



**MALTA**

**Fit-Tribunal ta' Revizjoni Amministrattiva  
(Att dwar it-Taxxa fuq il-Valur Mizjud - Kap.406 tal-Ligijiet ta' Malta)  
Magistrat  
Dr. Gabriella Vella B.A., LL.D.**

**Rikors Nru. 34/15VG**

**XXX**

**Vs**

**Kummissarju tat-Taxxa fuq il-Valur Mizjud**

**Illum 6 ta' Mejju 2021**

**It-Tribunal,**

Ra r-Rikors ipprezentat mis-socjetà XXX fl-20 ta' Mejju 2015, permezz ta' liema titlob li t-Tribunal: (i) iħassar u jirrevoka l-istimi maħruġa fil-konfront tagħha mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud għall-perijodi ta' taxxa 01.09.08-30.11.08, 01.09.10-30.11.10, 01.06.11-31.08.11, 01.09.11-30.11.11, 01.03.12-31.05.12, 01.06.12-31.08.12, 01.09.12-30.11.12 u 01.12.12-28.02.16; kif ukoll (ii) iħassar u jirrevoka *in toto* jew *in parte* l-penali amministrattivi u l-imgħaxijiet imposti fuqha mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud, bl-ispejjeż kontra l-Kummissarju tat-Taxxa fuq il-Valur Mizjud;

Ra d-dokumenti annessi mar-Rikors promotur a markati Dok. "A" a fol. 4 u 5 tal-proċess;

Ra r-Risposta tal-Kummissarju tat-Taxxi permezz ta' liema jopponi għall-appell tas-socjetà Rikorrenti mill-istimi maħruġa fil-konfront tagħha u jitlob li l-istess jiġi miċhud, bl-ispejjeż kontra tagħha, u minflok l-istimi jiġu kkonfermati stante li l-aggravji fuq liema 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. "A" sa' Dok. "M1" a fol. 17 sa' 225 tal-proċess;

Ra d-Digriet datat 29 ta' Mejju 2017<sup>1</sup>, permezz ta' liema t-Tribunal, fuq talba tas-soċjetà Rikorrenti, ordna l-inverżjoni tal-provi b'dana li kellu jibda l-ewwel bil-provi tiegħu l-Kummissarju tat-Taxxi;

Ra d-Digriet datat 17 ta' Ottubru 2017<sup>2</sup>, permezz ta' liema t-Tribunal ċaħad it-talba tal-Kummissarju tat-Taxxi biex jiġi awtorizzat jappella mid-Digriet tad-29 ta' Mejju 2017;

Sema' x-xhieda ta' Anton Theuma, rappreżentant tal-Kummissarju tat-Taxxi, mogħtija waqt is-seduta tad-19 ta' April 2018<sup>3</sup> u x-xhieda ta' Chris Spiteri, rappreżentant tal-Kummissarju tat-Taxxi, mogħtija waqt is-seduta tat-22 ta' Mejju 2018<sup>4</sup>, sema' x-xhieda ta' David Zammit mogħtija waqt is-seduta ta' l-24 ta' Jannar 2019<sup>5</sup> u x-xhieda ta' Renato Valente mogħtija waqt is-seduta tat-28 ta' Frar 2019<sup>6</sup>;

Ra n-Nota ta' Sottomissjonijiet tal-Kummissarju tat-Taxxi a fol. 308 sa' 321 tal-proċess u ra n-Nota Responsiva tas-soċjetà Rikorrenti a fol. 324 sa' 328 tal-proċess;

Ra d-Digriet datat 6 ta' Mejju 2021, permezz ta' liema t-Tribunal ordna korrezzjoni fir-Rikors promotur u kull fejn meħtieġ fl-atti fis-sens illi taħt l-intestatura tat-Tribunal jiżdiedu l-kliem "(Att dwar it-Taxxa fuq il-Valur Miżjud - Kap. 406 tal-Liġijiet ta' Malta)";

Ra l-atti kollha tal-kawża;

### **Ikkunsidra:**

Permezz ta' tmien stimi maħruġa fl-20 ta' April 2015 għall-perijodi ta' taxxa 01.09.08-30.11.08, 01.09.10-30.11.10, 01.06.11-31.08.11, 01.09.11-30.11.11, 01.03.12-31.05.12, 01.06.12-31.08.12, 01.09.12-30.11.12 u 01.12.12-28.02.13<sup>7</sup>, il-Kummissarju tat-Taxxi qed jesigi ħlas mingħand is-soċjetà Rikorrenti tas-somma ta' €19,154.68 rappreżentanti taxxa fuq il-valur miżjud, flimkien mas-somom ulterjuri ta' €3,214.43 rappreżentanti penali amministrattivi u ta' €3,841.58 rappreżentanti imghaxijiet, komplessivament ammontanti għal **€26,210.69**.

Is-soċjetà Rikorrenti ħassitha aggravata bil-ħruġ ta' dawn l-istimi fil-konfront tagħha u interponiet dan l-appell minnhom u titlob li t-Tribunal iħassar u jirrevoka l-istimi hekk maħruġa kontriha kif ukoll li jħassar u jirrevoka *in toto* jew *in parte* l-penali amministrattivi u l-imghaxijiet imposti fuqha mill-Kummissarju tat-Taxxa fuq il-Valur Miżjud.

Hawn it-Tribunal josserva li fir-Rikors ta' l-Appell tagħha s-soċjetà Rikorrenti tikkontendi li l-istimi maħruġa fil-konfront tagħha mill-Kummissarju tat-Taxxi huma għall-perijodi ta' taxxa 01.09.08-30.11.08, 01.09.10-30.11.10, 01.06.11-

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<sup>1</sup> Fol. 249 sa' 257 tal-proċess.

<sup>2</sup> Fol. 268 u 269 tal-proċess.

<sup>3</sup> Fol. 276 sa' 279 tal-proċess.

<sup>4</sup> Fol. 281 u 282 tal-proċess.

<sup>5</sup> Fol. 288 sa' 292 tal-proċess.

<sup>6</sup> Fol. 294 sa' 302 tal-proċess.

<sup>7</sup> Fol. 219 sa' 223 tal-proċess.

31.08.11, 01.09.11-30.11.11, 01.03.12-31.05.12, 01.06.12-31.08.12, 01.09.12-30.11.12, 01.12.12-28.02.16 u għalhekk għandu jsegwi li l-appell tagħha huwa minn dawn l-istimi. Jirriżulta però li l-aħhar perijodu ta' taxxa fir-rigward ta' liema nħarġet stima huwa l-perijodu 01.12.12-28.02.13 u mhux 01.12.12-28.02.16. Mill-atti proċesswali jirriżulta però li s-soċjetà Rikorrenti setgħet giet indotta f'dan l-iżball mid-Dipartiment tat-Taxxa fuq il-Valur Miżjud stess in kwantu l-avviż dwar il-ħruġ ta' stimi fil-konfront tagħha datat 17 ta' April 2015<sup>8</sup> jindika li l-aħhar perijodu ta' taxxa għal liema nħarġet stima huwa **01/12/12 to 28/02/16**. Fiċ-ċirkostanzi għalhekk it-Tribunal ser iqis li bħala fatt is-soċjetà Rikorrenti qed tappella mill-istimi effettivament maħruġa fil-konfront tagħha, ossia mill-istimi għall-perijodi ta' taxxa 01.09.08-30.11.08, 01.09.10-30.11.10, 01.06.11-31.08.11, 01.09.11-30.11.11, 01.03.12-31.05.12, 01.06.12-31.08.12, 01.09.12-30.11.12 u 01.12.12-28.02.13.

Qabel ma jibda jittratta l-appell in eżami, it-Tribunal josserva li fil-verbali tas-seduti tat-2 ta' Mejju 2016<sup>9</sup> u ta' l-20 ta' Ottubru 2016<sup>10</sup> gie verbalizzat is-segweni: *peress illi l-proċeduri quddiem il-Qorti ta' l-Appell (Sede Inferjuri) relattivi għall-applikabilità o meno ta' l-Artikolu 48(5) tal-Kap.406 tal-Liġijiet ta' Malta għadhom pendenti, ir-rikors jibqa' differit għall-informazzjoni għall-.....* Minkejja dak verbalizzat però mill-atti proċesswali kjarament jirriżulta li l-eċċezzjoni a tenur ta' l-Artikolu 48(5) tal-Kap.406 tal-Liġijiet ta' Malta ma giet sollevata fl-ebda stadju ta' dawn il-proċeduri u għaldaqstant it-Tribunal mhux se jindirizza dan l-aspett partikolari in kwantu bl-ebda mod ma jinkwadra f'dan l-appell.

Trattati dawn il-punti t-Tribunal ser jgħaddi biex jittratta l-appell tas-soċjetà Rikorrenti fil-mertu.

Is-soċjetà Rikorrenti tibbaza l-appell tagħha mill-istimi maħruġa kontriha fuq is-segweni aggravji: (i) *parti mill-bejgħ magħmul mis-soċjetà esponenti fil-perijodi relattivi huwa soġġett għall-eżenzjoni mill-ħlas tat-Taxxa fuq il-Valur Miżjud*; (ii) *diversi invoices li ġew preżentati mis-soċjetà esponenti ma ġewx aċċettati mill-Kummissarju intimat u dan mingħajr raġuni valida fil-liġi*; (iii) *is-soċjetà esponenti ma ngħatatx biżżejjed informazzjoni u opportunità mill-Kummissarju intimat sabiex tistharreġ u tirregola ruħha dwar l-invoices li allegatament m'humieq tajbin għall-finijiet tal-final assessment*; (iv) *b'hekk l-istima magħmula mill-Kummissarju intimat hija għal kollox arbitrara u b'hekk ma tirriflettix b'mod reali u ġust is-sitwazzjoni fiskali tas-soċjetà appellanta fil-perijodi reattivi*.

Il-Kummissarju tat-Taxxi jopponi għall-appell tas-soċjetà Rikorrenti mill-istimi maħruġa fil-konfront tagħha u jitlob li l-istess jiġi miċhud u l-imsemmija stimi jiġu kkonfermati, stante li l-aggravji fuq liema tibbaza l-appell tagħha huma għal kollox infondati fil-fatt u fid-dritt.

Mix-xhieda ta' Anton Theuma<sup>11</sup>, rappreżentant tal-Kummissarju tat-Taxxi u l-Ispettur tal-VAT li mexxa l-investigazzjoni fil-konfront tas-soċjetà Rikorrenti, jirriżulta li l-każ fil-konfront ta' l-imsemmija soċjetà għall-ewwel kien inbeda bħala

<sup>8</sup> Fol. 219 tal-proċess.

<sup>9</sup> Fol. 235 tal-proċess.

<sup>10</sup> Fol. 236 tal-proċess.

<sup>11</sup> Xhieda mogħtija waqt is-seduta tad-19 ta' April 2018, fol. 276 sa' 279 tal-proċess.

credit control iżda imbagħad kompli bħala investigazzjoni. Minn din l-investigazzjoni rriżulta li fil-perijodi ta' taxxa 01.09.08-30.11.08, 01.09.10-30.11.10, 01.06.11-31.08.11, 01.09.11-30.11.11, 01.03.12-31.05.12, 01.06.12-31.08.12, 01.09.12-30.11.12 u 01.12.12-28.02.13, is-socjetà Rikorrenti ddikjarat output tax bin-nieqes u input tax biz-zejjed.

Fir-Rapport<sup>12</sup> tiegħu Anton Theuma kkonstata li: **Desk Check Audit** - *The credit control exercise covered four tax periods, being: 01/09/2008-31/11/2008, 01/09/2010-31/11/2010, 01/06/2011-31/08/2011, 01/09/2012-30/11/2012. Two other tax period ledgers were later requested as follows: 01/09/2011-30/11/2011, 01/12/2012-28/02/2013. The total credit claimed in the six tax periods was €21,929.75.* **Accounting Records** - *The records requested in the letters sent were: the sales ledgers for the periods in question, the purchases ledgers for the periods in question, the purchases invoices, the financial statements for the years 2008-2012. The company at first sent nominal ledgers for the periods 01/06/2011-31/08/2011 and 01/09/2012-30/11/2012 based on a whole year. Mr. David Zammit, the accountant, was asked to produce them per tax period in order to tally with the declared VAT returns and to produce the ledgers for the first two periods. He stated that no ledgers were available for the first two tax periods as they were not in touch with the previous accountant. Because of this all the invoices for those periods were requested for viewing in order to reconstruct the ledgers of first two tax periods. The financial statements were also produced with the purchase invoices. Since discrepancies in the ledgers of tax periods 01/06/2011-31/08/2011 and 01/09/2012-30/11/2012 were noted, the ledgers for the following tax period for each of these returns was requested. The sales invoices for 2012 were requested as a sample in order to verify the recharge of excursions.* **Sales Analysis** - *The first exercise was made utilising the sales invoices produced for 2012. These were compared to the sales declared in the VAT returns. ... It transpired that during the five tax periods (01.12.11-29.02.12, 01.03.12-31.05.12, 01.06.12-31.08.12, 01.09.12-30.11.12, 01.12.12-28.02.13) €105.66 VAT at 18% had been over-declared whilst €6,386.75 VAT on accommodation was found under-declared in the VAT returns along with €92,382.76 exempt without credit. However when an email was sent to Mr. Zammit, no answer was given. When he was asked previously about discrepancies, he had stated that the accounts were best made on a yearly basis and that sales invoices could have been made back dated. These could not be accepted as reasons since the ledgers had to tally. Discrepancies in favour of the company could not be taken into consideration for two reasons: 1. Since a correction letter was not submitted; 2. That the differences could be present in 2011. Due to the fact that the sales invoices had not been requested for the first two tax periods, discrepancies could not be individualised. In the tax periods below, a difference was noted between the ledgers and the VAT returns. However in the tax period 01/09/2012-30/11/2012 an amount of €314.27 was found as discrepancy; this amount had to be decreased by the €80.02 previously assessed in the first exercise, done on accommodation for the same tax period in order not to assess the company twice on the same instance. Thus the amounts per tax periods below (01.06.11-31.08.11, 01.09.12-30.11.12) should be due - 01.06.2011-31.08.2011 - €24.01, 01.09.2012-30.11.2012 - €243.25. Furthermore in the VAT return for tax period 01/12/2012-*

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<sup>12</sup> Fol. 23 sa' 26 tal-proċess.

28/02/2013, the sales declared were only accommodation at 7% whereby the sales ledgers showed that there were sales also at 18%. Thus an explanation was required; Mr. Zammit gave no other reason except that the ledgers should be seen on a yearly basis. Since the sales at 18% had not been declared in the return, these would be assessed as follows: 01/12/2012-28/02/2013 - €48.82. In the ledger for the above tax period only €764.54 output tax at 7% was seen as opposed to the declared VAT return of €2,590.45 output tax at 7%. Thus the assessed discrepancy on sales amounts to €6,693.83 on various tax rates. **Purchases Analysis** - A number of exercises were carried out to verify the input VAT claimed: A casting exercise was carried out to verify that the correct tax rate is being applied on the net amount declared in the VAT returns. Due to the fact that for the first two tax periods no ledgers had been produced, the casting exercise could not be made. However, for the tax periods 01/06/2011-31/08/2011 and 01/09/2012-30/11/2012, and the returns 01/09/2011-30/11/2011 and 01/12/2012-28/02/2013 were found to be correct. A validation exercise was also carried out to reconcile the purchases ledgers against the amounts declared in the VAT returns. Since for the first two tax periods no ledgers had been produced, all the invoices had to be viewed and the purchase ledger was re-constructed from them. This caused a discrepancy between the amounts in the returns and the reconstructed ledger which should be due to the VAT Department. A discrepancy also resulted when checking the last two tax periods with the ledgers provided. Mr. Zammit was asked why the ledgers did not tally with the VAT returns and he stated that there was no hard copy and a reconciled ledger has been printed. The discrepancies result as such: 01.09.2008-30.11.2008 - diskrepanza assessjata ta' €2,543.26, 01.09.10-30.11.10 - diskrepanza assessjata ta' €2,183.97, 01.06.11-31.08.11 - diskrepanza assessjata ta' €206.15, 01.09.11-30.11.11 - diskrepanza assessjata ta' €12.16, 01.09.12-30.11.12 - diskrepanza assessjata ta' €3,829.09, 01.12.2012-28.02.2013 - diskrepanza assessjata ta' €434.14 - total €9,208.77. The discrepancy in the purchases amounts to €7,609.43, however discrepancies in favour of the company could not be taken into consideration since a correction letter was not submitted. Thus the assessed discrepancy amounts to €9,208.77. **Verification of Purchase Invoices** - The invoices were checked for verification; most of the claimed invoices were for accommodation, and tours or excursions and are by all accounts claimable as they were recharged. Furthermore transport was also claimed where the excursions were concerned. Mr. Zammit stated that due to a previous exercise in 2007, he had decided to waive off claim on expenses which could be partially attributed. Thus, the ledgers presented, showed only the invoices claimed which were direct attributable to the taxable activity and thus partial attribution was not due. **EU Acquisitions** - Only €692.01 acquisitions were evident on the VIES statement. €596.01 goods pertain to the periods prior to 6 years allowed for checking and are thus time barred. The remaining €96.00 was services acquired pertaining to the second quarter of 2014 which was not part of our request. **Capital Goods** - The only tax period requested in which capital expenditure was claimed, was the tax period 01/09/2008-30/11/2008, where only €100.61 was claimed. However, because no ledgers were produced, no capital goods could be verified, this due to the fact that a difference of €2,543.26 was found between the amount of purchases invoices for their period and the VAT declared in the return. **Services and Overheads** - Services and overheads claimed include books bought from Audiovisual. These were found to be directly attributable with the exempt without credit part of the company's economic activity and thus are not

*claimable and would be deducted. Lunches or dinners from restaurants and bars are also found in the ledgers. The lunches (or dinners) from restaurants and packed lunches bought from the A1 Bar had been argued by the accountant as pertaining to goods bought which were to be recharged with VAT. However since these fiscal receipts did not have the VAT no of the purchaser, no claim is to be allowed. As per previous headings, the first two tax periods could not be checked or verified with the ledger as these were not produced. It was noted however that when a reconstruction of the ledgers was attempted, invoices pertaining to car rentals, services to a van and a Skoda Fabia was also seen and thus could not be allowed for claim. Furthermore, invoices seen for paints and decorative items for the school could not be allowed as they were directly attributable to the exempt without credit activity. The withheld VAT results as such: 01/09/2008-30/11/2008 - €1,851.26, 01/09/2010-30/11/2010 - €361.79, 01/06/2011-31/08/2011 - €485.37, 01/09/2011-30/11/2011 - €1.42, 01/09/2012-30/11/2012 - €28.80, 01/12/2012-28/02/2013 - €523.44. The total withheld VAT amounts to €3,252.08.*

A bażi ta' dak minnu konstatat, Anton Theuma rakkomanda li jinħarġu stimi proviżorji għall-perijodi ta' taxxa 01.09.08-30.11.08, 01.09.10-30.11.10, 01.06.11-31.08.11, 01.09.11-30.11.11, 01.03.12-31.05.12, 01.06.12-31.08.12, 01.09.12-30.11.12 għall-valur komplessiv ta' €19,154.68, hekk kif delineat fit-tabella konklussiva tar-rapport tiegħu a fol. 26 tal-proċess.

Is-soċjetà Rikorrenti talbet għal Review ta' l-istimi proviżorji maħruġa fil-konfront tagħha u fir-Review Report<sup>13</sup> tiegħu r-Review Officer Chris Spiteri kkonstata u kkonkluda s-segweni: *following the request for review at red 78, a meeting was set up with Mr David Zammit, accountant. Mr. Zammit explained that the school agreed with €6,293 VAT under declared as per correction letter at red 82. Furthermore, in view of the fact that no further documentation was produced at review stage, provisional assessments are to be confirmed as follows:*

<i>Tax Period</i>	<i>VAT € (assessment)</i>
<i>01/09/08 to 30/11/08</i>	<i>4394.52 confirmed</i>
<i>01/09/10 to 30/11/10</i>	<i>2545.76 confirmed</i>
<i>01/06/11 to 31/08/11</i>	<i>715.53 confirmed</i>
<i>01/09/11 to 30/11/11</i>	<i>13.58 confirmed</i>
<i>01/03/12 to 31/05/12</i>	<i>13.73 confirmed</i>
<i>01/06/12 to 31/08/12</i>	<i>6293 (correction)</i>
<i>01/09/12 to 30/11/12</i>	<i>4172.16 confirmed</i>
<i>01/12/12 to 28/02/16</i>	<i>1006.40 confirmed</i>

In segwitu għal tali rapport u konsegweni rakkomandazzjoni nħarġu l-istimi mertu ta' dawn il-proċeduri.

### **Output tax stmata mill-Kummissarju tat-Taxxa fuq il-Valur Miżjud:**

Fir-rigward tal-kwistjoni ta' l-**output tax** li tikkonċerna l-perijodi ta' taxxa 01.06.11-31.08.11, 01.03.12-31.05.2012, 01.06.12-31.08.12, 01.09.12-30.11.12 u 01.12.12-

<sup>13</sup> Fol. 218 tal-proċess.

28.02.13, David Zammit, accountant tas-soċjetà Rikorrenti ddikjara li *l-ġest prinċipali huwa li kien hemm xi perijodu partikolari fejn kien hemm xi bejgħ kienu ġew maqbuża bi żball u fil-fatt aħna konna anke ktibna lid-dipartiment u aċċettajna li speċi dik kienet ammissjoni min-naħa tagħna*. Il-perijodu ta' taxxa li qed jagħmel referenza għalih David Zammit huwa l-perijodu 01.06.12-31.08.12<sup>14</sup> fejn il-Kummissarju tat-Taxxa fuq il-Valur Miżjud ħareġ stima ta' output tax fl-ammont ta' €6,293.00. In effetti fir-rigward ta' din l-istima ta' output tax is-soċjetà Rikorrenti kienet għamlet ittra ta' korrezzjoni. Fir-rigward ta' l-output tax stmat mill-Kummissarju tat-Taxxa fuq il-Valur Miżjud għall-perijodi ta' taxxa l-oħra, ossia l-perijodi 01.06.11-31.08.11, 01.03.12-31.05.2012, 01.09.12-30.11.12 u 01.12.12-28.02.13, is-soċjetà Rikorrenti baqgħet għal kollox siekta.

Mir-Rapport ta' Anton Theuma, li għalih già saret referenza estensiva iktar 'l fuq f'din is-sentenza, jirriżulta li l-output tax stmata f'kull wiehed mill-perijodi ta' taxxa appena imsemmija, giet hekk stmata minħabba diskrepanzi li rriżultaw bejn il-fatturi maħruġa mis-soċjetà Rikorrenti għall-bejgħ magħmul minnha u l-output tax minnha dikjarat fid-denunzji tat-taxxa tagħha għall-perijodi ta' taxxa relattivi u bejn il-ledgers ta' l-imsemmija soċjetà u l-output tax minnha dikjarat fid-denunzji tat-taxxa tagħha għal tali perijodi. Ladarba dawn id-diskrepanzi ma ġew bl-ebda mod indirizzati u wisq inqas spjegati mis-soċjetà Rikorrenti, it-Tribunal diffiċilment jista' jqis l-appell tagħha fir-rigward ta' dan l-aspett partikolari ta' l-istimi maħruġa fil-konfront tagħha għall-perijodi ta' taxxa hawn trattati, bħala li hu ġustifikat.

### **Input tax stmata mill-Kummissarju tat-Taxxa fuq il-Valur Miżjud:**

In kwantu rigwarda l-**input tax** stmata mill-Kummissarju tat-Taxxa fuq il-Valur Miżjud, mir-Rapport ta' Anton Theuma jirriżulta li din hija kostitwita minn żewġ aspetti:

1. Input tax fl-ammont komplessiv ta' €9,208.77 relattiv għall-perijodi ta' taxxa kollha ħlief għall-perijodi ta' taxxa 01.03.12-31.05.12 u 01.06.12-31.08.12, li rriżultat primarjament minn diskrepanza bejn il-ledger rikostruwit mill-istess Anton Theuma għall-perijodi ta' taxxa 01.09.08-30.11.08 u 01.09.10-30.11.10 a bażi tal-fatturi għall-istess perijodi ta' taxxa provduti mis-soċjetà Rikorrenti in kwantu ma kellhiex ledgers għal dawn il-perijodi, u dak dikjarat mill-imsemmija soċjetà fid-denunzji tat-taxxa relattivi tagħha u bejn il-ledgers tas-soċjetà Rikorrenti għall-perijodi ta' taxxa 01.09.12-30.11.12 u 01.12.12-28.02.12 u dak dikjarat mill-istess soċjetà fid-denunzji tat-taxxa tagħha għall-istess imsemmija perijodi ta' taxxa; u
2. *Withheld VAT* fl-ammont komplessiv ta' €3,252.08 relattiv għall-perijodi ta' taxxa 01.09.08-30.11.08, 01.09.10-30.11.10, 01.06.11-31.08.11, 01.09.11-30.11.11, 01.09.12-30.11.12 u 01.12.12-28.2.13 stante li wħud mill-ammonti dikjarati mis-soċjetà Rikorrenti fid-denunzji tat-taxxa tagħha għall-perijodi in kwistjoni bħala kreditu għal input tax ma kienux deducibbli, in kwantu relatati man-negożju tagħha *exempt without credit*, u oħrajn ma ġewx debitament sorretti minn fatturi ta' taxxa konformi ma' l-Att dwar it-Taxxa fuq il-Valur Miżjud.

<sup>14</sup> A tergo ta' fol. 219 tal-proċess.

Dwar l-input tax hekk stmata mill-Kummissarju tat-Taxxa fuq il-Valur Miżjud, David Zammit<sup>15</sup>, li, jigi ribadit, kien l-accountant tas-soċjetà Rikorrenti, xehed kien hemm numru ta' invoices illi d-dipartiment meta għamel l-investigation tiegħu ddecieda li jaqlagħhom mill-vat return tagħna. Kien hemm minnhom illi jiena nħoss li d-dipartiment kellu raġun u kien hemm oħrajn li nħoss illi ma kellux raġuni. ... per eżempju hawn numru ta' invoices u nixtieq insemmi xi ftit minnhom bħall-invoice illi tatna l-Higher School tan-Naxxar fejn il-Vat Department qed jgħidilna illi incorrect tax invoice, per eżempju jew ikun hemm xi vat number nieqies, hemm oħrajn per eżempju Mdina Dungeons. Aħna l-problema li għandha għaliex aħna morna għand dawn in-nies, eżempju Captain Morgan, A1 Bar, Yellow Pages, peress li l-perijodu antik ħadd mhu lest li joħorgilna invoice b'lura. ... Eden Superbowl, Hotels. Aħna għandna provi li kollha ħallasnihom dawn l-invoices. ... il-klijent għamel tentattiv magħhom biex niġbru dawn l-invoices. Għandna invoices aħna per eżempju jkun fihom vat number nieqes.

Renato Valente<sup>16</sup>, Direttur tas-soċjetà Rikorrenti, dejjem fir-rigward ta' l-input vat xehed: għalfejn qed jitolbuni biex inġib irċevuti meta l-irċevuti qegħdin hemmhekk u n-nies li għamli l-iżball huma s-suppliers u mhux jiena? ... Jiena x-xogħol tiegħi huwa bazikament qisni tour operator sa' ċertu punt fejn l-istudenti li jiġu, jiġu għal-language courses però imbagħad bħala language courses I have to give in a package. Issa hemm minnhom jiġu għal ċertu affarijiet għaliex ikunu qegħdin jistudjaw ċertu affarijiet allura meta jagħmlu l-English language course filgħodu, wara nofinshar jista' jkollhom ċertu visits li jikkoncernaw l-istudji tagħhom, eż. ST Microelectronics, il-plant tal-Coca Cola, agriturizmu u affarijiet hekk. ... Issa ovvjament irrid insib is-suppliers. One which comes to my mind hija Captain Morgan. Meta ssemmi Captain Morgan it is a big name. Jiena jekk nirċievi invoice mill-Captain Morgan nippretendi illi l-invoice minn Captain Morgan hija kif suppost, jien nħallasha, ngħaddiha lill-accountant li jieħu ħsieb il-posting għaliex imbagħad għandi l-awditur li jagħlaq il-kotba però jiena jekk qed inħallas għal servizz, tgħidli inti direttur, għandek ir-responsabilità u tkun taf x'qed jiġri, però ma jistax ikun li inkun naf kollox. Jekk jiena qed inħallas persuna li suppost qed tagħmel xogħolu, meta irċevejt il-każ u beda jispejgali x'kien hemm illi d-dipartiment qiegħed jitolbni illi kien hemm każi forsi klejmjajt ammonti żgħar ta' vat meta mhux suppost għaliex qabeż iż-żmien. Jiena l-problema li għandi hija illi l-vat inħallasha quarterly mhux darba fis-sena. Allura kien hemm ċertu skali differenti għaliex fis-Sajf ikun hemm ħafna, minn Settembru sa' Diċembru jkun hemm ftit imbagħad ikolli x-Xitwa mejta jew kwieta. Però coming back to what I was saying, jiena nħallas għal servizzi, nippretendi li l-affarijiet isiru kif suppost però imbagħad jiena ma nistax noqgħod niċċekkja kull invoice u ngħid din kif suppost u din mhux kif suppost meta huma ċertu kumpanniji stabbiliti. Kien hemm oħra ta' l-A packed lunches. Packed lunches I offered them to the students as an all inclusive because a lot of my things are all inclusive which means I offer them, I agree a price with the agent and the agent pays me. Ikun hemm ċertu ftit minnhom li jithallsu separatament jiġifieri it is very complex. Apparti l-fatt illi s-sistema ta' kif inhi l-ligi tal-vat fuq educational English schools is very biased, extremely biased but that is not something which is the vat department's fault, your fault or my fault.

<sup>15</sup> Xhieda mogħtija waqt is-seduta ta' l-24 ta' Jannar 2019, fol. 288 sa' 292 tal-proċess.

<sup>16</sup> Xhieda mogħtija waqt is-seduta tat-28 ta' Frar 2019, fol. 294 sa' 302 tal-proċess.



*It is the way the law is. ... Fuego kien wieħed mill-postijiet fejn kont nuża' għall-parties ta' l-istudenti fil-boom tal-Fuego meta kien għadu l-Qawra. Jiena kont inħallas lil Fuego, nagħtih cheque fuq il-kumpanija, johroqli invoice bil-vat number tiegħi u tiegħu and that's it and I claim the vat on it. And I claim vat, mhux Renato claims vat, għaliex il-persuna li huwa inkarigat jgħidli isma dan nistgħu nikklejmjawh, dan ma nistgħux nikklejmjawh u jiena ngħidlu mexxi u ara inti.*

Huwa evidenti mix-xhieda ta' David Zammit u ta' Renato Valente li s-soċjetà Rikorrenti bl-ebda mod ma indirizzat u wisq inqas spjegat id-diskrepanzi li rriżultaw in kwantu rigwarda akkwisti bejn il-ledgers għall-perijodi ta' taxxa imsemmija iktar 'l fuq u dak minnha dikjarat fid-denunzji tat-taxxa tagħha għall-istess perijodi ta' taxxa. Kjarament mingħajr ebda forma ta' spjega dwar tali diskrepanzi, it-Tribunal qajla jista' jikkonsidra li l-appell tagħha minn dan l-aspett partikolari ta' l-istimi mahruġa fil-konfront tagħha huwa ġustifikat.

L-uniku kument, o meglio sottomissjoni li għamlet fir-rigward huwa li *dwar l-ammont ta' €9,208.70* - li skond ir-Rapport ta' Anton Theuma ġie likwidat f'tali valur għaliex għalkemm kien hemm diskrepanzi a favur is-soċjetà Rikorrenti dawn ma setgħux jingħataw a favur tagħhom għaliex ma talbitx il-korrezzjonijiet relattivi - *jigi sottomess li dawn huma allegati diskrepanzi li l-Kummissarju tal-VAT sab fix-xiri. Illi fir-rapport stess ta' Adrian [recte: Anton] Theuma hemm ammissjoni, ex admissis fejn fir-realtà d-diskrepanza fix-xiri kienet ta' €7,609.43 li, iżda 'discrepancies in favour of the company could not be taken into consideration since a correction letter was not submitted. Thus the assessed discrepancy amounts to €9,208.77'*. Illi anke hawn, każ klassiku ta' 'form over substance' fejn għandna l-istess spettur tal-VAT li rriżultalu pożittivament li d-diskrepanza hija ta' €1,599.34 iżda peress li ma dahħlitx formola, allura ma jistax jagħti kasha. Fil-verità l-attitudini tal-kummissarju appellat hija ferm aghar mill-obbligi imposti fuq Spettur tal-Pulizija li huwa obligat bil-ligi li jekk isib evidenza favur l-akkużat, għandu jipprezentaha fil-Qorti. Il-Kummissarju appellat, min-naħa l-oħra, isib "evidenza" favur it-taxpayer u jinjoraha kompletament. Bid-dovut rispettt, in vista tad-diversi sentenzi li jekwiparaw il-proċeduri odjerni ma' proċeduri kważi penali, dan it-Tribunal huwa obligat li din id-differenza ta' €1,599.34 japplika a favur tat-taxpayer<sup>17</sup>.

It-Tribunal assolutament ma jaqbilx ma' din is-sottomissjoni tas-soċjetà Rikorrenti u dana billi ai termini tal-Liġi, senjatament ta' l-Artikolu 28 tal-Kap.406 tal-Liġijiet ta' Malta, aġġustamenti fit-taxxa dikjarata fid-denunzji tat-taxxa għall-perijodi ta' taxxa jeħtieġ li jsiru mit-taxpayer permezz tal-proċedura appożita, hekk anke kif previst fl-Għaxar Skeda tal-Kap.406 ta' l-Att dwar it-Taxxa fuq il-Valur Miżjud, u la l-Kummissarju tat-Taxxa fuq il-Valur Miżjud, illum Kummissarju tat-Taxxi, u lanqas it-Tribunal ma jistgħu jippermettu tibdil a favur it-taxpayer fit-taxxa dikjarata fid-denunzji tat-taxxa b'konsegwenza ta' diskrepanzi sakemm ma jkunx l-istess taxpayer li jagħmel l-aġġustament relattiv. Jekk għal raġunijiet li jaf hu biss, it-taxpayer jagħżel li ma jagħmilx l-aġġustamenti meħtieġa għad-denunzji tat-taxxa tiegħu ma jistax l-istess taxpayer jikkritika lill-Kummissarju tat-Taxxi għax ma jkunx

<sup>17</sup> Nota Responsiva tas-soċjetà Rikorrenti, fol. 328 tal-proċess.

ikkonċedielu ebda diskrepanza a favur tiegħu u jakkużah li jkun qed jaġġixxi b'mod fejn il-formalità tegħleb is-sustanza.

Apparte minhekk huwa prinċipju stabbilit fil-Liġi li d-dritt ta' kreditu ta' input tax ma huwiex dritt awtomatiku tat-*taxpayer* iżda huwa dritt ben regolat u dettat mill-Liġi. In effetti l-Artikolu 22(5) tal-Kap.406 tal-Liġijiet ta' Malta jipprovdi li *d-dritt ta' kreditu ta' input tax, l-ammont ta' kreditu u l-mod li bih l-input tax hija attribwibbli għall-provvisti huwa suġġett għall-kondizzjonijiet, limitazzjonijiet, reviżjonijiet u aġġustamenti mnizzla fl-Għaxar Skeda.*

Dan il-provvediment tal-Liġi appena ċitat jassumi ferm importanza fil-kuntest tal-lanjanza tas-soċjetà Rikorrenti, partikolarment kif avvanzata tramite x-xhieda ta' Reanto Valente, fir-rigward ta' l-ammont ta' €3,252.08 rappreżentanti *withheld tax* peress illi l-kreditu għal input tax dikjarat fid-denunzji tat-taxxa għall-perijodi ta' taxxa relattivi u rilevanti ma ġiex minnha debitament sostanzjat.

Il-Partita 2 ta' l-Għaxar Skeda tal-Kap.406 tal-Liġijiet ta' Malta tipprovdi li: (1) *Ma għandu jitqies ebda ammont bħala input tax ta' persuna kemm-il darba dik il-persuna ma ġġibx prova li dik it-taxxa kellha tithallas fuq il-provvisti ta' oġġetti u servizzi jew akkwisti intra-Komunitarji jew fuq importazzjonijiet ta' oġġetti li jkunu ġew jew ser jiġu wżati minnha fil-kors ta' l-avvanz ta' l-attività ekonomika tagħha.* (2) *Ħlief hekk kif il-Kummissarju jista' mod ieħor jippermetti, ebda ammont ma għandu jitqies bħala input tax ta' persuna kemm-il darba: (a) ma jkunx appoġġat bi: (i) fattura ta' taxxa dwar it-taxxa li għandha x'taqsam ma' l-oġġetti jew servizzi provduti lilu; jew (ii) fattura ta' taxxa dwar it-taxxa li għandha x'taqsam ma' l-oġġetti miksuba minnu taħt akkwist intra-Komunitarju; jew (iii) dokument ta' importazzjoni li jkun jindika lilha bħala importatur dwar it-taxxa fuq importazzjoni; u (b) dwar kull taxxa fuq xi provvista li skond dan l-Att għandha tithallas minn dik il-persuna jew fuq akkwist intra-Komunitarju, tkun niżżlet dik it-taxxa bħala dovuta lilha fuq id-denunzja tat-taxxa tagħha; u (c) id-dokument riferit fil-paragrafu (a) jkun miżmum minn dik il-persuna u jingħata, fuq talba, lill-Kummissarju; u (d) l-ammont tat-taxxa jkun ingħata kont tiegħu kif imiss fid-dokumentazzjoni miżmuma minn dik il-persuna sal-limitu meħtieġ għall-għanijiet ta' l-Att.*

Minn dawn il-provvedimenti tal-Liġi jirriżulta ferm ċar li l-oneru tal-prova tal-kreditu ta' input tax dikjarat fid-denunzja tat-taxxa huwa tat-*taxpayer* u ta' hadd iktar. Huwa t-*taxpayer* li se jibbenefika mill-kreditu ta' input tax minnu dikjarat fid-denunzja tat-taxxa tiegħu u għaldaqstant huwa l-istess *taxpayer*, u mhux terza persuna u wisq inqas is-supplier tiegħu, li għandu mhux biss l-obbligu iżda addirittura kull interess li jaċċerta ruħu li l-fatturi mogħtija lilu għall-akkwisti magħmula minnu in konnessjoni ma' u għall-avvanz ta' l-attività ekonomika tiegħu jkunu konformi mal-provvedimenti ta' l-Għaxar Skeda tal-Kap.406 tal-Liġijiet ta' Malta, u anke mat-Tnax-il Skeda ta' l-imsemmi Kapitolu tal-Liġijiet ta' Malta.

It-Tribunal hawn se jikkonċentra fuq il-kwistjoni tal-fatturi sottomessi mis-soċjetà Rikorrenti iżda li ma ġewx aċċettati bħala konformi għall-Kap.406 tal-Liġijiet ta' Malta da parte tal-Kummissarju tat-Taxxa fuq il-Valur Miżjud, u dana billi dak il-kreditu għal input tax dikjarat fir-rigward ta' l-attività ekonomika tas-soċjetà

Rikorrenti li hija eżenti bla kreditu - ossia s-servizz ta' edukazzjoni minnha provdut lil studenti barranin li kienu jiġu Malta biex jistudjaw l-Ingliż - ma hemmx wisq x'jingham fuqu. La attività partikolari tas-soċjetà Rikorrenti hija eżenti bla kreditu, neċessarjament isegwi li l-istess soċjetà ma hijiex intitolata tirreklama l-input tax relattiva għal akkwisti magħmula in konnessjoni ma' u għall-avvanz ta' tali attività ekonomika u għaldastant il-Kummissarju tat-Taxxa fuq il-Valur Miżjud għustament ma aċċettax il-kreditu (f'dan ir-rigward) reklamati mis-soċjetà Rikorrenti

Il-format li kellu jkollhom il-fatturi esebiti mis-soċjetà Rikorrenti għall-perijodi ta' taxxa 01.09.08-30.11.08, 01.09.10-30.11.10, 01.06.11-31.08.11, 01.09.11-30.11.11, 01.09.12-30.11.12 u 01.12.12-28.02.13 biex dawn jitqiesu bħala fatturi validi għall-finijiet ta' kreditu għal input tax jirriżulta b'mod ċar mit-Tnax-il Skeda tal-Kap.406 tal-Liġijiet ta' Malta, inklużi l-emendi li daħlu fis-seħh minn żmien għal żmien, dejjem b'referenza għall-perijodi ta' taxxa in kwistjoni. Bħala fatt is-soċjetà Rikorrenti mhux qed tikkontesta l-fatt li il-fatturi minnha esebiti in sostenn tal-kreditu għal input tax minnha reklamati fid-denunzji tat-taxxa tagħha għall-perijodi ta' taxxa hawn imsemmija ma kienux konformi mat-Tnax-il Skeda tal-Kap.406 tal-Liġijiet ta' Malta iżda tikkontendi li l-eżerċizzju li għamel id-Dipartiment tat-Taxxa fuq il-Valur Miżjud kien wieħed fejn *id-Dipartiment waqaf biss b'mod superfiċjali lejn il-formalità tal-fatturi, u ma ħax kont tas-servizzi mixtrija, każ klassiku ta' "Form over content"*<sup>18</sup>. Is-soċjetà Rikorrenti tippretendi li ladarba il-Kummissarju huwa sodisfatt li l-akkwisti minnha magħmula kienu in konnessjoni ma' u għall-avvanz ta' l-attività ekonomika tagħha, huwa seta', anzi kellu, jissorvola n-nuqqas ta' konformità tal-fatturi minnha esebiti mal-provvedimenti tal-Kap.406 tal-Liġijiet ta' Malta u minflok jgħaddi biex jikkonċedilha l-kreditu għal input tax minnha reklamati fid-denunzji tat-taxxa tagħha għall-perijodi in kwistjoni.

In sostenn ta' dak minnha affermat, is-soċjetà Rikorrenti tagħmel referenza għas-sentenza pronunċjata mill-Qorti Ewropea tal-Ġustizzja fl-ismijiet *Senatax GmbH v. Finanzamt Hannover-Nord*, Case No. C-518/14 u għas-sentenza pronunċjata mill-istess imsemmija Qorti fl-ismijiet *Barlis 06 - Investimentos Imobiliarios e Turisticos SA v. Atoridade Tributaria e Aduaneira*, Case No. C-516/14. Fil-fehma tat-Tribunal però l-ebda waħda minn dawn id-deċiżjoni ma hija ta' sostenn għall-posizzjoni tas-soċjetà Rikorrenti fil-każ in eżami.

Għalkemm fir-rigward tas-sentenza fl-ismijiet *Senatax GmbH v. Finanzamt Hannover-Nord*, Case No. C-518/14, is-soċjetà Rikorrenti ċċitat partijiet mill-osservazzjonijiet tal-Qorti Ewropea tal-Ġustizzja fir-rigward tar-referenza magħmula lilha, naqset milli tiċċita l-osservazzjonijiet konklussivi ta' dik il-Qorti dwar il-mistoqsijiet posti lilha, u jekk niġu għalhekk l-imsemmija soċjetà lanqas tat il-kwadru tal-mistoqsijiet li dwarhom kellha tesprimi ruħha l-Qorti.

Fl-imsemmija referenza fil-fatt, il-Qorti Ewropea tal-Ġustizzja kellha tippronunċja ruħha dwar dawn il-kweżiti posti lilha mill-Finance Court of Lower Saxony:

1. *Is the ex nunc effect of the first issue of an invoice, as established by the Court of Justice in the judgement of 29 April 2004, Terra Baubedarf - Handel (C-152/02)*

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<sup>18</sup> Nota Responsiva tas-soċjetà Rikorrenti, fol. 325 tal-proċess.

- [EU:C:2004:268], qualified by the judgements of the Court of Justice of 15 July 2010, Pannon Gép Centrum (C-368/09, [EU:C:2010:441], and of 8 May 2013, Petroma Transports and Others (C-271/12, [EU:C:2013:297], as regards cases, such as the present, in which an incomplete invoice is completed, in so far as the Court of Justice ultimately intended to permit retrospective effect in such cases?*
- 2. What are the minimum requirements for an invoice to be capable of correction with retrospective effect? Is it necessary that the original invoice bears a tax number of a VAT identification number, or can these be added later with the consequence that the right to deduct input tax on the basis of the original invoice is retained?*
  - 3. Is a correction to an invoice in time if it is only made in the course of objection proceedings against the decision (amended tax notice) of the tax authority?*

Wara li għamlet id-debiti osservazzjonijiet Tagħha, il-Qorti Ewropea tal-Ġustizzja ikkonkludiet illi: *the answer to Questions 1 and 2 is that Article 167, Article 178(a), Article 179 and Article 226(3) of Directive 2006/112 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which the correction of an invoice in relation to a detail which must be mentioned, namely the VAT identification number, does not have retroactive effect, so that the right to deduct VAT exercised on the basis of the corrected invoice related not to the year in which the invoice was originally drawn up but to the year in which it was corrected. Question 3 - by its third question, the referring Court asks whether Directive 2006/112 must be interpreted as precluding national legislation or a national practice under which a taxable person is refused the right to deduct VAT where the correction of an invoice takes place after the tax authorities have adopted a decision refusing the deduction of VAT. This question seeks essentially to determine whether the tax authorities are allowed to consider that a correction to an invoice relating to a detail that must be mentioned, namely the VAT identification number, has taken place belatedly if it occurs only after those authorities have adopted a decision refusing the deduction of VAT. It is clear from the observations of the German Government and Senatex that in the case in the main proceedings to tax office stated that it intended to accept the corrected invoices submitted by Senatex, and does not thus consider that the corrections made by Senatex were made belatedly. In those circumstances, there is not need to answer Question 3.*

Minn din id-deċizzjoni huwa evidenti li f'dak il-każ il-Qorti Ewropea tal-Ġustizzja kienet qed titkellem u tat deċizzjoni fir-rigward ta' fatturi li ġew ikkoreġuti maż-żmien u mhux dwar fatturi li kienu u baqgħu mhux konformi mal-Liġi dwar it-Taxxa fuq il-Valur Miżjud, hekk kif inhu l-każ in eżami.

Fil-fehma tal-Qorti lanqas id-deċizzjoni Barlis 06 - Investimentos Imobiliarios e Turisticos SA v. Atoridade Tributaria e Aduaneira, Case No. C-516/14 ma tapplika fil-każ in eżami stante li hemm il-Qorti Osservat illi *article 178(a) of Directive 2006/112 must be interpreted as precluding the national tax authorities from refusing the right to deduct VAT solely because the taxable person holds an invoice which does not satisfy the conditions required by article 226(6) and (7) of that directive, even though those authorities have available all the necessary information for ascertaining whether the substantive conditions for the exercise of the right are*

*satisfied. Fil-każ in eżami l-Kummissarju tat-Taxxi, u llum t-Tribunal, ma kellux all the necessary information for ascertaining whether the substantive conditions for the exercise of the right (għal input tax) are satisfied u dana stante li: (i) għall-perijodi ta' taxxa 01.09.08-30.11.08 u 01.09.10-30.11.10 is-soċjetà Rikorrenti ma pprovdietx il-ledgers relattivi u dawn kellhom jiġu rikostruwiti mid-Dipartiment tat-Taxxa fuq il-Valur Miżjud, senjatament minn Anton Theuma; (ii) il-ledgers għall-perijodi l-oħra għad illi pprovduti kienu għal sena sħiħa u mhux għall-perijodi ta' taxxa in eżami; u (iii) fi kwalunkwe każ irriżultaw diskrepanzi kbar bejn il-ledgers tal-kumpanija u d-dikjarazzjonijiet tat-taxxa tagħha. Fid-dawl ta' dan kollu huwa evidenti li l-Kummissarju tat-Taxxa fuq il-Valur Miżjud ma setax jibbaża ruħu fuq informazzjoni affidabbli oħra li verament turi li l-kreditu għal input tax reklammat mis-soċjetà Rikorrenti għall-perijodi ta' taxxa 01.09.08-30.11.08, 01.09.10-30.11.10, 01.06.11-31.08.11, 01.09.11-30.11.11, 01.09.12-30.11.12 u 01.12.12-28.02.13 kien attwalment dovut.*

Din l-osservazzjoni ssib sostenn ukoll fl-ittra ta' Busuttil & Micallef lis-soċjetà Rikorrenti datata 21 ta' Jannar 2010<sup>19</sup> relattivament għall-*Audit Financial Statements for the year ended 31 December 2008* (f'liema żmien jaqa' l-perijodu ta' taxxa 01.09.08-30.11.08 fejn l-iktar li ġie *withheld VAT*) fejn appuntu ġie osservat li - *Supporting documentation: During the course of our audit we noted that not all additions to fixed assets were being supported by a document which was in compliance with the VAT legislation. Should an investigation by the VAT or tax department be carried out, these invoices will not be allowed as qualifying for input VAT deductions or as qualifying expenses for tax purposes. We also noted that no paperwork exists for payments made to host families. The company should require a fiscal document to be presented to it in support of the cost being incurred as justification for the amounts reported on both the VAT and Income Tax returns. The company is responsible to declare to the Commissioner of Inland Revenue all allowable expenses and cannot claim a deduction for those expenses which are not justified. We recommend that the company obtains fiscal documentation for all its expenditure whether of a capital or revenue nature. Failure to do so could also lead to heavy fines being imposed by the said departments. We therefore urge the directors to take appropriate measures to rectify this situation.*

Fil-fehma tat-Tribunal fid-dawl ta' dan kollu u fid-dawl tal-fatt li l-fatturi sottomessi mis-soċjetà Rikorrenti in sostenn tal-kreditu għal input tax minnha reklammat fid-denunzji tat-taxxa tagħha - senjatament fir-rigward ta' dak il-kreditu li ġie *withheld* - ma kienux konformi mat-Tnax-il Skeda tal-Kap.406 tal-Liġijiet ta' Malta u l-Kummissarju tat-Taxxa fuq il-Valur Miżjud ma setax idur fuq informazzjoni affidabbli oħra, jirriżulta li l-appell ta' l-imsemmija soċjetà minn dan l-aspett partikolari ta' l-istimi maħruġa fil-konfront tagħha wkoll ma huwiex ġustifikat u b'hekk ma jistax jiġi milqugh.

Għal dawn ir-raġunijiet it-Tribunal jaqta' u jiddeciedi billi jiċhad l-appell tas-soċjetà Rikorrenti mill-istimi maħruġa fil-konfront tagħha mill-Kummissarju tat-Taxxa fuq il-Valur Miżjud għall-perijodi ta' taxxa 01.09.08-30.11.08, 01.09.10-30.11.10,

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<sup>19</sup> Fol. 225 tal-proċess.

01.06.11-31.08.11, 01.09.11-30.11.11, 01.03.12-31.05.12, 01.06.12-31.08.12, 01.09.12-30.11.12 u 01.12.12-28.02.13, u minflok jikkonferma l-istess imsemmija stimi.

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

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

**MAGISTRAT**

**DEPUTAT REĠISTRATUR**