



**MALTA**

**Administrative Review Tribunal  
Magistrate  
Dr. Gabriella Vella B.A., LL.D.**

**Application No. 111/14VG**

**Charles Richards Sayed**

**Vs**

**Director General (Inland Revenue)**

**Today, 17<sup>th</sup> March 2016**

**The Tribunal,**

After having taken cognizance of the Application filed by Charles Richards Sayed on the 15<sup>th</sup> December 2014 by means of which he requests the Tribunal to: (i) declare that the Tax Assessment issued against him by the Director General (Inland Revenue) dated 1<sup>st</sup> October 2014 relative to the transfer of property in his favour by virtue of a deed dated 12<sup>th</sup> October 2011 published in the records of Notary Dr. Malcolm Mangion, is time-barred in terms of Sections 52(5) and 55 of Chapter 364 of the Laws of Malta<sup>1</sup>; or alternatively to (ii) annul and revoke *in toto* the decision by the Director General (Inland Revenue) dated 24<sup>th</sup> September 2014 and the ensuing Tax Assessment dated 1<sup>st</sup> October 2014, above-mentioned, with costs against the Director General (Inland Revenue);

After having taken cognizance of the documents attached to the Application marked Doc. "A" to Doc. "D" a folio 7 to 21 of the records of the proceedings;

After having taken cognizance of the Reply by the Director General (Inland Revenue) by means of which he contests the appeal lodged by the Applicant and requests that the same be rejected since: (i) the Tax Assessment issued against the Applicant is not time-barred; (ii) the Tribunal is not competent to deal with and decide issues concerning an alleged breach of Human Rights

---

<sup>1</sup> Additional ground of appeal authorized by Decree dated 25<sup>th</sup> June 2015.

and Fundamental Freedoms; and (iii) the allegations put forth by the Applicant are totally unfounded in fact and at law;

After having taken cognizance of the documents attached to the Reply by the Director General (Inland Revenue Department) marked Doc. “CTD1” to Doc. “CTD13” at folio 29 to 47 of the records of the proceedings;

After having taken cognizance of the affidavit submitted by the Applicant marked Doc. “CS” and the documents attached thereto marked Doc. “CS1” to Doc. “CS3” filed by means of a Note dated 9<sup>th</sup> April 2015 at folio 65 to 69 of the records of the proceedings and after having taken cognizance of the testimony given by the Applicant under cross examination during the sitting held by the Judicial Assistant Dr. Daniela Mangion on the 23<sup>rd</sup> April 2015<sup>2</sup>;

After having taken cognizance of the Note of Submissions filed by the Applicant on the 25<sup>th</sup> June 2015 at folio 76 to 79 of the records of the proceedings and of the Note of Submissions filed by Director General (Inland Revenue) on the 30<sup>th</sup> July 2015 at folio 80 and 81 of the records of the proceedings;

After having taken cognizance of the records of the proceedings;

### **Considers:**

By virtue of these proceedings the Applicant is contesting the decision by the Director General (Inland Revenue) dated 24<sup>th</sup> September 2014<sup>3</sup> and the ensuing Tax Assessment dated 1<sup>st</sup> October 2014<sup>4</sup>, by means of which he is being requested to pay the sum of €2,260 representing tax on the additional chargeable value of €45,200 and the further sum of €2,260 representing additional duty/penalty, for a total of €4,520, relative to the acquisition of the premises “Carmelina” Claire Engel Street, St. Julian’s, by virtue of a deed published on the 12<sup>th</sup> October 2011.

By way of a preliminary ground of appeal the Applicant claims that the Tax Assessment issued against him by the Director General (Inland Revenue) is time-barred in terms of Sections 52(5) and 55 of Chapter 364 of the Laws of Malta since the first time such an assessment was brought to his attention was by means of a Notice served on him in June 2013, that is one year and eight months after the publication of the deed of transfer in the records of Notary Malcolm Mangion. The Applicant also claims that the value declared in the deed of transfer of the premises in issue reflects the real market value of the said premises at the time of transfer and that the provisions of Section 52(4) of Chapter 364 of the Laws of Malta violate his Human Right and Fundamental Freedom enshrined under Section 39 of the Constitution and Article 6 of the

---

<sup>2</sup> Folio 70 and 71 of the records of the proceedings.

<sup>3</sup> Folio 19 to 21 of the records of the proceedings.

<sup>4</sup> Folio 17 and 18 of the records of the proceedings.

European Convention for the Protection of Human Rights and Fundamental Freedoms. On the basis of the above the Applicant is requesting that: (i) first and foremost the Tribunal declare that the Tax Assessment issued against him by the Director General (Inland Revenue) is time-barred in terms of Sections 52(5) and 55 of Chapter 364 of the Laws of Malta; alternatively, (ii) that the Tribunal annul and revoke *in toto* the decision by the Director General (Inland Revenue) dated 24<sup>th</sup> September 2014 and the ensuing Tax Assessment dated 1<sup>st</sup> October 2014.

The Director General (Inland Revenue) opposes the claims and consequent requests put forth by the Applicant and requests that his appeal from the decision dated 24<sup>th</sup> September 2014 and the ensuing Tax Assessment dated 1<sup>st</sup> October 2014, be rejected since: (i) contrary to that claimed by the Applicant the Tax Assessment issued against him is not time-barred; (ii) the Tribunal is not competent to deal with and determine issues pertaining to an alleged violation of Human Rights and Fundamental Freedoms; and (iii) the allegations put forth by the Applicant are unfounded in fact and at law.

During the sitting held on the 9<sup>th</sup> April 2015<sup>5</sup> the parties declared that in view of the claim put forth by the Applicant that the Tax Assessment issued against him by the Director General (Inland Revenue) is time-barred, the Tribunal should determine and decide this particular issue prior to dealing with the merits of this Appeal. This decision therefore exclusively refers to and determines this preliminary ground for appeal raised by the Applicant.

Section 52(5) of Chapter 364 of the Laws of Malta provides that *saving the provisions of this article, the Commissioner may raise an assessment as provided in this article, at any time, within one year from the day of the receipt by the Commissioner of the notice referred to in article 51*<sup>6</sup>... Section 55 of the said Chapter of the Laws of Malta provides that *an assessment shall for all purposes of this Act be deemed to have been made by the Commissioner on the date of service of the notice aforesaid*<sup>7</sup>. From these provisions it is very clear that within one year from receipt of the Notice by the Notary pertinent a deed of transfer published by him, the Commissioner must not only issue a tax assessment, if any, but he must also serve such tax assessment on the taxpayer. Since the period of one year set out in Section 52(5) of Chapter 364 of the Laws of Malta is a peremptory period, should a tax assessment not be issued **and** served on the taxpayer within the said period of one year, then that tax assessment is time-barred and therefore no longer due.

The Applicant claims that the Tax Assessment issued against him is time-barred because the first time he was informed about such an assessment was in June 2013 when he received a request for payment from the Director General (Inland Revenue) for the sum of €5,020 representing the amount of

---

<sup>5</sup> Folio 63 of the records of the proceedings.

<sup>6</sup> Underlining by the Tribunal.

<sup>7</sup> Underlining by the Tribunal.

tax assessed in connection with documents and transfers relating to the premises “Carmelina” Claire Engel Street, St. Julian’s, purchased by him on the 12<sup>th</sup> October 2011, that is almost one year and eight months prior to the said request for payment.

The Director General (Inland Revenue) on the other hand claims that the said Tax Assessment is not time-barred because:

- The Tax Assessment was originally issued on the 9<sup>th</sup> March 2012, that is less than five months after the Notary submitted the Notice of Transfer with the Capital Transfer Duty Department<sup>8</sup>, and was sent to the Applicant at the address 14, Louisville 5, Depiro Street, Sliema<sup>9</sup>;
- The Tax Assessment was returned undelivered to the Capital Transfer Duty Division with an indication that there was a re-direction of mail to “Carmelina” Claire E. Engel Street, St. Julian’s<sup>10</sup>;
- On the 4<sup>th</sup> June 2012 the same said Tax Assessment dated 9<sup>th</sup> March 2012 was sent to the Applicant at “Carmelina” Claire E. Engel Street, St. Julian’s<sup>11</sup>;
- Since the envelope containing the Tax Assessment was not returned to the Capital Transfer Duty Division, the Director General (Inland Revenue) assumed that the said Tax Assessment was duly served on the Applicant;
- Since the Applicant did not submit an objection to the Tax Assessment a Demand Note was issued against him on the 16<sup>th</sup> April 2013 and by means of a Notice dated 30<sup>th</sup> May 2013<sup>12</sup> the Applicant was once again requested to pay the sum of €5,020 representing tax assessed in connection with documents and transfers relating to the premises “Carmelina” Claire Engel Street, St. Julian’s;
- On the 13<sup>th</sup> June 2013<sup>13</sup> the Director General (Inland Revenue) received a letter of objection from the Applicant which objection was considered and even though the assessment was reduced from a total of €5,020 to a total of €4,520, the request for the cancellation *in toto* of the Tax Assessment was rejected by means of a decision dated 24<sup>th</sup> September 2014 and the ensuing Tax Assessment was issued on the 1<sup>st</sup> October 2014.

In terms of Section 61 of Chapter 364 of the Laws of Malta (1) *A notice given by the Commissioner for the purposes of this Act shall be served on the person to whom it is addressed either personally or by being sent by registered post to his last known business or private address: Provided that where such notice is not made because the taxpayer could not be found or for*

---

<sup>8</sup> Doc. “CTD1” at folio 29 to 32 of the records of the proceedings.

<sup>9</sup> Doc. “CTD6” at folio 38 of the records of the proceedings.

<sup>10</sup> Doc. “CTD7” at folio 39 of the records of the proceedings.

<sup>11</sup> Doc. “CTD8” at folio 40 and 41 of the records of the proceedings.

<sup>12</sup> Doc. “CTD9” at folio 42 of the records of the proceedings.

<sup>13</sup> Doc. “CTD10” at folio 43 of the records of the proceedings.

*other reasons attributable to him and the Commissioner publishes a notice in the Gazette and in one or more daily newspapers stating that a notice has been made and inviting the taxpayer to call for it at the Department, then such notice shall also be deemed to have been duly notified. (2) In the case of service by registered post, unless the contrary is proved, the notice shall be deemed to have been served: (a) in the case of a person residing in Malta, not later than the third day succeeding the day of postage; and (b) in the case of a person not so residing, on the day succeeding that on which the notice would have been received in the ordinary course by post.*

It is very clear that Section 61(2) of Chapter 364 of the Laws of Malta creates certain presumptions vis-à-vis service of a notice issued by the Director General (Inland Revenue) by registered mail, even though the Tribunal believes that such presumptions come into play mainly in so far as concerns **when** service on the taxpayer took place rather than **whether** service on the taxpayer effectively took place. However, having said that it clearly results that these presumptions are not *iuris et de iure* presumptions but rather *iuris tantum* presumptions which can be over-turned by evidence to the contrary.

The Director General (Inland Revenue) insists that since the envelope containing the Tax Assessment re-issued and re-sent to the Applicant on the 4<sup>th</sup> June 2012 at the address “Carmelina” Claire Engel Street, St. Julian’s, was not returned to the Capital Transfer Duty Division as happened with the first attempt at service of the Tax Assessment in March 2012, then that necessarily means that the Applicant actually received the Tax Assessment re-issued and re-sent on the 4<sup>th</sup> June 2012.

The Tribunal has already expressed its misgivings regarding such a line of argument by the Director General (Inland Revenue) in the judgment in the names **Antonio Polidano pro et noe v. Commissioner for Revenue, Application No. 197/12** delivered on the 10<sup>th</sup> October 2013, and in this case it sees no reason why it should change its views with regard to the same.

Under cross examination the Applicant declared that he lives, or rather lived, alone in the premises “Carmelina” Claire Engel Street, St. Julian’s, and that he never authorized anyone to accept on his behalf mail addressed to him<sup>14</sup>. In view of this clear and unequivocal declaration by the Applicant the Tribunal is of the opinion that the onus of proof shifted onto the Director General (Inland Revenue) who should have proved that the Tax Assessment was **indeed and not merely presumably** served on the Applicant. The Director General (Inland Revenue) however did not submit any evidence which satisfactorily contradicts or at least casts doubt on that claimed by the Applicant under cross examination but merely persists with the submission that once the envelope containing the Tax Assessment re-issued and re-sent on the 4<sup>th</sup> June

---

<sup>14</sup> Testimony under cross examination during the sitting held by Dr. Daniela Mangion on the 23<sup>rd</sup> April 2015, folio 70 and 71 of the records of the proceedings.

2012 was not returned to the Capital Transfer Duty Division, then that Tax Assessment must have been served on the Applicant<sup>15</sup>.

In view of the declarations by the Applicant under cross examination the Director General (Inland Revenue) should have, to say the least, summoned a representative of the Universal Service Provider, in Malta's case Maltapost, in order to confirm or otherwise service on the Applicant of the Tax Assessment re-issued and re-sent to him on the 4<sup>th</sup> June 2012 by registered mail.

Regulation 7B(4) of the Postal Services (General) Regulations, Subsidiary Legislation 254.01, provides that: *a postal article, other than a registered or insures postal article<sup>16</sup>, shall be deemed to have been duly delivered when such postal article has been placed in a private letter box required to be provided under this regulation which bears the same address as is indicated on the postal article.* Regulations 32 and 33 of the said Regulations provide that: *the universal service provider so designated shall provide a registration service whereby every postal article may be registered [Regulation 32]. On the delivery of a registered postal article, the addressee, his representative, or a member of his household shall, unless instructions to the contrary are given to the universal service provider concerned by the addressee, give a written receipt therefore to the universal service provider: Provided that when such a receipt is not obtained, the postal article shall be considered as undelivered<sup>17</sup>: Provided further that this regulation shall apply without prejudice to any other law regulating receipts for registered postal articles.*

Even though Regulation 33 of Subsidiary Legislation 254.01 applies without prejudice to any other law regulating receipts for registered postal articles, which would therefore include Section 61 of Chapter 364 of the Laws of Malta, in view of the claims made by the Applicant, that is that he has never been served with the Tax Assessment re-issued and re-sent to him on the 4<sup>th</sup> June 2012, that he lives, or rather, lived alone in the premises "Carmelina" Claire Engel Street, St. Julian's, and that he never authorized anyone to accept on his behalf mail addressed to him, the Tribunal reiterates that the Director General (Inland Revenue) should have summoned a representative of the Universal Service Provider to give evidence regarding the service or otherwise of the said Tax Assessment, a witness who however was never summoned.

In the light of the above and in default of satisfactory evidence, as opposed to mere presumptions, by the Director General (Inland Revenue) to counter claims made by the Applicant under cross examination, the Tribunal is not at all convinced and satisfied that the Applicant was indeed served with the Tax Assessment in June 2012.

---

<sup>15</sup> Note of Submissions by the Director General (Inland Revenue), para. 7, folio 81 of the records of the proceedings.

<sup>16</sup> Underlining by the Tribunal.

<sup>17</sup> Underlining by the Tribunal.

For all intents and purposes the Tribunal observes that the fact that the Director General (Inland Revenue) considered the objection submitted by the Applicant in June 2013 – and this after being served with the Notice dated 30<sup>th</sup> May 2013 – does not in any way rectify or rather nullify the fact that the Tax Assessment was not issued **and** served on the Applicant within the peremptory period of one year set out in Section 52(5) of Chapter 364 of the Laws of Malta. Since the said period of one year is a **peremptory period** the Tax Assessment not served within the said period is time-barred and all actions and acts carried out on the basis of such a time-barred tax assessment are necessarily null and without any validity at law.

In view of the above it clearly results that the preliminary ground for appeal raised by the Applicant is justified and must therefore be upheld.

For these reasons the Tribunal upholds the preliminary ground for appeal put forth by the Applicant and whilst declaring the Tax Assessment issued by the Director General (Inland Revenue) against the Applicant time-barred in terms of Sections 52(5) and 55 of Chapter 364 of the Laws of Malta, annuls and revokes the decision by the Director General (Inland Revenue) dated 24<sup>th</sup> September 2014 and the ensuing Tax Assessment dated 1<sup>st</sup> October 2014.

Costs pertinent to these proceedings are to be borne by the Commissioner for Revenue.

**MAGISTRATE**

**DEPUTY REGISTRAR**