



MALTA

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

Rikors Nru. 135/13VG

XXX

Vs

Direttur Ġenerali (Taxxi Interni)

Illum 22 ta' Marzu 2022

It-Tribunal,

Ra r-Rikors ipprezentat minn XXX fit-30 ta' Lulju 2013 permezz ta' liema jitlob li t-Tribunal iħassar u jirrevoka l-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2007, inkluż is-sorte, l-imghax u taxxa addizzjonali, mahruġa fil-konfront tiegħu mid-Direttur Ġenerali (Taxxi Interni) u dana billi: (i) il-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2007 u l-Avviż ta' Rifjut ma nħarġux *properly, reasonably u fairly*; (ii) il-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2007 harġet *fuori termine*, Artikoli 30 u 31 tal-Kap.372 tal-Liġijiet ta' Malta; (iii) huwa qatt ma rċieva l-qliegħ li qed jgħid id-Direttur Ġenerali (Taxxi Interni); (iv) il-kalkoli tad-Direttur Ġenerali (Taxxi Interni) huma għal kollox żbaljati u bażati fuq premissi ħżiena; (v) huwa ma ingħatax smiġħ xieraq fl-istadju ta' l-oġġezzjoni; u (v) ir-rapport taxxa pperikolata/multi amministrattivi w imghax punittiv jippekkaw serjament f'dak li huwa proporzjonalità; bl-ispejjeż kontra d-Direttur Ġenerali (Taxxi Interni);

Ra d-dokumenti annessi mar-Rikors promotur markati Dok. "DGO1" sa' Dok. "DGO3b" a fol. 2 sa' 6 tal-proċess;

Ra r-Risposta tad-Direttur Ġenerali (Taxxi Interni) permezz ta' liema jopponi għall-appell tar-Rikorrent mill-Likwidazzjoni ta' Taxxa mahruġa fil-konfront tiegħu għas-sena ta' stima 2007 u jitlob li l-istess jiġi miċħud, bl-ispejjeż kontra r-Rikorrent, u minflok l-imsemmija Likwidazzjoni ta' Taxxa tiġi kkonfermata stante li: (i) ma huwiex minnu li l-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2007 u l-Avviż ta' Rifjut ma nħarġux *properly, reasonably u fairly*; (ii) il-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2007 inħarġet entro t-terminu ta' ħames snin minn tmiem is-sena li fiha r-Rikorrent issottometta l-formola tat-taxxa tiegħu għas-sena in kwistjoni u dan ai termini ta' l-Artikolu 31(6) tal-Kap.372 tal-Liġijiet ta' Malta; (iii) il-kalkoli li fuqhom hija bbażata l-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2007 huma għal kollox spjegati u huma bbażati fuq l-fatti u fuq il-provvedimenti tal-Liġi; (iv) ir-Rikorrent ingħata kull

opportunità biex jipprezenta l-verzjoni tiegħu ta' kif graw il-fatti, kemm fl-istadju ta' verifika kif ukoll fl-istadju ta' oġġezzjoni, u b'hekk ma jistax jixli lid-Direttur Ġenerali (Taxxi Interni) li ma taħx smiġh xieraq anzi kien ir-Rikorrent stess li baqa' ma kkoperax mad-Dipartiment tat-Taxxi Interni; (v) it-taxxa pperikolata nħadmet abbażi tar-rati ta' taxxa li huma applikabbli għal kull individwu residenti fir-Repubblika ta' Malta u l-multi amministrattivi w imghax huma bbażati fuq il-provvedimenti tal-Liġi f'dan ir-rigward;

Ra d-dokumenti annessi mar-Risposta tad-Direttur Ġenerali (Taxxi Interni) markati Dok. "GB1" sa' Dok. "GB22" a fol. 27 sa' 107 tal-proċess;

Ra d-dikjarazzjoni li dawn il-proċeduri għandhom jimxu mar-Rikors bin-Numru 134/13¹ u li l-provi miġbura fl-imsemmija proċeduri jgħoddu għal dawn il-proċeduri ukoll²;

Ra d-Digriet datat 29 ta' Jannar 2015³ li bih it-Tribunal f'dak l-istadju u sakemm jiġi deċiż l-aggravju tar-Rikorrent li l-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2007 inħarġet *fuori termine*, astjena milli jiehu konjizzjoni tat-talbiet avvanzati mir-Rikorrent waqt is-seduta tat-12 ta' Jannar 2015, ossia sabiex tiġi ordnata l-inverzjoni tal-provi għal fuq il-Kummissarju tat-Taxxi stante li l-każ in kwistjoni jinvolvi penali amministrattivi li huma ta' natura punittiva ai termini ta' l-Artikolu 6 tal-Konvenzjoni Ewropea għall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fundamentali u sabiex il-Kummissarju tat-Taxxi jiġi ordnat jesebixxi fl-atti ta' dawn il-proċeduri l-file tad-Dipartiment relattiv għar-Rikorrent u dana fid-dawl tal-kumplexità tal-każ u l-element *cross border* u l-element ta' investigazzjoni kriminali li jikkarakterizzaw il-każ kontra l-istess Rikorrent;

Sema' x-xhieda ta' Michèle Xuereb, rappreżentant tal-Kummissarju tat-Taxxi, mogħtija waqt is-seduti ta' l-4 ta' Ġunju 2015⁴, tas-17 ta' Novembru 2016⁵, tat-23 ta' Jannar 2017⁶, tas-6 ta' April 2017⁷, tal-11 ta' Mejju 2017⁸, tad-19 ta' Ottubru 2017⁹, tat-23 ta' Novembru 2017¹⁰, tal-25 ta' Jannar 2018¹¹, tal-15 ta' Marzu 2018¹², ta' l-14 ta' Ġunju 2018¹³, tal-11 ta' Ottubru 2018¹⁴ u tas-17 ta' Jannar 2019¹⁵ u ra d-dokumenti esebiti minnha markati Dok. "MX1" sa' Dok. "MX10" a fol. 211 sa' 324 tal-proċess fl-ismijiet "XXX v. Direttur Ġenerali (Taxxi Interni), Rik. Nru. 134/13, Dok. "GV1" a fol. 358 sa' 377 tal-proċess fl-ismijiet "XXX v. Direttur Ġenerali (Taxxi Interni), Rik. Nru. 134/13, Dok. "GVX" a fol. 395 sa' 408 tal-proċess fl-ismijiet "XXX v. Direttur Ġenerali (Taxxi Interni), Rik. Nru. 134/13 u Dok. "GVZ" a fol. 422 tal-proċess fl-ismijiet "XXX v. Direttur Ġenerali (Taxxi Interni), Rik. Nru. 134/13, Dok. "A" u Dok. "B" a fol. 429 sa' 801 tal-proċess fl-ismijiet "XXX v. Direttur Ġenerali (Taxxi Interni), Rik. Nru. 134/13, ra l-affidavit ta' Michèle Xuereb esebiti mill-Kummissarju tat-Taxxi permezz ta' Nota ppreżentata fis-6 ta' Lulju 2015 a fol. 134 sa' 136 tal-proċess u ra d-dokumenti li għalihom issir referenza fl-

¹ Fol. 120 tal-proċess.

² Fol. 246 tal-proċess.

³ Fol. 126 sa' 129 tal-proċess.

⁴ Fol. 132 u 133 tal-proċess.

⁵ Fol. 163 sa' 167 tal-proċess.

⁶ Fol. 169 sa' 185 tal-proċess.

⁷ Fol. 190 sa' 197 tal-proċess.

⁸ Fol. 202 tal-proċess.

⁹ Fol. 204 sa' 217 tal-proċess.

¹⁰ Fol. 226 sa' 230 tal-proċess.

¹¹ Fol. 232 u 233 tal-proċess.

¹² Fol. 235 u 236 tal-proċess.

¹³ Fol. 238 u 239 tal-proċess.

¹⁴ Fol. 241 sa' 243 tal-proċess.

¹⁵ Fol. 247 sa' 252 tal-proċess.

imsemmi affidavit esebiti a fol. 131 sa' 178 tal-proċess fl-ismijiet "XXX v. Direttur Ġenerali (Taxxi Interni), Rik. Nru. 134/13, sema' x-xhieda tar-Rikorrent mogħtija waqt is-seduti tad-19 ta' Ottubru 2017¹⁶ u tat-23 ta' Novembru 2017¹⁷ u ra d-dokumenti esebiti mir-Rikorrent a fol. 822 sa' 1388 tal-proċess fl-ismijiet "XXX v. Direttur Ġenerali (Taxxi Interni), Rik. Nru. 134/13, ra s-sentenza fl-ismijiet "HSBC Bank Malta p.l.c. v. O.A. Investments Ltd. et" Ċitaz. Nru. 333/04 deċiża mill-Prim' Awla tal-Qorti Ċivili fl-1 ta' Marzu 2005 esebita mir-Rikorrent permezz ta' Nota ippreżentata fit-2 ta' Marzu 2021 a fol. 1399 sa' 1404 tal-proċess fl-ismijiet "XXX v. Direttur Ġenerali (Taxxi Interni), Rik. Nru. 134/13 u ċ-ċertifikat maħruġ mid-Deputat Registratur tar-Registru tal-Qrati Ċivili u Tribunali (Malta) li minnu jirrizulta li l-appell mis-sentenza appena msemmija ġie dikjarat bħala ċedut fit-30 ta' Marzu 2007;

Ra s-sentenza preliminari mogħtija fid-9 ta' Mejju 2016¹⁸ bis-saħħa ta' liema ġie miċhud l-aggravju tar-Rikorrent li l-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2007 inħareġ *fuori termine* a tenur ta' l-Artikoli 30 u 31 tal-Kap.372 tal-Liġijiet ta' Malta;

Ra d-Digriet datat 21 ta' Lulju 2016¹⁹ permezz ta' liema ġiet milqugħa t-talba avanzata mir-Rikorrent waqt is-seduta tat-12 ta' Jannar 2015 u mtennija waqt is-seduta tat-13 ta' Jannar 2016 u konsegwentement ġiet ordnata l-inverżjoni tal-provi b'dana li jkun il-Kummissarju tat-Taxxi li jibda jressaq il-provi dwar il-mertu;

Ra d-Digriet datat 9 ta' Awwissu 2016²⁰ li bih ġiet miċhuda t-talba tal-Kummissarju tat-Taxxi biex jiġi awtorizzat jappella mid-Digriet datat 21 ta' Lulju 2016, in kwantu tali talba saret oltre t-terminu ta' għaxart ijiem previst fl-Artikolu 229(3) tal-Kap.12 tal-Liġijiet ta' Malta;

Ra d-Digriet datat 11 ta' Mejju 2017²¹ li bih it-Tribunal astjena milli jiehu konjizzjoni tat-talba tar-Rikorrent avanzata bir-Rikors ippreżentat fis-6 ta' April 2017, ossia t-talba għall-isfilz tad-dokument Dok. "MX6" esebit minn Michèle Xuereb waqt is-seduta tat-23 ta' Jannar 2017, u dana billi tali talba tirrikjedi analiżi u determinazzjoni ta' materja li jmorru oltre l-kompetenza tat-Tribunal;

Sema' t-trattazzjoni orali da parte tad-Difensur tar-Rikorrent u ra n-Nota ta' Sottomissjonijiet tal-Kummissarju tat-Taxxi a fol. 265 sa' 285 tal-poċess;

Ra li l-partijiet kontendenti ddikjaraw li ma għandhomx iktar sottomissjonijiet x'jressqu²²;

Ra l-atti kollha tal-kawża;

Ikkunsidra:

Bil-proċeduri odjerni r-Rikorrent jikkontesta Likwidazzjoni ta' Taxxa għas-sena ta' stima 2007 maħruġa fil-konfront tiegħu mid-Direttur Ġenerali (Taxxi Interni) fit-3 ta' Ġunju

¹⁶ Fol. 210 sa' 217 tal-proċess.

¹⁷ Fol. 219 sa' 225 tal-proċess.

¹⁸ Fol. 142 sa' 146 tal-proċess.

¹⁹ Fol. 149 sa' 156 tal-proċess.

²⁰ Fol. 157 tal-proċess.

²¹ Fol. 199 sa' 201 tal-proċess.

²² Vide Nota ta' l-Avukat Dr. Robert Attard a fol. 1434 tal-proċess fl-ismijiet "XXX v. Direttur Ġenerali (Taxxi Interni), Rik. Nru. 134/13 u verbal tas-seduta ta' l-14 ta' Ottubru 2021 a fol. 286 tal-proċess.

2013, permezz ta' liema qed jiġi mitlub iħallas is-somma ta' €35,748 rappreżentanti taxxa dovuta għall-imsemmija sena ta' stima, flimkien mas-somma ulterjuri ta' €150,303 rappreżentanti interessi u taxxa addizzjonali, komplessivament ammontanti għal €186,051²³.

Huwa jitlob ir-revoka *in toto* ta' l-imsemmija Likwidazzjoni ta' Taxxa in bażi għas-segwenti aggravji: (i) il-Likwidazzjoni ta' Taxxa u l-Avviż ta' Rifjut ma nħarġux *properly, reasonably* u *fairly*; (ii) il-Likwidazzjoni ta' Taxxa harġet *fuori termine*, Artikoli 30 u 31 tal-Kap.372 tal-Liġijiet ta' Malta; (iii) huwa qatt ma rċieva l-qliegħ li qed jgħid id-Direttur Ġenerali (Taxxi Interni); (iv) il-kalkoli tad-Direttur Ġenerali (Taxxi Interni) huma għal kollox żbaljati u bażati fuq premessi ħżiena; (v) huwa ma inġhatax smiġħ xieraq fl-istadju ta' l-oġġezzjoni; u (v) ir-rapport taxxa pperikolata/multi amministrattivi w imġhax punittiv jippekkaw serjament f'dak li huwa proporzjonalità.

Id-Direttur Ġenerali (Taxxi Interni), illum Kummissarju tat-Taxxi, jopponi għall-appell tar-Rikorrent mill-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2007 u jitlob li l-istess jiġi miċhud u l-imsemmija Likwidazzjoni ta' Taxxa tiġi kkonfermata stante li: (i) ma huwiex minnu li l-Likwidazzjoni ta' Taxxa u l-Avviż ta' Rifjut ma nħarġux *properly, reasonably* u *fairly*; (ii) il-Likwidazzjoni ta' Taxxa nħarġet entro t-terminu ta' ħames snin minn tmiem is-sena li fiha r-Rikorrent issottometta l-formola tat-taxxa tiegħu għas-sena in kwistjoni u dan ai termini ta' l-Artikolu 31(6) tal-Kap.372 tal-Liġijiet ta' Malta; (iii) il-kalkoli li fuqhom hija bbażata l-Likwidazzjoni ta' Taxxa huma għal kollox spjegati u huma bbażati fuq l-fatti u fuq il-provvedimenti tal-Liġi; (iv) ir-Rikorrent inġhata kull opportunità biex jippreżenta l-verżjoni tiegħu ta' kif ġraw il-fatti, kemm fl-istadju ta' verifika kif ukoll fl-istadju ta' oġġezzjoni, u b'hekk ma jistax jixli lid-Direttur Ġenerali (Taxxi Interni) li ma taħx smiġħ xieraq anzi kien ir-Rikorrent stess li baqa' ma kkoperax mad-Dipartiment tat-Taxxi Interni; (v) it-taxxa pperikolata nħadmet abbażi tar-rati ta' taxxa li huma applikabbli għal kull individwu residenti fir-Repubblika ta' Malta u l-multi amministrattivi w imġhax huma bbażati fuq il-provvedimenti tal-Liġi f'dan ir-rigward.

L-aggravju preliminari sollevat mir-Rikorrent fis-sens illi l-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2007 inħarġet *fuori termine* l-perijodu previst fl-Artikoli 30 u 31 tal-Kap.372 tal-Liġijiet ta' Malta, ġie miċhud b' sentenza preliminari pronunċjata fid-9 ta' Mejju 2016²⁴. Konsegwentement għalhekk, b'din is-sentenza l-appell tar-Rikorrent mill-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2007 ser jiġi trattat u deċiż fil-mertu.

Mill-provi prodotti u mill-atti proċesswali jirriżulta li l-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2007 mertu ta' dawn il-proċeduri, ossia l-Likwidazzjoni ta' Taxxa datata 3 ta' Ġunju 2013, inħarġet fil-konfront tar-Rikorrent in segwitu għal stadju ta' oġġezzjoni, fejn appuntu ġiet trattata l-oġġezzjoni tar-Rikorrent mill-Likwidazzjoni ta' Taxxa originali għall-istess imsemmija sena ta' stima mahruġa fil-konfront tiegħu fl-20 ta' Jannar 2011²⁵ u permezz ta' liema kien ġie mitlub iħallas is-somma komplessiva ta' €256,488 rappreżentanti taxxa, interessi u taxxa addizzjonali.

Il-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2007 mahruġa fl-20 ta' Jannar 2011, inħarġet in segwitu għal verifika da parte tat-Tax Compliance Unit fil-konfront tar-Rikorrent li kienet tkopri s-snin ta' stima 2004 sa' 2009 u mir-Rapport tat-Tax

²³ Dok. "DG03b" a fol. 5 tal-proċess.

²⁴ Fol. 142 sa '146 tal-proċess.

²⁵ Dok. "DG01" a fol. 2 tal-proċess.

Compliance Unit²⁶ jirrizulta li din l-istima kienet inharget in bazi għas-segventi konsiderazzjonijiet:

Documents/information requested: *Statement of Affairs as at 31st December 2008; Local Bank Statements together with confirmation letter of bank accounts held from 1st January 2005 till 31st December 2008; Foreign Bank statements held from 1st January 2005 till 31st December 2008; Completed Income Tax Returns for years of assessment 2006 and 2007 (basis 2005 and 2006); Completed Income Tax Returns and Audited Financial Statements of Colbor Ltd for years of assessment 2003 till 2009 (basis 2002 till 2008); Completed Income Tax Returns and Audited Financial Statements of Tajjar Trading Co. Ltd. for years of assessment 2002 till 2009 (basis 2001 till 2008); Completed Income Tax Returns and Audited Financial Statements of Mantoray Limited for years of assessment 2002 till 2009 (basis 2001 till 2008); Completed Income Tax Returns and Audited Financial Statements of O.A. Investments for years of assessment 2002 till 2009 (basis 2001 till 2008); Bank Statements (local and foreign) including any bank loans and sanction letters in respect of Colbor Ltd, Tajjar Trading Co. Ltd., Mantoray Limited and O.A. Investments Limited, held from 1st January 2005 till 31st December 2008.*

Documents/Information submitted: *Despite several reminders, Mr. Agius failed to provide the majority of the information/documents requested and the only documents presented were limited to: Bank documents - BOV A/C 112-05333011 (however from January 07 till June 2007 were not included); BOV A/C 112-07095014 (Mr. Agius submitted only the following 3 sheets:- statement dated 29/03/2008 opening bal - €148358.84 closing balance - €154444.03, statement dated 29/03/2009 opening bal - €160816.98 closing balance - €166575.56, statement dated 30/09/2009 opening bal - €166575.56 closing balance - €172037.14; deed dated 20/07/2006 between Barclays Bank plc and TP wherein Mr. Agius was granted a loan facility not exceeding €1,000,000 for a period not exceeding 31/05/2011; Barclays Bank p.l.c. Loan Agreement dated 09/05/2006; Letter from Barclays Wealth wherein the facility was extended to €1,048,000. Personal income tax return for year of assessment 2007 (basis 2006) - with nil amounts. Statement of affairs with several omissions/inaccuracies.*

Bank documentation - *During our meetings Mr. Agius stated that he had requested bank statements from the banks but the latter were reluctant to give him such statements. Mr. Agius also stated that he did not have any HSBC accounts. In this regard Mr. Agius presented a letter dated 10th November 2009 addressed to BOV in which bank statements for Mantoray Limited, Colbor Limited and O.A. Investments were requested. Taxpayer's attention was drawn to the fact that his personal bank statements together with those in respect of Tajjar Trading Co. Ltd. were not included in this letter. In the second part of deed dated 20/07/2006 (paragraph 10.4) we have stated that the creditor namely HSBC Bank Malta p.l.c. waives its hypothecary rights arising out of notes of hypothec I. 14838/2003 and I.21979/2003 against the Borrower in so far as such rights effect the immovable property above described and hypothecated and releases the borrower from the effects of such hypothecs but otherwise holds firm and secure all its other rights arising out of said note. The waiver was granted against a payment of Lm400,000. This implies that part of the loan was*

²⁶ Fol. 792 sa' 801 tal-proċess fl-ismijiet "XXX v. Direttur Ġenerali (Taxxi Interni), Rik. Nru. 134/13.

used to make this payment. This paragraph demonstrates that contrary to what taxpayer stated, in 2006 he definitely had at least one account with HSBC.

Further Return/Statement of Affairs - The further return which, as stipulated by the ITMA, is to be furnished within thirty days from notice, was only submitted in May 2010, and despite the delay, several omissions and inaccuracies were noticed. Since these were very evident, a copy was handed to tp upon submission. At this point, Mr. Agius was reminded on the importance of making a proper declaration. He was also invited to make any rectifications which he deemed necessary.

Some of the inaccuracies/omissions in the Statement of Affairs - Section 2 - Bank Deposits/Equities/Inv. Funds/Bonds Other Investments. TP only wrote "Liability Personal and Overdraft" No other information was included despite the fact that this section clearly specifies that details such as institution, asset type, reference no and currency should be included. **Section 2** - shares in private companies and relative shareholder's accounts. TP listed only O.A. Investments and Mantoray Ltd. The number and type of shares, cost and shareholder's balance was not included. He also did not include Colbor Limited, Tassar Trading Company and Rail Trading Company Limited. According to MFSA information and information obtained from foreign tax authorities, these companies should have been included. **Section 5** - Insurance premiums. TP wrote N/A. However, from bank account 112-05333011 presented by TP, there is a monthly payment of approximately Lm191 to Eagle Star Insurance. **Section 6** - Loans advanced - Tp wrote OA - not known until accounts are settled.

Involvement in companies - In one of our meetings Mr. Agius stated that none of his companies were active, however our sources show that O.A. Investments and Mantoray Limited effected the following transactions: O.A. Investments - erba' trasferimenti: tnejn minnhom fis-27 ta' Jannar 2004, u ż-żewġ trasferimenti l-oħra fit-28 ta' Novembru 2005 u fit-30 ta' Marzu 2007 rispettivament. Din is-soċjetà għamlet ukoll korrezzjoni fil-15 ta' Marzu 2007 relattiva għat-trasferiment li kellu marbut miegħu l-Kont bin-Numru IV200008284. Mantoray Limited - trasferiment fit-30 ta' Marzu 2007 u korrezzjoni fil-15 ta' Marzu 2007 relattiva għat-trasferiment li kellu marbut miegħu l-Kont bin-Numru IV200008284.

Rail Trading Company Limited - An anonymous letter including copies of foreign bank transaction sheets on behalf of Rail Trading Company was received by this Unit. Information was therefore requested to foreign tax authorities which later confirmed that Rail Trading Company Ltd. was incorporated in the UK on 1st April 1992 and that Mr. Agius is its only director and shareholder. We were also informed that no financial statements were submitted to HM Revenue & Customs and that their records show the company as having been dormant since its incorporation. Mr. Agius was clearly asked whether he was involved in any foreign companies and to include these in the statement of Affairs. However taxpayer repeatedly denied any involvement. Id-dokumentazzjoni f'idejn id-Dipartiment turi diversi trasferimenti ta' flus magħmula mis-soċjetà Rail Trading Company Limited verso kontijiet bankarji taljani a favur ta' Admiral s.p.a. verso ż-żieda fis-share capital ta' l-istess Rail Trading Company Limited, Giovanna La Gumina u Assunta Giammusso fil-perijodi 16 ta' Dicembru 2004, fit-30 ta' Dicembru 2004, fit-13 ta' April 2005, fit-18 ta' Lulju 2005, fid-29 ta' Settembru 2005, fl-20 ta' Ottubru 2005, fl-24 ta' Novembru 2005, fit-28 ta' Novembru 2005 u fis-7 ta' Frar 2006.

Mr. Agius was requested to submit all missing information/documents by not later than 2nd June 2010, but to no avail. A Notification was sent to taxpayer informing him that audit covers the period from Y/A 2004 till Y/A 2009. As demonstrated above, the contentions made by taxpayer cannot be relied upon, and therefore I suggest to proceed by issuing assessments on the information available. IRD Assessments were discussed with Mr. Marvin Gaerty and it was decided that since Rail Trading Company Limited is considered as dormant, the funds transferred on its behalf should be considered as taxpayers personal funds. Since the majority of statements relate to 2005, we are assuming that in previous and subsequent years the transactions effected amount to approximately the same amounts. The assessments also take into consideration the amounts used by the taxpayer as living expenses. Taxpayer owns a Villa, Mercedes and pays at least a monthly payment of Lm191 to Eagle Star Insurance (i.e. Lm2,292 yearly). Since there could also be other statements which were not forwarded to our Unit I suggest bringing to charge the following income:

	€	Lm
Y/A 2004	100,000	42930
Y/A 2005	200,000	85860
Y/A 2006	200,000	85860
Y/A 2007	200,000	85860
Y/A 2008	200,000	85860
Y/A 2009	200,000	85860
	<u>1,100,000</u>	<u>472,230</u>

...

IRD Assessment:

Y/A	Assessment		Increase in Tax	
	€	Lm	€	Lm
2004	100,000	429,930	33,061	14,193
2005	200,000	85860	68,369	29,351
2006	200,000	85860	64798	27818
2007	200,000	85860	64798	27818
2008	200,000	85860	64300	27604
2009	200,000	85860	65179	27981
Total	1,100,000	472,230	360,505	254,765

Ir-Rikorrent, kif già iktar 'l fuq osservat, ogġezzjona għall-Likwidazzjoni ta' Taxxa maħruġa fil-konfront tiegħu in bażi għall-konsiderazzjonijiet u konkluzjonijiet tat-Tax

Compliance Unit, u dana billi *income brought to charge is excessive, does not agree with amounts reported*²⁷.

Mir-Rapport ta' l-Objection Review Officers Kevin Ellul u Miriam Alessandro²⁸ jirrizulta li l-bazi għall-Likwidazzjoni ta' Taxxa mertu ta' dawn il-proċeduri, ossia l-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2007 mahruġa fil-konfront tar-Rikorrent fit-3 ta' Ġunju 2013, hija s-segwenti - *injection of funds in Admiral s.p.a. - the funds invested by Rail Trading Company Limited, a dormant company fully owned by taxpayer, in Admiral s.p.a. shall be brought to charge since the declarations for income tax purposes of the taxpayer do not justify the accumulation of this wealth by taxpayer. Għalkemm hemm indikat wkoll fringe benefit on debit balances in shareholder's account, jirrizulta evidenti li għas-sena ta' stima 2007 din il-kwistjoni ma tapplikax.*

L-Objection Review Officers waslu għall-bazi fuq liema għandha tinħareġ il-Likwidazzjoni tat-Taxxa għas-sena ta' stima 2007 in segwitu għas-segwenti konsiderazzjonijiet: *during the objection review the taxpayer was informed that the department had information that he was a shareholder and director of Rail Trading Company Limited, a foreign registered entity. Mr. Agius conceded that he owned a foreign company but stated that it had always been dormant. To corroborate his statement, the taxpayer provided a declaration prepared by the company's administrators (Fordhams & Co) stating that the company was dormant. Taxpayer was also informed that the department has information in hand indicating the transfer of funds from Rail Trading Company Limited to another entity. Mr. Agius remarked that this foreign company had been used by a third party as a channel for movement of funds owned by this third party. He claimed that those funds did not belong to him. However, the taxpayer did not bring any evidence to support his contentions. ... During the review it transpired that several aspects of Mr. Agius' income had not been looked into during the audit. These areas were: 1) Movements in shareholders' loans to Maltese entities owned by Mr. Agius; 2) Fringe benefits due on loans taken by Mr. Agius from his Maltese Companies. A detailed exercise was carried out to analyse the movement in shareholder's loans accounts in the Maltese companies owned by Mr. Agius, namely OA Investments Limited, Colbor Limited and Mantoray Limited, during the period under review. It transpired that a total of Lm109,223 had been injected by Mr. Agius during the years under review. However, following clarifications from the taxpayer's auditors (Vincent Curmi & Associates) it resulted that there had been a book-keeping mistake during the financial year ending 31 December 2007 which had gone unnoticed by the auditors. Interest waived by the bankers of Lm133,187 was incorrectly posted as funds injected by the shareholder. The corresponding entry was made against bank interest payable in the profit and loss account. An adjustment was made to the declarations of OA Investments Limited for basis year 2007. During our fieldwork it was noted that the taxpayer had debit shareholder's balance in the books of OA Investments Limited for the years under review on which fringe benefits were due. Despite repeated reminders to provide explanations with respect to such balances, taxpayer did not give the requested feedback. Table 2 indicates the value of the fringe benefits on these debit shareholder's balances:*

²⁷ Vide ittra ta' oġġezzjoni datata 28 ta' April 2011, fol. 6 tal-proċess u Avviż ta' Oġġezzjoni għas-sena ta' stima 2007, fol. 3 tal-proċess.

²⁸ Fol. 663 sa' 666 tal-proċess fl-ismijiet "XXX v. Direttur Ġenerali (Taxxi Interni), Rik. Nru. 134/13.

Fringe benefits due from Mr. XXX - O.A. Investments Limited

Y/A	2004	2005	2006
Basis Year	2003	2004	2005
	Lm	Lm	Lm
Amount due from shareholder	108,052	92,235	93,325
Interest rate	8%	8%	8%
Value of fringe benefits	8,644	7,379	7,466

Objection review officers conclusions - Based on the work carried out during the objection review, it is recommended that the Director General - Inland Revenue Department issues a refusal to taxpayer's objections and revise the assessment on the following basis: 1. Injection of funds in Admiral s.p.a. - the funds invested by Rail Trading Company Limited, a dormant company fully owned by the taxpayer, in Admiral s.p.a. shall be brought to charge since the declarations for income purposes of the taxpayer do not justify the accumulation of this wealth by the taxpayer - din il-baži tal-Likwidazzjoni ta' Taxxa mertu ta' dawn il-proċeduri. 2. Fringe benefits on debit balances in shareholder's accounts.

The following table indicates the revised assessment:

Y/A	2004	2005	2006	2007	2008	2009
Basis	2003	2004	2005	2006	2007	2008
	Lm	Lm	Lm	Lm	Lm	Lm
Employment	4,000	4,300				
Pension						4,786
Rental Income		79			79	183
Injection of funds in foreign entities Table 2)		3,886	67,626	50,228		
Fringe benefits (Table 3)	8,644	7,379	7,466			
	12,644	15,644	75,092	50,228	79	4,969
Tax Due	2,193	3,243	24,050	15,348	-	-

Mill-minuti ta' l-Objection Review Officers, senjatament mill-minuti tal-laqgħat tagħhom mar-Rikorrent u r-rappreżentant tiegħu, jirriżulta li fil-laqgħa tat-3 ta' April 2012²⁹ ir-Rikorrent u r-rappreżentant tiegħu ġew infurmati bis-segwent: 1. *Mantoray - KE (Kevin Ellul) explained that since the company did not trade, it was decided to accept TP's returns. Presented Withdrawal forms for Y/A 2003 - 2009. Advised TP to file objection letter for Y/A 2001 - 2002.* 2. *Colbor Ltd. - KE explained that the company expenses were reversed since the company was not trading. PL (Dr. Pawlu Lia) asked OA (XXX) the reason why he didn't wind up the company. OA said that he could not due to court proceedings. Presented withdrawal forms for Y/A 2003 & 2008 and AF for Y/A 2009 and 2010.* 3. *OA Investments Ltd - KE explained that the company had incorrectly claimed finance costs. These were being reversed. Presented withdrawal forms for Y/A 2003 - 2009. Advised OA to file objection for Y/A 2002.* Minn dawn il-minuti jirriżulta għalhekk - hekk kif anke kkonfermat minn Michèle Xuereb, rappreżentant tal-Kummissarju tat-Taxxi, fil-kors tax-xhieda estensiva tagħha - li l-kwistjonijiet mat-tlett soċjetajiet Mantoray Limited, Colbor Limited u O.A. Investments Limited (din ta' l-aħħar salv il-kwistjoni tal-*fringe benefits* a favur ir-Rikorrent) ġew risolti.

Injection of Funds da parte ta' Rail Trading Company Limited fis-soċjetà Admiral.

Ir-Rikorrent jišhaq li f'dan il-każ huwa għandu jgawdi mis-salvagwardji ta' l-Artikolu 6 tal-Konvenzjoni Ewropea għall-Protezzjoni tad-Drittijiet ta' Bniedem u tal-Libertajiet Fundamentali - *the criminal limb* - stante li t-taxxa addizzjonali imposta fuqu oltre t-taxxa u l-interessi, hija ta' natura punittiva u għaldaqstant ekwivalenti għal akkuza kriminali.

Jinsab ormai ben stabbilit fid-deċiżjonijiet tal-Qorti Ewropeja dwar id-Drittijiet tal-Bniedem (ECHR) li fejn tiġi imposta *tax surcharge* fuq it-*taxpayer*, tiġi kkreat sitwazzjoni li hija affini għal akkuza kriminali bil-konsegwenza għalhekk li għandu japplika *the criminal limb* ta' l-Artikolu 6 tal-Konvenzjoni. Deciżjoni tal-Qorti Ewropeja dwar id-Drittijiet tal-Bniedem f'tali rigward hija d-deċiżjoni **Paykar Yev Haghtanak Ltd. v. Armenia, App. Nru. 21638/03**, li saret finali fit-2 ta' Ġunju 2008. Fid-deċiżjoni Tagħha l-Qorti osservat illi: *the court reiterates at the outset that tax disputes fall outside the scope of civil rights and obligations under Article 6, despite the pecuniary effects which they necessarily produce for the tax payer. ... However, when such proceedings involve the imposition of surcharges or fines [li huwa appuntu l-każ in eżami] then they may, in certain circumstances, attract the guarantees of Article 6 under its "criminal" head. The present case concerns proceedings in which the applicant company was found to be liable to pay profit tax, VAT and simplified tax plus additional surcharges and fines. It remains therefore to be determined whether Article 6 can be applicable to the proceedings in question under its "criminal" limb. The Court reiterates that the concept of "criminal charge" within the meaning of Article 6 is an autonomous one... In determining whether an offence qualifies as "criminal" three criteria are to be applied: the legal classification of the offence in domestic law, the nature of the offence and the degree of severity of the possible penalty (see Engel and*

²⁹ Fol. 761 tal-proċess fl-ismijiet "XXX v. Direttur Ġenerali (Taxxi Interni) Rik. Nru. 134/13.

Others v. The Netherlands, judgement of 8 June 1976, Series A no. 22 pp. 34-35, § 82; *Oztürk v. Germany*, judgement of 21 February 1984, Series A no. 73, p.18, § 50; and *Ezeh and Connors v. The United Kingdom [GC]*, nos. 39665/98 and 40086/98, 82, ECHR 2003-X). The second and third criteria are alternative and not necessarily cumulative: for Article 6 to apply by virtue of the words “criminal charge” it suffices that the offence in question should by its nature be “criminal” from the point of view of the Convention, or should have made the person concerned liable to a sanction which, by its nature and degree of severity, belongs in general to the “criminal” sphere. ... The minor degree of the penalty, in taxation proceedings or otherwise, is not decisive in removing an offence, otherwise criminal by nature, from the scope of Article 6 (see *Jussila*, ... § 35, where the Court found Article 6 to be applicable even when the surcharge imposed amounted to only 10 percent of the tax due). Turning to the first criterion, the surcharges and fines in the present case were imposed in accordance with various tax laws and are not classified as criminal. This is, however, not decisive. As regards the second criterion, the Court notes that the relevant provisions of the Laws on Taxes and the Law on Value Added Tax are applicable to all persons - both physical and legal - liable to pay tax and are not directed at a specific group. Furthermore, the surcharges and the fines are not intended as pecuniary compensation for any costs that may have been incurred as a result of the taxpayer’s conduct. The purpose pursued by these measures is to exert pressure on taxpayers to comply with their legal obligations and to punish breaches of those obligations. The penalties are thus both deterrent and punitive. The Court considers that the above is sufficient to establish the criminal nature of the offence.... It would, nevertheless, also point out that in the present case the applicant company had quite substantial penalties imposed on it: the fines ranging from 10 to 50 percent and the surcharges for the period of delay cumulatively amounting from about 5 to 43 percent of the tax due. In the light of the above, the Court concludes that the proceedings to which the applicant company was a party can be classified as “criminal” for the purposes of the Convention. It follows that Article 6 applies.

L-hekk imsejjha *criminal limb* ta’ l-Artikolu 6 tal-Konvenzjoni essenzjalment tiddisponi li: (1) *fid-deċiżjoni ... ta’ xi akkuża kriminali kontra tiegħu*, kulhadd huwa intitolat għal *smiġħ imparzjali u pubbliku fi żmien raġonevoli minn tribunal indipendenti u imparzjali mwaqqaf b’ligi*. Is-sentenza għandha tingħata pubblikament iżda l-istampa u l-pubbliku jista’ jiġi eskluż mill-proċeduri kollha jew minn parti minnhom fl-interess tal-morali, ta’ l-ordni pubbliku jew tas-sigurtà nazzjonali f’soċjetà demokratika, meta l-interessi tal-minuri jew il-protezzjoni tal-ħajja privata tal-partijiet hekk teħtieġ, jew safejn ikun rigorozament meħtieġ fil-fehma tal-Qorti f’ċirkostanzi speċjali meta l-pubblicità tista’ tippregudika l-interessi tal-gustizzja - salvagwardja din li t-Tribunal jemmen li illum, partikolarment bil-kostituzzjoni tat-Tribunal ta’ Reviżjoni Amministrattiva, tinsab ben definita u konċessa; (2) *kull min ikun akkużat b’reat kriminali għandu jiġi meqjus li jkun innocenti sakemm ma jiġix pruvat hati skond il-ligi*. (3) *kull min ikun akkużat b’reat kriminali għandu d-drittijiet minimi li ġejjin: (a) li jkun infurmat minnufih, b’lingwa li jifhem u bid-dettal, dwar in-natura u r-raġuni ta’ l-akkuża kontra tiegħu; (b) li jkollu żmien u facilitajiet xierqa għall-preparazzjoni tad-difiża tiegħu; (ċ) li jiddefendi ruħu personalment jew permezz ta’ assistenza legali magħżula minnu stess jew, jekk ma jkollux mezzi biżżejjed li jħallas l-assistenza legali din għandha tingħata lilu b’xejn meta l-interessi tal-gustizzja jeħtieġu hekk; (d) li jeżamina jew li jara li jiġu eżaminati xhieda kontra tiegħu u li jottjeni l-attenzenza u l-eżami ta’ xhieda favur tiegħu taħt l-istess kondizzjonijiet bħax-xhieda kontra tiegħu;*

(e) li jkollu assistenza b'xejn ta' interpretu jekk ma jkunx jifhem jew jitkellem il-lingwa użata fil-qorti.

Essenzjalment għalhekk *taxpayer* rinfaccjat bl-imposizzjoni ta' taxxa addizzjonali - bħalma huwa appuntu l-każ in eżami - jrid ikollu s-salvagwardji tas-smiġh xieraq, tal-presunzjoni ta' l-innoċenza u dawk is-salvagwardji minimi previsti fl-Artikolu 6(3) tal-Konvenzjoni naturalment kif applikabbli fil-każ tiegħu. Mandanakollu però, għalkemm id-dritt għal smiġh xieraq huwa meqjus b'iktar strettezza u rigorożità fl-isfera tal-Liġi Kriminali milli huwa taht l-hekk imsejjaħ *civil limb* ta' l-Artikolu 6 tal-Konvenzjoni, is-salvagwardji u drittijiet taht il-*criminal limb* ta' l-imsemmi Artikolu tal-Konvenzjoni mhux neċessarjament japplikaw bl-istess strettezza u rigorożità f'kull każ, partikolarment f'dawk il-każijiet li ma humiex u ma jaqgħux fl-isfera klassika tal-Liġi Kriminali - bħamla appuntu hija t-taxxa addizzjonali f'materji fiskali. Fir-rigward issir referenza għal dak osservat mill-Qorti Ewropeja dwar id-Drittijiet tal-Bniedem fid-deċizzjoni **Jussila v. Finland, App. Nru. 73053/01** mogħtija fit-23 ta' Novembru 2006 - *while it may be noted that the above-mentioned cases in which an oral hearing was not considered necessary concerned proceedings falling under the civil head of Article 6§1 and that the requirements of a fair hearing are the most strict in the sphere of criminal law, the Court would not exclude that in the criminal sphere the nature of the issues to be dealt with before the tribunal or court may not require an oral hearing. Notwithstanding the consideration that a certain gravity attaches to criminal proceedings, which are concerned with the allocation of criminal responsibility and the imposition of a punitive and deterrent sanction, it is self-evident that there are criminal cases which do not carry any significant degree of stigma. There are clearly "criminal charges" of differing weight. What is more, the autonomous interpretation adopted by the Convention institutions of the notion of a "criminal charge" by applying the Engel criteria have underpinned a gradual broadening of the criminal head to cases not strictly belonging to the traditional categories of the criminal law, for example administrative penalties (Öztürk), prison disciplinary proceedings (Campbell and Fell v. The United Kingdom, 28 June 1984, Series A no. 80), customs law (Salabiaku v. France, 7 October 1988, Series A no. 141-A), competition law (Société Stenuit v. France, 27 February 1992, Series A no. 232-A), and penalties imposed by a court with jurisdiction in financial matters (Guisset v. France, no. 33933/96, ECHR 2000-IX). Tax surcharges differ from the hard core of criminal law; consequently, the criminal-head guarantees will not necessarily apply with their full stringency.*

Fil-każ in eżami, id-dritt tar-Rikorrent għas-salvagwardji previsti fil-*criminal limb* ta' l-Artikolu 6 tal-Konvenzjoni già gie rikonoxxut lilu in forza tad-Digriet datat 21 ta' Lulju 2016³⁰, meta, nonostante dak provdut fl-Artikolu 35(3) tal-Kap.372 tal-Liġijiet ta' Malta, giet ordnata l-inverzjoni tal-provi b'dana li jibda l-ewwel bil-provi il-Kummissarju tat-Taxxi. Naturalment l-inverzjoni tal-provi giet ordnata b'rispett lejn dak provdut fl-Artikolu 6(2) tal-Konvenzjoni u cioè li *kull min ikun akkużat b'reat kriminali għandu jiġi meqjus li jkun innoċenti sakemm ma jiġix pruvat ħati skond il-liġi.*

In verità u sa' ċertu punt indipendentement minn dak provdut fl-Artikolu 6(2) tal-Konvenzjoni, dan it-Tribunal jemmen - u dejjem hekk emmen - li għalkemm f'materji fiskali proċeduri istitwiti quddiemu jiġu istitwiti mit-*taxpayer* li jkun qed jikkontesta Likwidazzjoni ta' Taxxa u/jew stima maħruġa fil-konfront tiegħu mill-Kummissarju tat-Taxxi u b'hekk jsegwi li għandu l-oneru li fl-aħħar mill-aħħar jissosstanzja u jipprova l-

³⁰ Fol. 149 sa '156 tal-proċess.

aggravji tiegħu fil-konfront tal-Likwidazzjoni ta' Taxxa u/jew stima mahruġa kontrih, il-punto di partenza ta' kull konsiderazzjoni f'kull azzjoni ta' din in-natura hija r-raġjonevolezza u legalità tal-Likwidazzjoni ta' Taxxa u/jew stima mahruġa fil-konfront tat-taxpayer. Jekk Likwidazzjoni ta' Taxxa u/jew stima mahruġa fil-konfront tat-taxpayer immedjatament tirrizulta li ma hijiex raġjonevoli u/jew legali, allura t-Tribunal għandu jhassar u jirrevoka jew inaqqas dik il-Likwidazzjoni ta' Taxxa u/jew stima, skond il-każ.

Huwa fil-fatt prinċipju assodat f'materja ta' Liġi Amministrattiva li *a person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he likes merely because he is minded to do so – he must in the exercise of his discretion do not what he likes but what he ought. In other words, he must, by the use of his reason, ascertain and follow the course which reason directs. He must act reasonably. ... It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of authority. Warrington LJ in Short v. Poole Corporation gave the example of the red-haired teacher dismissed because she had red hair. This is unreasonable in one sense. In another it is taking into consideration extraneous matters. It is so unreasonable that it might also be described as being done in bad faith; and, in fact, all these things run into one another. ... The rule of reason has thus become a generalised rubric covering not only sheer absurdity or caprice, but merging into illegitimate motives and purposes, a wide category of errors commonly described as 'irrelevant considerations', and mistakes and misunderstandings which can be classed as self misdirection, or addressing oneself to the wrong question*³¹.

Mill-provi prodotti u mill-atti proċesswali jirżulta li l-investigazzjoni fil-konfront tar-Rikorrent skattat wara li d-Dipartiment tat-Taxxi Interni rċieva ittra anonima flimkien ma' numru ta' dokumenti annessi magħha, li kienu juru jew jidhru li juru numru ta' trasferimenti ta' flus minn soċjetà bl-isem ta' Rail Trading Company Limited verso numru ta' kontijiet bankarji f'Banek Sqallin f'isem Admiral s.r.l. u l-iskop ta' tali versamenti ta' flus kien għal żieda f'*share capital* ta' l-imsemmija Admiral s.r.l., bis-soċjetà Rail Trading Company Limited ikollha sehem ta' 43% fiha³². In segwitu għall-investigazzjoni kondotta fil-konfront tar-Rikorrent fir-rigward ta' dawn it-trasferimenti, li kienet tinkludi verifika ma' l-awtoritajiet fiskali ta' l-Ingilterra dwar l-*ultimate beneficial ownership* tas-soċjetà Rail Trading Company Limited u l-*istatus* tagħha, verifika tad-dikjarazzjonijiet ta' taxxa tar-Rikorrent għas-snin ta' stima mertu ta' l-investigazzjoni, tal-kontijiet bankarji tar-Rikorrent u anke ta' l-*statement of affairs* ta' l-istess Rikorrent - dawn ta' l-aħħar hekk kif provduti u kumpilati mir-Rikorrent - id-Direttur Ġenerali (Taxxi Interni) wasal għall-konklużjoni li l-flus li ġew trasferiti minn

³¹ Administrative Law, H.W.R. Wade & C.F. Forsyth, 10th Edition.

³² Fol. 606 sa' 613 tal-proċess fl-ismijiet "XXX v. Direttur Ġenerali (Taxxi Interni), Rik. Nru. 134/13.

Rail Trading Company Limited fil-kontijiet bankarji ta' Admiral s.r.l. ma setghux kienu għajr flejjes tar-Rikorrent li huwa kien naqas milli jiddikjara fid-dikjarazzjonijiet tat-taxxa tiegħu u konsegwentement kellu jiġi intaxxat fuq l-istess.

Ir-Rikorrent jikkontendi li l-investigazzjoni tad-Direttur Ġenerali (Taxxi Interni) fil-konfront tiegħu hija monka u b'hekk mhux sostenibbli in kwantu hija bbażata fuq dokumentazzjoni li waslet għand id-Dipartiment tat-Taxxi Interni b'mod anonimu u li ma giet minnu bl-ebda mod ikkonfermata u/jew ikkoroborata. Jikkontendi għalhekk li d-Direttur Ġenerali (Taxxi Interni), illum il-Kummissarju tat-Taxxi, ma irnexxilux jipprova b'mod adegwat u sodisfaċenti, anzi jikkontendi li l-istess ma irnexxilux jipprova 'l hinn minn kull dubju raġonevoli, li verament kien hemm trasferimenti ta' flejjes mis-soċjetà Rail Trading Company Limited f'kontijiet bankarji intestati lis-soċjetà Admiral s.r.l. u fin-nuqqas ta' tali prova ma jistax jingħad li r-Rikorrent naqas milli jiddikjara d-dhul kollu tiegħu għall-finijiet ta' taxxa fuq l-income.

Konsiderazzjoni superficjali tal-fatti tal-każ tista' twassal għall-konkluzjoni pretiża mir-Rikorrent iżda konsiderazzjoni iktar akkurata ta' dak li ġara u sehħ, partikolarment fl-istadju ta' l-oġġezzjoni, turi realtà differenti minn dik li r-Rikorrent jrid lit-Tribunal isib u jemmen.

Fil-kors ta' l-investigazzjoni fil-konfront tar-Rikorrent, id-Direttur Ġenerali (Taxxi Interni), bis-saħħa ta' u ai termini ta' l-ordni dwar l-eżenzjoni mill-ħlas ta' taxxa doppja fuq l-income mar-Renju Unit, ottjena informazzjoni mill-awtoritajiet Ingliżi dwar l-*ultimate beneficial ownership* tas-soċjetà Rail Trading Company Limited. Minn din l-informazzjoni, mogħtija peremzz ta' ittra datata 11 ta' Marzu 2010³³, id-Direttur Ġenerali (Taxxi Interni) gie infurmat illi *Rail Trading Company Ltd is known to HM Revenue & Customs and was incorporated in the UK on the 1 April 1992. The registered office address of the company is 2nd Floor, 61 Old Street, London, EC1V 9HX. The company has not submitted any financial statements to HM Revenue & Customs. Our records show the company as having been dormant since its inception. The only director of the company is Mr. Oliver Agaus of Villa Montoray, Triq tal-Mielah, High Ridge, St. Andrews, Malta. The issued share capital of the company is 100 ordinary share of £1. These are all held by Mr. Oliver Agaus. Our records show that the surname is recorded as "Agaus" and not "Agius".*

Li Rail Trading Company Limited hija soċjetà tar-Rikorrent gie kkonfermat waqt l-istadju ta' oġġezzjoni meta r-rappreżentant tar-Rikorrent ipprova lill-Objection Review Officers ittra maħruġa minn Fordhams & Co. datata 14 ta' Lulju 2011³⁴ indirizzata lil O. Agaus ta' Villa Montoray, Triq tal-Mielah, High Ridge, St. Andrews, Malta. Fiha din l-ittra jingħad *this is to confirm that the above company is registered in United Kingdom. The company is dormant and has not carried out trade. The enclosed dormant company accounts have been filed in the public domain for the year ended 31 March 2011.*

Mill-minuti tal-laqgħat bejn l-Objection Review Officers u r-Rikorrent u/jew ir-rappreżentant tiegħu, l-Avukat Dr. Pawlu Lia, jirriżulta li din l-ittra giet provduta lid-Dipartiment bhala prova da parte tar-Rikorrent li għalkemm Rail Trading Company Limited hija soċjetà tiegħu, din kienet dormant u ma kenitx qed tagħmel u tiggenera

³³ Fol. 621 tal-proċess fl-ismijiet "XXX v. Direttur Ġenerali (Taxxi Interni), Rik. Nru. 134/13.

³⁴ Fol. 721 tal-proċess fl-ismijiet "XXX v. Direttur Ġenerali (Taxxi Interni), Rik. Nru. 134/13.

dhul. Fil-minuti tal-laqgħa ta' l-24 ta' Frar 2012³⁵ bejn l-Objection Review Officers u l-Avukat Dr. Pawlu Lia li kien qed jirrapprezenta lir-Rikorrent fl-istadju ta' l-oġġezzjoni, hemm innizzel li *Dept. had noted that TP had 2 companies situated abroad. PL (ossia l-Avukat Dr. Pawlu Lia) said he knew only of one. TP had explained that his company had been used as a channel for funds movement. TP had concrete evidence as regards whom the person who had provided the information to the dept*³⁶. Fil-minuti tal-laqgħa tas-6 ta' Ottubru 2011³⁷, ukoll bejn l-Objection Review Officers u l-Avukat Dr. Pawlu Lia, hemm innizzel li *PL also provided a document prepared by the administrators (Fordhams & Co.) of Rail Company Ltd. stating that this company was dormant and did not carry out any trade*³⁸. *PL was informed by the OROs (Objection Review Officers) that such a declaration did not provide sufficient comfort that no transactions were actually effected through the company's bank accounts. In fact, the Department is in possession of a public document showing that Rail Company Ltd. is a shareholder of Admiral s.r.l. a company registered in Italy. The Department is also in possession of bank documentation showing that funds were frequently transferred from Rail Company Ltd. to Admiral s.r.l.*³⁹. *The balance sheet as at 31 March 2011 of Rail Company Ltd. downloaded from Company House website shows a bank balance of £100 financed by share capital of £100. The same position was noted as at 31 March 2010 indicating thus that most probably such balance sheet and the declaration provided by Fordhams & Co do not depict the true facts, i.e. the investment in Admiral srl and the bank transactions are not recognised*⁴⁰. Fil-minuti tal-laqgħa tal-11 ta' Lulju 2011⁴¹ bejn l-Objection Review Officers, ir-Rikorrent u l-Avukat Dr. Pawlu Lia, hemm innizzel li *with respect to OA on a personal basis, KE and AM remarked that the issue in this case was that the taxpayer did not provide complete information when he compiled the statement of affairs. OA pointed that he provided the information requested. At this point KE mentioned the taxpayer's involvement in a company resident in the UK. OA did not deny his involvement but stated that the company is dormant. KE remarked that from the information available the company is not dormant. PL referred to the possibility of double taxation agreements. KE confirmed that the company is not filing its accounts and as such the double taxation agreement is not relevant*⁴².

Minn dawn il-minuti jirrizultaw diversi fatturi ta' importanza għall-konsiderazzjonijiet li llum jrid jagħmel dan it-Tribunal, partikolarment fid-dawl ta' ċerta salvagwardji li r-Rikorrent jesigi li huwa għandu favurih u li jgħibu fix-xejn l-investigazzjoni kollha da parte tad-Dipartiment tat-Taxxi Interni:

- Fl-istadju ta' l-oġġezzjoni r-Rikorrent, oltre li kien jidher personalment għal uħud mill-laqgħat ma' l-Objection Review Officers, kien rappreżentat mill-Avukat Dr. Pawlu Lia, li anke attenda għal xi laqgħat waħdu u għadda informazzjoni u dokumentazzjoni lid-Dipartiment għan-nom tar-Rikorrent. Dana juri li r-Rikorrent kien debitament assistit

³⁵ Fol. 762 tal-proċess fl-ismijiet "XXX v. Direttur Ġenerali (Taxxi Interni), Rik. Nru. 134/13..

³⁶ Enfasi tat-Tribunal.

³⁷ Fol. 763 tal-proċess fl-ismijiet "XXX v. Direttur Ġenerali (Taxxi Interni), Rik. Nru. 134/13..

³⁸ Enfasi tat-Tribunal.

³⁹ Enfasi tat-Tribunal.

⁴⁰ Enfasi tat-Tribunal.

⁴¹ Fol. 764 u 765 tal-proċess fl-ismijiet "XXX v. Direttur Ġenerali (Taxxi Interni), Rik. Nru. 134/13..

⁴² Enfasi tat-Tribunal.

- għall-finijiet tad-drittijiet tiegħu u għall-mod kif kellu jew ma kellux jirrispondi u/jew jirribatti għall-affermazzjonijiet u asserzjonijiet tad-Dipartiment tat-Taxxi Interni;
- Ir-Rikorrent kien infurmat li l-informazzjoni li d-Dipartiment kellu fil-konfront tiegħu dwar Rail Trading Company Limited u t-trasferiment ta' flejjes f'kontijiet bankarji ta' Admiral s.r.l, kienet giet provduta b'mod anonimu - di fatti kif già indikat hawn fuq fil-minuta tal-laqgħa 24 ta' Frar 2012 jingħad *inter alia* li *TP had concrete evidence as regards whom the person who had provided the information to the dept.* Ir-Rikorrent għalhekk kien jaf ben sew fiex kienet tikkonsisti l-bażi fuq liema d-Dipartiment kien qed jinvestigah u b'hekk kien jaf ben tajjeb kif kellu u ma kellux jirrispondi u/jew jirribatti għall-affermazzjonijiet u asserzjonijiet tad-Dipartiment kontrih;
 - Nonostante dan kollu, ir-Rikorrent stess jew tramite r-rappreżentant tiegħu l-Avukat Dr. Pawlu Lia, irrikonoxxa li s-soċjetà Rail Trading Company Limited hija soċjetà tiegħu u għall-asserzjoni tad-Dipartiment li din is-soċjetà kienet għamlet trasferimenti ta' fondi f'kontijiet bankarji ta' Admiral s.r.l, ukoll soċjetà li fiha r-Rikorrent kellu involviment, irribatta billi stqarr li s-soċjetà Rail Trading Company Limited kienet dormant u b'hekk ma kenitx qed tiġġenera introjtu u allega li l-fondi trasferiti ma kienux tiegħu iżda li *his company had been used as a channel for funds movement* minn terzi persuni.

Fiċ-ċirkostanzi għalhekk it-Tribunal għandu sitwazzjoni quddiemu fejn ir-Rikorrent, pur sapendo li l-informazzjoni li d-Dipartiment tat-Taxxi Interni kellu fil-konfront tiegħu kienet ġejja minn sors anonimu u fi stadju fejn kien debitament assistit u rappreżentat, aċċetta u rrikonoxxa li s-soċjetà Rail Trading Company Limited hija soċjetà tiegħu, iddikjara li din is-soċjetà kienet dormant u ma kienet qed tiġġenera l-ebda introjtu u għat-trasferimenti tal-fondi rribatta bl-allegazzjoni li dawn kienu fondi ta' terz li kien għamel użu jew aħjar donnu nqeda bis-soċjetà Rail Trading Company Limited biex imexxi flus appartenenti lilu. Dak affermat u allegat mir-Rikorrent in sostenn tad-difiza tiegħu għall-affermazzjonijiet tad-Dipartiment kontrih, ma ġie minnu bl-ebda mod ippruvat, la fl-istadju ta' oġġezzjoni u wisq inqas fil-kors ta' dawn il-proċeduri.

Fil-kors ta' l-investigazzjoni, inkluż ukoll l-istadju ta' l-oġġezzjoni fejn irrikonoxxa l-konessjoni tiegħu mas-soċjetà Rail Trading Company Limited u allega li din kienet qed tintuża minn terzi għal trasferiment ta' fondi, ir-Rikorrent ma pprovdiex informazzjoni kompluta, kemm għal dak li jirrigwarda informazzjoni bankarja kif ukoll għal dak li jirrigwarda statement of affairs u b'hekk ma kien hemm ebda ġustifikazzjoni għal dak minnu allegat dwar l-istat finanzjarju ta' Rail Trading Company Limited u l-użu li sar minn terzi għaċ-ċaqliq ta' fondi appartenenti lilhom. Lanqas ma pprovda ebda prova dwar l-istat bankjaru veru u attwali tas-soċjetà Rail Trading Company Limited u tal-konessjoni, jew aħjar nuqqas ta' l-istess, mas-soċjetà Admiral s.r.l. Tul il-kors ta' dawn il-proċeduri wkoll ir-Rikorrent ma ndirizza din il-kwistjoni bl-ebda mod u dana nonostante dak li ħareġ u rrizulta tul l-istadju ta' oġġezzjoni, stadju dan u rizzultanzi fattwali dawn li t-Tribunal, minkejja dak pretiż mir-Rikorrent, ma jistax jinjora u jonqos milli jikkonsidra daqs li kieku qatt ma sehħew u/jew saru. Dak affermat mir-Rikorrent fil-kors ta' l-istadju ta' oġġezzjoni wkoll jiffirma parti mill-bażi tal-Likwidazzjoni ta' Taxxa maħruġa fil-konfront tiegħu u għaldaqstant, fil-fehma tat-Tribunal, baqa' jgħodd anke tul il-kors ta' dawn il-proċeduri, partikolarment fid-dawl ta' l-aggravju tar-Rikorrent li l-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2007 u l-Avviż ta' Rifjut ma nħarġux *properly, reasonably* u *fairly*, li huwa qatt ma rċieva l-qliegħ li qed jgħid id-Direttur Generali (Taxxi Interni) u li l-kalkoli tad-Direttur Generali (Taxxi Interni) huma għal kollox żbaljati u bażati fuq premissi ħżiena. Konsegwentement u fiċ-ċirkostanzi r-Rikorrent kellu jutilizza dawn il-proċeduri biex effettivament juri li l-Likwidazzjoni ta'

Taxxa maħruġa fil-konfront tiegħu hija eċċessiva, haġa li però għal raġunijiet li jaf huwa biss baqa' ma għamilx.

It-Tribunal josserva li filwaqt li huwa minnu li jissussisti l-prinċipju li *kull min ikun akkużat b'reat kriminali għandu jiġi meqjus li jkun innocenti sakemm ma jiġix pruvat ħati skond il-liġi* u għandu d-dritt li jibqa' sieket u ma hu obbligat jipprova xejn, huwa daqstant ieħor prinċipju stabbilit li meta dik l-istess persuna tagħżel li għall-akkużi dedotti kontriha tirribatti b'difiża speċifika - fil-każ in eżami d-difiża tar-Rikorrent li s-soċjetà Rail Trading Company Limited hija dormant u qatt ma opeart u li l-istess soċjetà giet utilizzata minn terzi biex iċaqalqu flejjes appartenenti lilhom - hija allura għandha ttipprova dak minnha allegat sal-grad tal-probabbli u jekk dan il-grad tal-prova ma tilhqux allura tkun qed ixxejjen dak minnha allegat.

Fil-każ in eżami din il-prova r-Rikorrent ma sehħlux jagħmilha u għaldaqstant dak minnu allegat jirriżulta għal kollox imxejjen bil-konsegwenza li l-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2007 maħruġa fil-konfront tiegħu għal dak li jirrigwarda l-injection of funds da parte ta' Rail Trading Company Limited fis-soċjetà Admiral s.r.l, hija ġustifikata u jisthoqq li tiġi kkonfermata.

It-Tribunal josserva li fil-kors tal-proċeduri u anke fis-sottomissjonijiet finali ir-Rikorrent avvanza l-pretensjoni li l-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2007 maħruġa fil-konfront tiegħu hija eċċessiva għaliex id-Direttur Ġenerali (Taxxi Interni), illum il-Kummissarju tat-Taxxi, ma għamel l-ebda verifika biex jara jekk is-somma komplessiva ta' €200,000 minnu meqjusa bħala dhul mhux dikjarat (in verità in kwantu rigwarda l-injection of funds in foreign entitles id-Direttur Ġenerali (Taxxi Interni) iddetermina li din kienet fl-ammont komplessiv ta' €283,577.91 tul is-snin ta' stima 2005, 2006 u 2007) kenitx fil-fatt derivanti mis-shareholder's loan mis-soċjetà O.A. Investments Limited lir-Rikorrent. Din evidentement hija linja difensjonali li r-Rikorrent qed javvanza kontra l-Likwidazzjoni ta' Taxxa maħruġa fil-konfront tiegħu u jikkonsegwi għalhekk li huwa l-istess Rikorrent li għandu jagħti prova sodisfaċenti ta' dak minnu allegat, haġa li però huwa baqa' ma għamilx.

Mill-provi prodotti jirriżulta li l-informazzjoni u dokumentazzjoni li d-Direttur Ġenerali (Taxxi Interni), illum il-Kummissarju tat-Taxxi, kellu għall-finijiet kemm ta' verifika kif ukoll ta' konsiderazzjoni ta' l-oġġezzjoni tar-Rikorrent għall-Likwidazzjoni ta' Taxxa oriġinali kienet waħda limitata anke għaliex, hekk kif jirriżulta mill-ittra ta' HM Revenue & Customs⁴³, is-soċjetà Rail Trading Company Limited *has not submitted any financial statements to HM Revenue & Customs. Our records show the company as having been dormant since its inception.* Konsegwentement għalhekk id-Direttur Ġenerali (Taxxi Interni) qajla seta' jassumi u wisq inqas jivverifika li l-fondi f'Rail Trading Company Limited u li ġew minnha injettati f'entitajiet terzi, senjatament f'Admiral s.r.l., kienu derivanti mis-shareholder's loan minn O.A. Investments Limited lir-Rikorrent. Tali dokumentazzjoni u informazzjoni li effettivament tista' tiskolpa lir-Rikorrent u teħilsu minn kwalunkwe responsabilità fiskali għal dhul meqjus mhux dikjarat da parte tad-Direttur Ġenerali (Taxxi Interni), illum il-Kummissarju tat-Taxxi, jekk verament teżisti, għandha tinsab fil-pussess tar-Rikorrent u jsegwi għalhekk li l-unika haġa loġika kellha tkun li l-istess Rikorrent jissottomettiha kemm llid-Direttur Ġenerali (Taxxi Interni) tul il-varji stadji tal-pendenza ta' bejniethom kif ukoll, u possibilment maġġorment, quddiem dan it-Tribunal fil-kors ta' dawn il-proċeduri, haġa li però baqa' ma għamilx.

⁴³ Fol. 768 tal-proċess fl-ismijiet "XXX v. Direttur Ġenerali (Taxxi Interni), Rik. Nru. 134/13.

Jiġi ribadit għalhekk li dak allegat mir-Rikorrent jirriżulta għal kollox imxejjen bil-konsegwenza li l-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2007 maħruġa fil-konfront tiegħu għal dak li jirrigwarda l-injection of funds da parte ta' Rail Trading Company Limited fis-soċjetà Admiral s.r.l, hija ġustifikata u jisthoqq li tiġi ikkonfermata.

Aggravji oħra.

Kif già iktar 'l fuq osservat, il-kwistjoni tal-*fringe benefits* ma tinkwadraz fil-Likwidazzjoni ta' Taxxa għas-sena ta' stima 2007, iżda t-Tribunal josserva li b'opposizzjoni għall-Likwidazzjoni ta' Taxxa mertu ta' dawn il-proċeduri r-Rikorrent jikkontendi wkoll li huwa ma ngħatax smiġh xieraq fl-istadju ta' l-oġġezzjoni u r-rapport taxxa pperikolata/multi amministrattivi u imgħax punittiv jippekkaw serjament f'dak li huwa proporzjonalità.

In kwantu rigwarda l-aggravju tar-Rikorrent li ma ngħatax smiġh xieraq fl-istadju ta' l-oġġezzjoni, it-Tribunal iqis li ma tantx hemm wisq x'jingħad fir-rigward in kwantu dan assolutament ma huwiex minnu. Minn konsiderazzjoni tal-file relattiv għall-istadju ta' l-oġġezzjoni⁴⁴ u b'mod partikolari tal-minuti tal-laqgħat miżmuma mill-Objection Review Officers mar-Rikorrent u/jew ir-rappreżentant tiegħu l-Avukat Dr. Pawlu Lia, jirriżulta ferm ċar li r-Rikorrent ngħata kull opportunità li jiġġustifika, jispjega u jiddefendi lillu nnifsu versu l-pretensjonijiet tad-Direttur Ġenerali (Taxxi Interni) fil-konfront tiegħu, kwindi altru milli ma ngħatax smiġh xieraq.

In kwantu rigwarda l-aggravju tar-Rikorrent li r-rapport taxxa pperikolata/multi amministrattivi u imgħax punittiv jippekkaw serjament f'dak li huwa proporzjonalità, it-Tribunal huwa tal-fehma li entro l-parametri tal-kompetenza Tiegħu kif konferita bl-Artikolu 35 tal-Kap.372 tal-Liġijiet ta' Malta, huwa jista' jikkonsidra u jiddetermina biss jekk fl-imposizzjoni tat-taxxa addizzjonali u imgħaxijiet il-Kummissarju tat-Taxxi Interni mexiex skond il-provvedimenti relattivi ta' l-Att dwar it-Taxxa fuq l-Income, Kap.123 tal-Liġijiet ta' Malta, u l-Att dwar l-Amministrazzjoni tat-Taxxa, Kap. 372 tal-Liġijiet ta' Malta. Fil-każ in eżami jirriżulta li l-Kummissarju tat-Taxxi Interni impona t-taxxa amminsitrattiva u l-imgħax fuq ir-Rikorrent a tenur ta' l-Artikolu 56 tal-Kap.123 tal-Liġijiet ta' Malta u a tenur ta' l-Artikolu 44 tal-Kap.372 tal-Liġijiet ta' Malta, u għaldaqstant ma jirriżultax li dawn, bhala parti mill-Likwidazzjonijiet ta' Taxxa maħruġa fil-konfront tar-Rikorrent, huma żbaljati jew eċċessivi. Jekk ir-Rikorrent jikkontendi però li d-disposizzjonijiet tal-Liġi kif promulgati jiksru l-prinċipju ta' proporzjonalità, it-Tribunal ma huwiex il-forum idoneju fejn tiġi trattata tali kwistjoni.

Fid-dawl ta' dan kollu osservat it-Tribunal iqis li l-appell tar-Rikorrent mill-Likwidazzjoni ta' Taxxa maħruġa fil-konfront tiegħu mid-Direttur Ġenerali (Taxxi Interni) għas-sena ta' stima 2007 ma huwiex ġustifikat u b'hekk ma jisthoqqx li jiġi milqugh.

Għal dawn ir-raġunijiet it-Tribunal jaqta' u jiddeċiedi billi jiċhad l-appell tar-Rikorrent mill-Likwidazzjoni ta' Taxxa maħruġa fil-konfront tiegħu mid-Direttur Ġenerali (Taxxi Interni) għas-sena ta' stima 2007 u minflok jikkonferma l-istess imsemmija Likwidazzjoni ta' Taxxa.

⁴⁴ Dok. "B" a fol. 658 sa' 801 tal-proċess fl-ismijiet "XXX v. Direttur Ġenerali (Taxxi Interni), Rik. Nru. 134/13.

L-ispejjeż ta' dawn il-proċeduri fil-mertu għandhom jiġu sopportati interament mir-Rikorrent.

MAGISTRAT

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