

Avviż Nru. 1621

ATT DWAR IT-TAXXA FUQ IL-VALUR MIŻJUD (KAP. 406)

Linja gwida dwar l-artikolu 84 tal-Att dwar it-Taxxa fuq il-Valur Mizjud – Arrangamenti ta' kompromess

F'konformita' mal-artikolu 75(2) tal-Att dwar it-Taxxa fuq il-Valur Mizjud (Kap. 406, Liġijiet ta' Malta), il-Kummissarju tat-Taxxi jgħarraf illi b'effett mill-pubblikazzjoni ta' dan l-avviż u sakemm johroġ avviż ieħor, l-applikazzjoni ta' ftehim ta' kompromess skont l-artikolu 84 huwa regolat skont dan li ġej:

A. Ftehim ta' kompromess skont is-sub-artikolu 84(1):

Is-sub-artikolu 84(1) jipprovdi:

“Minkejja kull dispożizzjoni oħra ta’ dan l-Att, il-Kummissarju jista’ f’każ ta’ xi reat li jsir taħt dan l-Att, jidhol fi ftehim bil-miktub ma’ min jagħmel ir-reat li bis-saħħa tiegħu min jagħmel ir-reat iħallas somma ekwivalenti għall-multa li tista’ tiġi imposta bħala piena skont dan l-Att meta dik il-persuna tinstab haġja ta’ dak ir-reat, iżda b’dan illi meta l-liġi tipprovdi l-inqas u l-ogħla ammont ta’ multa li tista’ tiġi hekk imposta is-somma li għandha tithallas b’riżultat ta’ dak il-ftehim għandha tkun somma ekwivalenti għall-imsemmi l-inqas ammont miżjud b’nofs id-differenza bejn l-imsemmija l-inqas u l-ogħla ammonti, u malli jiġi iffirmit xi ftehim bħal dak mill-Kummissarju u minn min jagħmel ir-reat, għandha tintemm kull responsabbiltà kriminali ta’ min jagħmel ir-reat taħt dan l-Att għar-rigward ta’ dawk ir-reati li dwarhom ikun sar il-ftehim.”.

a. Il-Kummissarju jikkonsidra l-applikazzjoni ta' dan is-sub-artikolu biss fuq talba speċifika minn min jagħmel offiża.

b. Dan is-sub-artikolu ma jiġix applikat għall-offiżi li jaqgħu taħt is-sub-artikoli li ġejjin:

76. Kull persuna li -

(c) tonqos milli tagħmel denunzja ta' taxxa meta tkun meħtieġa tagħmel dan bis-saħħa ta' dan l-Att;

(d) tonqos milli tagħmel denunzja addizzjonali, dikjarazzjoni jew tagħti taġhrif jew li ġġib kotba, dokumentazzjoni, dokumenti u kontijiet, jew tonqos milli thallas xi taxxa jew penali amministrattiva meta tkun meħtieġa tagħmel dan bis-saħħa ta' dan l-Att jew ta' kull regolament magħmul bis-saħħa ta' dan l-Att;

(e) tforni prodotti jew servizzi u li tonqos li tipprovdi dik il-garanzija mitluba mill-Kummissarju skont l-artikolu 63(5);

77. Kull persuna li -

(a) xjentement tonqos li tagħti kont għal xi attività taxxabli jew xi akkwist intra-Komunitarju mwettqa minnha fir-records, dokumenti u kontijiet meħtieġa b'dan l-Att jew b'xi regolamenti magħmula bis-saħħa tiegħu;

(b) tagħmel xi denunzja, dikjarazzjoni jew tagħti taġhrif meħtieġ għal xi wieħed mill-għanijiet ta' dan l-Att li tkun taf li jkun mhux korrett jew qarrieqi f'xi rigward materjali;

(c) tiffalsifika xi *records*, dokumenti jew kontijiet meħtieġa li jinżammu taħt dan l-Att jew thejji jew tagħmel jew tgħin fit-thejjija jew fl-egħmil jew tagħmel uzu minn, xi *records*, dokumenti jew kontijiet foloz;

(d) bil-ġhan li taħbi xi prova li tkun taf jew li tkun mistennija li raġonevolment tkun taf li tkun rilevanti għal xi għan ta' dan l-Att, tiddistribwi, tħassar, tagħmel ħsara jew taħbi xi taġhrif maħzun jew xi *records*, dokumenti jew kontijiet, jew tkun fil-pussess ta' jew tforni lil xi persuna oħra xi programm ta' *software* li jista' jħassar, jiddistribwi, jiddanneġġa jew jaħbi xi taġhrif maħzun jew xi *records*, dokumenti jew kontijiet;

(g) taġhti fattura jew dokument ieħor dwar provvista li juru li għandha tithallas taxxa fuq dik il-provvista meta tkun taf li ma għandha tithallas ebda taxxa jew li t-taxxa li għandha tithallas tkun inqas minn dik muriġa, jew mod ieħor iżżid ma' prezz jew tinkludi fi prezz għal provvista xi ammont li juri li jirrappreżenta xi taxxa li fil-fatt ma tkunx dovuta jew li tkun oġġla mittaxxa dovuta;

(h) applika biex tkun reġistrata taħt l-artikolu 11 f'ċirkostanzi li juru li kienet taf jew setgħat b'diligenza tkun taf li ma kienetx intitolata li tkun hekk klassifikata;

(i) tkun reġistrata taħt l-artikolu 11 u ma tibqax iktareligibbli biex tkun hekk reġistrata, tonqos milli applika biex tħassar dik ir-reġistrazzjoni bil-mod meħtieġ u fil-limitu ta' żmien imsemmi f'dan l-Att;

(j) tkun reġistrata taħt l-artikolu 11 turi b'konnessjoni ma' xi operazzjoni li ma tkunx hekk reġistrata bil-ġhan li tagħmel qligħ finanzjarju;

(k) ma tkunx reġistrata taħt l-artikolu 11 turi b'konnessjoni ma' xi operazzjoni li tkun hekk reġistrata bil-ġhan li tagħmel qligħ finanzjarju;

(l) wara li tkun għaddiet jew inkludiet ma' prezz ta' prodotti jew servizzi minnha mogħtija lil persuna oħra xi ammont li jkun maħsub li juri li jirrappreżenta xi taxxa li għandha tithallas taħt dan l-Att xjentement tonqos milli taġhti kont għal dak l-ammont fir-*records* tagħha jew li tħallas dak l-ammont lill-Kummissarju;

(m) tikseb pussess jew ikollha x'taqsam ma' xi prodotti, jew taċċetta l-provvista ta' xi servizzi meta jkollha għaliex taħseb li t-taxxa fuq il-provvista ta' dawk loġġetti jew servizzi tkun ġiet jew tkun se tiġi skartata;

(n) tipprovd i jew toffri li tipprovd lil persuna oħra oġġetti jew servizzi li l-kisba tagħhom jew is-sehem fihom jew l-aċċettazzjoni tagħhom tirrendi lil dik il-persuna l-oħra taħt ta' reat bis-saħħa tal-paragrafu (m);

(p) li hija istituzzjoni ta' kreditu jew finanzjarja li tforni flus jew taġhti kreditu permezz ta' faċilità ta' kont ta' self jew permezz ta' xi forma oħra ta' faċilità lil klijent b'konnessjoni mal-fornitura ta' prodotti jew servizzi minn terzi lil dak il-klijent għall-bini, bini mill-ġdid, tiswija, miljorament jew manutenzjoni ta' proprjetà immobbli jew għal fissi ta' immobbli li għandhom x'jaqsmu ma' dik il-proprjetà, u li tagħmel pagament għal dawk il-prodotti jew servizzi jew direttament lill-venditur jew fornitur jew lil terzi jew lill-klijent sugġett għal ftehim jew bil-kondizzjoni espressa jew miftehma li l-ammont mħallas jiġi mġhoddi lil dak il-venditur jew fornitur, billi tiddebita l-kont ta' self jew faċilità oħra tal-klijent, fuq il-bażi ta' dokumenti ta' sostenn, li jinkludu kuntratti, fatturi, irċevuti, ċertifikati tal-periti jew ċertifikati oħra jew dokumenti simili, sottomessi minn jew għan-nom tal-klijent jew minn jew għan-nom ta' fornituri, kuntratturi jew terzi oħra, u li tonqos li tinforma lill-Kummissarju bl-ismijiet u n-numri tar-reġistrazzjoni tal-VAT ta' dawk il-fornituri, kuntratturi jew terzi oħra kif jingħad hawn fuq, minbarra l-klijent, li lilhom tkun għamlet direttament jew indirettament pagamenti kif speċifikat f'dan il-paragrafu, fil-forma meħtieġa mill-Kummissarju, kif ukoll tal-ammonti ta' dawk il-pagamenti, sa mhux aktar tard mill-aħħar tal-kwart tas-

sena kalendarja li jiġi minnufih wara l-kwart tas-sena kalendarja li fih tkun għamlet direttament jew indirettament xi pagament kif jingħad hawn fuq.

79. Kull persuna li -

(a) tfixxkel, ittellef, ixxekkel jew tagħmel xi haġa bil-ħsieb li tfixxkel, ittellef jew ixxekkel, jew iddejjaq jew tattakka lill-Kummissarju jew lil xi persuna li tkun qed twettaq kif imiss xi setgħa jew dmir lilha mogħti jew impost fuqha b'dan l-Att jew bis-saħħa tiegħu;

(b) tkun inkarigata minn xi fond li l-Kummissarju jew persuna awtorizzata mill-Kummissarju jkollha s-setgħa li tidhol fih skont l-artikolu 53(a), tonqos li tippermetti dak id-dhul mill-Kummissarju jew mill-persuna awtorizzata jew tonqos milli tiegħu dawk il-miżuri li jistgħu jkunu raġonevolment meħtieġa għal għan ta' xi dhul bħal dak, jew ta' xi spezzjoni ta' dak il-fond jew ta' xi oġġetti, attiv, kotba, *records* jew dokumenti li jkunu qegħdin jinżammu hemm ġew.

80. (1) Id-dispożizzjonijiet tal-artikoli 18, 60 u 62 tal-Ordinanza tad-Dwana għandhom japplikaw għal dan l-Att bħallikieku kull riferenza għal dazji li tinsab f' dawk l-artikoli kienet riferenza għal taxxa dovuta taħt dan l-Att, u kull persuna li tikser id-dispożizzjonijiet ta' dawk l-artikoli li jiftiehm kif imsemmi qabel dwar xi oġġetti li l-importazzjoni tagħhom hi suġġetta għal taxxa taħt dan l-Att tkun haġta, mingħajr preġudizzju għal kull responsabbiltà li jkollha taħt l-Ordinanza msemmija, ta' reat taħt dan l-Att u tista' għal kull reat bħal dak, tehel multa li tkun ekwivalenti għal tlett darbiet it-taxxa li jkollha tithallas jew multa ta' tliet mija u ħamsin euro (€350), skont liema tkun l-akbar, b'dan illi terz minn dak l-ammont għandu jitqies bħala dejn ċivili dovut lill-Kummissarju, jew priġunerija għal żmien ta' mhux iżjed minn sentejn, jew għal dawk il-multi u priġunerija flimkien, u min jagħmel ir-reat jista' jew jinżamm jew jittiehdu proċedimenti kontrih b' tahraka, bl-istess mod u għamla, u skont id-dispożizzjonijiet l-oħra kollha stabbiliti fil-Kodiċi Kriminali.

ċ. Għaċ-ċarezza, fejn isir ftehim ta' kompromess li jinvolvi każ fejn hemm taxxa ipperikolata skont l-artikolu 77, jiġifieri fejn it-taxxa ipperikolata tkun aktar minn €100, il-kalkolazzjoni tal-multa ta' kompromess tkun ikkalkolata skont is-sub-artikolu 84(1) flimkien ma' l-ammont ta' taxxa ipperikolata għal darbtejn, limitat għal minimu ta' €1,000.

B. Ftehim ta' kompromess skont is-sub-artikolu 84(3):

Is-sub-artikolu 84(3) jipprovdi:

“Minkejja d-dispożizzjonijiet tas-subartikoli (1) u (2), il-Kummissarju jista', f' każ ta' reat minn xi persuna kontra d-dispożizzjonijiet tal-artikoli 76(b), 77(e), 77(f) u 77(o), jidhul fi ftehim ma' dik il-persuna, fejn min jagħmel ir-reat iħallas lill-Kummissarju fi żmien ħmistax-il ġurnata minn meta jirċievi avviż f'dan ir-rigward mill-Kummissarju dan li ġej:

(a) mitt euro (€100) fil-każ tal-ewwel reat;

(b) mitejn euro (€200) fil-każ tat-tieni reat;

(ċ) erba' mitt euro (€400) fil-każ tat-tielet reat; u

(d) ħames mitt euro (€500) fil-każ fejn min jagħmel ir-reat u, jew xi impjegat tiegħu jew xi persuna oħra li tkun qed taġixxi f'isem dik il-persuna jagħmlu żewġ reati separati f'perjodu ta' sitt xhur;

u mal-ħlas ta' dik il-multa, għandha tintemm kull responsabbiltà kriminali taħt dan l-Att għar-rigward ta' dawk ir-reati li dwarhom ikun sar il-ftehim.”.

a. Il-Kummissarju joffri ftehim ta' kompromess skont is-sub-artikolu 84(3) qabel ma jirrikorri għall-azzjoni fil-qorti.

b. Il-Kummissarju ma joffrix ftehim ta' kompromess skont is-sub-artikolu 84(3) fil-każ li jkun hemm taxxa ipperikolata skont l-artikolu 77 (jiġifieri fejn it-taxxa ipperikolata tkun aktar minn €100). Talba għal kompromess f'każ bħal dan tista' tiġi kunsidrata taht is-sub-artikolu 84(1).

ċ. Ftehim ta' kompromess skont is-sub-artikolu 84(3) jista' jiġi aċċettat biss kemm-il darba l-multa ta' kompromess relevanti tithallas fi żmien hmistax il-jum minn notifika kif preskritt. Jekk il-ħlas ma jsirx fil-ħin, ftehim għal kompromess ieħor jista' jkun kunsidrat biss taht is-sub-artikolu 84(1).

Il-Kummissarju tat-Taxxi jista' jbidel, jemenda jew jirtira dawn il-linji gwida f'kull żmien skond il-bżonn.

17 ta' Diċembru, 2021

Govt. Notice No. 1621

VALUE ADDED TAX ACT (CAP. 406)

Guidelines on article 84 of the Value Added Tax Act – Compromise Arrangements

In conformity with article 75(2) of the Value Added Tax Act (Chapter 406, Laws of Malta), the Commissioner for Revenue notifies that with effect from the publication of this notice and until further notice, the application of compromise arrangements in terms of article 84 shall be regulated in terms of the following:

A. Compromise arrangements in terms of sub-article 84(1):

Sub-article 84(1) provides:

“Notwithstanding any other provisions of this Act, the Commissioner may, in the case of an offence under this Act, enter into an agreement in writing with the offender whereby the said offender pays a sum equivalent to the fine (multa) that may be imposed by way of penalty in accordance with this Act on the conviction of that person for the said offence, so however that where a minimum and a maximum amount is provided for in respect of the fine (multa) that may be so imposed, the sum payable pursuant to the said agreement shall be a sum equivalent to the said minimum amount increased by one half of the difference between the said minimum and maximum amounts, and upon the signing of any such agreement by the Commissioner and the offender all criminal liability of the offender under this Act with regard to the offences in relation to which the agreement has been entered shall be extinguished.”

a. The Commissioner shall only consider the application of this sub-article upon a specific request from an offender.

b. This sub-article shall not be applicable to offences falling under the following sub-articles:

76. Any person who –

- (c) fails to furnish a tax return when required to do so in virtue of this Act;
- (d) fails to furnish any additional return, statement or information or to produce any books, records, documents and accounts, or fails to pay any tax or administrative penalty due when required to do so in virtue of this Act or of any regulations made under this Act;
- (e) supplies goods or services having failed to provide the security requested by the Commissioner under article 63(5);

77. Any person who –

- (a) knowingly fails to account for any taxable supply or any intra-community acquisition made by him in the records, documents and accounts required by this Act or any regulations made under this Act;
- (b) gives any return, statement or information required for any of the purposes of this Act which he knows to be incorrect or misleading in any material respect;
- (c) falsifies any records, documents or accounts required to be kept under this Act or prepares or draws up or helps in the preparation or drawing up or makes use of any false records or documents;
- (d) with the intent of concealing any evidence which he knows or is reasonably expected to know to be relevant for any purpose of this Act destroys, erases, damages or conceals any stored information or any records, documents or accounts, or is in possession of or supplies to another person any software application that would erase, destroy, damage or conceal any stored information or any such records, documents or accounts;
- (g) provides an invoice or other document in respect of a supply showing tax to be chargeable on that supply in a case where he knows that no tax is chargeable or where the tax chargeable is less than that shown or otherwise knowingly adds to or includes in a price for a supply any amount purporting to represent tax which is not due or which is higher than the tax due;
- (h) applies to be registered under article 11 in circumstances indicating that he knows or could with due diligence have known that he is not entitled to be so classified;
- (i) being registered under article 11 and not being eligible to remain so registered does not apply for the cancellation of that registration in the manner required and within the time laid down in this Act;
- (j) being registered under article 11 purports in connection with any transaction not to be so registered for the purpose of obtaining any financial gain;
- (k) not being registered under article 11 purports in connection with any transaction to be so registered for the purpose of obtaining any financial gain;
- (l) having added to or included in a price for goods or services supplied by him to another person any amount purporting to represent tax chargeable under this Act, knowingly fails to account for that amount in his records and accounts or to pay that amount to the Commissioner;
- (m) acquires possession of or deals with any goods, or accepts the supply of any services having reason to believe that the tax on the supply of the said goods or services has been or will be evaded;
- (n) supplies or offers to supply to another person goods or services the acquisition or dealing with which or the acceptance of which would render that other person guilty of an offence in virtue of paragraph (m);
- (p) being a credit or financial institution which supplies money or grants credit by way of a loan account facility or by means of any other kind of

facility to a customer in connection with the supply of goods or services by third parties to that customer for the construction, re-construction, repair, refurbishment or maintenance of immovable property or for fixtures related thereto, and which effects payment for such goods or services either directly to the vendor or supplier thereof or to a third party or to the customer subject to an understanding or to an express or implied condition that the amount paid will be passed on to the said vendor or supplier, by the debit of the customer's loan account or other facility, on the basis of supporting documents, including contracts, invoices, receipts, architects' or other certificates, or similar documents, submitted by or on behalf of the customer or by or on behalf of suppliers, contractors or other third parties, and which fails to inform the Commissioner of the names and VAT registration numbers of the said suppliers, contractors or other third parties as aforesaid, other than the customer, to whom it has directly or indirectly made payments as specified in this paragraph, in the form required by the Commissioner, as well as of the amounts of such payments, by not later than the end of the calendar quarter immediately following the calendar quarter during which it directly or indirectly made payment as aforesaid.

79. Any person who –

(a) obstructs, hinders, impedes or does anything which is calculated to obstruct, hinder or impede, or molests or assaults the Commissioner or any person duly engaged in the exercise of any power or duty conferred or imposed on him by or under this Act;

(b) being a person in charge of any premises which the Commissioner or any person authorized by the Commissioner is empowered to enter in terms of Article 53(a) fails to allow access to the said premises to the Commissioner or authorized officer or fails to take such measures as may be reasonably required of him for the purpose of any such access or of any inspection of that premises or of any goods, assets, books, records or documents kept therein,

80.(1) The provisions of articles 18, 60 and 62 of the Customs Ordinance shall apply to this Act as if all references to duties contained in those articles were references to tax due under this Act, and any person who is in contravention of the provisions of the said articles construed as aforesaid in relation to any goods whose importation is subject to tax under this Act shall, without prejudice to any liability incurred under the said Ordinance, be guilty of an offense under this Act and shall be on conviction, be liable to a fine (multa) equivalent to three times the tax payable or to a fine (multa) of three hundred and fifty euro (€ 350), which ever shall be the greater, so however that one third of the said amount shall be deemed as a civil debt due to the Commissioner, or to imprisonment for a term not exceeding two years or to both such fine and imprisonment and the offender may be either detained or proceeded against by summons, in the same manner and form, and subject to all other provisions laid down in the Criminal Code.

c. For clarity, where a compromise agreement is entered into in a case involving endangered tax in terms of article 77, i.e. where the endangered tax amounts to more than €100, the calculation of the compromise fine shall be computed according to sub-article 84(1) plus the amount of the endangered tax multiplied by two, capped to a minimum of €1,000.

B. Compromise arrangements in terms of sub-article 84(3):

Sub-article 84(3) provides:

“Notwithstanding the provisions of sub-articles (1) and (2), the Commissioner may, in the case of an offense by any person against the provisions of articles 76 (b), 77 (e), 77 (f), and 77 (o), enter into an agreement with the offender, whereby the said offender pays to the Commissioner within fifteen days from receipt of a notice to this effect by the Commissioner the following:

- (a) one hundred euro (€ 100) in the case of a first offense;*
- (b) two hundred euro (€ 200) in the case of a second offense;*
- (c) four hundred euro (€ 400) in the case of a third offense; and*
- (d) five hundred euro (€ 500) in the case where the offender and, or any of his employees or any other person acting on his behalf is found in default on two separate occasions within a period of six months;*

and upon the payment of such fine (multa), all criminal liability under this Act with regard to the offenses in relation to which the fine (multa) has been paid, shall be extinguished.”.

- a. The Commissioner shall offer a compromise in terms of sub-article 84(3) prior to resorting to court action.
- b. The Commissioner shall not offer a compromise in terms of sub-article 84(3) in the case of endangered tax as per article 77 (i.e. where the endangered tax is more than €100). A request for such compromise could be considered under article 84(1).
- c. A compromise agreement in terms of sub-article 84(3) can only be accepted if the relevant compromise fine is paid within fifteen days from the notification as prescribed. If payment is not made in time, a further compromise could only be considered under sub-article 84(1).

The Commissioner for Revenue may change, amend or withdraw these guidelines at any time as necessary.

17th December, 2021