

CHAPTER 372**INCOME TAX MANAGEMENT ACT**

To regulate the collection of income tax and to provide the administrative machinery for such collection.

23rd September, 1994

ACT XVIII of 1994 as amended by Acts XXIII and XXIV of 1995, XX of 1996, XVI of 1997, V of 1998, I and IX of 1999, VI and IX of 2001, II of 2002, II of 2003, II and XIII of 2004, II of 2005, and II, IV and IX of 2007; Legal Notice 425 of 2007; and Acts I of 2008 and II of 2009.

ARRANGEMENT OF ACT

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PART I

Preliminary

- Short title. **1.** The short title of this Act is Income Tax Management Act.
- Interpretation. **2.** In this Act, and in any rules made under this Act, words and expressions shall, unless the subject in context otherwise requires, have the same meaning and the same interpretation as the meanings and interpretations contained in article 2 of the Income Tax Act.
- Cap. 123.

PART II

Administration

Appointment of administrative authority.
Amended by:
V. 1998.2;
IX. 2001.30;
II. 2004.47.
 Cap. 123.

3. (1) The administration of this Act and of the Income Tax Act, (hereinafter collectively referred to as "the Income Tax Acts") is vested in the Commissioner who may, in writing and subject to such limitations as he may think fit, delegate to any person any of the rights, duties, powers and other functions vested, conferred or imposed upon him by the Income Tax Acts.

(2) The Commissioner may appoint any person who in his opinion has the necessary qualifications to assist him in determining the value of any movable or immovable property for any of the purposes of the Income Tax Acts and such person shall, during the term of his appointment, be deemed to be an officer employed in the administration of the Income Tax Acts and serving in the Commissioner's department.

Official secrecy.
Amended by:
XXIV.1995.362;
XVI. 1997.8;
V. 1998.3;
II. 2003.41;
IV. 2007.24.

4. (1) Except as may be necessary for the purposes of the Income Tax Acts, or where the Prime Minister otherwise directs, every person having any official duty or being employed in the administration of the Income Tax Acts shall regard and deal with all documents, information, returns and assessments relating to the Income Tax Acts, or copies thereof, as secret and confidential and shall make and subscribe before the Court of Appeal a declaration on oath to that effect in the form prescribed.

(2) No person appointed under or employed in carrying out the provisions of the Income Tax Acts shall be required to produce in any court, tribunal, Board or committee of enquiry, any return, document or assessment or to divulge or communicate to any court, tribunal, Board or committee of enquiry, any matter or thing coming under his notice in the performance of his duties under the Income Tax Acts except as may be necessary for the purpose of carrying into effect the provisions of the Income Tax Acts, or for the purpose, or in the course, of a prosecution for any offence committed against any of the provisions of the Income Tax Acts.

(3) Nothing contained in this article shall prevent the disclosure to any authorised representative of any other Government of such information as is required to be disclosed in terms of -

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- (a) any arrangement made under article 76 of the Income Tax Act including the disclosure of such facts as may

be necessary to enable proper relief to be given in Malta or elsewhere under any such arrangement or under article 89 of the Income Tax Act;

- (b) any other arrangement between Malta and other States or their tax authorities providing for the reciprocal exchange of information for tax purposes.

(4) The provisions of this article in regard to secrecy shall not apply to information contained in any return filed in accordance with articles 10, 21 or 23 and relating to such details of income and as prescribed under the Income Tax Acts.

- (5) (a) The Commissioner shall submit to the Speaker of the House of Representatives a certified statement showing the details of income declared by each Member of the House for the purpose of the Income Tax Acts from the year of assessment in which such Member first became a Member of the House and for every subsequent year of assessment up to and including the year of assessment following the year in which such Member ceases to be a Member of the House:

Provided that if a Member having ceased to be a Member of the House as aforesaid again becomes a Member of the House, the Commissioner shall also submit to the Speaker the details of the income in respect of the period covering the years when such member ceased to be a Member until he again becomes a Member of the House.

- (b) The Speaker of the House of Representatives shall, upon a request in writing by any Member of the House or by the editor responsible for any newspaper registered under the Press Act, furnish such Member or editor with the details of income in respect of any year of assessment declared by any Member of the House for the purposes of the Income Tax Acts, provided that the details of income so requested have been made available to the Speaker under the provisions of paragraph (a) and that prior to giving such information the Speaker shall notify such Member whose details of income are being requested, with a copy of such request and of the reply being given.

Cap. 248.

(6) Notwithstanding anything contained in this article, the Commissioner may permit the Auditor General of the Government or any other officer duly authorised in that behalf by the Auditor General to have such access to any records or documents as may be necessary for the performance of his official duties. The Auditor General or any such officer shall be deemed to be a person employed in the administration of this Act for the purpose of this article.

Cap. 364.

(7) Notwithstanding anything contained in this article, the Commissioner may make use of the documents, information and returns relating to the income or items of income of any person for the purpose of the Duty on Documents and Transfers Act, and may produce or cause to be produced in court in any proceedings relating to duties levied or leviable, and for the collection of any penalty inflicted under such Act, a copy of any particulars contained in any document of return as aforesaid, certified by him or by the chairman of the Board of Special Commissioners constituted under article 34 or by the Registrar of Courts, as the case may be, to be a correct copy of such particulars:

Provided that the Commissioner may produce or cause to be produced the original of any such document or return in any case where it is necessary to prove the handwriting or the signature or the identity of the person who wrote, made, signed or furnished such document or return, but only for the purpose of such proof.

(8) Nothing in this article shall prevent the delivery of documents by the Commissioner in accordance with article 57.

(9) Notwithstanding the provisions of the other subarticles of this article or of any other law, the Commissioner shall furnish to the Commissioner of Value Added Tax such information being information obtained by the Commissioner for any of the purposes of this Act, as may be directed by the Minister.

PART III

Persons Assessable

Chargeability of agent or person residing out of Malta.
Amended by: XIII. 2004.86.
Cap. 123.

5. (1) Further to the provisions contained in Part IX of the Income Tax Act, a person not resident in Malta (hereinafter in this Act referred to as "a non-resident person") shall be assessable and chargeable in the name of his trustee, guardian, tutor, curator or committee, or of any attorney, factor, agent, receiver, branch or manager, whether such attorney, factor, agent, receiver, branch or manager has the receipt of the income or not, in like manner and to the like amount as such non-resident person would be assessed and charged to tax in Malta as if he were in the actual receipt of such income.

A non-resident person shall be assessable and chargeable in respect of any income arising, whether directly or indirectly, through or from any attorneyship, factorship, agency, receivership, branch or management, and shall be so assessable and chargeable in the name of the attorney, factor, agent, receiver, branch or manager.

(2) Where the registered holder of a share holds such share for the benefit of another person, the Commissioner shall be entitled to treat such registered holder as beneficially entitled to such share except as provided in subarticle (3).

(3) Where the registered holder of a share had been licensed under article 51A of the Malta Financial Services Authority Act and until such time that he is so licensed or is authorised or otherwise permitted to act as a trustee under article 43 or 43A of the Trusts and Trustees Act or is licensed under the Investment Services Act, to carry out activities within paragraph 4 of the First Schedule to that Act and provides the Commissioner with a certificate in writing that he holds the share for the benefit of a person or persons all of whom are not resident in Malta within the meaning of the Income Tax Acts, the Commissioner shall not treat the registered holder of the share as beneficially entitled to it.

Cap. 330.

Cap. 331.
Cap. 370.

(4) A person referred to in subarticle (3) who issues a false certificate to the Commissioner shall be guilty of making a false statement within the meaning of article 52(1)(b).

(5) The master of any ship owned or chartered by a non-resident person who is chargeable under article 28 of the Income Tax Act shall (though not to the exclusion of any other agent) be deemed the agent of such non-resident person for all the purposes of the Income Tax Acts.

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(6) Where a non-resident person carried on business with a resident person, and it appears to the Commissioner that, owing to the close connection between the resident person and the non-resident person and to the substantial control exercised by the non-resident person over the resident person, the course of business between those persons can be so arranged and is so arranged that the business done by the resident person in pursuance of his connection with the non-resident person produces to the resident person either no profits or less than the ordinary profits which might be expected to arise from the business, the non-resident person shall be assessable and chargeable to tax in the name of the resident person as if the resident person were an agent of the non-resident person.

(7) Where it appears to the Commissioner that the true amount of the gains or profits of any non-resident person chargeable to tax in the name of a resident person cannot in any individual case be readily ascertained, the Commissioner may, if he thinks fit, assess and charge the non-resident person on a fair and reasonable percentage of the turnover of the business done by the non-resident person through or with the resident person in whose name he is chargeable as aforesaid and in such case the provisions of the Income Tax Acts as to the delivery of returns or particulars by persons acting on behalf of others shall extend so as to require returns or particulars to be furnished by the resident person of the business so done by the non-resident person through or with the resident person, in the same manner as returns or particulars are to be delivered by persons acting for incapacitated or non-resident persons in respect of income to be charged:

Provided that the amount of the percentage shall in each case be determined having regard to the nature of the business and shall, when determined by the Commissioner, be subject to an appeal as provided by articles 35 and 37.

(8) Nothing in this article shall render a non-resident person chargeable in the name of a broker or general commission agent or other agent where such broker, general commission agent or agent is not an authorised person carrying on the regular agency of the non-resident person, or a person chargeable as if he were an agent in pursuance of subarticles (5), (6) and (7), in respect of gains or profits arising from sales or transactions carried out through such a broker or agent.

(9) The fact that a non-resident person executes sales or carries out transactions with other non-residents in circumstances which would make him chargeable in pursuance of subarticles (5) and (6) in the name of a resident person shall not of itself make him chargeable in respect of gains or profits arising from those sales or transactions.

(10) Where a non-resident person is chargeable to tax in the name of any attorney, factor, agent, receiver, branch or manager in respect of any gains or profits arising from the sale of goods or produce manufactured or produced out of Malta by the non-resident person, the person in whose name the non-resident person is so chargeable may, if he thinks fit, apply to the Commissioner to have the assessment to tax in respect of those gains or profits made or amended on the basis of the profits which might reasonably be expected to have been earned by a merchant or, where the goods are retailed by or on behalf of the manufacturer or producer, by a retailer of the goods sold, who had bought from the manufacturer or producer direct, and, on the proof to the satisfaction of the Commissioner of the amount of the profits on the basis aforesaid, the assessment shall be made or amended accordingly.

(11) A non-resident person shall not, by virtue of this article, be assessable or chargeable to tax in the name of an agent or other representative in respect of gains or profits arising to the non-resident person resulting from the provision in Malta by the agent or such other representative of any of the services listed in the First Schedule to the Investment Services Act, provided that:

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- (a) the investment services concerned are carried out in the ordinary course of such business; and
- (b) the remuneration which the agent or other representative receives for the provision of investment services to the non-resident person is at a rate which is not less than that which is customary for that class of business, and in the case of an agent or other representative who provides investment services as part only of a business, the provisions of paragraphs (a) and (b) shall apply as if that part were a separate business.

(12) For the purposes of subarticle (11) an agent or other representative shall be deemed to have carried out an investment service on behalf of his principal whether he undertakes the transaction himself or gives instructions to another person.

(13) The activities of the agent or other representative shall not affect the residence of the non-resident person for tax purposes.

6. The person in whose name a non-resident person is chargeable, shall be answerable for all matters required to be done by virtue of the Income Tax Acts for the assessment of the income of any person for whom he acts and for paying the tax chargeable thereon.

Acts to be done by trustees, etc.

7. (1) The manager or other principal officer of every body of persons shall be answerable for doing all such acts, matters and things as are required to be done by virtue of the Income Tax Acts for the assessment of such body and payment of the tax.

Manager of corporate bodies of persons.

(2) Every such principal officer shall pay the tax out of the property of the body of persons. He shall, however, be liable for payment personally, and jointly and severally with any other person responsible therefor, if at any time after 1st January, 1979 he had in his possession or control any property belonging to the body of persons which could have been used to pay the tax then due.

(3) The liquidator of a company which is being wound up shall not distribute any of the assets of the company to its shareholders unless he had made provision, in so far as he is able to do so out of the assets of the company, for the payment in full of any tax which he knows of or might reasonably expect to be payable by the company under the Income Tax Acts and in default, such liquidator shall be liable personally, and jointly and severally with any other person responsible therefor, for payment of the tax due.

8. Every person who in whatever capacity is in receipt of any money or value being income arising from any of the sources mentioned in the Income Tax Acts or belonging to any person who is chargeable in respect thereof, or who would be so chargeable if he were resident in Malta and not an incapacitated person, shall whenever required to do so by any notice from the Commissioner, prepare and deliver within the period mentioned in such notice a list signed by him containing -

Lists to be prepared by representative or agent.

- (a) a true and correct statement of such income; and
- (b) the name and address of every person to whom the same shall belong,

and the provisions of the Income Tax Acts with respect to the failure to deliver lists or particulars in accordance with a notice from the Commissioner shall apply to any such lists.

9. Every person answerable under the Income Tax Acts for the payment of tax on behalf of another person may retain out of any money coming to his hands on behalf of such other person so much thereof as shall be sufficient to pay such tax, and shall be and is hereby indemnified against any person whatsoever for all payments made by him in pursuance and in virtue of the Income Tax Acts.

Indemnification of representative.

PART IV

Returns

Return of income.
Substituted by:
IX. 1999.2.

10. (1) The Commissioner may, by notice in writing, require any person to furnish him by not later than such date as may be prescribed with a return of income together with and containing such particulars, statements, accounts, computations or other documents as may be necessary to enable such person's income and allowable deductions and the tax payable by or repayable to that person to be readily ascertained in accordance with and for the purposes of the Income Tax Acts.

(2) The Commissioner may, by means of the notice referred to in subarticle (1), require any person to include in his return of income for the year of assessment 1999 and any subsequent year of assessment a self-assessment, that is to say, a computation showing:

- (a) the chargeable income of that person for the year of assessment on the basis of the information contained in the return of income;
- (b) the tax chargeable thereon; and
- (c) the tax payable by or repayable to that person for the year of assessment, being the difference between the tax computed under paragraph (b) and the aggregate of the amounts referred to in the following subparagraphs, disregarding any credit, relief or tax paid, withheld, payable or repayable for any other year of assessment:
 - (i) any provisional tax paid and any tax deducted at source that falls to be set off or that is available as a credit in accordance with the provisions of the Income Tax Acts against the tax computed under paragraph (b);
 - (ii) any tax credit or relief claimed and due in accordance with the provisions of Part X of the Income Tax Act relating to the chargeable income computed under paragraph (a); and
 - (iii) any other amount paid on account of the tax chargeable for the year of assessment as computed under paragraph (b).

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(3) A self-assessment shall not be construed as being an assessment for any purpose of the Income Tax Acts and any reference in the said Acts to an assessment shall not be construed as or as including a reference to a self-assessment.

(4) If a person required to file a return of income under this article is a company resident in Malta it shall furnish together with the return the documents specified in article 19(4).

(5) No return purporting to have been filed in accordance with the provisions of this article shall be considered to have been so filed unless it is complete in all material respects, including a self-

assessment when required by the notice referred to in subarticle (1), and unless it is accompanied by such documents as are required under the other provisions of this article.

10A. (1) The Commissioner may, when and as often as he deems necessary, give notice in writing to any person to furnish him, within a reasonable time stated in such notice, not being less than thirty days, such information as may be necessary in order to provide information, including documents, to foreign tax authorities where arrangements between Malta and the respective State or its tax authorities exist for the reciprocal exchange of information for tax purposes.

Commissioner may
request
information.
Added by:
II. 2003.42.
Amended by:
II. 2005.31.
Substituted by:
I. 2008.2.

(2) The provisions of this article shall apply even if the Commissioner could not collect the relevant information for the purposes of the Income Tax Acts. The provisions of this article shall have effect in respect of any person, entity or scheme, including a person entity or scheme referred to in article 17, notwithstanding any obligation to secrecy or confidentiality, or to any other restriction relating to the disclosure of information.

(3) For the purposes of this article, "tax" means any tax to which an arrangement as referred to in subarticle (1) applies.

(4) The powers of the Commissioner to require a person to provide information under this article include the power:

- (a) to require any person to complete and deliver to the Commissioner any return specified in that notice;
- (b) to summon any person who, he has reason to believe, is able to give information required for the purposes of this article, to attend before him and to examine such person on oath or otherwise;
- (c) to require any person to produce for examination any books, documents, accounts (including bank statements, passbooks and other bank documents) and any other document which the Commissioner may require or a copy or extract thereof;
- (d) to require any person to give information by means of written statements;
- (e) to require any person to authenticate in such form as the Commissioner may consider appropriate or as may be prescribed any document prepared by that person or an extract thereof or the copy of any document held by that person or of an extract thereof;
- (f) to require any person to confirm on oath any declaration made by him or any document prepared by him;
- (g) to require any person to provide information, documents or written statements in such other form as the Minister may prescribe.

Where notice is not received.
Substituted by:
IX.1999.2.

11. Where any person chargeable with tax has not received the notice mentioned in article 10(1) in respect of any year of assessment for which he is so chargeable by such date as may be prescribed for the purpose of this article, the provisions of the said article 10 shall apply to him as if he has been duly served with a notice under subarticle (1) of that article and, with respect of the year of assessment 1999 and any subsequent year of assessment, with a notice under subarticle (2) of that article, and it shall accordingly be the duty of that person to furnish a return of income under that article including, when applicable, a self assessment for that year and to comply with all the other provisions of the said article.

Election not to furnish return.
Substituted by:
IX.1999.2.

12. (1) Notwithstanding the provisions of articles 10 and 11, but without prejudice to the other provisions of this Part, a person to whom this article applies shall not be required to furnish a return of income for a year of assessment if he makes an election for that year under and in accordance with this article.

(2) This article applies to:

(a) an individual resident in Malta whose total income for the year of assessment -

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(i) does not include any income falling under article 4(1)(a) of the Income Tax Act; and

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(ii) does not exceed the amount to which a nil rate of tax applies in terms of the relevant provisions of article 56(1) of the Income Tax Act;

(b) an individual resident in Malta whose total income for the year of assessment consists solely of income that was subject to deduction at source, including income subject to a nil rate of deduction, in terms of regulations made for the purposes of article 23 and fully reported in a statement or statements of earnings prepared in accordance with the said regulations and held in his possession;

(c) a person who is designated as a person to whom this article applies by regulations that may be prescribed under this article.

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(3) (a) When a person has an option in terms of any provision of the Income Tax Act to disclose or not disclose income, that income shall not be taken into account for the purposes of subarticle (2), and if that person makes an election under this article he shall be deemed for the purposes of the Income Tax Acts to have opted not to disclose that income and such income shall accordingly not form part of his total income.

(b) When a person makes an election under this article, the income that he would have been required to disclose were it not for the provisions of this article shall be taken into account in determining his total income for any purpose of the Income Tax Acts.

- (c) When a person makes an election under this article and he is also eligible to make an election for a separate computation under article 50 of the Income Tax Act, that person shall be deemed to have taken the more advantageous option under that article according to his particular circumstances. Cap. 123.
- (d) With respect to a married individual living with his or her spouse references in this article to an individual shall be construed as references to the responsible spouse and references to the income or the chargeable income of an individual shall be construed as references to the income or the chargeable income of both spouses.
- (4) (a) An election under this article shall be made by the delivery to the Commissioner of a signed declaration confirming the person's eligibility to make the election in terms of this article and complying with the other provisions of this subarticle.
- (b) An election shall not be deemed to have been made under this article unless:
- (i) it is made by a person to whom this article applies;
 - (ii) it is made on the prescribed form and contains such particulars and is accompanied by such documents as may be required by that form; and
 - (iii) it is delivered to the Commissioner by not later than such date as may be prescribed.

12A.(1) Notwithstanding the provisions of articles 10, 11 and 12, but without prejudice to the other provisions of this Part, a person shall not be required to furnish a return of income mentioned in article 10(1) or to make an election in terms of article 12 where the Commissioner gives notice in writing to this effect to such person.

No obligation to furnish return of income.
Added by:
IV. 2007.25.

(2) The notice mentioned in subarticle (1) shall include a person's income which is required to be disclosed for the purposes of the Income Tax Acts as known to the Commissioner at the time of service of the said notice.

(3) When a person who is served with a notice mentioned in subarticle (1) has income required to be disclosed that is higher than that shown in the said notice it shall be the duty of that person to furnish a return of income under article 10(1).

(4) Where the notice mentioned in subarticle (1) results in a refund of tax, the Commissioner shall refund such tax after the person in receipt of such notice has agreed in writing that the refund is due to him, and if it then results that the refund is wholly or partly not due to the said person and that the said person has failed to abide by the provisions of subarticle (3) the provisions of article 48(9) shall apply.

Further returns.
Substituted by:
IX. 1999.2.
Amended by:
II. 2009.29.

13. (1) The Commissioner may when and as often as he thinks necessary give notice in writing to any person who has filed a return under article 10 requiring him to furnish, within a reasonable time stated in such notice, not being less than thirty days, fuller or further returns respecting any matter as to which a return is required by the said article.

(2) The Commissioner may give notice in writing to any person who has made an election under article 12 to make a return of income and to make a self assessment under article 10 and to comply with the other provisions of that article within a reasonable time stated in such notice and not being less than thirty days.

(3) A person who has delivered a return of income may at any time before an assessment is made under article 31 make such corrections to or additions to that return as he may consider appropriate by furnishing a further return in such manner and on such form as may be prescribed.

(4) When a further return made pursuant to subarticle (3) with respect to a year of assessment produces a reduction in the tax payable by or an increase in the tax repayable to that person as resulting from a previous return, it shall not have any effect for the purposes of this Act if it is made later than five years from the expiration of that year of assessment.

(5) A person who has made an election under article 12 with respect to a year of assessment may at any time within that year of assessment or within five years from the expiration thereof, but before an assessment is made under article 31, furnish the Commissioner with a return of income including a self-assessment on such form as may be prescribed.

(6) When a return for a year of assessment is furnished pursuant to and in accordance with this article it shall be deemed to be a return of income made under article 10 and shall be read and construed as one with any other return that may have been so made for that same year, and any determination made under article 31 shall be revised and replaced as necessary, provided that:

- (a) such return shall not relieve any person of any penalty, tax, additional tax or interest to which he may have become liable in accordance with any provision of the Income Tax Acts;
- (b) a person who has made an election under article 12 and who submits a return in accordance with subarticle (2) or subarticle (5) shall not be deemed to have made a default by reason only of the fact that the return is submitted after the time prescribed for the purposes of article 10(1).

(7) The Commissioner may give notice in writing to any person informing him that an enquiry will be conducted into that person's tax declarations and liabilities in respect of such years of assessment as shall be indicated in the said notice.

14. For the purpose of obtaining full information in respect of any person's income, the Commissioner may, notwithstanding any other provision of this Act or of the Income Tax Act, give notice to such person requiring him within a reasonable time to complete and deliver to the Commissioner any return specified in such notice and/or to attend personally or by representative before him and to produce for examination any books, documents, accounts and returns (including bank statements and passbooks) which the Commissioner may deem necessary.

Power to call for returns, books, etc.
Amended by:
II. 2003.43.
Cap. 123.

15. A return, statement or form purporting to be furnished under the Income Tax Acts by or on behalf of any person shall for all purposes be deemed to have been furnished by that person or by his authority, as the case may be, unless the contrary is proved, and any person signing any such return, statement or form shall be deemed to be cognizant of all matters therein.

Returns to be deemed to be furnished by due authority.

16. The Commissioner may require any person having an office or employment, whether paid or otherwise, with the Government of Malta or with any organisation or other body whether having a legal personality or not in which the Government of Malta or any such body as aforesaid have a controlling interest or over which they have effective control to supply such particulars in respect of any matter as may be required for the purposes of the Income Tax Acts and which may be in the possession of such person having such office or employment:

Official information.
Amended by:
II. 2005.32;
I. 2008.3.

Provided that, subject to article 10A, no such person having such office or employment as aforesaid shall, by virtue of this article, be obliged to disclose any information in relation to a person in respect of which such person having such office or employment is under the duty of professional secrecy. Where any information is protected by professional secrecy for the benefit of any person, nothing in this proviso shall preclude the giving of such information in respect of any other person, excluding therefrom the name of the person in whose interest such protection is given

17. Without prejudice to the provisions relating to the duty of professional secrecy, and subject to article 10A, no request for information shall be made pursuant to any power under the Income Tax Acts from any of the following licensed persons:

Professional secrecy.
Amended by:
I. 2008.4.

- (a) a bank licensed under the Banking Act; Cap. 371.
- (b) an insurance company in respect of life assurance business which is carried on pursuant to a licence granted under the Insurance Business Act; Cap. 290 - Repealed.
- (c) any person licensed to carry on investment business under the Investment Services Act; Cap. 370.
- (d) a collective investment scheme licensed under the Investment Services Act; Cap. 370.
- (e) a stockbroker licensed under the Malta Stock Exchange Act, Cap. 345.

except solely for the purposes of determining the taxable income of such licensed person, and in replying to any such request the

licensed person shall not disclose any information in relation to the affairs of persons with whom the licensed person has or has had a professional relationship:

Provided that nothing in this article shall prejudice the right of the Commissioner to make a request referred to in article 34(2) of the Income Tax Act.

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Substitution of original returns.
Amended by:
IX. 1999.3.

18. (1) Where any return, statement or form completed and delivered to the Commissioner for the purposes of the Income Tax Acts has been lost or destroyed, or has been so defaced or damaged as to be illegible or otherwise useless, the Commissioner may require the person by or on whose behalf such return, statement or form has been completed and delivered to furnish him to the best of his ability with a duplicate copy of such return, statement or form or to give such information, particulars or evidence as may be required in replacement.

(2) Nothing in this article contained shall affect the provisions of article 30(4) and (5) or article 31(5) and (6), nor shall the Commissioner be empowered to require a copy of any return, statement or form, or the provision of any information, particulars or evidence in respect of any year of assessment where the raising of the relative assessment is statute-barred in terms of the provisions of the said subarticles.

Records to be kept.
Amended by:
XX.1996.21;
II. 2007.23;
IV. 2007.26.

19. (1) Every person carrying on a trade, business, profession or vocation shall keep proper and sufficient records of his income and expenditure to enable his income and allowable deductions to be readily ascertained.

(2) The records referred to in subarticle (1) shall include:

- (a) proper accounts with respect to -
 - (i) all sums of money received or expended and the matters in respect of which the receipt or expenditure takes place; and
 - (ii) all sales, purchases or services rendered, as well as any other transaction, act or operation pertaining to the trade, business, profession or vocation;
- (b) a profit and loss account or equivalent annual statement;
- (c) a statement of the assets and liabilities as on the date on which the annual accounts of the trade, business, profession or vocation are made up or, in the case of a company, a balance sheet.

(3) Subject to such conditions as he may deem fit to impose, the Commissioner may exempt any person in respect of any year of assessment from keeping any record or statement referred to in subarticle (2).

(4) The records required to be kept under the provisions of this article shall be supported by such documents as may be appropriate in the circumstances, including -

- (a) in the case of a company registered in Malta, the balance sheet and profit and loss account, which shall comply in every respect with the applicable provisions of articles 167, 168 and 169 of the Companies Act and notwithstanding any exemption made by that Act or by any other law, such balance sheet and profit and loss account shall be accompanied by a report made out by a certified public auditor as provided by the applicable provisions of articles 179 and 181 of that Act: Cap. 386.

Provided that in the case of a company which is not resident in Malta, such records shall be those which refer to the company's activities in Malta.

- (b) in the case of a co-operative society, the audited financial statements of the society, prepared in all respects as required by the law for the time being in force regulating co-operative societies and accompanied by any report which is by any such law required to accompany the audited financial statements of the society.

(5) All records required to be kept by any of the provisions of this article shall be retained for a period of not less than nine years after the completion of the transactions, acts or operations to which they relate:

Provided that the provisions of this subarticle shall not apply where effect has been given to the provisions of article 26, of article 163(5) or of article 324(2) of the Companies Act.

Cap. 386.

20. (1) The Commissioner, or any officer authorised by him in writing shall have full and free access to all business or professional premises such as offices, factories, workshops, warehouses, garages and land serving such purposes in order to inspect any books, documents, accounts and returns or to observe and record the nature and importance of any business or professional activity carried on there, and to check the existence of merchandise and means of production and transport and shall have full and free access to any property or other asset whose value is required to be determined for any of the purposes of the Income Tax Acts to the extent that such access is likely to assist him in determining the said value but shall not have any power under this article to seize any item or remove it from the premises:

Certain powers of the Commissioner.
Amended by:
XI. 2001.31;
II. 2005.33;
L.N. 425 of 2007.

Provided that the Commissioner or any officer authorised by him as aforesaid may not seize any notarial act or register, and may not inspect public wills, the acts of delivery of secret wills and registers thereof during the life of the testator or testators, without the permission in writing of such testator or testators:

Provided further that the Commissioner or any officer authorised by him as aforesaid may not inspect any document or other record which is protected by the duty of professional secrecy or listen to any conversation or recording device which is protected by the same duty.

- (2) If, in the exercise of his powers under subarticle (1), the

Commissioner or a person authorised by him as aforesaid, requires access to premises occupied in whole or in part for the purposes of habitation, such access shall require the presence of an officer of the Police of a rank not below that of inspector and shall not take place between nine in the evening and five in the morning.

Cap. 55.

(3) The Commissioner shall, for the purpose of assessing the tax under the Income Tax Acts, be entitled to make the application referred to in article 68(2)(a) of the Notarial Profession and Notarial Archives Act, and the provisions of the said subarticle (2) shall apply to such application in so far as applicable.

(4) If any person prevents or obstructs the Commissioner or the said officer in the execution of his duties, or refuses to comply with any request made by the Commissioner or by the said officer in accordance with the provisions of this article, he shall, on conviction by the Court of Magistrates, sitting as a court of criminal judicature, be liable to a fine (*multa*) of not less than fifty-eight euro (58) and not exceeding four hundred and sixty-five euro (465) or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(5) The powers of investigation under this article shall not be exercised unless the Commissioner or any officer authorised by him, has reasonable grounds to suspect that tax is being evaded in respect of operations carried out by the taxpayer on the premises referred to in subarticle (1).

Return to be delivered by employer.

21. (1) Every employer when required to do so by notice from the Commissioner shall, within the time limited by the notice, prepare and deliver for any year a return containing -

- (a) the names and places of residence of all persons employed by him;
- (b) the payments and allowances made to those persons in respect of that employment,

and the provisions of the Income Tax Acts with respect to the failure to deliver returns or particulars in accordance with a notice from the Commissioner shall apply to any such return.

(2) Where the employer is a body of persons, the manager or other principal officer shall be deemed to be the employer for the purposes of this article, and any director of a company, or person engaged in the management of a company, shall be deemed to be a person employed.

Payment of tax of individuals employed but not domiciled or ordinarily resident in Malta.

22. (1) In this article the expression "individual to whom this article applies" means an individual who is not domiciled in Malta or who, if so domiciled, is not ordinarily resident therein.

(2) Where any person employs in Malta an individual to whom this article applies and who is or is likely to be chargeable with tax under the provisions of the Income Tax Acts, he shall give notice in writing to the Commissioner not later than three months after the date of the commencement of such employment, stating the full name and address of such individual, the date of commencement

and the terms of employment.

(3) Any person ceasing to employ in Malta an individual to whom this article applies and who is or is likely to be chargeable with tax under the Income Tax Acts, shall give notice in writing to the Commissioner not less than one month before such individual ceases to be employed by him in Malta stating the name and address of the individual and the expected date of cessation:

Provided that the Commissioner may accept such shorter notice as he may deem reasonable.

(4) Any person who employs in Malta an individual to whom this article applies and who is to the knowledge of such person about to leave or intending to leave Malta on termination of his employment with such person shall give notice in writing to the Commissioner of the expected date of departure of such individual. Such notice shall be given not less than one month before the expected date of departure:

Provided that the Commissioner may accept such shorter notice as he may deem reasonable.

(5) Where any person in his capacity as employer of an individual hereinafter mentioned has in his possession any monies which whatsoever are or may be payable to or for the benefit of an individual to whom this article applies and who has ceased or is about to cease to be employed by such person in Malta, he shall not without the permission of the Commissioner, notwithstanding the provisions of any other law, pay any part of such monies to or for the benefit of such individual until the expiry of thirty days after the receipt by the Commissioner of such notice as is required to be given under subarticle (4).

(6) The Commissioner may by notice in writing whenever he thinks fit declare any person who employs in Malta an individual to whom this article applies, being an individual who is or is likely to be chargeable with tax under the Income Tax Acts, to be the representative taxpayer of such individual, and the person so declared shall be the representative taxpayer of such individual for the purposes of the Income Tax Acts and may be required to pay any tax due by such individual from property or monies, including pension, salary, wages or any remuneration which may be due by him to such individual and, in default, such payment shall, notwithstanding the provisions of any other law, be recoverable from the representative taxpayer so declared by the Commissioner in the manner provided in Part VII of this Act.

(7) Any notice to be given to the Commissioner in accordance with the provisions of this article shall be given in addition to any other notice to be given under article 23.

(8) Where services are rendered in Malta for any person resident in Malta by an individual who does not have an employer in Malta the foregoing provisions of this article shall apply to such resident person in the same manner as if he were the employer of the said individual.

Payment by deduction at source from certain income.

Amended by:

V. 1998.5;

IX. 1999.4;

II. 2003.44;

II. 2004.49;

L.N. 425 of 2007.

Cap. 123.

23. (1) Where any person pays income chargeable under article 4(1)(a), (b) or (d) of the Income Tax Act, or any other income as may be prescribed, he shall, at the time of payment deduct tax therefrom at such amount and in such manner as may be prescribed under this subarticle or under any other provision of the Income Tax Acts.

(2) Any tax deducted as required under subarticle (1) shall be remitted to the Commissioner in such manner and within such period as may be prescribed.

(3) Deductions of tax made under subarticle (1) shall be set off for the purposes of collection against the tax chargeable on the corresponding income for the year of assessment following that during which the relative deductions are made, or for any other year of assessment as the Commissioner may elect and any tax which cannot be set off as aforesaid shall be refunded in accordance with the provisions of article 48:

Provided that such tax shall not be set off or refunded as aforesaid unless the person receiving the income has declared that income in a return of income furnished in accordance with article 10 or made an election under article 12 for the year of assessment following that during which the deductions were made or has complied with such conditions that may be prescribed to the extent that they are relevant to the income in question:

Provided further that the provisions of this subarticle shall not apply where any tax deducted as aforesaid has not been remitted to the Commissioner and the Commissioner is satisfied that such non-remittance was due to any fault or connivance on the part of the person receiving the income.

(4) If any person fails to deduct tax in accordance with the provisions of any rules referred to in subarticle (1) or after deducting such tax, fails to pay it to the Commissioner within the prescribed period or who otherwise fails to comply with the provisions of such rules, he shall be liable to the prescribed additional tax which the Commissioner is empowered to impose under subarticle (5) hereof and where applicable he shall, in addition, be chargeable with the tax which should have been deducted or paid.

(5) Where the Commissioner has reason to believe that a person has made a default against the provisions of any rules referred to under this article he may at any time serve upon such person a default notice as prescribed showing the tax which should have been deducted or remitted and/or any additional tax imposed upon him as aforesaid, so however that such additional tax shall not exceed the amount of four hundred and sixty-five euro (465) for every such default; and the additional tax so imposed shall be borne by the person to whom subarticle (4) hereof applies and shall not be recoverable by such person wholly or in part from the person receiving the income.

(6) If any person feels aggrieved by a default notice served upon him under subarticle (5) hereof, he may apply to the Commissioner in writing contesting such notice in the manner and

within such period as may be prescribed.

(7) Where a person has not contested the default notice referred to in subarticle (5) hereof or where his contestation has been refused, the Commissioner may, where the payment of the amount due has not already been made, serve a demand notice on such person showing the tax which should have been deducted or remitted and/or any additional tax imposed upon him; and, unless the contrary is proved, the said notice shall be sufficient evidence that the amount shown therein is the amount due to be paid to the Commissioner by the said person:

Provided that a person on whom a demand notice has been served in consequence of a refusal by the Commissioner in accordance with this subarticle may appeal such decision in a court of law within fifteen days from the date of service of such notice.

(8) The Commissioner may in his discretion remit wholly or in part any additional tax imposed under the provisions of this article.

(9) Any additional tax imposed under the provisions of this article shall not be deemed to be part of any tax paid or payable for the purposes of any other article of this Act or of any article of the Income Tax Act or any rules made thereunder.

Cap. 123.

(10) The powers conferred upon the Commissioner by this article shall be in addition to any right conferred upon him to commence proceedings in respect of an offence under the provisions of subarticle (13).

(11) Notwithstanding the provisions of any other law, the demand notice by the Commissioner referred to in subarticle (7), showing the amount due to be paid under this article, shall constitute a privileged claim over the assets of the employer ranking immediately after the wages of employees and claims of the Director of Social Security for any amounts due by way of contribution under article 116 of the Social Security Act, and shall be paid after such wages and claims in preference to all other claims whether privileged or hypothecary.

Cap. 318.

(12) Any person to whom this article applies shall at all times maintain proper and sufficient records as may be prescribed and shall, whenever called upon to do so by the Commissioner or by any public officer authorised by him in writing, produce for inspection at such person's premises or as otherwise directed, all wage sheets, lists and documents and other records whatsoever relating to any payment made by him of income chargeable under paragraph (b) or (d) of subarticle (1) of article 4 of the Income Tax Act, to any other income as may be prescribed, to any tax deduction made therefrom or to the accounting of any such payment or tax deduction:

Cap. 323.

Provided that all such records shall be retained for a period of not less than nine years after the completion of the transactions, acts or operations to which they relate and shall be made readily available for examination at any time during such period.

The aforesaid period of prescription shall in no case commence before such person has fully complied with the

provisions of this article and of any rules made thereunder.

(13) Any person who contravenes or fails to comply with the provisions of this article or of any rules referred to in subarticle (1) shall be liable, on conviction, to a fine (*multa*) of not less than one hundred and sixteen euro (116) and not exceeding one thousand and one hundred and sixty euro (1,160) or to imprisonment for a term not exceeding six months or to both such fine and imprisonment, and to a further fine (*multa*) of not less than four euro (4) but not exceeding twenty-three euro (23) for every day during which the offence continues after conviction:

Provided that the Commissioner may compound any offence under this subarticle and may before judgment stay or compound any proceedings thereunder:

Provided further that the offence under this subarticle shall continue to subsist until the offender shall have conformed and complied with the provisions of this article or of any rules referred to therein.

Return to be furnished of income received on account of, or paid to, other persons.
Amended by:
IX. 1999.5;
XIII. 2004.87;
I. 2008.5.

24. (1) Where any person in any capacity whatsoever -

- (a) receives any profits or income to which the provisions of the Income Tax Acts apply which belong to some other person; or
- (b) pays to some other person, or to his order, any profits or income to which the provisions of the Income Tax Acts apply and which belong to such other person,

then the Commissioner may give notice to such first-named person requiring him to furnish within the time limited by such notice, not being less than thirty days from the date of service of such notice, a return containing -

- (i) a true and correct statement of all such profits and income; and
- (ii) the name and address of every person to whom the same belong or are paid:

Provided that, subject to the provisions of article 10A, no such person shall, by virtue of this article, be obliged to disclose any information in relation to another person which he holds in the capacity of a trustee of a trust or which is otherwise covered by the duty of professional secrecy.

(2) A notice under subarticle (1) may be given by the Commissioner so as to apply either generally to persons to whom such profits or income as are mentioned in that subarticle belong or are paid or to any particular person or class of persons as aforesaid.

Returns to be furnished by trustees.
Added by:
XIII. 2004.88.

24A. (1) The Commissioner may give notice to a trustee of a trust requiring him to furnish, within the time limited by such notice, not being less than thirty days from the date of service of such notice, a return containing -

- (a) a true and correct statement, certified by a warrant holder referred to in article 57, of the income attributable to such trust as referred to in article 27B of the Income Tax Act; and Cap. 123.
- (b) (i) the names and addresses of those beneficiaries to whom income has been allocated as provided in article 27D(4) of the Income Tax Act, together with the relative amounts so allocated; and Cap. 123.
- (ii) the amount, date of allocation, type and country of source of the income so allocated for each beneficiary referred to in subparagraph (i).
- (2) (a) A return under the provisions of this article shall be deemed to be a return required to be furnished under the provisions of article 10.
- (b) A trustee who issues a false certificate to the Commissioner shall be guilty of making a false statement within the meaning of article 52(1)(b).

24B. Where -

- (a) the settlor of a trust is a person resident in Malta; and
- (b) none of the trustees of such trust is a person resident in Malta; and
- (c) property is settled into such trust after such date as the Minister responsible for finance may, by notice in the Gazette, appoint,

Returns to be furnished by settlors.
Added by:
XIII. 2004.88.
Amended by:
L.N. 425 of 2007.

the said settlor shall inform the Commissioner of the property so settled together with a copy, where applicable, of the relevant trust instrument or of any other document evidencing the existence of such trust. This information shall be submitted to the Commissioner by not later than thirty days from the date of the relevant settlement. Any settlor who fails to comply with the provisions of this article shall be guilty of an offence and liable on conviction to a fine (*multa*) of not less than one hundred and sixteen euro (116) and not exceeding one thousand and one hundred and sixty euro (1,160) and to a further fine (*multa*) of not less than four euro (4) but not exceeding twenty-three euro (23) for every day during which the offence continues after the lapse of the said thirty days.

24C. For the purpose of ensuring compliance with the provisions of the Income Tax Acts, the Commissioner may:

- (a) demand and request from any person the production of information which, in the opinion of the Commissioner, relates to the income or the economic activities of any other person or class of persons;
- (b) inspect and request the production of any books, records or documents or a copy or extract thereof, which, in the opinion of the Commissioner, relate to the income or the economic activity of any person or class of persons:

Powers of the Commissioner to request information.
Added by:
II. 2005.34.
Amended by:
I. 2008.6.

Provided that, subject to article 10A, the information requested under this article may not include:

- Cap. 377. (i) any information falling within the definition of a "professional secret" or "secret" in terms of article 2 of the Professional Secrecy Act; or
- Cap. 440. (ii) any information falling within the definition of "sensitive personal data" in terms of article 2 of the Data Protection Act:

Cap. 440. Provided further that, subject to article 10A, where any such information is protected by professional secrecy or the provisions of the Data Protection Act and such protection is for the benefit of any person, such information in respect of any other person shall be given excluding therefrom the name of the person in whose interest such protection is given.

Occupiers to furnish return of rent payable.

25. The Commissioner may give notice in writing to any person who is the occupier of any house, property, land or industrial building requiring him to furnish within a reasonable time a return containing -

- (a) the name and address of the owner of such house, property, land or industrial building; and
- (b) a true and correct statement of the rent payable and any other consideration passing therefor.

Return of lodgers and inmates.

26. The Commissioner may give notice in writing to any person requiring him within the time limited by such notice, not being less than thirty days from the date of service of such notice, to furnish a return containing the name of any lodger or inmate who is at the date of the notice resident in his house, hotel or institution, and has been so resident, except for temporary absences, throughout the preceding three months.

Certain partnerships.

27. (1) Where the Commissioner is satisfied that a trade, business, profession or vocation is carried on by two or more persons jointly, the income of any partner from the partnership, otherwise than in a partnership *en commandite* the capital of which is divided into shares or in a partnership *anonyme*, shall be deemed to be the share to which he was entitled during the year preceding the year of assessment in the income of the partnership, such income being ascertained in accordance with the provisions of the Income Tax Acts and shall be included in the return of income to be made by such partner under the provisions of the Income Tax Acts.

(2) The precedent partner, that is to say the partner who of the partners resident in Malta -

- (i) is first named in the agreement of partnership, or
- (ii) is the precedent acting partner if the partner named with precedence is not an acting partner,

shall, when required by the Commissioner, make and deliver a return of the income of the partnership for any year, such income being ascertained in accordance with the provisions of the Income Tax Acts, and declare therein the names and addresses of the other

partners in the firm together with the amount of the share of the said income to which each partner was entitled for that year; and -

- (a) where no partner is resident in Malta, the return shall be made and delivered by the attorney, agent, manager or factor of the firm resident in Malta; and
- (b) the provisions of the Income Tax Acts with respect to the failure to deliver returns or particulars in accordance with a notice from the Commissioner shall apply to any return required under this article.

(3) Where the Commissioner is not satisfied that a trade, business, profession or vocation is carried on by two or more persons jointly, the gains or profits from such trade, business, profession or vocation shall be deemed to have accrued to such person entitled to a share of such gains or profits as the Commissioner may elect, and assessment of tax shall be made accordingly.

(4) Where an assessment has been made in accordance with the provisions of subarticle (3), the partnership shall not be considered to be a body of persons for the purposes of article 60 of the Income Tax Act.

Cap. 123.

(5) Nothing in this article contained shall prevent the decision of the Commissioner in the exercise of any discretion given to him from being questioned in an appeal in accordance with articles 35 and 37.

28. (1) Every notice to be given by the Commissioner under the Income Tax Acts shall be signed by the Commissioner or by some person or persons from time to time appointed by him for that purpose, and every such notice, including a receipt for payment of tax, shall be valid if the signature of the Commissioner or of such person or persons is duly printed, stamped or written thereon:

Signature of notices.
Amended by:
II. 2003.45.

Provided that any notice in writing under the provisions of the Income Tax Acts to any person requiring him to furnish particulars to the Commissioner, or any notice under the Income Tax Acts requiring the attendance of any person or witness before the Commissioner shall be personally signed by the Commissioner or by any person duly authorised by him.

(2) A signature attached to any notice and purporting to be the signature of any person so appointed shall be taken to be the signature of that person until the contrary be shown.

29. (1) Notice may be served on a person either personally or by being sent by post to his last known business or private address, and shall in the latter case unless the contrary is proved be deemed to have been served, in the case of persons resident in Malta, not later than the third day succeeding the day when posted, and in the case of persons not so resident, the day succeeding the day on which the notice would have been received in the ordinary course by post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

Service of notices.

Free postage.

(2) All returns, additional information and resulting correspondence and payment of tax under the provisions of the Income Tax Acts may be sent free of postage to the Commissioner in envelopes marked "Income Tax".

Time and date for delivery of returns, etc., and for payments.
Added by:
IX.1999.6.

29A. (1) Any period or date laid down in or under the Income Tax Acts for the furnishing, delivery or service of a return, notice or other document to or on the Commissioner or for any payment to the Commissioner shall be deemed to expire at noon of the last day of that period or of that date or at such later time as may be prescribed.

Cap. 252.

(2) When the date on which a return, notice or other document is to be furnished, delivered or served or deemed to be served or on which a payment is to be made in terms of any provision of this Act falls, were it not for the provisions of this subarticle, on a Saturday or a public holiday as established in the National Holidays and Other Public Holidays Act, that date shall be deemed to fall on the first working day, other than a Saturday, following the said Saturday or public holiday.

PART V

Assessments

Assessments relating to years preceding the year of assessment 1999.
Substituted by:
IX. 1999.7.
Amended by:
II. 2004.50.

30. (1) Where a person has delivered a return of income for any year of assessment preceding the year of assessment 1999 the Commissioner may -

- (a) accept the return and make an assessment accordingly;
- (b) after considering such further returns, books or evidence, if any, as may be produced before or obtained by him, refuse to accept the return and to the best of his judgement determine by order in writing the amount of the chargeable income of the person and assess him accordingly.

(2) Where a person has not delivered a return of income for any year of assessment preceding the year of assessment 1999 and the Commissioner is of the opinion that such person is liable to pay tax, he may, according to the best of his judgement, determine the amount of the chargeable income of such person and assess him accordingly, but such assessment shall not affect any liability otherwise incurred by such person by reason of his failure or neglect to deliver a return.

(3) Where it appears to the Commissioner that a person has not been assessed or has been assessed at a lesser amount than that which ought to have been charged for any year of assessment preceding the year of assessment 1999, the Commissioner may assess such person at such amount or additional amount as, according to his judgement, ought to have been charged and the provisions of subarticle (1)(b) shall apply to such an assessment.

(4) An assessment for a year of assessment made pursuant to any of the foregoing provisions of this article shall be made within that year of assessment or within eight years after the expiration

thereof:

Provided that in cases where there has not yet been a final decision or a final judgement, the notification of an assessment to the taxpayer after the expiration of the periods specified in this subarticle shall not constitute and shall not be deemed to have ever constituted a reason for the said assessment or notice thereof being declared prescribed, time-barred or otherwise quashed, if such assessment is delivered by not later than the 31st December, 2007:

Provided further that where such notification is not made by the 31st December, 2007 because the taxpayer could not be found or for other reasons attributable to him, such assessment shall be deemed to have been duly notified if, not later than 31st December 2008, the Commissioner publishes a notice in the Gazette and in one or more daily newspapers stating that such assessment has been made and inviting the taxpayer to call for it at the Department.

(5) Notwithstanding the provisions of subarticle (4), where a person has not made to the Commissioner the returns required by the Income Tax Acts for any year of assessment preceding the year of assessment 1999 or a full and true disclosure of all material facts necessary for his assessment for any such year and there has been an avoidance of tax, the Commissioner, where he is of the opinion that the avoidance of tax is due to fraud or evasion, may at any time assess such person at such amount or additional amount as according to his judgement ought to have been charged and take action for the payment of tax, additional tax and any penalty.

(6) Where in the opinion of the Commissioner there has been fraud or evasion as aforesaid, such decision shall be subject to appeal under the provisions of articles 35 and 37.

31. (1) Where a person has delivered a return of income under article 10 that includes a self-assessment for the year of assessment 1999 or any subsequent year of assessment, the Commissioner shall determine the chargeable income, the tax chargeable thereon and the tax payable by or repayable to that person for that year of assessment in the amounts indicated by that person in the self-assessment, making such arithmetical adjustments as may result to be necessary on the basis of the information contained in that return.

Assessment, and determinations relating to the year of assessment 1999 and subsequent years.
Substituted by:
IX. 1999.7.
Amended by:
II. 2003.46.

(2) Where a person has made an election under article 12 for a year of assessment the Commissioner shall, on the basis of the information in his possession, determine the chargeable income, the tax chargeable thereon and the tax payable by or repayable to that person for that year of assessment.

(3) Where a person has not delivered a return of income for the year of assessment 1999 or any subsequent year and has not made an election under article 12 or, having made such an election has, after being given notice by the Commissioner to make a return as provided in article 13, failed to file such a return, and the Commissioner is of the opinion that such person is liable to pay tax, he may determine the amount of the tax payable by that person for that year of assessment on the basis of an estimate made in such

manner and by such method as the Commissioner deems fit without prejudice to any liability otherwise incurred by that person by reason of his failure or neglect to deliver a return.

(3A) Where an estimate has been made in the circumstances mentioned in subarticle (3) and the return has still not been delivered, the Commissioner may make an assessment under the provisions of subarticle (5) on the person concerned, without the need to have previously notified the said person that an enquiry is being conducted into his tax declarations and liabilities.

(4) The Commissioner may make such enquiries and verifications as he deems fit with respect to any tax payable by or repayable to a person and may make such adjustments to a determination made under the other provisions of this article as may be agreed upon in writing with that person or as may be required in accordance with article 13(6).

(5) Where it appears to the Commissioner that the tax payable by a person for the year of assessment 1999 or any subsequent year of assessment has been determined at a lesser amount than that which ought to have been charged, the Commissioner may after considering such further returns, books or evidence, if any, as may be produced before or obtained by him, to the best of his judgement make an assessment of the chargeable income of that person, the tax chargeable thereon and the tax payable by or repayable to that person for that year of assessment, and where the Commissioner after having made an assessment is of the opinion that any tax so assessed has been assessed at a lesser amount than that which ought to have been charged he may, in the same manner, make an additional assessment or assessments.

(6) An assessment or additional assessment for a year of assessment under subarticle (5) shall be made not earlier than the time prescribed under article 10(1) for the submission of the return of income for that year and not later than five years from the end of the year in which a return of income or a further return for that year was furnished or in which an election under article 12 for that year was made.

(7) Notwithstanding the provisions of subarticle (6) where a person:

- (a) has furnished the Commissioner with a return or returns and has not made therein a full disclosure of all material facts relevant to the determination of his income and allowable deductions; or
- (b) for the purpose of avoiding tax or through gross or wilful neglect has furnished the Commissioner with a return which is incorrect or misleading in any material respect,

an assessment or an additional assessment under subarticle (5) may be made at any time after the time laid down in accordance with this Act for the submission of the return of income for that year.

(8) A decision on the existence of any circumstance that warrants the application of the provisions of subarticle (7) shall be

subject to appeal under the provisions of articles 35 and 37.

(9) A determination made pursuant to subarticle (1), (2) or (3) shall not be construed as being an assessment for any of the purposes of the Income Tax Acts.

31A. The tax chargeable on the income of a company shall be declared, determined, assessed and paid in the currency (or where applicable, in currencies *pro rata*) in which its share capital is denominated and any refunds and repayments made in accordance with the provisions of the Income Tax Acts in respect of such tax shall be made in the same currency (or, where applicable, in currencies *pro rata*) in which such tax was paid.

Assessment and
payment of tax in
foreign currency.
Added by:
IX. 1999.7.

32. (1) The Commissioner may for the purposes of the Income Tax Acts cancel any assessment raised by him, and such cancellation shall be without prejudice to the raising of any assessment required to be raised under this Act in replacement of the assessment so cancelled which shall be deemed not to have been raised.

Cancellation of
assessments.
Amended by:
XXIII.1995.2;
I. 1999.2;
II. 2002.80.

(2) Nothing in this article contained shall empower the Commissioner to cancel or raise any assessment for any year where such cancellation or raising of any assessment would involve the opening of any matter which has been determined on appeal for that year.

(3) Notwithstanding any other provisions of the Income Tax Acts where more than eight years have elapsed since the expiration of the year of assessment to which an assessment raised by the Commissioner before 1st January, 1992 refers and such assessment is still not final and conclusive in terms of article 38, and it appears to the Commissioner that such assessment may be invalid or void because of any mistake, defect or omission by the Commissioner in making such assessment or in the notice thereof, the Commissioner may within ten years from 1st January 1992 or within two years from the date the taxpayer applies to the Commissioner in writing indicating as a further ground of objection such mistake, defect or omission raise a new assessment in terms of article 30 for the year of assessment in question and the provisions of the Income Tax Acts as to notice of assessment, appeal and other proceedings under the Income Tax Acts shall apply to such an assessment and to the tax charged thereon:

Provided that:

- (i) the provisions of this subarticle shall similarly apply to those assessments which have been raised by the Commissioner on 1st January 1992 or any subsequent date other than assessments raised under article 31 of the Act; and
- (ii) where a new assessment in terms of article 30 and to which this subarticle or paragraph (i) of this proviso refers has not been raised by the Commissioner within the period referred to in this subarticle, the Commissioner may at any

time raise a new assessment on the taxpayer on all or any part of the chargeable income of the taxpayer as declared by him for the year of assessment in question upon which no valid assessment has been raised; and except for the provisions of article 30(4), the provisions of the Income Tax Acts as to notice of assessment, appeal and other proceedings under the Income Tax Acts shall apply to such assessment and to any tax chargeable thereunder.

Power of the Commissioner to revise assessment in case of objection.
Amended by:
XXIII.1995.3;
XX.1996.21.

33. (1) The Commissioner shall cause to be served personally on or sent by registered post to each person assessed to tax a notice addressed to him at his usual place of abode or business, stating the amount of his chargeable income and the amount of tax payable by him and informing him of his rights under the provisions of subarticle (2).

(2) If any person disputes the assessment he may apply to the Commissioner, by notice of objection in writing, to review and to revise the assessment made upon him. Such application shall state precisely the grounds of his objection to the assessment and shall be made within thirty days from the date of the service of the notice of assessment:

Provided that the Commissioner, upon being satisfied that owing to absence from Malta, sickness or other reasonable cause, the person disputing the assessment was prevented from making the application within such period, shall extend the period as may be reasonable in the circumstances:

Provided also that no such notice may be validly entered against any assessment unless -

- (a) the return for the respective year of assessment has been filed in terms of articles 10 and 11 before the notice is given to the Commissioner;
- (b) the tax not in dispute for the said year of assessment has been paid in full before the time limit set out in article 42(1) where the main income of the person for the year immediately preceding the said year of assessment is derived from sources other than those falling under article 4(1)(b) and (d) of the Income Tax Act which are subject to deduction of tax under the PAYE rules:

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Provided further that where any person has already delivered any notice under this article against any assessment and such assessment is still not final and conclusive in terms of article 38 he shall comply with the preceding proviso hereto by the 28th June, 1996, otherwise the notice given will be rejected and the assessment objected to will become final and conclusive on such date.

(3) On receipt of the notice of objection referred to in subarticle (2), the Commissioner may require the person giving the notice of objection to furnish such particulars or information as the

Commissioner may deem necessary with respect to the income of the person assessed and to produce all books or other documents in his custody or under his control relating to such income, and may summon any person who, he thinks, is able to give evidence respecting the assessment to attend before him and produce all books or other documents in his custody or under his control and may examine such person on oath or otherwise:

Provided that the clerk, agent, employee or other person confidentially employed in the affairs of the person to be charged and the parents, spouse or children of such person shall not be examined except on the request of the assessee:

Provided further that except at the request of the assessee, no person shall be examined in relation to any information concerning the assessee in respect of which the said person is under the duty of professional secrecy.

(4) In the event of any person assessed, who has objected to an assessment made upon him, agreeing with the Commissioner as to the amount at which he is liable to be assessed, the assessment shall be amended accordingly, and notice of the tax payable shall be served upon such person.

(5) If no agreement is reached the Commissioner shall determine the tax by order in writing:

Provided always that in the event of any person who, under the provisions of subarticle (2), has applied to the Commissioner for a revision of the assessment made upon him, failing to agree with the Commissioner as to the amount at which he is liable to be assessed, his right of appeal under the provisions of this Act, against the assessment made upon him, shall remain unimpaired.

PART VI

Appeals

34. (1) There shall be a Board of Special Commissioners, hereinafter referred to as "the Board", for the purpose of hearing and determining appeals in accordance with the provisions of article 35. The Board shall consist of a chairman, who shall be one of a panel of persons appointed by the President of Malta to serve as special commissioner in that capacity, and of two other special commissioners who shall be two of a panel of persons appointed as aforesaid to serve in such other capacity, and who shall serve on the Board in accordance with such distribution of duties, including provision for inability to serve and other circumstances, as the Minister responsible for finance may establish.

(2) A person shall be disqualified from being appointed or continuing to be a special commissioner as long as he is a member of the House of Representatives.

(3) Every special commissioner shall, before entering upon his office, make and subscribe a declaration on oath in the form prescribed to that effect, before the Court of Appeal.

(4) Every special commissioner shall hold office during the

Establishment of
Board of Special
Commissioners.

President of Malta's pleasure.

(5) The President of Malta may, without assigning any reason, revoke the appointment of any special commissioner and he may appoint new special commissioners whenever necessary.

(6) The Commissioner shall publish within a reasonable time all decisions of the Board on points of law, giving the facts of the appeal and the arguments.

(7) The Board shall have the power to summon any person to give evidence or to produce books or other documents before it and the chairman of the Board or the member acting as chairman at a meeting of the Board, shall have power to administer an oath to any person appearing before the Board:

Provided that -

- (i) the clerk, agent, employee or other person confidentially employed in the affairs of the appellant and the parent, spouse or children of such appellant shall not be called to give evidence or to be examined except on the request of the appellant;
- (ii) any person, other than the Commissioner, who has or has had any official duty, or is or has been employed, in the administration of the Income Tax Acts, shall not be called to give evidence or to be examined in connection with any official matter concerning the assessment under appeal except on the request of the Commissioner;
- (iii) except at the request of the appellant, no person shall be examined in relation to any information concerning the appellant in respect of which the said person is under the duty of professional secrecy.

(8) The special commissioners shall receive such remuneration as the President of Malta may determine.

(9) The special commissioners shall not be personally liable for any act or default of the Board done or omitted to be done in good faith in the course of the operations of the Board.

(10) The Minister responsible for finance may make rules governing appeals to the Board of Special Commissioners and, without prejudice to the generality of the foregoing, may make rules -

- (a) prescribing the manner in which an appeal shall be made to the Board and the fees to be paid in respect of any such appeal;
- (b) prescribing the procedure to be adopted by the Board in hearing an appeal and the records to be kept by the Board;
- (c) prescribing the manner in which the Board shall be convened and the places where and the times at which

the Board shall hold sittings;

- (d) prescribing a scale of costs; and
- (e) generally for the better carrying out of the provisions of this Part of this Act relating to the Board of Special Commissioners.

35. (1) Any person who, being aggrieved by an assessment made upon him, has failed to agree with the Commissioner in the manner provided in article 33(4) may enter within thirty days after the date of service upon him of notice of the refusal of the Commissioner to amend the assessment as desired, an appeal against such assessment to the Board of Special Commissioners.

Appeal to special commissioners.
Amended by:
IV: 2007.27.

(2) Every person appealing shall appear before the Board either in person or by agent on the day and at the time fixed for the hearing of the appeal:

Provided always that if it be proved to the satisfaction of the Board that owing to absence from Malta, sickness or other reasonable cause, any person is prevented from attending at the hearing of his appeal on the day and at the time fixed for that purpose, the Board may postpone the hearing of such appeal for such reasonable time as it thinks necessary for the attendance of the appellant.

(3) The onus of proving that the assessment complained of is excessive shall be on the appellant.

(4) Subject to the provisions of subarticle (3), the Board shall confirm, reduce, increase or annul the assessment or make such order thereon as to it may seem fit. Notice of the Board's decision, the date thereof, and of any amendments to the assessment shall be sent to the Commissioner who shall cause a copy thereof to be served either personally on, or by registered post to, the person appealing together with a notice informing such person of his rights under the provisions of article 37.

(5) No appeal shall lie from the decision of the Board except on a question of law only.

(6) An appeal to the Board made by a taxpayer or on his behalf cannot be withdrawn or discontinued except with the consent of the Commissioner.

(7) The Board may order the correction of any arithmetical error incurred in any of its decisions on an application served on the other party and filed, in the case of the Commissioner, within ten days after the date of the decision and, in the case of the taxpayer, within ten days after the service upon him of such decision.

36. The following provisions shall have effect for the purposes of any appeal made under article 35:

Certain provisions to be followed in the hearing of appeals.
Amended by:
IV: 2007.28.

- (a) the Board shall summarily reject any appeal before it for any year of assessment and confirm the assessment complained of unless prima facie proof is brought before it that, by the date on which the appeal was

entered, appellant had filed under articles 10 and 11 a return of his income chargeable for the said year of assessment;

- (b) where the assessment complained of has been raised by the Commissioner in accordance with the provisions of article 30(1)(b) or (2) or (3), or of article 31(5) and the dispute before the Board includes a dispute concerning any income arising from sources referred to in article 4(1)(a) of the Income Tax Act, no evidence shall be considered by the Board as sufficient to warrant any change in the assessment concerning that income unless the person appealing against the commissioner's decision has, not later than the thirtieth day after that fixed for the first hearing of the appeal, delivered to the Commissioner the records required to be kept by article 19 and the other documents required by that article to support or accompany such records, and unless he subsequently confirms such records and documents on oath before the Board;
- (c) the Commissioner may at any time during the hearing of an appeal require a declaration by the Board as to whether the appeal should be rejected and the assessment complained of confirmed in accordance with the provisions of paragraph (a) or (b).

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Appeals to the
Court of Appeal
(Inferior
Jurisdiction).
Amended by:
VI. 2001.25;
IV. 2007.29;
L.N. 425 of 2007.

37. (1) Any person who, having appealed to the Board feels aggrieved by its decision may, by application filed within thirty days from the date of service upon him of the decision of the Board, appeal against the decision, on a question of law only -

- (i) where the total amount of tax, additional tax, fines and interest in dispute at the time when the appeal was lodged before the Board is less than one million and one hundred and sixty-five thousand euro (1,165,000), to the Court of Appeal (Inferior Jurisdiction); and
- (ii) where the total amount of tax, additional tax, fines and interest in dispute at the time when the appeal was lodged before the Board is of one million and one hundred and sixty-five thousand euro (1,165,000) or more, to the Court of Appeal.

(2) The Commissioner may, if he is dissatisfied with the decision of the Board, appeal against the decision on a question of law only to the court that is competent to take cognizance of the appeal in accordance with subarticle (1)(i) and (ii) by an application filed within thirty days from the date of the Board's decision.

(3) Unless rules made hereunder provide a longer period, seven clear days' notice shall be given to the parties of the date fixed for the hearing of the appeal.

(4) The court may confirm, reduce, increase or annul the assessment or make such orders thereon as it may deem fit.

(5) Notice of the amount of tax payable under the assessment as determined by the court shall be served by the Commissioner, either personally on, or by registered post to, the other party.

(6) The Commissioner shall publish within a reasonable time all decisions of the court giving the facts of the appeal and the arguments.

(7) The cost of the appeal shall be in the discretion of the Court of Appeal or of the Court of Appeal (Inferior Jurisdiction), as the case may be, and shall be a sum fixed by the registrar.

(8) The Minister responsible for justice may by regulations under this subarticle establish the fees payable in the registry of the courts in relation to the filing of judicial acts in connection with an appeal to the Court of Appeal and to the Court of Appeal (Inferior Jurisdiction), as the case may be, under this article:

Provided that until such fees have been so established by the Minister, the fees contained in Schedule A to the Code of Organization and Civil Procedure shall apply. Cap. 12.

38. Where no valid objection or appeal has been lodged within the time limited by this Part against an assessment as regards the amount of the chargeable income assessed thereby or the tax rebate granted in terms of article 57 of the Income Tax Act, or where the amount of the chargeable income or tax rebate has been agreed to under article 33(4), or where the appeal has been withdrawn or discontinued, or where the amount of such chargeable income or tax rebate has been determined on objection or appeal, the assessment as made or agreed to or determined on appeal, as the case may be, shall be final and conclusive for all purposes of the Income Tax Acts as regards the amount of such chargeable income or tax rebate: Assessments or amended assessments to be final.
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Provided that nothing in this Part shall prevent the Commissioner from making any refund under the provisions of article 48 or any assessment or additional assessment for any year of assessment which does not involve reopening of any matter which has been determined on appeal for the year.

39. (1) No assessment, warrant or other proceeding purporting to be made in accordance with the provisions of the Income Tax Acts shall be quashed, or deemed to be void or voidable, for want of form, or be affected by the reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of the Income Tax Acts or any Act amending the same, and if the person assessed or intended to be assessed or affected thereby is designated therein according to the common intent and understanding. Errors, etc., in assessments and notices.

(2) An assessment shall not be impeached or affected -

(a) by reason of a mistake therein as to -

- (i) the name or surname of a person liable; or
- (ii) the description of any income; or

- (iii) the amount of tax charged;
- (b) by reason of any variance between the assessment and the notice thereof:

Provided that in cases of assessment, the notice thereof shall be duly served on the person intended to be charged and such notice shall contain, in substance and effect, the particulars on which the assessment is made.

(3) In the case of a body of persons it shall be sufficient for the purposes of the Income Tax Acts if only the name of the body of persons appears on any notice issued thereunder by or on behalf of the Commissioner.

(4) Where any appeal has been entered from any assessment raised by the Commissioner and such assessment is by final decision or judgment declared invalid or void, the Commissioner may, within one year of the final decision or judgment as the case may be, where a new assessment cannot be issued under any other provision of the Income Tax Acts, raise a new assessment on the taxpayer on all or any part of the chargeable income of the taxpayer as declared by the taxpayer for the year of assessment in question upon which no valid assessment has been raised; and the provisions of the Income Tax Acts as to notice of assessment, appeal and other proceedings under the Income Tax Acts shall apply to such assessment and to any tax chargeable thereunder.

PART VII

Collection

Executive title.
Amended by:
XXIII. 1995.4;
V. 1998.6;
II. 2004.51.
Cap. 12.
Cap. 123.

40. (1) The following shall constitute an executive title within the meaning and for the purposes of Title VII of Part 1 of Book Second of the Code of Organization and Civil Procedure, namely:

- (a) the notice referred to in article 73(4)(c) of the Income Tax Act;
- (b) the notice referred to in article 23(7);
- (c) the final and conclusive assessment referred to in article 38;
- (d) the notice referred to in article 42(6);
- (e) the notice referred to in article 43(6);
- (f) the notice referred to in article 46(1) and the notice of assessment and demand in writing by the Commissioner referred to in article 46(3):

Provided that except in the cases referred to in paragraph (f), the procedure laid down in article 44(1)(b) shall be followed in all cases before payment is enforced in virtue of such title.

(2) Where in accordance with the provisions of article 44(1)(b), a payment is enforceable against a body of persons in virtue of an executive title, the Commissioner may, without the need of any other act, proceed with such enforcement against every officer thereof who is personally liable therefor in terms of article 7 or of

any rules made thereunder.

41. (1) Where notice of objection or appeal against an assessment has been given, the Commissioner may, in his discretion, keep in abeyance the collection of not less than ninety per cent of that part of the tax assessed thereunder which is in dispute.

Procedure in cases where objection or appeal is pending.

(2) This article shall not apply to the tax deductible in accordance with the provisions of article 23 and to the tax payable in accordance with the provisions of article 42(2).

42. (1) Tax due for any year of assessment preceding the year of assessment 1999 shall be payable within the period ending on the last day of the first calendar month immediately following that during which service has been made of a notice of assessment under article 33.

Time within which payment is to be made.
Amended by:
XX. 1996.21;
IX. 1999.8.

(1A) Tax chargeable for the year of assessment 1999 or any subsequent year of assessment shall be due and payable by not later than such date, being a date not earlier than the tax return date as determined in accordance with article 10, during that year, in the Income Tax Acts referred to as the "tax settlement date", as may be prescribed.

(2) Notwithstanding anything contained in subarticle (1) and (1A), provisional tax shall be paid to the Commissioner in the year immediately preceding the year of assessment by every person in respect of his liability for the year of assessment in such amount and in such manner and on such date as may be prescribed:

Provided that the provisions of this subarticle shall not apply to the income of any body of persons arising from activities relating or ancillary to banking, sound or television broadcasting, film renting or insurance (excluding commissions derived from the sale of insurance by bodies of persons residing in Malta) in respect of the liability of such body of persons for any year of assessment preceding the year of assessment 1990.

(3) Apart from any payment of provisional tax which may be due under the provisions of subarticle (2) -

- (a) every person shall make payments to be determined by the Commissioner on account of the said person's outstanding liability to tax for any year of assessment in such amount and in such manner and on such date as may be prescribed; and

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- (b) subject to the provisions of paragraph (c), every provisional taxpayer shall, not later than the 30th June of each year, make a payment in respect of his tax liability for the year of assessment commencing on the 1st January of that year in an amount equivalent to the excess, if any, of the aggregate of the tax chargeable in respect of his income for the year immediately preceding that year of assessment over the aggregate of the provisional tax paid by him in respect of that year, any double taxation relief to which such person may be entitled in respect of the said year of assessment and any tax deducted at source under the provisions of articles 59 and 73 of the Income Tax Act, from such income:

Provided that the provisions of this paragraph shall not apply to the income of any body of persons referred to in the proviso to subarticle (2) for any year of assessment preceding the year of assessment 1989;

- (c) every person required to make a self assessment in accordance with article 10(2), including any person to whom article 12 applies but who does not make an election under that article for that year, shall, by not later than the tax settlement date, pay the amount, if any, that is required to be determined in that self-assessment as the amount of tax payable by that person for that year of assessment;
- (d) notwithstanding any other provision contained in this Act or in any other law no person may set off against the tax payable for a year of assessment in accordance with paragraph (c) any amount whatsoever, including any amount repayable to him or due to him as a credit under the Income Tax Acts for any other year of assessment;
- (e) for the purposes of paragraph (b) "provisional taxpayer" means any person, including a company, who derives any income or to whom any income accrues which is not emoluments.
- (4) (a) Payment of tax due by individuals in terms of article 90A(7)(b) of the Income Tax Act shall be made by not later than:
- (i) the 30th May of the relevant year in respect of the income arising during the period January to April of the same year;
 - (ii) the 30th September of the relevant year in respect of the income arising during the period May to August of the same year; and
 - (iii) the 15th February of the year following the relevant year in respect of the income arising during the period January to December of the relevant year after deducting the payments made in terms of subparagraphs (i) and (ii). This

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payment shall be accompanied by a statement of accounts indicating the taxable net profits for the relevant year.

(b) For the purposes of paragraph (a) -

"relevant year" means the year during which the income from part-time work is earned; and

"taxable net profit" is the result of all incomes and expenses in accordance with established accounting practices but duly adjusted for income tax purposes.

(5) If any person fails to pay any tax as prescribed under or pursuant to this article he shall be chargeable with the tax which should have been so paid and, in addition, with further tax or interest as provided for in article 44, and such tax, additional tax and interest shall be recovered from such person in the same manner as other tax assessed and charged upon him.

(6) For the purposes of subarticle (5) a notice by the Commissioner to any person showing the tax which should have been paid and any additional tax and interest to which he is liable for having failed to pay the tax shall, unless the contrary is proved, be sufficient evidence that the amount shown in the said notice is the amount due to be paid to the Commissioner by the said person.

(7) The powers conferred upon the Commissioner by subarticles (5) and (6) shall be in addition to any right conferred upon him to commence proceedings in respect of an offence under subarticle (8).

(8) (a) Any person who contravenes or fails to comply with the provisions of this article or of any rules made thereunder shall be liable on conviction to a fine (*multa*) of not less than one hundred and sixteen euro (116) and not exceeding one thousand and one hundred and sixty euro (1,160) and to a further fine (*multa*) of not less than eleven euro (11) but not exceeding one hundred and sixteen euro (116) for every day during which the offence continues.

(b) The Commissioner may compound any offence under this article and may before judgment stay or compound any proceedings thereunder.

(9) Notwithstanding anything contained in the preceding provisions of this article, any tax payable by an international trading company and by a company with respect to profits allocated to the foreign income account shall not become payable before the earlier of:

(a) the date of distribution of such profits by the company; or

(b) eighteen months after the end of the accounting period in which the aforesaid profits were made by the company.

Time limit within which payment is to be made by trustees.

Added by:
XIII. 2004.89.
Cap. 123.

Advance Company Income Tax.

Added by:
II. 2007.24.

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42A. Notwithstanding anything contained in article 42, tax payable on the income attributable to a trust as defined in article 27B of the Income Tax Act for any year of assessment, shall be paid not later than the tax settlement date as defined in the Income Tax Acts.

42B. (1) In addition to the other provisions of this Part and in particular articles 42 and 43 hereof a company shall also pay the tax chargeable on its income in the manner set out in this article.

(2) Upon the payment of a dividend from profits allocated to the foreign income account or the Maltese taxed account the tax which a company is entitled to deduct in terms of article 59 of the Income Tax Act in respect of such dividend together with any additional tax payable in terms of article 44(1)(a), after deducting any tax credits relative to the profits out of which the dividend is paid excluding any tax credits relative to a claim for relief of double taxation under the articles referred to in articles 74(a), (b) and (c) of the Income Tax Act, shall be referred to as Advance Company Income Tax.

(3) The amount of Advance Company Income Tax less any claim for relief of double taxation and any tax that the company has paid, as at the date of payment contemplated herein, on the profits out of which the said dividend is paid shall be paid by the company within sixty days the end of the month following that in which the dividend is paid.

(4) Where a dividend is paid out of profits earned in the accounting period in which the dividend is paid the dividend shall, for the purpose of this article, be deemed to have been paid on the last day of that accounting period.

(5) Where a payment of Advance Company Income Tax has been made in accordance with this article, the amount so paid, excluding any additional tax included therein, shall be set-off against any other future payments of tax that the company is required to make on the profits out of which the dividend is paid.

(6) During the period from 1 January 2007 to the 31 December 2010 the provisions of this article shall only be applicable to a company which was a company registered in Malta on or after the 1 January 2007, but was not resident in Malta before that date and to a company in respect of which paragraph (i) of the proviso to article 48(4A)(b) has been applied.

Gains or profits from transfer of property.

Amended by:
II. 2004.52;
XIII. 2004.90;
L.N. 425 of 2007.
Cap. 123.

43. (1) Where any person derives gains or profits from the transfer of property referred to in article 5(1)(a)(i) and (ii) of the Income Tax Act, he shall -

- (a) where the transfer refers to an immovable property or to the undivided part of the immovable property obtained before the 25th November, 1992, by the transferor *causa mortis*, or in a partition of immovable property obtained by the co-partitioners *causa mortis*, remit to the Commissioner within fifteen days of the relative transfer a full and final payment equivalent to

7% of the consideration relating to the transfer of the property:

Provided that, irrespective of whether the said property was thus obtained before or after the 25th November, 1992, the said full and final payment shall be equivalent to 5% of the consideration relating to the transfer of the property where:

- (i) the promise of sale agreement in respect of such transfer has been signed prior to the 25th November, 2003;
 - (ii) the said agreement has been duly registered at the Ministry responsible for finance by the 22nd December, 2003 and a certificate to that effect has been issued by the said Ministry;
 - (iii) the relative deed of transfer is published by the 31st October, 2005, which date shall supersede the relevant date appearing on the certificate issued by the Ministry in accordance with subparagraph (ii); and
 - (iv) the duty under the Duty on Documents and Transfers Act on the said deed is paid and the relative deed enrolled in the Public Registry by the 15th December, 2005 and a copy of the certificate issued by the Ministry is presented to the Commissioner with such payment; Cap. 364.
- (b) in any other case, and irrespective of whether such gains or profits are chargeable under the provisions of that article or under any other provision of the Income Tax Acts, remit to the Commissioner within fifteen days of the relative transfer a provisional tax payment equivalent to 7% of the consideration relating to the transfer of the property or of the value of the donation:

Provided that in deeds of emphyteusis or sub-emphyteusis no account shall be taken of any yearly ground rent or sub-ground rent payable according to the deed.

(2) Provisional tax under this article shall not be payable in respect of:

- (a) any transfer of assets not subject to tax on capital gains, or to tax under the provisions of article 4 of the Income Tax Act; Cap. 123.
- (b) transfer of property on deeds of partition;
- (c) transfer of shares in public companies.

(3) Saving the transfer of property referred to in subarticle (1)(a), the Commissioner may authorise any person chargeable under article 5(1)(a) of the Income Tax Act, to pay provisional tax under this article at a rate lower than that referred to in subarticle (1), if it can be proved that the gain is less than 20% of the consideration or of the value of the donation as the case maybe. Cap. 123.

- (4) (a) The tax paid by a person in respect of transfers referred to in subarticle (1)(a), shall not be available as a credit against that person's tax liability or for a refund, as the case may be, for the relevant year of assessment. Such tax shall be separate and distinct from that paid or payable under the provisions of article 42 and he shall not be required to declare any such income, in any return made pursuant to the Income Tax Acts.
- (b) Any provisional tax paid for the purposes of subarticle (1)(b), during or in respect of the year preceding any year of assessment, shall be set off for the purpose of collection against the tax charged in respect of the said year of assessment and if there is an excess after the aforesaid set-off has been made, such excess shall be refunded in accordance with the provisions of article 48. Such provisional tax shall be separate and distinct from that paid or payable under the provisions of article 42 except for persons who have gains or profits from immovable property falling under article 4(1)(a) of the Income Tax Act:

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Provided that the tax paid and referred to in paragraph (b) of this subarticle shall not be set off or refunded as aforesaid unless the person who has paid the tax has declared the relative gains or profits from the transfer in a return of income furnished in accordance with article 10 for the year of assessment following that during which the gains or profits from the said transfer were derived.

(5) If any person fails to pay any tax or provisional tax, as the case may be, as provided under this article he shall be chargeable with the tax which should have been so paid and, in addition, with further tax as provided for in article 44(1)(a), and such tax and additional tax shall be recovered from such person in the same manner as other tax assessed and charged upon him.

(6) For the purposes of subarticle (5) a notice by the Commissioner to any person showing the tax which should have been paid and any additional tax to which he is liable for having failed to pay the tax shall, unless the contrary is proved, be sufficient evidence that the amount shown in the said notice is the amount due to be paid to the Commissioner by the said person.

(7) The powers conferred upon the Commissioner by subarticles (5) and (6) shall be in addition to any right conferred upon him to commence proceedings in respect of any offence under subarticle (8).

(8) Any person who contravenes or fails to comply with the provisions of this article shall be liable on conviction to a fine (*multa*) of not less than one hundred and sixteen euro (116) and not exceeding one thousand and one hundred and sixty euro (1,160) or to imprisonment for any term not exceeding six months or to both such fine and imprisonment, and to a further fine (*multa*) of not less than four euro (4) but not exceeding twenty-three euro (23) for every day during which the offence continues after conviction:

Provided that the Commissioner may compound any offence under this article and may before judgment stay or compound any proceedings thereunder.

- (9) (a) The tax or provisional tax, as the case may be, payable under this article shall be paid in such manner as may be prescribed.
- (b) Notwithstanding anything that may be provided for in the rules where immovable property or any rights annexed thereto are transferred by means of a public deed the notary publishing such deed shall have the same duties and liability in connection with the collection and payment of the tax or provisional tax, as the case may be, payable on such deed in accordance with this article as are by the Duty on Documents and Transfers Act imposed on notaries publishing such deeds, in connection with the duty chargeable and collected on transfers in accordance with that Act. Any failure by a notary in connection with the collection and payment of tax or provisional tax, as the case may be, under this article shall for all purposes of the Duty on Documents and Transfers Act, be deemed to be a failure of his duties under that Act. Cap. 364.
- (c) Where any assets the transfer of which is subject to tax on capital gains under article 5 of the Income Tax Act, is sold in a judicial auction, the Registrar of Courts shall have the same duties with regard to the withholding and payment of the tax or provisional tax, as the case may be, under this article as are under article 66 of the Duty on Documents and Transfers Act imposed on him in relation to the duty leviable on transfers *causa mortis* under the said Act. Cap. 123.
Cap. 364.

44. (1) Where any tax payable within the periods provided for in subarticle (1) or (2), subarticle (3)(a) and (b), in article 42, in article 43(1), in article 45 or in article 9A(8) of the Income Tax Act, is not settled within the relevant period - Additional tax and interest for non-payment of tax, and enforcement of payment.

- (a) additional tax equal to one per cent of the unpaid tax for each calendar month or part thereof during which such tax remains unpaid shall be added thereto, and the provisions of the Income Tax Acts relating to the collection and recovery of tax shall apply to the collection and recovery of such additional tax; *Amended by:*
XXIII. 1995.5;
IX. 1999.9;
II. 2003.47;
II. 2004.53;
II. 2009.30.
Cap. 123.
- (b) the Commissioner shall serve a demand note upon the person assessed, and if payment is not made within fifteen days from the date of the service of such demand note, the Commissioner may proceed to enforce payment in virtue of the executive title referred to in article 40 after two days from the service on the debtor of an intimation, for payment made by means of a judicial act, or as hereafter provided;

Cap. 123.

(c) additional tax charged under this subarticle shall not be deemed to be part of any tax paid or payable for the purposes of articles 59, 73, 76 or 89 of the Income Tax Act, or articles 23, 43, 51 or 52, or any rules made thereunder.

(2) The Commissioner may, in his discretion, remit wholly or in part any additional tax chargeable under subarticle (1):

Provided that no such remission shall be effected by the Commissioner unless he is satisfied that the person liable for the payment of the tax was prevented from making payment within the periods provided for in article 42(1), (2) or (3) or in article 45 or by rules made thereunder owing to his absence from Malta or serious sickness or for such other cause as the Minister responsible for finance may prescribe from time to time.

(2A) When any tax payable for the year of assessment 1999 or any subsequent year of assessment is not paid by the relevant tax settlement date -

(a) interest at the rate of one per cent of the unpaid tax shall be charged thereon from the tax settlement date for each calendar month or part thereof during which such tax remains unpaid and the provisions of the Income Tax Acts relating to the collection and recovery of tax shall apply to the collection and recovery of such interest:

Provided that for any period or part thereof commencing on or after 1st January 2009, interest shall be calculated at the rate of point seven five percent (0.75%) per month or part thereof and the total interest shall not exceed the amount of the said tax;

(b) an amount of tax shown as payable for a year of assessment by a person in a determination or an assessment made under article 31 shall unless and until it is substituted by another amount by means of a subsequent determination or assessment be deemed to be the tax payable for that year of assessment for the purpose of paragraph (a) regardless of the date when the said determination is made or when the assessment becomes final and conclusive;

(c) the Commissioner shall serve a demand note upon the person by whom any tax is due and if payment is not made within fifteen days from the date of the service of such demand note, the Commissioner may proceed to enforce payment in virtue of the executive title referred to in article 40 after two days from the service on the debtor of an intimation for payment made by means of a judicial act.

(2B) Notwithstanding the provisions of subarticle (2A):

(a) no interest shall run on any tax payable by a person for any year of assessment if the Commissioner has determined and directed by notice in writing given to a

payor in accordance with rules made pursuant to article 23 that deductions be made from emoluments payable to that person to cover the said tax and if that notice has not been revoked by a notice in writing given by the Commissioner to that person;

- (b) no interest shall run on any additional tax charged pursuant to the provisions of article 56(12) of the Income Tax Act.

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(2C) Interest charged under subarticle (2A) shall not be deemed to be part of any tax or additional tax paid or payable for any of the purposes of the Income Tax Acts.

(2D) The Commissioner may, at his discretion, remit wholly or in part any interest chargeable under subarticle (2A) in accordance with rules issued for this purpose by the Minister responsible for finance.

(3) The provisions of article 468* of the Code of Organization and Civil Procedure, shall apply with respect to any warrant issued on the strength of any executive title mentioned in article 40 and to the paying out of the proceeds of the sale by auction of the property seized; and no opposition or reservation in the schedule of deposit shall stay the paying of any sum deposited in court following any such warrant as aforesaid.

Cap. 12.

(4) The provisions of subarticle (3) shall not prejudice the amount of tax that may be finally determined under the other provisions of the Income Tax Acts.

45. Where payment of tax is kept in abeyance in accordance with the provisions of article 41 pending the result of a notice of objection or of an appeal, the tax outstanding under the assessment as determined on such objection or appeal, as the case may be, shall be payable within the period ending on the last day of the calendar month immediately following that during which service of the notification of tax payable has been made, and if such tax is not paid within such period the provisions of the last preceding article shall apply:

Collection of tax after determination of objection or appeal.
Amended by:
IX. 1999.10.

Provided that nothing in this article or in article 41 shall be construed as suspending the running of interest on the tax outstanding as aforesaid and interest on the said tax shall be computed and due in accordance with the provisions of article 44(2A) as from the relevant tax settlement date up to the date of payment.

46. (1) If in any particular case, the Commissioner has reason to believe that a person who has been assessed to tax may leave Malta before such tax becomes payable under the provisions of the Income Tax Acts without having paid such tax, he may by notice in writing to such person demand payment of such tax within a time to be limited in such notice. Such tax shall thereupon be payable at the expiration of the time so limited and shall in default of payment,

Payment of tax by persons about to leave Malta.
Amended by:
IX. 1999.11.

*Repealed by Act XXIV of 1995. See article 466 of Chapter 12.

unless security for payment thereof be given to the satisfaction of the Commissioner, be recovered forthwith in the manner provided by article 44.

(2) If in any particular case, the Commissioner has reason to believe that tax upon any chargeable income may not eventually be recovered, he may at any time and as the case may require -

- (a) forthwith by notice in writing require any person to make a return and to furnish particulars of any such income within a time to be specified in such notice;
- (b) make an assessment upon such person in the amount of the income returned or, if default is made in making such return or the Commissioner is dissatisfied with such return, in such amount as the Commissioner may think reasonable;
- (c) by notice in writing to the person assessed require that security for the payment of the tax assessed be forthwith given to his satisfaction.

(3) Notice of any assessment made in accordance with the provisions of subarticle (2) shall be given to the person assessed, and any tax so assessed (in accordance with the provisions of subarticle (2)) shall be payable on demand made in writing under the hand of the Commissioner and shall in default of payment, unless security for the payment thereof be given to the satisfaction of the Commissioner, be recoverable forthwith in the manner provided by article 47.

(4) Any person who has paid the tax in accordance with a demand made by the Commissioner or who has given security for such payment under subarticle (2) shall have the rights of objection and appeal conferred by articles 33, 35 and 37 and the amount paid by him shall be adjusted in accordance with the result of any such objection or appeal.

(5) The provisions of subarticle (2) shall not affect the powers conferred upon the Commissioner by articles 30 and 31.

Suit for tax by
Commissioner.
Amended by:
IX. 1999.12;
II. 2004.54;
IV. 2007.30.

47. (1) Tax may be sued for and recovered, as the case may require, in the Civil Court, First Hall, or in the Court of Magistrates (Malta) in its civil jurisdiction or in the Court of Magistrates (Gozo), also in its civil jurisdiction by the Commissioner in his official name with full costs of suit from the person charged therewith, from the person by whom it is payable or from the person responsible for its deduction as a debt.

(2) Save as otherwise expressly provided in the Income Tax Acts and saving in particular the provisions article 30(5) and of article 31(7), action for the payment of tax, additional tax, interest or any penalty may be taken during any time from the date on which it becomes due and payable up to eight years from that date or, where an assessment in respect thereof has been made, from the date on which that assessment becomes final and conclusive.

(3) The running of the period referred to in subarticle (2) shall be interrupted by a demand note served through registered post by

the Commissioner or by any judicial act filed by the Commissioner before the expiration of such period demanding the payment of the amount claimed.

(4) Where the action referred to in subarticles (2) and (3) has not been taken within the time specified therein, and such time expires on or before the 31st December 2003, then, notwithstanding the provisions of the said subarticles, action for the payment of the said tax, additional tax, interest or penalty may be taken until the 31st December 2005.

PART VIII

Refunds

48. (1) If it be proved to the satisfaction of the Commissioner that any person for any year of assessment has paid tax, by deduction or otherwise, in excess of the amount with which he is properly chargeable, such person shall be entitled to have the amount so paid in excess refunded by the Commissioner. Every claim for repayment under this article should be made within four years from the date on which the assessment in respect of the year of assessment to which it relates becomes final and conclusive:

Repayment of tax.
Amended by:
XX. 1996.21;
V. 1998.7;
IX. 1999.13;
II. 2003.48;
II. 2004.55;
II. 2007.25;
IV. 2007.31;
IX. 2007.7;
II. 2009.31.

Provided that in the case of a person making a claim for repayment for any year of assessment in respect of which he has no chargeable income, such claim shall be made within four years from the end of the year of assessment to which the claim relates:

Provided also that where the claim relates to tax paid for the year of assessment 1999 or any subsequent year of assessment it shall be made within five years from the relevant tax return date or, where an assessment in respect thereof has been made from the date on which that assessment becomes final and conclusive:

Provided further that in no case shall any refund be made in respect of -

- (a) any tax which a company has deducted or is entitled to deduct from any dividend paid to any person who in virtue of any exemption granted by or under any law is not chargeable to tax thereon; and
- (b) any tax charged on any body of persons under article 56(4) of the Income Tax Act, or under article 27(3) and (4); and
- (c) any tax which a company has deducted or is entitled to deduct from any dividend paid to a collective investment scheme.

Cap. 123.

For the purposes of this proviso -

"company" includes a collective investment scheme; and

"dividend" includes any distribution made by a collective investment scheme.

(2) Except as regards sums repayable on an objection or appeal, no repayment shall be made to any person in respect of any year of

assessment as regards which that person has failed or neglected to deliver a return or has been assessed in a sum in excess of the amount contained in his return, provided he has received notice of the assessment made upon him for that year; unless that person has made an election under article 12 for that year or it is proved to the satisfaction of the Commissioner that such failure or neglect to deliver a true and correct return did not proceed from any fraud or wilful act or omission on the part of that person.

Cap. 123.

(2A) Subject to the provisions of sub- subarticle (2B) any tax determined as repayable to a person for a year of assessment under article 31(1) or (2) shall become due or shall be deemed to have become due, as the case may be, in the case of a person to whom article 11(2) of the Income Tax Act applies, on the first of April, and, in the case of any other person, on the first of March, of the year immediately following that year of assessment or on such other date or dates, not being later than the dates aforesaid, as may be prescribed.

(2B) When the tax repayable has been determined under article 31 following a return furnished after the relevant tax return date it shall become due or shall be deemed to have become due, as the case may be, on the later of -

- (a) the last day of the twelfth month following that in which the said return was furnished, and
- (b) the last day of the sixth month following the date on which it would have otherwise become due in terms of subarticle (2A).

(2C) The Commissioner shall be entitled to deduct from any repayment due to a person as stated in subarticles (2A) and (2B) any tax, additional tax or interest that may be due by that person under the Income Tax Acts.

(2D) Interest shall be payable by the Commissioner on any repayment of tax that becomes due under subarticle (2A) or (2B) after any deduction made in terms of subarticle (2C) as from the date it becomes due as aforesaid at the rate of one per cent for every month or part thereof for which it remains unpaid:

Provided that for any period or part thereof commencing on or after 1st January 2009, interest shall be calculated at the rate of point seven five percent (0.75%) per month or part thereof and the total interest shall not exceed the amount of the said repayment.

(2E) For the purposes of this article where the repayment of tax is made by means of a cheque or a draft, the tax shall be deemed to have been repaid to a person on the day on which the cheque or the draft is posted to that person's last known address.

(2F) The provisions of subarticles (2B) to (2E) shall not apply to refunds to which subarticles (4) or (4A) or the first proviso to subarticle (7) refer.

(3) Any person who is aggrieved by the decision of the Commissioner as to the amount to be repaid under the provisions of this article shall have the same right to appeal against such decision

as if he were aggrieved by an assessment made upon him:

Provided that such appeal shall not reopen any question with respect to which a right of appeal under the provisions of article 35 and 37 has lapsed or which has already been decided on appeal.

- (4) (a) A person, in receipt of a dividend paid to him from profits allocated to the foreign income account or any profits distributed by an international trading company, as the case may be, may claim a refund of two-thirds of the Malta tax paid by the company in respect of those profits distributed to him by way of such dividend, where such person is either:
- (i) not resident in Malta and who is, where applicable, not owned and controlled by, directly or indirectly, nor acts on behalf of, a person who is ordinarily resident and domiciled in Malta; or
 - (ii) a company resident in Malta which is wholly owned by a person or persons not resident in Malta, provided that such person or persons are not owned and controlled by, directly or indirectly, or act on behalf of a person or persons ordinarily resident and domiciled in Malta.
- (b) Subject to the provisions of paragraph (a), where profits distributed as aforesaid out of the foreign income account derive from a participating holding or from the disposal of such holding, a claim may be made for a refund of all of the Malta tax paid in respect of those profits:

Provided that with respect to a claim for refund relative to dividends derived from a participating holding acquired on or after 1 January 2007, the refund contemplated by this paragraph shall only be due when the conditions set out in either paragraph (i) or paragraph (ii) below are satisfied:

- (i) where the body of persons in which the participating holding is held satisfies any one of the following conditions, that is to say:
 - (1) it is resident or incorporated in a country or territory which forms part of the European Union;
 - (2) it is subject to any foreign tax of at least fifteen per cent (15%);
 - (3) it does not have more than fifty per cent (50%) of its income derived from passive interest or royalties;
- (ii) where none of the conditions set out in paragraph (i) are satisfied then both of the following two conditions must be satisfied:
 - (1) the equity holding by the company registered in Malta in the body of persons

not resident in Malta is not a portfolio investment and for this purpose the holding of shares by a company resident in Malta in a body of persons not resident in Malta which derives more than fifty per cent of its income from portfolio investments shall be deemed to be a portfolio investment; and

- (2) the body of persons not resident in Malta or its passive interest or royalties have been subject to any foreign tax at a rate which is not less than five per cent (5%):

Provided further that the provisions of the immediately preceding proviso shall, with effect from 1 January 2011, also be applicable to a claim for refund in respect of the Malta tax paid on distributed profits comprised in dividends received from a participating holding acquired before the 1 January 2007.

- (c) For the purposes of this subarticle and subarticle (7), the expression "Malta tax paid" shall mean the tax actually paid by the company to the Commissioner on the profits distributed out of the foreign income account or on any profits derived and distributed by a company while it was an international trading company, as the case may be:

Provided that as regards claims made relative to the payment of dividends from profits allocated to the foreign income account and brought to charge to tax in year of assessment 2008 and subsequent years of assessment the expression Malta tax paid shall mean the tax actually paid by the company to the Commissioner on the profits so allocated plus the amount, if any, by which such tax has been reduced by a claim of relief of double taxation under the articles referred to in articles 74(a), (b) and (c) of the Income Tax Act:

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Provided that the following provisos shall also apply to the whole of subarticle (4):

- (i) with effect from 1 January 2011 and up to 31 December 2014, as regards dividends paid by a company which was an international trading company as at 31 December 2010, the provisions of this article shall continue to apply after 31 December 2010 with respect to the distribution of profits earned by such company while it was an international trading company;
- (ii) a person resident in Malta, registered for the purpose of making a claim in terms of this subarticle in such manner as may be prescribed, may also claim a tax refund contemplated by this subarticle with respect to dividends paid from profits allocated to the foreign

income account when such dividend is paid:

- (1) by a company which was a company registered in Malta on or after 1 January 2007 but was not resident in Malta before that date; and
- (2) by any other company registered in Malta out of profits derived by the said company in respect of accounting periods which commenced on or after 1 January 2011.

- (4A) (a) With effect from 1 January 2007 a person, in receipt of a dividend paid to him by a company registered in Malta from profits allocated to its Maltese taxed account or its foreign income account, may claim a refund of six-sevenths of the Advance Company Income Tax pertaining to those profits distributed to him by way of such dividend, provided that such person is for such purpose registered in such manner as may be prescribed:

Provided that where the dividend is paid out of profits:

- (i) consisting of passive interest or royalties or of dividends received from a participating holding in a body of persons which does not satisfy the conditions referred to in the proviso to article 12(1)(u) of the Income Tax Act, the rate of refund shall be of five-sevenths of the said Advance Company Income Tax; Cap. 123.
 - (ii) allocated to the foreign income account and in respect of which profits the company has claimed relief of double taxation no claim for refund may be made under this subarticle.
- (b) During the period from 1 January 2007 to 31 December 2010, any refund contemplated in this subarticle may only be claimed by a person in receipt of a dividend from a company which was a company registered in Malta on or after 1 January 2007 but was not resident in Malta before that date:

Provided that:

- (i) a person in receipt of a dividend from a company referred to in any of sub-paragraphs (1) or (2) and paid after the said company has informed the Commissioner as contemplated in the said paragraphs (1) or (2) below, may also claim a tax refund in terms of this subarticle during the aforementioned period if the conditions of paragraph (a) are satisfied:
 - (1) a company which qualifies as an international trading company and which informs the Commissioner that it has opted to cease to be an international trading company which option shall be approved by an extraordinary resolution of the

members of such company;

- (2) a company which has informed the Commissioner that it has opted to be treated as a company which was registered in Malta on or after 1 January 2007 but was not resident in Malta before that date, where such company had, in the three accounting periods immediately preceding that in which it has so informed the Commissioner, in the aggregate more than 50% of its profits allocated to the foreign income account or consisting of income in respect of which the exemption provided by article 12(1)(u) of the Income Tax Act is applicable and has been applied, which option shall be approved by an extraordinary resolution of the members of such company:

Provided that:

- (aa) where the company was not in existence or was not resident or registered in Malta during the whole of the above mentioned three year period the condition relating to the nature of its income set out in paragraph (2) above shall be determined by reference to the period that such company was in existence, resident or registered in Malta as the case may be;
- (bb) The Commissioner may, in his discretion, determine that paragraph (2) above applies to a company if, he is of the opinion that it is likely that more than half of the distributable profits of the company will be allocated to the foreign income account in the foreseeable future:

Provided further that a company to which paragraph (2) above applies shall not be entitled to claim a refund in respect of the Malta tax paid on profits allocated to its Maltese taxed account in years of assessment prior to year of assessment 2008.

- (ii) such company did not derive any of its profits, (even if such profits are not comprised in the said dividend) directly or indirectly, from a trade, business or other activity (hereinafter referred to as "the new activity") which is in whole or in part the same or an expansion, replacement or duplication of a trade, business or other activity which was carried on in Malta,

prior to the 1 January 2007, by any person (hereinafter referred to as the "old activity"); and the foregoing shall be interpreted in the light of the following:

- (1) where the human, tangible or intangible resources of the new activity are substantially the same as those which were utilised by old activity, it shall be presumed, unless the contrary is proved, that the new activity is the same or an expansion, replacement or duplication of an old activity;
- (2) where the new activity is carried on directly or indirectly by any person in any way directly or indirectly connected or associated with the persons which carried on the old activity through shareholding, voting or other ownership or controlling rights it shall be presumed, unless the contrary is proved, that the new activity is the same or an expansion, replacement or duplication of an old activity;
- (3) a new activity shall not be presumed to be the same or an expansion, replacement or duplication of an old activity merely because the new activity is similar to an old activity because, inter-alia, it provides the same type of goods or services or because the new activity operates in the same market as the old activity and competes with the old activity:

Provided that where the old activity had been carried by a company to which proviso (i) to this paragraph (b) may be applied the new activity shall not be considered in whole or in part the same or an expansion, replacement or duplication of the old activity.

- (c) For the purpose of paragraph (b)(ii) where the Commissioner is of the opinion that any activity carried out by any company which consists of any part of any administrative, management or other activity carried on by any person as part of his business activities prior to the 1 January 2007, and any other activity forms part of a scheme the sole or main purpose of which is the avoidance of the provisions of paragraph (b) shall be a trade, business or activity which was carried on in Malta, prior to the 1 January 2007, by any person; and for this purpose the word "scheme" shall have the meaning assigned to it by article 51(5) of the Income Tax Act.
- (d) Without prejudice to proviso (i) of paragraph (b) a claim for refund pursuant to paragraph (a) in respect of

dividends paid from profits allocated to the Maltese taxed account by companies which were resident in Malta prior to the 1 January 2007 may only be made in respect of the tax paid on profits derived by the said company in respect of accounting periods which commenced on or after 1 January 2011.

(5) A claim for refund pursuant to subarticle (4) or subarticle (4A) shall be made not later than four years from the date from which the amount of tax is eligible for refund.

(6) The Commissioner shall make payment of the refund under subarticle (4) or subarticle (4A) on being satisfied as to the correctness of the claim made and upon receipt of a certificate issued by the company paying the dividend under the provisions of article 59(5) of the Income Tax Act. Such refund, unless otherwise provided for in the Income Tax Acts, shall not be taxable:

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Provided that notwithstanding anything contained in the Income Tax Acts the Commissioner shall not make such payment unless any tax due under the investment income provisions in respect of investment income referred to in article 41(a)(viii)(2) or (4) comprising the distributed profits the tax paid on which is the tax in respect of which the claim pursuant to this subarticle is made, has been paid.

(7) (a) Where a claim for refund has been made under the provisions of subarticle (4) or subarticle (4A), no person shall be entitled to a further refund under that subarticle or to a refund under any other provisions of the Income Tax Acts of the Malta tax paid in respect of which the said claim has been made.

(b) Where a claim for refund of the Malta tax paid has been made under subarticle (1), no person shall be entitled to a further refund under the provisions of subarticle (4) or subarticle (4A) of the Malta tax in respect of which the said claim has been made.

(c) Where a company (the distributing company) pays a dividend out of profits allocated to the foreign income account, to a company resident in Malta (the recipient company) and a claim for refund has been made under the provisions of subarticle (4) or subarticle (4A) in respect of the tax paid by the recipient company on the dividend received from the distributing company, no person shall be entitled to a further refund under the provisions of subarticle (4) or subarticle (4A) of the Malta tax in respect of which the said claim has been made.

(d) A tax refund payable in terms of subarticle (4) or subarticle (4A) shall in no case exceed the amount of tax actually paid by the company paying the dividend on the distributed profits comprised in that dividend in respect of which the claim pursuant to those subarticles is made:

Provided that a person entitled to such refund as set out under subarticle (4) or subarticle (4A) in respect of profits distributed by an international trading company shall also be entitled to a refund of the difference between the Malta tax suffered by the company and the tax chargeable on such person on such income in accordance with the provisions of this Act:

Provided further that the provisions of the immediately preceding proviso shall during the period 1 January 2011 to 31 December 2014 also apply in the case of any profits distributed by a company which was an international trading company as at 31 December 2010 where such profits were earned by such company while it was an international trading company.

(8) A refund due by the Commissioner as aforesaid shall constitute a debt due by the Commissioner to the claimant which shall be payable not later than the fourteenth day following the end of the month in which the refund becomes due and shall be recoverable as such.

(9) Where a refund of tax by the Commissioner is wholly or partly not due to a person, it shall be the duty of such person to make a repayment thereof to the Commissioner within thirty days from the date of receipt of such refund, and where such repayment is not paid as aforesaid interest shall be charged according to the provisions of article 44.

(10) If any person claims a refund in terms of subarticle (4) or subarticle (4A) when that person was not entitled to the said refund such person shall be liable to pay a penalty equal to the amount of the refund claimed and if the refund was in fact paid to him that person shall in addition be liable to repay the tax so refunded and to additional tax of seven per cent per month or part thereof commencing from the month in which the said refund was paid to him up to the month in which he repaid the tax refunded and any payment made by the said person in respect of the tax repayable by him in terms of this paragraph shall first be applied against any additional tax due thereon:

Provided that the provisions of this subarticle shall not be applicable when the person referred to therein proves that he did not know and could not reasonably have known that he was not entitled to such a tax refund.

PART IX

Offences and Penalties

49. (1) Any person who contravenes or fails to comply with any of the provisions of the Income Tax Acts or of any rules made thereunder shall be guilty of an offence and, unless another punishment is specifically provided by the Income Tax Acts, he shall be liable on conviction to a fine (*multa*) of not less than twenty-three euro (23) and not exceeding one hundred and sixteen euro (116).

General provisions
regarding offences.
Amended by:
L.N. 425 of 2007.

(2) Where a person is, on or after 1st July 1977, found guilty of an offence under any of the provisions of the Income Tax Acts and is not sentenced to imprisonment for that offence the court shall expressly warn him that if, within five years from the date of the warning, he is again found guilty of another offence under any of the provisions of the Income Tax Acts (whether of the same nature or not) he shall be sentenced, in addition to any other punishment, to not less than three days imprisonment; and a person so found guilty on a second or subsequent occasion, within the period aforesaid, shall, notwithstanding anything contained in the Probation Act, or in any other enactment, be sentenced to imprisonment for a term of not less than three days, in addition to any other punishment except imprisonment for a longer term.

Cap. 446.

Penalty for failure to comply with notice.

Amended by:
L.N. 425 of 2007;
I. 2008.7.

50. Every person who without sufficient cause -

- (a) fails to comply with the requirements of a notice, intimation, request or demand note given or made to him or served upon him under the Income Tax Acts; or
- (b) fails to attend in answer to a notice issued to him under the Income Tax Acts or having attended fails to answer any question lawfully put to him,

shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) of not less than twenty-three euro (23) and not exceeding ten thousand euro, and to a further fine (*multa*) not exceeding two hundred euro for every day during which the default continues after conviction.

Penalty for making incorrect returns, etc.

Amended by:
L.N. 425 of 2007.

51. (1) Every person who without reasonable excuse -

- (a) makes an incorrect return by omitting or understating any income of which he is required by the Income Tax Acts to make a return; or
- (b) gives any incorrect information in relation to any matter or thing affecting his own liability to tax or the liability of any other person or of a partnership,

shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not less than fifty-eight euro (58) and not exceeding four hundred and sixty-five euro (465) and, in addition, to double the amount of tax which has been undercharged in consequence of such incorrect return, or information, or would have been so undercharged if the return or information had been accepted as correct.

(2) No person shall be liable to any penalty under this article unless the complaint concerning such offence was made in the year of assessment in respect of or during which the offence was committed or within three years after the expiration thereof.

(3) The Commissioner may compound any offence under this article, and may before judgment stay or compound any proceedings thereunder.

- 52.** (1) Any person who wilfully with intent to evade or to assist any other person to evade tax under the Income Tax Acts -
- Penal provisions relating to fraud, etc.
Amended by:
L.N. 425 of 2007.
- (a) omits from a return or any other document or statement made, prepared or submitted for the purposes of or under the Income Tax Acts, any income which should be included therein; or
 - (b) makes any false statement or entry in any return or other document or statement prepared or submitted for the purposes of or under the Income Tax Acts; or
 - (c) gives any false answer, whether verbally or in writing, to any question or request for information asked or made in accordance with the provisions of the Income Tax Acts; or
 - (d) prepares or maintains or authorises the preparation or maintenance of any false books of account or other records or falsifies or authorises the falsification of any books of account or records; or
 - (e) makes use of any fraud, art or contrivance whatever or authorises the use of any such fraud, art or contrivance,

shall be guilty of an offence, and shall for each such offence be liable on conviction before a Court of Magistrates sitting as a court of criminal judicature to a fine (*multa*) of not less than one hundred and sixteen euro (116) and not exceeding four hundred and sixty-five euro (465) and, in addition, to treble the amount of tax to which the person whose tax liability it was intended to evade or to assist in evading is liable under the Income Tax Acts for the year of assessment in respect of or during which the offence was committed, or to imprisonment for any term not exceeding six months, or to both such fine and imprisonment.

(2) The Commissioner may compound any offence under this article, and may before judgment stay or compound any proceedings thereunder.

- 53.** Any person who, having or having had any official duty or being or having been employed in the administration of the Income Tax Acts, has or had access to, possession of or control over any documents, information, returns or assessments, relating to the Income Tax Acts, or copies thereof, and who, except as provided in article 4, at any time communicates or attempts to communicate any such information or anything contained in such documents, returns, assessments or copies to any person, shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) of not less than two hundred and thirty-two euro (232) and not more than two thousand and three hundred and twenty-five euro (2,325), or to imprisonment for a period not exceeding six months, or to both such fine (*multa*) and imprisonment.
- Penalty for offences against official secrecy.
Amended by:
L.N. 425 of 2007.

- 54.** The institution of proceedings for, or the imposition of, a penalty, fine or term of imprisonment under the Income Tax Acts shall not relieve any person from liability to payment of any tax for which he is or may be liable.
- Tax to be payable notwithstanding any proceedings for penalties, etc.

Saving for criminal proceedings.

55. The provisions of the Income Tax Acts shall not affect any criminal proceedings under any other Act or law.

Prosecution to be with the sanction of Commissioner.

56. No prosecution for any offence against the Income Tax Acts may be commenced except at the instance of or with the sanction of the Commissioner.

Documents containing evidence of act or omission by warrant holder.
Added by:
V. 1998.4.

57.* (1) In this article -

(a) "warrant holder" means a person or firm in possession of a warrant issued under the Accountancy Profession Act;

(b) "Board" means the Board constituted under article 6 of the Accountancy Profession Act.

Cap. 281.

(2) Where the Commissioner is of the opinion that any document which has been produced to or obtained by him for any purpose of the Income Tax Acts for the year immediately preceding the year of assessment beginning on 1st January, 1998 and subsequent years, being a document to which this article refers, constitutes or contains evidence of any act or omission on the part of a warrant holder, and that such act or omission is an act or omission mentioned in article 14(1)(a)(i) of the Accountancy Profession Act he shall, subject to the other provisions of this article, send a copy of that document to the Board.

(3) The Commissioner shall certify any document he sends to the Board in accordance with subarticle (1) hereof as a true copy of the original and shall send to the Board together with any such document a statement giving the reasons for which he has formed his opinion, provided that no reference may be made in any such statement to any facts or circumstances which do not result from the said documents.

(4) The Board may use any document received in accordance with the provisions of this article for the purpose of an enquiry which it may conduct under the said Act but not for any other purpose.

(5) A document sent to the Board and certified as a true copy of the original in accordance with this article shall be admissible as evidence as if it were the original and the production of such document shall not empower any court or authority to request the Commissioner to produce the original of such document or to give evidence on such document except as may be allowed under the other provisions of the Income Tax Acts:

Provided that the Commissioner may be required to produce the original of any such document in any case where it is necessary to prove the handwriting or the signature or the identity of the warrant holder in question, but only for the purpose of such proof and provided that the said original shall be returned to the Commissioner as soon as it is no longer required for the purpose for which it has been produced.

(6) Within a reasonable time from the receipt of any document

*This article was originally added as article 19A.

sent to it in accordance with this article, the Board shall inform the Commissioner in writing whether it proposes to use the said document for the purpose referred to in subarticle (4) hereof or not, and, in the latter case, the Board shall state the reason for its decision not to make such a use and shall return the document to the Commissioner.

(7) Within a reasonable time from the conclusion of any enquiry in which any documents referred to the Board in accordance with this article have been used, the Board shall deliver to the Commissioner a copy of its decision on that enquiry.

(8) Nothing in this article shall be construed as -

- (a) empowering the Board to request any information or documents from the Commissioner or to otherwise have access to documents or other information held by the Commissioner;
- (b) binding the Commissioner to give evidence or explanations in respect of any documents sent by him to the Board;
- (c) binding the Commissioner to conduct any investigation or make reports on the conduct of any warrant holder.

(9) The documents to which this article refers are:

- (a) any report or certification signed by a warrant holder;
- (b) any records, books, accounts or computations, or any extract thereof, in respect of which a report or certification referred to in paragraph (a) hereof has been made:

Provided that a document referred to in this paragraph shall not be deemed to be a document to which this article refers unless it is sent to the Board together with the said report or certification.

PART X

Power to make rules

58. The Minister responsible for finance may from time to time make rules generally for carrying out the provisions of this Act and may, in particular, by those rules provide -

- (a) for the form of returns, claims, statements and notices under this Act;
- (b) for the use of electronic communications with respect to the form and delivery of returns, claims, statements, notices and information or documents the form and delivery of which is authorised or required by or under the Income Tax Acts and of regulations made thereunder, including the making of payments by electronic means under the said Acts and regulations; and

Power to make rules.
Amended by:
II. 2002.81.

(c) for any such matters as are authorised by this Act to be prescribed.

Record of certain exemptions to be laid on Table of the House of Representatives. Cap. 123.

59. A record of any exemption made by the Minister responsible for finance under the provisions of article 12(2) of the Income Tax Act, in regard to any body of persons, or class of persons, shall be laid on the Table of the House of Representatives as soon as may be after it is made.

Transitory provision. Cap. 123.

60. (1) The provisions of article 4(4A) of the Income Tax Act as in force immediately before the coming into force of this Act and the Income Tax (Amendment) (No.2) Act, 1994, shall continue in force with respect to every capital assets return mentioned in that subarticle with respect to the years of assessment mentioned in that subarticle up to the year of assessment 1994.

Cap. 123.

(2) The provisions of the Income Tax Act with respect to returns of income and capital assets for the years of assessment up to the year of assessment 1994, shall continue in force, as immediately in force before the coming into force of this Act.
