċjetà Rikorrenti mil-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2004 u mid-deċiżjoni tal-Kummissarju tat-Taxxi tat-12 ta' Diċembru 2018, ma huwiex ġustifikat u ma jisthoqqux li jiġi milqugħ.

Għal dawn ir-raġunijiet it-Tribunal jaqta' u jiddeciedi billi **jiċhad** l-appell tas-soċjetà Rikorrenti mil-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2004 u mid-deċiżjoni tal-Kummissarju tat-Taxxi tat-12 ta' Diċembru 2018, u minflok jikkonferma l-istess imsemmija Likwidazzjoni ta' Taxxa u deċiżjoni tal-Kummissarju tat-Taxxi.

L-ispejjeż ta' dawn il-proċeduri għandhom jiġu sopportati interament mis-soċjetà Rikorrenti.

MAĠISTRAT

DEPUTAT REĠISTRATUR