

Brincat Anna at Parlament-MT

From: Caruana Joseph at CfR
Sent: Monday, 27 March 2023 18:35
To: Brincat Anna at Parlament-MT
Cc: Farrugia Aldo at CfR; Azzopardi Stefania at CfR
Subject: Re: Informazzoni mitluba mill-Kumitat Permanenti dwar il-Kontijiet Pubbliċi
Attachments: Letter from Malta Power and Gas Limited - 23rd May 2014.pdf; Reply to letter dated 23rd May 2014.pdf

Sa Anna Brincat
Clerk for Public Accounts Committee

Għażiża Sinjura Brincat,

B'referenza għat-talba tal-Kumitat Permanenti dwar il-Kontijiet Pubbliċi t'hawn taħt, qed nannetti ittra ta' Malta Power and Gas Limited datata 23 ta' Mejju 2014 u r-risposta tas-Sur Marvin Gaerty, li fl-2014 kellu l-kariga ta' Kummissarju tat-Taxxi, datata 24 ta' Settembru 2014, tramite email.

Ġentilment ninfurmak li d-dokumenti annessi huma l-unika korrisondenza li hija a konoxxenza ta' dan l-uffiċċju.

Inselli għalik,

Joseph Caruana
Commissioner for Revenue
Office of the Commissioner for Revenue

t +356 22962516 e joseph.caruana@gov.mt
www.cfr.gov.mt | www.publicservice.gov.mt | fb.com/servizzpubbliku

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MINISTRY FOR FINANCE
AND EMPLOYMENT

VINCENZO DIMECH STREET, FLORIANA, MALTA

From: Brincat Anna at Parlament-MT <anna.brincat@parlament.mt>
Sent: Friday, 24 March 2023 09:31
To: Caruana Joseph at CfR <joseph.caruana@gov.mt>
Subject: Re: Informazzjoni mitluba mill-Kumitat Permanenti dwar il-Kontijiet Pubbliċi

Sur Joseph Caruana
Kummissarju tat-Taxxi

Il-Kumitat Permanenti dwar il-Kontijiet Pubbliċi, li ltaqa' nhar it-Tlieta 14 ta' Marzu 2023, talab sabiex il-Kumitat jingħata kopja ta' kull korrisondenza li rċeva l-Kummissarju tat-Taxxi, kif ukoll kull risposta li nbaġħatet, mingħand/lil Enemalta jew Malta Power and Gas Limited, fejn fiha ġie mitlub jagħti gwida dwar kumpens f'każ li jitneħħa l-floating storage unit u jsir pipeline fiss, kif ukoll kopja tad-dokumenti dwar konsulenti li saru għat-talbiet min-naħa ta' NexiaBT rigward dan.

Nitolbok sabiex, jekk jogħġbok, tibgħat din l-informazzjoni lili, fuq dan l-indirizz elettroniku, ħalli nkun nista' ngħaddiha lill-Kumitat.

Nirringrazzjak u nselli għalik.

Anna Brincat

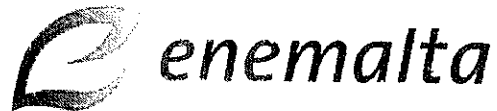
Clerk for Public Accounts Committee
Standing Committee for the Environment, Climate Change and Development Planning
National Audit Office Accounts Committee

t: +356 25596308 e: anna.brincat@parlament.mt | www.parlament.mt

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HOUSE OF REPRESENTATIVES
PARLIAMENT OF MALTA
FREEDOM SQUARE, VALLETTA, MALTA



Central Administration Offices
Church Wharf, Marsa MNS 1000 - Malta
Tel: +356 2122 3671
email: info@enemalta.com.mt

Malta Power and Gas Limited
Enemalta Corporation
Church Wharf
Marsa
Registration number C60775

Thru': Mr Henry Attard – Executive Director (Finance) Enemalta Corporation 

Mr Marvin Gaerty
The Commissioner for Revenue
Office of the Inland Revenue
Inland Revenue Department
Floriana

23 May 2014

Dear Mr. Gaerty,

Malta Power and Gas Limited ("the Company") is a company incorporated and exclusively resident in Malta. This letter sets out below some background information in respect of certain matters that we wish to bring to your attention together with our comments on the applicable Maltese income tax and VAT implications.

The Company will build a new gas power plant in Delimara and supply electricity and liquefied natural gas ("LNG") to Enemalta Corporation ("Enemalta") for a period of 18 years. The Company will be procuring gas in LNG form for use by Enemalta.

The Company's issued share capital is currently entirely held by Enemalta.

(1) Background

a) Fees for services rendered by Enemalta to the Company

Enemalta will be charging a fee for the services that it would have rendered to the Company in relation to the said gas power plant project. The said fees refer to services rendered by Enemalta to the Company in respect of various operational matters required for the purpose of the Company's business activities.

This fee will amount to €30 million and will be settled over a period of 12 months.

b) Payment upon the termination of the LNG related contracts

The Company will construct and operate a gas plant for the receipt, storage and regasification of the LNG. The gas produced will in part be used by a new power plant, also to be built and operated by the Company, and in part by existing plant belonging to Enemalta that will be converted to work on gas.

For the purpose of the above, the Company will also enter into a series of supply contracts with Enemalta for the following (indicating also the approximate percentage of turnover that each contract is expected to contribute):

- (i) Making available and operating the LNG gas plant (16% approx of annual turnover)
- (ii) Making available and operating a new 210MW power plant (16% approx of annual turnover)
- (iii) Making available the LNG, which would be supplied in part in gas form and in part as electric current (68% approx of turnover).

These contracts will have a duration of 18 years.

At the same time, Enemalta is considering the feasibility of investing in a gas pipeline that would replace the LNG gas plant. Enemalta has accordingly requested the Company for an option to terminate the LNG related contracts at predetermined points to create space for this possible change.

If and when this change occurs, it will naturally constitute a loss of a substantial part of the business structure of the Company, which will at that point be obliged to transfer the gas facilities to Enemalta (they would no longer be used, except possibly as an emergency back-up). The Company will also cease, or lose control over, the supply of gas, which would henceforth be negotiated and procured by Government or Enemalta in a natural gas form.

Enemalta will compensate the Company by paying a capital sum to the Company for the resultant loss of such a substantial part of its business and for relinquishing its rights to carry on such business.

(2) Technical considerations

We set out below, on the basis of professional advice received from PwC and from NexiaBT, our understanding of the technical considerations in respect of the transactions referred to in part (1) above.

a) Fees for services rendered by Enemalta to the Company

- *Income tax*

As set out in part (1) above, the Company will incur costs for the services rendered by Enemalta in respect of various operational matters required for the purpose of the Company's business activities.

The resulting benefits derived from such costs will accrue to the Company over the term of the contracts, i.e. over an 18-year term. Consequently, from an accounting perspective the Company should be accounting for such costs as an "intangible asset" which would be constituted by a long term prepayment that shall then be written off to the Company's income statement in equal annual amounts over the said 18-year contract term.

Such costs will constitute operating expenses paid upfront by the Company which are thus wholly and exclusively incurred in the production of its income.

Consequently, on the basis of the above, we submit that the said costs are to be considered by the Company as deductible expenses for Maltese income tax purposes.

Given that, from an accounting perspective, the Company should be charging the costs incurred to its income statement over an 18-year term (rather than in the year in which such fees would have been paid), and on the basis that the Company would be carrying on a trade or business, the Company is entitled, for Maltese income tax purposes, to consider such costs as deductible in the year they are accounted for.

In the event that, in respect of a year of assessment, the Company has insufficient income in the particular basis year against which to absorb the said costs, we submit that such costs (or any excess of such costs over the income derived by the Company) would be carried forward and absorbed against any income to be derived by the Company in subsequent years.

- *VAT*

We submit that the fees charged by Enemalta to the Company, referred to above, are chargeable to VAT and such VAT is recoverable by the Company on the basis that the Company will be providing exclusively taxable supplies for VAT purposes.

We understand that in those instances in which a supply between related entities is involved, the VAT Department allows, by way of practice, the VAT chargeable by one related entity on a supply to be set off against the VAT recoverable by the other entity on the same supply.

Naturally, such "set-off" procedure will be subject to such conditions as the VAT Department may decide to impose in this particular case.

b) Payment upon the termination of the LNG related contracts

- *Income tax*

As set out in part (1) above, in the event of a termination of the LNG related agreements, a termination payment would be due by Enemalta to the Company in terms of the contractual arrangements between the parties.

Indeed if the LNG related agreements are terminated by Enemalta the Company will relinquish its right to supply LNG to Enemalta, and the use of its gas facilities, thus resulting in the loss of a substantial part of the Company's trading operation for which it was set up (as per the approximate percentages of turnover referred to in point 1(b) above).

On this basis, the Company would have effectively lost a substantial part of its profit-making structure. Consequently, any capital sum paid by Enemalta to the Company to compensate for such loss should be considered as being of a capital nature and not subject to income tax.

Naturally, the non-taxable nature of the said sum would apply independently of the method used to calculate/ quantify the amount of compensation, because the method of calculation is irrelevant from the perspective of determining the taxability of the payment.

- *VAT*

We submit that from a VAT perspective any sum payable for early termination, in terms of an agreement that allows for early termination, is not considered a consideration for a supply.

Consequently, in this case any payment made by Enemalta to the Company for the termination of the LNG related contracts falls outside the scope of the VAT Act and consequently not chargeable to VAT.

(3) Request

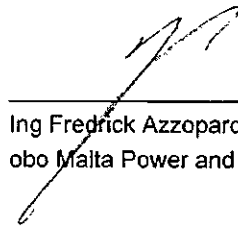
The Company and Enemalta will soon be entering into the contractual arrangements referred to in this letter. The tax matters we have addressed above will impact upon the terms of these contractual arrangements and both parties desire certainty on these topics before concluding the proposed transactions.

We accordingly kindly ask you to confirm or provide your feedback in respect of the technical submissions set out under Part (2) above; and to confirm that the "set-off" procedure for VAT purposes referred to in Part 2(b) above may be adopted by Enemalta and the Company in respect of the said supply.

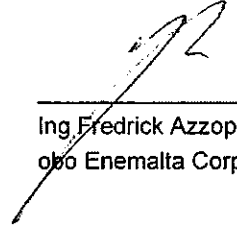
Naturally, please do not hesitate to contact us if you require any further information or clarification.

We thank you in advance for your kind assistance and co-operation.

Yours sincerely,



Ing Fredrick Azzopardi
obo Malta Power and Gas Limited



Ing Fredrick Azzopardi
obo Enemalta Corporation

cc. *Electrogas Consortium*

Gaerty Marvin at MFE

From: mirko.rapa@mt.pwc.com
Sent: Tuesday, 27 January 2015 19:56
To: Gaerty Marvin at MFIN
Cc: Chris.Galea@mt.pwc.com; Mirko.Gulic@mt.pwc.com
Subject: Enemalta - Electrogas
Attachments: ScerriA_20140910_152112_001.pdf

Dear Mr Gaerty,

Further to our conversation, we refer to the attached correspondence, in particular the VAT implications arising in respect of the fees chargeable by Enemalta Corporation, now Enemalta plc ("Enemalta"), to Electrogas Malta Limited ("Electrogas") amounting to €30 million. Electrogas was previously known as "Malta Power and Gas Limited" and although Malta Power and Gas Limited was a subsidiary of Enemalta, at the time this procedure was agreed to, on the 11 June 2014 the shares in Malta Power and Gas Limited were transferred to the current shareholders.

We understand that although the shares in Electrogas have been transferred by Enemalta before the said fees were charged, the VAT set-off procedure should still apply in this case. Consequently, the VAT chargeable on the said fees to be charged by Enemalta to Electrogas may be set off against the VAT recoverable by Electrogas.

We understand that Enemalta charged such fees in December 2014 and that Enemalta will raise an invoice for the amount of €30M to Electrogas dated 31 December 2014 on which 18% VAT (amounting to €5.4M) will be charged. This VAT charge gives rise to VAT payable by Enemalta to the VAT department whilst Electrogas will be entitled to recover the same amount of VAT from the VAT Department. However, through the agreed set-off procedure, no VAT will be payable by Enemalta and no VAT will be recoverable by Electrogas in respect of this transaction.

We have already informed the VAT Department about such set off, however, we have agreed to seek your formal approval before such set off is actually performed by the VAT Department. In this respect, if agreed to, we would appreciate if you could kindly forward your authorisation to Mr Lawrence Gatt (Assistant Director Inspectorate and Assurance - lawrence.gatt@gov.mt) so that the set-off can be authorised and performed.

We would also be grateful if you could kindly ask Mr Gatt to inform us once he receives your authorisation.

We look forward for your feedback but please feel free to contact us should you require any further information or clarification.

Kind regards,
Mirko

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Mirko Rapa

PwC | Partner
Direct: (356) 25646738 | Fax: (356) 21244768
Email: mirko.rapa@mt.pwc.com
PricewaterhouseCoopers
78 Mill Street, Qormi, QRM3101. Malta

From: Gaerty Marvin at MFIN [<mailto:marvin.gaerty@gov.mt>]
Sent: Wednesday, September 24, 2014 3:09 PM
To: Antoinette Scerri - Nexia BT
Subject:

Dear Antoinette,

Re: Tax confirmation letter (attached) dated 24th May 2014 - Malta Power and Gas Ltd

With reference to the attached letter dated 24th May 2014 submitted by Malta Power and Gas Ltd, whereby confirmation was requested on a. the technical submissions set out under part 2 and b. "vat set-off procedure" referred to in part 2(b) of the said letter, we are in agreement and confirm both the technical submissions and "set-off procedure".

Best regards

Marvin

Marvin Gaerty

Commissioner for Revenue

Office of the Commissioner for Revenue

t: +356 22962433 e: marvin.gaerty@gov.mt | www.finance.gov.mt MINISTRY FOR FINANCE

Kindly consider your environmental responsibility before printing this e-mail Vincenzo Dimech Street,
FLORIANA, MALTA

----- End of message text -----

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