



VAT APPEALS

ADMINISTRATIVE REVIEW TRIBUNAL

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This May marks the eight year since the commencement of the hearing of VAT appeals cases by the Administrative Review Tribunal instead of the VAT Appeals Board. The terms of reference of this Tribunal are laid down in the VAT Act or Chapter 406 of the Laws of Malta and The Administrative Justice Act or Chapter 490 of the Laws of Malta. Further reference is done also to the Code of Organization and Civil Procedure or Chapter 12 of the Laws of Malta.

The coming into effect of the Administrative Justice Act was a game changer at least in the fiscal camp. Without judging its predecessor, i.e. The VAT Appeals Board, and without delving into futile comparisons between these two institutions, one must admit that The Administrative Review Tribunal was a catalyst of change. It did not shy away from going into uncharted legal procedural territory and delivering landmark judgements to which reference will be made hereunder.

A case in point is the right given by the Tribunal to the taxpayer to have access to the information obtained by the then VAT Department (now the Office of the Commissioner for Revenue) on the taxpayer. Up to that moment in time, such right was unheard of, since such information stored in files was regarded to be privileged. Not even the taxpayer himself had the right to access his personal file. Only the Commissioner of VAT (now the Commissioner for Revenue) and to whom was delegated access in the furtherance of the Act was granted access. This judgement was later confirmed by the Court of Appeals.

Having said that, one might start asking about the powers of, the competence of and the procedure adapted by the Tribunal during the sittings. Well, already at a first glance, the following extracts from the Administrative Justice Act and the VAT Act will give the reader an idea, to what extent does the power of the Tribunal extend:

Article 5 (1) of The Administrative Justice Act states the following:

5. (1) There shall be set up in accordance with the provisions of this Part of this Act, an independent and impartial tribunal, to be known as the Administrative Review Tribunal, for the purpose of reviewing administrative acts referred to it in accordance with this Act or any other law, and for the purpose of exercising any other jurisdiction conferred on the Administrative Review Tribunal by or under this or any other law, whether before or after the coming into force of this Act.

(2) The Administrative Review Tribunal shall have, jurisdiction to review administrative acts.

Items 1(1) (2) of the Ninth Schedule of The VAT Act state the following:

1. (1) The Tribunal shall be competent to hear any appeal against an assessment and to confirm, reduce or increase any taxable value or credit or tax assessed by the Commissioner, or cancel the assessment or make such other declaration or order as it deems fit.

(2) The Tribunal shall be competent to determine any matter referred to it in accordance with article 44.

The above-mentioned extracts assure the plaintiff that he can rest his case in front of an independent and impartial tribunal which has the power to syndicate the administrative decisions taken by the Commissioner for Revenue in his regard. Such decisions include, but are not limited to the investigation carried out, the notices served on the taxpayer and the *modus operandi* used by the Commissioner for Revenue. The role of the Tribunal is to ascertain that the Commissioner or his representatives abide by the letter of the law and respect the rights of the taxpayer as prescribed in the Maltese constitution and international conventions of which the Government of Malta is also signatory.

In this regard, another landmark decree granted the taxpayer the right to remain silent. However, this right is granted if certain conditions are met. If these conditions are met, consequently, the onus of proof shifts to the Commissioner for Revenue which in layman terms means that it is the Commissioner who must prove that an assessment is valid factually and legally. The Tribunal's decree must be put into the perspective that under normal circumstances, 'the onus of proving that any taxable value assessed by the Commissioner is excessive or that any credit assessed by the Commissioner is insufficient shall lie on the appellant'[1]. However, this preliminary judgement, may be still appealed by the Commissioner for Revenue.

The above relates only to assessments served on taxpayers. What about article 44 of the VAT Act, which lists eleven different instances on which appeals could be filed? What about the right to deduct? Are the penalties commensurate to the defaults committed by the taxpayer? What about registrations, can the Commissioner cancel a registration? Who is to determine whether a supply or an acquisition is taxable or exempt?

As previously explained, although the Commissioner for Revenue is legally bound and empowered to administer the VAT Act, on the other hand the Administrative Justice Act empowers the Administrative Review Tribunal to syndicate any administrative decision as it deems fit guaranteeing the right to a fair hearing to the parties involved. Notwithstanding all the good intentions of the Commissioner for Revenue and the Administrative Review Tribunal, the plaintiff is still required to make his part by filing appeals, summoning witnesses, writing submissions, etc. Does everybody have the right skills set and expertise to lodge an appeal in front of the Administrative Review Tribunal or the Court of Appeals?

If your answer is no, then you do not have anything to worry about because Zampa Debattista will fill in the gap. Our team of VAT specialists can make up for this gap and offer these services to taxpayers. In this sense the firm is rolling out a new line service offering investigation and/or court representation. Zampa Debattista has the necessary resources and expertise to render pristine services to our clientele in such circumstances as described above and represent its clientele effectively, efficiently and in a timely manner.

[1] Item 2(2) of the 9th Schedule of the VAT Act

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