



MALTA TAX LAW UPDATE

Update 19

EDITOR'S NOTE

Predictably, the first quarter of 2016 was an eventful one. A number of legal notices implementing some of the budget measures have been published. Meanwhile, our Courts delivered several tax judgments.

The Tribunal's judgment in *Rikors Nru. 146/13VG* is extremely interesting because the Tribunal has refused to apply a provision contained in the VAT Act. The Commissioner of Tax has asked for leave to appeal this judgment and taxpayer did not object to this request. Hopefully, the matter will be sorted out by the Court of Appeal soon, once and for all. Case 146 resulted in the suspension of a number of similar cases.

The Tribunal's judgment in *Rikors Nru. 17/11VG* is an important one because it deals with the obligation to keep proper books and records. It was a major win for the Commissioner for Revenue.

The European Court of Justice has delivered a number of important judgments relating to VAT and some very important judgments are expected towards the end of the year.

Robert Attard

10/03/16

DISCLAIMER

The information herein is provided without any express or implied warranties. The authors shall not be responsible for omissions, errors or mistakes. In the preparation of this presentation, the authors tried to offer correct information. However, the information is intended solely to provide very general knowledge. The authors make no claims, promises, undertakings or guarantees about accuracy, completeness, or adequacy of the contents of this presentation. This document was written with the understanding that the authors will not be responsible for the result of any actions taken on the basis of information in this presentation. The authors are not attempting to provide advice, and the information in this document should be used as a research tool only. The information contained in this presentation includes information from different sources and, as far as possible, specific individuals or bodies of persons are credited as a source.

▶ INDEX

1.	LEGISLATIVE CHANGES.....	PAGE 3
1.1	ACTS OF PARLIAMENT.....	PAGE 3
1.2	LEGAL NOTICES.....	PAGE 5
1.3	BILLS.....	PAGE 5
2.	JUDICAL DECISIONS.....	PAGE 7
2.1	JUDGMENTS OF THE ART.....	PAGE 7
2.2	JUDGMENTS OF THE COURT OF APPEAL	PAGE 8
2.3	JUDGMENTS OF THE FIRST HALL CIVIL COURT	PAGE 9

1. LEGISLATIVE CHANGES

1.1 Acts of Parliament

ACT No. XII of 2016, AN ACT to amend the Malta Travel and Tourism Services Act, Cap. 409.

In an indirect way, a change in this non-tax law will leave an impact on tax law because it changes the definition of the term 'tourist', a term which is linked to the requirement to obtain a licence, a requirement that influences the tax treatment of rental agreements. The new definition of the term 'tourist' reads as follows:

"'tourist" means any person who is travelling to and staying in places outside his usual environment for not more than one consecutive year for leisure, business and other personal purpose other than by taking up employment or to establish a business in the place visited.".'

1.1.2 Legal Notices

L.N. 378 of 2015 DUTY ON DOCUMENTS AND TRANSFERS ACT(CAP. 364) Exemption of Duty in terms of article 23 (Amendment)(No. 3) Order, 2015

This Legal Notice extends the period of application of the concession (exemption) applicable to transfers falling under 32 (4) (a) DDTA (for first time buyers) to 2017.

L.N. 384 of 2015 INCOME TAX ACT (CAP. 123) INCOME TAX MANAGEMENT ACT (CAP. 372) Cooperation with Other Jurisdictions on Tax Matters (Amendment) Regulations, 2015

The amendments provide for requests for information on groups of taxpayers enabling same. The amendments bind Malta to send feedback on automatic exchange of information once a year incorporating introducing detailed rules with respect to information that must be exchanged. The new rules empower the Inland Revenue to issue guidelines to implement and interpret the EU Administrative Cooperation Directive. Reporting Malta Financial Institutions must register with the Commissioner for the purposes of the Directive. They are allowed to use service providers to fulfil reporting and due diligence obligations. Financial Institutions are bound to keep records for a minimum period of 5 years and are bound by annual reporting obligations.

The recently introduced rules incorporate a special anti-avoidance rule and rules on the imposition of penalties. A Schedule annexed to the Legal Notice incorporates detailed rules relating to due diligence and reporting.

L.N. 1 of 2016 INCOME TAX ACT (CAP. 123) Double Taxation Relief (Taxes on Income) (The Kingdom of the Netherlands, in respect of Curaçao) Order, 2016

This Legal Notice transposes Malta's Double Tax Treaty with Curacao. The Curacao Treaty is heavily based on the OECD Model. Features deserving special mention include:

- (a) The definition of nationality; which for the purposes of Curacao is linked with the right to vote, birth and residence for more than 5 years;
- (b) Dividends paid by a Curacao company to a Maltese resident are taxable at the rate of 5% of the gross amount only if the Maltese resident holds less than 10% of the company paying the dividends;
- (c) The Treaty does not prevent the application of the EU Tax Savings Directive;
- (d) The Treaty incorporates a specific provision on income from natural resources.

L.N. 2 of 2016 INCOME TAX ACT (CAP. 123) Donations (Community Chest Fund) (Amendment) Rules, 2016

This Legal Notice refers to the special deduction available with respect to donations to the CCF. LN. 2 provides that in year of assessment 2015, eligible deductions will be deductible in full (previously only 50% of the expense was deductible).

L.N. 3 of 2016 INCOME TAX ACT (CAP. 123) DUTY ON DOCUMENTS AND TRANSFERS ACT (CAP. 364) Fiscal Representatives (Financial Services Undertakings Exercising a European Right) (Revocation) Regulations 2016

L.N. 3 abolishes the Fiscal Representatives (Financial Services Undertakings Exercising a European Right) Regulations.

L.N. 4 of 2016 INCOME TAX ACT (CAP. 123) Exemption on Royalties Derived from Patents (Amendment) Rules, 2016

L.N. 4 refers to the tax exemption on royalties incorporated in 12 (1) (v) ITA. No determination by the competent authority in accordance with rule 5 shall be issued after the 30th June 2016, and no benefits under the rules may be availed of after the 30th June 2021.

L.N. 36 of 2016 MALTA ENTERPRISE ACT (CAP. 463) Tax Credits for Micro Enterprises and the Self-Employed (Amendment) Regulations, 2016

L.N. 36 creates a special regime for enterprises known as female owned undertakings. From year of assessment 2016, female owned undertakings may be granted a total amount of tax credits in terms of this regulation that shall not exceed fifty thousand euro (€50,000) over any period of three consecutive years, under the terms and conditions specified in the Guidelines.

L.N. 43 of 2016 VALUE ADDED TAX ACT (CAP. 406) Value Added Tax Act (Amendment of Eighth Schedule) Regulations, 2016

This Legal Notice provides that the use of sporting facilities will be subject to VAT at 7% and amends the Eight Schedule accordingly.

L.N. 44 of 2016 INCOME TAX ACT (CAP. 123) European Union Directives (Amendment) Regulations, 2016

These regulations came into force with effect from 30 November 2015 and transpose Council Directive (EU) 2015/2060 of 10 November 2015 repealing Directive 2003/48/EC on taxation of savings income in the form of interest payments. Certain obligations contemplated by the directive will be phased out by 31 December 2016.

L.N. 59 of 2016 DUTY ON DOCUMENTS AND TRANSFERS ACT (CAP. 364) Duty on Transfers (Exemption) Order, 2016

This LN creates a favourable rate of duty (2.5%) with respect to certain transfers. The favourable rate contemplated in the Legal Notice applies when:

- (a) the transfer is made on or after the 1st January 2016 but before the 1st January 2017 to a person who does not require a permit by the Minister for the purposes of the Immovable Property (Acquisition by Non-Residents) Act;
- (b) the property is situated within an urban conservation area or is scheduled by the Malta Environment and Planning Authority;
- (c) together with the notice referred to in article 51 of the Duty on Documents and Transfers Act, there shall be submitted to the Commissioner for Revenue a certificate issued by the MEPA certifying that the property falls within a development area known as an Urban Conservation Area (UCA), or is a scheduled property in accordance with article 81 of the Environment and Development Planning Act or any Act which may be substituted therefor;
- (d) no relief was claimed under this Order in respect of any previous transfer of the said property;
- (e) no relief is claimed under article 32C of the Duty on Documents and Transfers Act.

2.3 Bills

None that we are aware of.

3 Judicial Decisions

3.1 Judgments of the ART

Rikors Nru. 146/13VG x Vs Direttur Generali (Taxxa fuq il-Valur Mizjud)

This case involved an assessment to VAT. Taxpayer tried to file evidence which had not been produced at investigation stage. Citing Article 48 (5), the Vat Department objected. Article 48 (5) provides that, in an appeal, a taxpayer cannot produce evidence which was not produced at investigation stage. Taxpayer argued that 48 (5) infringed his right to a fair hearing because it limited his right to bring evidence. The Tribunal allowed taxpayer to bring new evidence, refusing to apply 48 (5). An extract from this important judgment follows:

‘B’hekk kemm il-darba t-Tribunal kellu japplika dak provdut fl-ewwel proviso ta’ l-Artikolu 48(5) tal-Kap.406 tal-Ligijiet ta’ Malta, ikun mhux biss qed jipperikola u jipprejudika d-dritt ta’ smigh xieraq tas-socjetà Rikorrenti izda jkun qed imur ghal kollox kontra l-principji regolaturi in bazi ghal liema u ghas-salvagwardja ta’ liema gie specifikatament kostitwit. Jigi in oltre osservat illi huwa pacifikament stabbilit in linea ta’ principju generali illi t-tribunali kollha ta’ kwalsiasi forma w attribuzzjoni, indistintament ghandhom jirrispettaw ir-regoli hekk importanti u fondamentali tal-gustizzja naturali. Regoli dawn invjolabbli li jesigu, inter alia, il-parità ta’ trattament mal-partijiet in kawza li ebda tribunal ma jista’ jissorvola¹², principju dan li fil-fehma tat-Tribunal japplika iktar u iktar meta dan it-Tribunal huwa espressament marbut bil-Ligi li jirrispetta d-dritt tal-partijiet li jinghataw smigh xieraq, inkluzi l-principji tal-gustizzja naturali, nemo judex in causa sua u audi et alteram partem. Tant l-osservanza tal-principji ta’ gustizzja naturali hija kardinali f’kull procediment giudizzjarju jew quasi-gudizzjarju che sia, illi n-non-osservanza ta’ l-istess twassal ghan-nullità tal-procedimenti u ta’ l-eventwali sentenza moghtija fihom¹³.

Fid-dawl ta’ dan kollu osservat ghalhekk it-Tribunal iqis li ma ghandux japplika l-ewwel proviso ta’ l-Artikolu 48(5) tal-Kap.406 tal-Ligijiet ta’ Malta, kif invece pretiz mid-Direttur Generali (Taxxa fuq il-Valur Mizjud).’

The Department filed a request for leave to appeal, a request which taxpayer did not object too.

Rikors Nru. 285/12VG

This case involved the tax treatment of a very particular product in respect of which VAT had not been charged. The price for the product was fixed by a State entity. The VAT Department withdrew the assessment on the following grounds:

‘...l-Kummissarju ghazel li jikkancella l-istimi mahruga fil-konfront tar-Rikorrent għall-perijodi ta’ taxxa in kwistjoni mhux għaliex kien hemm xi zball da parte tad-Dipartiment f’li jinhargu l-imsemmija stimi izda minhabba l-pregudizzju notevoli li fic-cirkostanzi kien se jsufri r-Rikorrent. In effetti peress illi l-prezz li bih id-distributuri setghu jbieghu ... kien – kif del resto għadu sa’ illum – jigi stabbilit minghajr ebda dritt da parte tad-distributur li jzid tali prezz, lanqas biex izid it-18% VAT, fid-dawl tal-quantum tal-prezz stabbilit fiz-zminijiet rilevati r-Rikorrent mhux talli ma kien se jaqla’ xejn talli kien se jkollu johrog il-flus mill-but biex ihallas l-output tax pretiza mill-Kummissarju tat-Taxxi. Il-Kummissarju deherlu li din kienet sitwazzjoni ingusta fir-rigward tar-Rikorrent u għalhekk ghazel li jikkancella l-istimi in kwistjoni.

The Tribunal did not award costs.

Rikors Nru. 17/11VG xxx Vs Kummissarju tat-Taxxi Interni

This case involved an assessment to Income Tax. Taxpayer argued that, for many years, he had abandoned his trade and had been living on social assistance but the Department maintained that he was receiving trading income that was not being declared in his tax returns. The bone of contention appears to have been taxpayer’s refusal to provide the department with copies of his bank statements. Taxpayer told the Department that he could not produce the documents requested because the banks were refusing to provide him with copies of his bank statements. The Tribunal examined taxpayer’s financial transactions and analysed his deals involving immovable property. Taxpayer had justified discrepancies by saying that monies had been donated to him both by his father and his brother-in-law. The Tribunal proceeded to examine the quality of taxpayer’s books and records for the years in which he traded. Taxpayer had argued that, because he was a sole trader, he was not bound to keep accounting records. The Tribunal referred to the law in force during the investigation and at objection stage. It held that Article 19 ITMA was clear enough; taxpayer was not keeping books he was duty bound to keep. The Tribunal did not believe taxpayer’s version of events concluding that taxpayer had failed to prove his case. The appeal was dismissed.

Rikors Nru. 96/11VG XXX Vs Kummissarju tat-Taxxi Interni

This case involved an assessment to income tax due with respect to a share transfer. Taxpayer contended that the payment he had received was not really for the transfer of taxable securities but was a non-taxable ex gratia terminal benefit. The Tribunal referred to contradictions in taxpayer’s evidence. The Tribunal held that, because payor and payee were not in an employer/employee relationship, one could not speak of a terminal benefit. Furthermore, a lawyer’s letter that had been exhibited by taxpayer as evidence of his correct classification of the payment received could not be taken as evidence because it had not been confirmed on oath. The Tribunal held that the fact that payment was to be made by instalments did not change the nature of the taxable capital gain received (regardless of whether the whole sum had actually been paid). The Tribunal remarked:

“A tenur ta’ l-Artikolu 5(1)(a)(ii) tal-Kap.123 tal-Ligijiet ta’ Malta l-qlich jew profit li jinqala’ mit-trasferiment ta’ proprjeta’ jew uzufrutt ta’, jew mill-assenjament jew cessjoni ta’ kull jedd fuq titoli [li jinkludi ishma f’kumpanija – Art.5(b)(d) tal-Kap.123 tal-Ligijiet ta’ Malta], negozju, avvjamment, permessi ta’ negozju, drittijiet ta’ l-awtur, privattivi, trade marks u l-imsijiet ta’ dijt kummercjali u proprjeta’ oħra intellettuali huwa qligh kapitali li għandu jigi intaxxat skond l-Artikolu 4(1) tal-Kap.123 tal-Ligijiet ta’ Malta. Minn dan l-artikolu tal-Ligi johrog car li huwa t-trasferiment per se ta’ l-attiv in kwistjoni, fil-kaz in ezami ta’ ishma f’kumpanija, li jaghti lok għat-taxxa u l-hlas ta’ l-istess u għalhekk il-fatt li l-korrispettiv jithallas fuq medda ta’ zmien jew addirittura ma jithallasx kollu ma jbidel assolutament xejn mill-obbligu tat-taxpayer li jhallas it-taxxa dovuta għal sena ta’ stima partikolari fuq tali qligh kapitali hekk iggenerat mit-trasferiment ta’ l-attiv in kwistjoni tul sena bazi partikoarli.”

The Tribunal dismissed the appeal.

Rikors Nru. 52/09 M. S. & A. Developments Limited Vs Kummissarju tat-Taxxi

This case involved an appeal from an assessment to duty on documents. The Court accepted the appeal describing the Government's valuation of the property as 'superficial'.

Rikors Nru. 303/12VG XXX Vs Kummissarju tat-Taxxa fuq il-Valur Mizjud

This appeal involved an assessment raised by the department over a threshold exercise. Final assessments were issued without granting taxpayer the right to object. The Commissioner revoked his assessment. The Tribunal noted that:

'Fil-kaz tas-Sur XXX u kif gara fil-kazijiet l-oħra fejn il-Kummissarju ra li xi hadd li qiegħed taht Artikolu 11 deherlu li qabez it-threshold u allura kellu jdur għall-Artikolu 10, il-Kummissarju ha azzjoni u ra kif għamel biex jaqlibhom għall-Artikolu 10 u deherlu li dik il-move kien hemm difett legali fiha u ma kienx kopert bil-ligi speċjalment minhabba li tista' tohrog stima provizorja biss lil xi hadd li qiegħed taht Artikolu 10 u mhux Artikolu 11 voldiri biex tohroglu stima din trid tkun stima provizorja u stima provizorja tista' tohrogha lil xi hadd biss li huwa taht Artikolu 10. Għaldaqstant f'dawn il-proceduri ma kienx hemm stadju ta' review fejn l-argumenti li gab is-sur Borg ma setghax igibhom mal-Kummissarju għaliex dan l-istadju tar-review xorta ma sarx. Għaldaqstant il-Kummissarju deherlu li jikkancella l-istima u ma waqafx hemm, rega' qiegħed fl-istadju li jinhareg stima provvizzorja jew inkella jerga' jibghat denunzja lit-tax payer u jghidlu jekk qed taqbel miegħi li inti qbitzt it-threshold, agħtini d-denunzja llum, hallasni tal-VAT illum allura f'dak il-kaz ser ikollok reduction ta' imghax ghax ikun inezistenti għaliex inti thallasha llum u jekk ma taqbilx għandek access għar-review. Jigifieri dik kienet ir-raguni għalfejn il-Kummissarju ikkancella l-istejjem. In kontro-ezami għall-mistoqsija: Inti semmejt difett legali, naqblu li dan id-difett legali gie kommess mill-Kummissarju fil-fatt?, bla ebda ezitazzjoni ta' xejn wiegeħ: Mela dazgur.'

The Tribunal awarded costs against the Revenue.

Rikors Nru. 159/13VG xxx Vs Id-Direttur Generali (Taxxa fuq il-Valur Mizjud)

The Tribunal rejected a preliminary plea raised by the Revenue relating the supposed late filing of an appeal. The Tribunal applied provisions contained in the Code of Organisation and Civil Procedure concluding that a refusal of a judicial act could not be taken to imply a valid notification.

Rikors Nru.230/11 VG Thea Pisani u Nicole Pisani Vs Kummissarju tat-Taxxi

This case involved an assessment to duty on documents payable on a taxable transfer. Parties had rescinded the taxable contract because the nullity of the transfer was clear (transferor did not own the asset transferred). The Tribunal held that the fact the rescission of the contract was extra-judicial (not ordered by a court but agreed to voluntarily) did not prejudice appellant's case for a tax refund. The appeal was upheld.

3.2 Judgments of the Court of Appeal

Appell Numru: 49/2011AE Attard Brothers Company Limited Vs Kummissarju tat-Taxxi Interni

This case involved an assessment to income tax in respect of undeclared sales. The company argued that, in reality, the amount in dispute was a shareholder's loan. The Company lost its case in front of the Tribunal appealing to the Court of Appeal. Company based its case on the argument that the Commissioner was failing to recognise the company's distinct legal personality. In addition, the Commissioner had requested a number of documents from the company's shareholder when the shareholder was not a company and the documents requested of him did not have to be kept by him. The Court of Appeal dismissed the appeal noting that the company's shareholder was trying to hide behind his company. Appellant company had failed to prove its case by bringing the necessary proof. The appeal was dismissed with costs.

Appell numru: 220/2011AE Nazzareno Vassallo ghan-nom u in rapprezentanza tas-socjeta Vassallo Builders Group Limited Vs Il-Kummissarju tat-Taxxi Interni

The Court of Appeal dismissed an appeal which was essentially based on a point of fact (whether a property was scheduled or otherwise). The Court of Appeal held that the Tribunal's independent valuation was correct.

3.3 Judgments of the First Hall Civil Court

Rikors Kostituzzjonali Numru: 62/2010 TM Paul u Alexandra konjugi Piscopo vs Onorevoli Prim Ministru Avukat Generali Kontrollur tad-Dwana li fil-verbal tas-seduta tal-21 ta' Gunju 2013, il-Qorti ordnat li flok il-kliem "Kontrollur tad-Dwana", jidhlu l-kliem "Direttur Generali"

This case involved a vessel which, according to the Comptroller of Customs was engaged in a suspicious activity. Whilst procedures were still underway, the Comptroller of vessel impounded the vessel. The owner of the vessel held that the seizure note amounted to a violation of his right to property. The First Hall Civil Court (Constitutional Jurisdiction) disagreed with him. The Court held that the vessel's involvement in a suspicious activity meant that the issue of the seizure note was perfectly justified. It could not be said that the seizure of the vessel was unreasonable. The Court held that if, upon the termination of the proceedings, the Courts found that the company was not involved in an illicit trade, the company could always sue for just satisfaction.

Rikors Guramentat Nru. 1126/2015

Taxpayer filed an action for judicial review because, in the course of a tax investigation, the tax authorities did not grant him access to information. The Court dismissed the case because in its opinion the Commissioner for Revenue had not taken a decision subject to review. Taxpayer filed an appeal.

Rikors Maħluf Numru: 796/14LM Direttur Ġenerali (Taxxi Interni) vs Nicolas Cimon (Karta tal-Identita' Nru: 113346A)

This case involved an application filed by the Revenue in terms of the Mutual Assistance Directive. Taxpayer did not contest the enforcement process and the Commissioner's application was upheld.

Rikors Numru: 67/15LM

This case involved an action to rescind an executive title obtained by the Commissioner with respect to VAT. The Court rejected the case because it found that taxpayer had not used the correct procedure to contest the claim.

Rikors Numru 834/2015 SM Il-Kummissarju tat-Taxxi vs. Antipodes Premium Wines Limited (C – 42575)

This case involved an enforcement order filed in terms of the Mutual Assistance Directive. Commissioner's application was denied because taxpayer had not been notified.

Rikors Nru. 24/2010 JZM David Mifsud (ID63370M) kontra L-Onorevoli Prim Ministru, L-Avukat Generali, il-Kummissarju tat-Taxxa fuq il-Valur Mizjud, il-Kummissarju tal-Pulizija

This judgment is similar to the Angelo Zahra and Robert Ciantar judgments discussed in an earlier update. Basically, the Court concluded that a person who is punished with an administrative penalty for a default cannot be prosecuted criminally for the same default. The First Hall Civil Court (Constitutional Jurisdiction) declared that Article 83 (3) of the VAT Act is unconstitutional. The AG appealed and the appeal is pending in front of the Constitutional Court.

3.4 Judgments of the Constitutional Court

Rikors numru 19/08 AF General Workers' Union v. L-Avukat Generali

This non-tax case leaves a huge impact on administrative law, tax law included. It explains why tribunals such as the Board of Special Commissioners and the VAT Appeals Board had to be abolished. The Constitutional Court held that tribunals governed by rules analogous to those regulating the Industrial Tribunal do not incorporate the necessary safeguards in terms of impartiality. Interestingly, the same legal point made in this case had previously been made in an Eco Contributions Appeal which had not been escalated to the Constitutional Court.

3.5 Judgments of the CJEU

Case C-22/15 (Commission v. Netherlands)

This judgment is not available in English. The Court held that the way the Netherlands was applying an exemption on the hiring of quays and moorings was incompatible with its Treaty obligations.

Case C-424/14 (Jácint Gábor Balogh v Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Főigazgatósága)

The CJEU held that the VAT Directive must be interpreted as not precluding national legislation requiring a taxable person to state when an economic activity commences where the proceeds of that activity do not exceed the threshold of the exemption scheme for small enterprises and the taxable person does not intend to carry out a taxable activity.

EU law must be interpreted as not precluding an administrative fine from penalising the failure by a taxable person to comply with his obligation to state when an economic activity commences where the proceeds of that activity do not exceed the threshold of the exemption scheme for small thresholds. It is for the referring court to assess whether, in the case in the main proceedings, the penalty imposed is in conformity with the principle of proportionality.

Case C-120/15 (Kovozber s. r. o. v Daňový úrad Košice)

This judgment is available only in French. The CJEU held that the VAT Directive precludes national legislation providing that interest payable by the Government on late payment of a VAT refund is to start running after a number of days after completion of a tax investigation.

Case C-335/14 (Les Jardins de Jouvence SCRL v État belge)

The CEU held that the VAT Directive must be interpreted as meaning that, among the services provided by a serviced residence, such as that at issue in the main proceedings, whose charitable nature must be assessed by the referring court in the light of, in particular, the factors mentioned in the present judgment, those consisting of the provision of dwellings adapted for elderly persons may benefit an exemption. The other services provided by that serviced residence may also benefit from that exemption, provided in particular that the services which serviced residences are obliged to offer pursuant to the relevant national legislation are intended to achieve the support and care of elderly persons and correspond to the services which old people's homes are also obliged to offer in accordance with national legislation.

It is irrelevant in this respect whether or not the operator of a serviced residence such as that at issue in the main proceedings receives a subsidy or any other form of advantage or financial support from public authorities.

Joined Cases C-250/14 and C-289/14 (Air France-KLM, formerly Air France and Hop!-Brit Air SAS, formerly Brit Air)

The CEU held that the VAT Directive must be interpreted as meaning that the issue by an airline company of tickets is subject to value added tax where the tickets issued have not been used by passengers and the latter are unable to obtain a refund for those tickets.

The VAT Directive must be interpreted as meaning that the value added tax paid when the air ticket was purchased by a passenger who has not used it becomes chargeable on receipt of payment of the ticket price, whether by the airline company itself, by a third party acting in its name and on its behalf, or by a third party acting in its own name but on behalf of the airline company.

The VAT Directive must be interpreted as meaning that, in the event that a third party sells an airline company's tickets on behalf of that company in the context of a franchise agreement and pays that company, in respect of tickets issued and no longer valid, a lump sum calculated as a percentage of the annual turnover from the corresponding flight routes, that sum constitutes a sum that is taxable as consideration for those tickets.

Case C-419/14) (WebMindLicenses Kft v. Nemzeti Adó- és Vámhivatal Kiemelt Adó- és Vám Főigazgatóság)

The CEU held that EU law must be interpreted as meaning that, in order to determine whether, in circumstances such as those of the main proceedings, a licensing agreement concerning the making available of know-how enabling operation of a website by which interactive audiovisual services were supplied, concluded with a company established in a Member State other than that in which the company granting the licence is established, arose from an abuse of rights designed to benefit from the fact that the rate of value added tax applicable to those services was lower in that other Member State, the fact that the manager and sole shareholder of the latter company was the creator of that know-how, that that same person exercised influence or control over the development and exploitation of that know-how and over the supply of the services which were based on it and that management of the financial transactions, staff and technical instruments necessary for the supply of those services was carried out by subcontractors, and the reasons which may have led the company granting the licence to make the know-how at issue available to a company established in that other Member State instead of exploiting it itself, do not appear decisive in themselves.

It is incumbent upon the referring court to analyse all the circumstances of the main proceedings in order to determine whether that agreement constituted a wholly artificial arrangement concealing the fact that the services at issue were not actually supplied by the company acquiring the licence, but were in fact supplied by the company granting it, examining in particular whether the establishment of the place of business or fixed establishment of the company acquiring the licence was not genuine, whether that company, for the purpose of engaging in the economic activity concerned, did not possess an appropriate structure in terms of premises and human and technical resources and whether it did not engage in that economic activity in its own name and on its own behalf, under its own responsibility and at its own risk.

EU law must be interpreted as meaning that, if an abusive practice is found which has resulted in the place of supply of services being fixed in a Member State other than the Member State where it would have been fixed in the absence of that abusive practice, the fact that value added tax has been paid in that other Member State in accordance with its legislation does not preclude an adjustment of that tax in the Member State in which the place where those services have actually been supplied is located.

Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax must be interpreted as meaning that the tax authorities of a Member State which are examining whether value added tax is chargeable in respect of supplies of services that have already been subject to that tax in other Member States are required to send a request for information to the tax authorities of those other Member States when such a request is useful, or even essential, for determining that value added tax is chargeable in the first Member State.

EU law must be interpreted as not precluding, for the purposes of the application of Article 4(3) TEU, Article 325 TFEU and Articles 2, 250(1) and 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, the tax authorities from being able, in order to establish the existence of an abusive practice concerning value added tax, to use evidence obtained without the taxable person's knowledge in the context of a parallel criminal procedure that has not yet been concluded, by means, for example, of the interception of telecommunications and seizure of emails, provided that the obtaining of that evidence in the context of the criminal procedure and its use in the context of the administrative procedure do not infringe the rights guaranteed by EU law.

In circumstances such as those of the main proceedings, by virtue of Articles 7, 47 and 52(1) of the Charter of Fundamental Rights of the European Union it is incumbent upon the national court which reviews the legality of the decision founded on such evidence adjusting value added tax to verify, first, whether the interception of telecommunications and seizure of emails were means of investigation provided for by law and were necessary in the context of the criminal procedure and, secondly, whether the use by the tax authorities of the evidence obtained by those means was also authorised by law and necessary. It is incumbent upon that court, furthermore, to verify whether, in accordance with the general principle of observance of the rights of the defence, the taxable person had the opportunity, in the context of the administrative procedure, of gaining access to that evidence and of being heard concerning it. If the national court finds that the taxable person did not have that opportunity or that that evidence was obtained in the context of the criminal procedure, or used in the context of the administrative procedure, in breach of Article 7 of the Charter of Fundamental Rights of the European Union, it must disregard that evidence and annul that decision if, as a result, the latter has no basis. That evidence must also be disregarded if the national court is not empowered to check that it was obtained in the context of the criminal procedure in accordance with EU law or cannot at least satisfy itself, on the basis of a review already carried out by a criminal court in an inter parties procedure, that it was obtained in accordance with EU law.

Case C-342/14 (X-Steuerberatungsgesellschaft v Finanzamt Hannover-Nord)

The CEJ held that, on a proper construction of Article 56 TFEU, legislation of a Member State which defines the conditions of access to the activity of professional assistance in tax matters may not restrict the freedom to provide services of a tax consultancy company — formed in accordance with the law of another Member State in which that company is established, which draws up, in the latter Member State where tax consultancy work is not regulated, a tax return on behalf of a recipient of services in the first Member State and sends that tax return to the tax authority of the first Member State —, without the qualification obtained by that company, or by the natural persons providing services of professional assistance in tax matters for that company, in other Member States being accorded its proper value and being duly taken into account.

Disclaimer

The information herein is provided without any express or implied warranties. The authors shall not be responsible for omissions, errors or mistakes. In the preparation of this presentation, the authors tried to offer correct information. However, the information is intended solely to provide very general knowledge. The authors make no claims, promises, undertakings or guarantees about accuracy, completeness, or adequacy of the contents of this presentation. This document was written with the understanding that the authors will not be responsible for the result of any actions taken on the basis of information in this presentation. The authors are not attempting to provide advice, and the information in this document should be used as a research tool only. The information contained in this presentation includes information from different sources and, as far as possible, specific individuals or bodies of persons are credited as a source.