CHAPTER 123

INCOME TAX ACT

To impose a Tax upon Incomes.

Amended by:
XVII. 1994.35.

1st January, 1949

ACT LIV of 1948, as amended by Acts: VI of 1953, XX of 1955, V of 1958; Emergency Ordinance XV of 1958; Ordinances: VIII and XVI of 1959, XXV of 1960, XXIV and XLI of 1961, XXV of 1962; Legal Notice 4 of 1963; Acts: X and XIV of 1963; V of 1964; Legal Notice 46 of 1965; Acts: XXXI of 1966, XXVII of 1967, VIII of 1969, XXVIII and XXXV of 1972, X and XX of 1973, XLIX and LVIII of 1974; Legal Notice 148 of 1975; Acts: XLII of 1975, XXII, XXIV and XXXIX of 1976, XXVI of 1977, XXVIII of 1978, XXI of 1980, IX and XL of 1981, IX and XIII of 1983; XIV of 1984, VIII of 1987; XXXI of 1988, XIX of 1989, XXXVI of 1990, VIII of 1991, XIII of 1992, XVIII of 1993, I and XVII of 1994, XXII of 1995, XX of 1996, V, XVII of 1998, IX of 1999 and XI of 2000; Legal Notice 238 of 2000; Acts IV and IX of 2001, II of 2002, II of 2003, II, III and XIII of 2004, II and IX of 2005, II of 2006, and II, IV, IX, XIII and XXXII of 2007; Legal Notice 409 of 2007; Acts II and XVII of 2009; Legal Notice 98 of 2009; Acts I and XIX of 2010; Legal Notice 336 of 2010; Acts IV, XVI and XXII of 2011, and V of 2012; Legal Notice 218 of 2012; and Acts III of 2013, XII, XXII, XXIII and XXXVII of 2014, XIII, XXI and XXXIII of 2015, XV of 2016, and XVI of 2017.

ARRANGEMENT OF ACT

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PART I

PRELIMINARY

Short title.

1. The short title of this Act is the Income Tax Act.

Interpretation.
Amended by:
V. 1958.2;
XV.1958.2;
XXV. 1960.2;
XXV.1962.2,4,5;
L.N. 46 of 1965;
VIII.1969.2;
XLIX.1974.2;
LVIII.1974.68;
XXII.1976.4;
XXIV.1976.2;
XXVI.1977.2;
XXVIII. 1978.2;
XXI.1980.2;
IX.1983.2;
XVIII.1993.2;
XVII. 1994.4;
XX.1996. 2;
XVII.1998.70;
IX.1999.14;
IX. 2001.21;
II. 2002.42;
II. 2003.7;
II. 2007.3;
IV. 2007.7;
IX. 2007.2;
L.N. 409 of 2007;
I. 2010.10;
IV. 2011.7;
XXII. 2011.5;
V. 2012.9;
III. 2013.18;
XIII. 2015.42;
XV. 2016.12.
Cap. 281.
Cap. 386.
XVI. 2017.14.

2. (1) In this Act, and in any rules made under this Act, unless the subject or context otherwise requires -

"a company registered in Malta" shall mean a company which is resident in Malta or a company which, although not resident in Malta, carries on any activity in Malta and in the case of a company which is neither incorporated nor resident in Malta shall mean a company that is registered for this purpose with the Commissioner in such manner as may be prescribed;

"body of persons" means any body corporate, including a company, and any fellowship, society or other association of persons, whether corporate or unincorporate, and whether vested with legal personality or not;

"bonus shares" means and includes the paid-up value of shares distributed by a company to its shareholders to the extent to which the paid-up value represents a capitalization of profits;

"certified public auditor" means an individual who holds a warrant to act as auditor issued under the Accountancy Profession Act, or a partnership of auditors duly registered under the said Act, provided such individual is not disqualified and in the case of a partnership none of the partners is an individual who is disqualified for appointment as auditor or from holding such appointment on any of the grounds mentioned in article 153 of the Companies Act;

"chargeable income" means the total income of any person for any year;

Cap. 370.

"collective investment scheme" means any scheme or arrangement which is licensed under the Investment Services Act or notified in terms of the Investment Services Act (List of Notified AIFs) Regulations;

"Commissioner" means the Commissioner for Revenue;

"Commonwealth" has the same meaning as is assigned to it in article 124 of the Constitution of Malta;

"company" means -

Cap. 386.
Cap. 168.

(*a*) (i) a limited liability company constituted under the Companies Act or under the Commercial Partnerships Ordinance; or

(ii) any other company constituted as such under any other law in force in Malta;

(iii) (1) any partnership *en nom collectif* and any partnership *en commandite* constituted under the Companies Act or under the Commercial Partnerships Ordinance;

(2) any partnership regulated by the applicable provisions of the Civil Code and registered in such manner as may from time to time be provided in terms of the Second Schedule to the Civil Code; Cap. 16.

(3) any European Economic Interest Grouping (EEIG) formed pursuant to the provisions of the Companies Act (European Economic Interest Grouping) Regulations; S.L. 386.08

and which partnership or EEIG as the case may be, has elected to be treated as a company in terms of article 27(6) of the Income Tax Management Act and for as long as such election remains in force: Cap. 372.

Provided that in the case of a cell company as defined in the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations, (in this proviso referred to as 'the Regulations') as may be amended from time to time, or in any other law or regulations replacing the Regulations, for all intents and purposes of the Income Tax Acts, every cell of a cell company and that part of a cell company in which non-cellular assets are held, shall each be deemed to be a separate company and any words and expressions in the Income Tax Acts which are relevant to a company shall be construed accordingly. The interpretation of such words and expressions insofar as applicable to a cell company shall be made on the basis of the relevant provisions of the Regulations: S.L. 386.10

Provided further that in the case of a securitisation cell company as defined in the Securitisation Cell Company Regulations (in this proviso referred to as 'the Securitisation Regulations'), as may be amended from time to time, or in any other law or regulations replacing the Securitisation Regulations, for all intents and purposes of the Income Tax Acts, every cell of a securitisation cell company and that part of a securitisation cell company in which non-cellular assets are held, shall each be deemed to be a separate company and any words and expressions in the Income Tax Acts which are relevant to a company shall be construed accordingly. The interpretation of such words and expressions insofar as applicable to a securitisation cell company shall be made on the basis of the relevant provisions of the Securitisation Regulations: S.L. 386.16

Provided further that a partnership *en commandite* with its capital divided into shares constituted prior to the 1st of January, 2015 shall be deemed to have elected to be treated as a company in terms of article 27(6) of the Income Tax Management Act and for as long as such election remains in force; Cap. 372.

(*b*) (i) any body of persons constituted, incorporated or registered outside Malta, and of a nature similar to a company referred to in sub-paragraphs (i) or (ii) of paragraph (*a*) above;

(ii) any body of persons constituted, incorporated or registered outside Malta and of a nature similar to any partnership referred to in sub-paragraph (iii) of paragraph (*a*) above, where such body of persons has elected to be treated as a company in terms of article 27(6) of the Income Tax Management Act and for as long as such election remains in force;

Cap. 372.

(*c*) any co-operative society duly registered as such under the appropriate law for the time being in force in Malta;

"continental shelf" has the same meaning as is assigned to it in the Continental Shelf Act;

Cap. 535.

"debenture interest" means interest payable by a company under or by virtue of a debenture or a debenture trust deed, whether in the form of a mortgage or any other instrument or document acknowledging indebtedness;

"distributable profits" shall mean the total profits which are available for distribution by a company registered in Malta under the laws for the time being in force in Malta, and the distributable profits shall, for the purposes of this Act, be allocated to the following accounts, that is to say, final tax account, immovable property account, foreign income account, Maltese taxed account, and untaxed account, and for the purposes of this definition these accounts shall comprise the distributable profits as set out in the respective definitions:

Provided that in the case of a company which is neither incorporated nor resident in Malta the distributable profits shall be the profits attributable to the activities of such company in Malta and in respect of which it has registered with the Commissioner less any of such profits which the company has distributed in previous years;

"dividend" includes -

(*a*) bonus shares

(*b*) any distribution made by a company, to its partners or shareholders, as the case may be, and any amount credited to them as partners or shareholders as the case may be; and

(*c*) any distribution made by a co-operative society to its members and any amount credited to them as members, including any patronage refund, bonus certificate or bonus share, made, paid or allotted in accordance with the law regulating such societies for the time being in force in Malta;

"equity holding" shall mean a holding of the share capital in a

company which is not a property company, when the shareholding entitles the shareholder to at least any two of the following rights (hereinafter referred to as "equity holding rights"):

(i) a right to votes;

(ii) a right to profits available for distribution to shareholders; and

(iii) a right to assets available for distribution on a winding up of that company,

and "equity shares", "equity shareholder" and "equity shareholding" shall be construed accordingly:

Provided that the Commissioner shall be entitled to determine that an equity holding exists even where such holding is not a holding of the share capital in a company or does not consist solely of such a holding of share capital, but where it can be demonstrated that in substance there is at any time an entitlement to at least two of the equity holding rights;

"final tax account" shall mean the taxed account to which an amount of distributable profits which suffered tax, calculated in such manner and in such amount as may be prescribed, shall be allocated before any distributable profits are allocated to any other taxed account;

"foreign income account" shall, with effect from the year immediately preceding the year of assessment 1996, mean any of the following categories of distributable profits arising in that year and in subsequent years to the extent that they result from taxable income:

(*a*) profits resulting from royalties and similar income arising outside Malta and from dividends, capital gains, interest, rents, income or gains derived from a participating holding or from the disposal of such holding other than a participating holding in a company resident in Malta, or in a partnership *en commandite* the capital of which is not divided into shares which is resident in Malta, and any other income derived from investments situated outside Malta, which are liable to tax in Malta and shown as part of the company's chargeable income in the return made pursuant to article 10 of the Income Tax Management Act, and are receivable by a company registered in Malta not being a company registered under the Malta Financial Services Authority Act, and

Cap. 372.

Cap. 330.

(*b*) profits resulting from investments, assets or liabilities situated outside Malta to a company not registered under the Malta Financial Services Authority Act, and either licensed as a bank in Malta or in possession of a licence granted under the provisions of the Financial Institutions Act:

Cap. 330.

Cap. 376.

Provided that, notwithstanding the provisions of article 92(1)(*b*), with effect from the year of assessment 2016, this paragraph shall not be applicable to any company which is not specifically empowered to receive such

profits or gains; and

(*c*) all profits or gains of a company registered in Malta, which are liable to tax in Malta and shown as part of the company's chargeable income in the return made pursuant to article 10 of the Income Tax Management Act and attributable to a permanent establishment (including a branch) situated outside Malta, and for these purposes "profits or gains" shall be calculated as if the permanent establishment is an independent enterprise operating in similar conditions and at arm's length; and

Cap. 372.

(*d*) profits resulting from dividends paid out of the foreign income account of another company registered in Malta; and

(*e*) profits or gains resulting to a company registered in Malta authorised under article 7 of the Insurance Business Act, not being a company registered under the Malta Financial Services Authority Act, from the business of insurance in relation to risks situated outside Malta:

Cap. 403.
Cap. 330.

Provided that this provision shall apply exclusively to companies which allocated profits to the foreign income account on the basis of this paragraph for any year of assessment up to and including year of assessment 2007, and such companies shall only be entitled to continue allocating profits on the basis of this paragraph up to and including year of assessment 2011:

Provided that in the case of a company referred to in paragraph (*e*) of this definition, any profits or gains which would, in accordance with the above provisions, stand to be allocated to the foreign income account will, for any financial year, not be so allocated unless such profits or gains arise in the year immediately preceding the year of assessment 2000 and in subsequent years:

Provided further that in the case of a company which is licensed as a bank in Malta or which forms part of a banking group as defined below, any profits which would, in accordance with the above provisions, stand to be allocated to the foreign income account will, for any financial year, not be so allocated unless:

(*a*) more than ninety-five per cent of its average daily deposits throughout the financial year are taken from persons who are not residents in Malta; and

(*b*) where the company forms part of a banking group, such group meets, on a consolidated basis, the requirement specified in paragraph (*a*) above.

For the purposes of this proviso:

(*a*) "banking group" shall comprise only Maltese registered companies, at least one of which must be a bank licensed in Malta, and which companies are

members of a banking group of companies. Two companies shall be deemed to be members of a banking group of companies if one is the ten per cent affiliate of the other or both are ten per cent affiliates of a third company. For this purpose, a company shall be deemed to be a ten per cent affiliate of another company (parent company):

(i) if and so long as more than ten per cent of its ordinary share capital and more than ten per cent of its voting rights are owned directly or indirectly by the parent company; or

(ii) the parent company is beneficially entitled either directly or indirectly to more than ten per cent of any profits available for distribution to the ordinary shareholders of the affiliate company; or

(iii) the parent company would be beneficially entitled either directly or indirectly to more than ten per cent of any assets of the affiliate company available for distribution to its ordinary shareholders on winding up:

Provided that notwithstanding the above provisions, a company which has been acquired by a bank in satisfaction of a debt and which does not otherwise form part of the bank's business shall be deemed not to form part of a banking group;

(*b*) "average daily deposits" shall be computed by taking the total deposits at the end of each day for the financial year and dividing such amounts by the number of days in that financial year and average daily deposits taken from persons who are not resident in Malta shall be computed in like manner. The word "deposits" shall have the meaning assigned to it in the Banking Act; Cap. 371.

(*c*) the amount of the consolidated average daily deposits of a banking group shall include only deposits accepted by companies forming part of the banking group placed by persons other than such companies:

Provided further, that in the case of an international trading company, the profits which would, in accordance with the above provisions, stand to be allocated to the foreign income account will, for any financial year, not be so allocated:

Provided further that notwithstanding anything contained in this Act or in any rules made thereunder any profits derived up to the 31 December 2010 by a company which was resident in Malta prior to the 1 January 2007 (other than a company which has exercised its option in terms of paragraph (i)(2) of the proviso to article 48(4A)(*b*) of the Income Tax Management Act) which would have been allocated to the foreign income account had such profits been brought to charge to tax in the year of assessment 2007 shall be allocated to the foreign income account; Cap. 372.

"immovable property account" shall mean the taxed account to which distributable profits which have suffered tax and which are not allocated to the final tax account calculated in such manner as may be prescribed, shall be allocated before any distributable profits are allocated to the other taxed accounts;

"incapacitated person" means any minor, lunatic, idiot, insane person or person under tutorship or curatorship;

"income" except for the purposes of article 4(1) and Part IV shall include capital gains as defined in article 5;

"industrial building or structure" includes a building used as a hotel or a car park or offices, as may be prescribed. For the purpose of this definition:

(*a*) the word "hotel" includes any number of constructions suitably furnished and equipped, with accommodation in single or double bedrooms, provided that such constructions are grouped together and have in common ancillary hotel services and amenities within a single and defined parcel of land and are operated by a common management for the accommodation and for the use of guests against payment;

(*b*) the word "car park" refers to a structure of a commercial nature available to the general public, which is the main income generating activity of any person claiming any deductions in its respect under article 14(1)(*f*) or (*j*), and which is first used for this purpose after the 1st January 2012;

"international trading company" means a company registered in Malta by not later than 31 December 2006 which is engaged solely in carrying on trading activities with persons outside Malta who are not resident in Malta and which has its objects expressly limited to such trading activities as well as to such acts and activities as are necessary for the conduct of its operations from Malta. The following activities shall be allowable activities of an international trading company:

(*a*) purchases for export of goods manufactured, assembled or processed in Malta provided that such purchases are not made from a person who owns directly or indirectly more than fifteen per cent of the ordinary share capital of the said international trading company;

Cap. 330.

(*b*) trading with companies registered in Malta under the Malta Financial Services Authority Act;

(*c*) trading with other international trading companies; and

(*d*) the management of companies resident in Malta whose business is restricted to affiliated insurance and where such business is carried on exclusively with non-residents;

(*e*) the provision of management, administration or other services to collective investment schemes resident in Malta where such schemes are marketed exclusively outside Malta and are licensed or exempt from licensing under the Investment Services Act; and Cap. 370.

(*f*) the provision of ship management services by companies whose activities and objects solely comprise the management of ships which are of not less than one thousand nett tons and which are engaged in the carriage of goods or passengers:

Provided that a company shall not be, in the year immediately preceding a year of assessment, an international trading company if it claims a benefit under any provision of a law, other than the Income Tax Acts, which has the effect of reducing its chargeable income or its rate of tax for the said year of assessment, and in such case, notwithstanding the provisions of article 52(8)(*a*), any ruling which had been notified under the provisions of article 52(5) shall become void. This proviso shall have effect notwithstanding that the relevant law deems that such benefit is granted under any of the provisions of the Income Tax Acts:

Provided that the company has not opted to cease to be an international trading company pursuant to article 48(4A)(*b*)(i)(1) of the Income Tax Management Act: Cap. 372.

Provided further that notwithstanding any other provisions of this Act or any other law including the provisions of article 52(8) of this Act no company shall be an international trading company with effect from 1 January 2011;

"loss" in relation to a trade, business, profession, or vocation means loss computed in like manner as profits;

"Malta" means the Island of Malta, the Island of Gozo and the other islands of the Maltese Archipelago, including the territorial waters thereof and the continental shelf;

"Maltese taxed account" means any of those profits of a company that are not included in the foreign income account and:

(*a*) which have suffered tax; or

(*b*) which have been exempt from tax under the provisions of any Maltese law and where the distribution of such profits by the company is also exempt from tax in the hands of the shareholders:

Provided that this paragraph shall cease to apply with effect from year of assessment 2008;

"married" refers to any of the spouses or partners in a married couple;

"married couple" refers to two spouses who contracted marriage

or two partners who have registered their partnership as a civil union, in accordance with the legal provisions of the country where the marriage or civil union was executed;

"participating holding" shall mean a holding which arises where:

(*a*) a company holds directly at least ten percent of the equity shares of a company whose capital is wholly or partly divided into shares, which holding confers an entitlement to at least ten percent of any two of the following:

(i) right to vote;

(ii) profits available for distribution; and

(iii) assets available for distribution on a winding up:

Provided that the Commissioner shall be entitled to determine that the provisions of this paragraph are satisfied even where the said minimum level of entitlement exists in the circumstances referred to in the proviso to the definition of "equity holding";

(*b*) a company is an equity shareholder in a company and the equity shareholder company is entitled at its option to call for and acquire the entire balance of the equity shares not held by that equity shareholder company to the extent permitted by the law of the country in which the equity shares are held; or

(*c*) a company is an equity shareholder in a company and the equity shareholder company is entitled to first refusal in the event of the proposed disposal, redemption or cancellation of all of the equity shares of that company not held by that equity shareholder company; or

(*d*) a company is an equity shareholder in a company and is entitled to either sit on the Board or appoint a person to sit on the Board of that company as a director; or

(*e*) a company is an equity shareholder which holds an investment representing a total value, as on the date or dates on which it was acquired, of a minimum of one million, one hundred and sixty-four thousand euro (€1,164,000) (or the equivalent sum in a foreign currency) in a company and that holding in the company is held for an uninterrupted period of not less than 183 days; or

(*f*) a company is an equity shareholder in a company and where the holding of such shares is for the furtherance of its own business and the holding is not held as trading stock for the purpose of a trade:

Provided that a holding of a company in -

(*a*) a partnership *en commandite* the capital of which is not divided into shares constituted under the Companies Act, not being a property partnership, or

Cap. 386.

(*b*) a body of persons which is constituted, incorporated or registered outside Malta, not being a property partnership, and is of a nature similar to a partnership *en commandite* the capital of which is not divided into shares constituted under the Companies Act, or Cap. 386.

(*c*) a collective investment vehicle constituted, incorporated or registered outside Malta and which is not resident in Malta, where the liability of investors in such scheme is limited to the amount invested by them,

shall be deemed to constitute a participating holding if it satisfies the provisions of any of paragraphs (*a*) to (*f*) above which shall apply *mutatis mutandis* to such holding. For the purposes of this proviso, the terms "equity shares" or "shares" shall be construed as referring to the capital in the said body of persons or collective investment scheme which entitles the holder to at least two of the following rights:

(i) a right to vote;

(ii) a right to profits available for distribution; and

(iii) a right to assets available for distribution on a winding up of the said body of persons,

and the term "equity shareholder" shall be construed accordingly:

Provided that the Commissioner shall be entitled to determine that an equity holding exists even where the particular company does not have a holding in the share capital in a company or does not consist solely of such a holding of share capital, but it can demonstrate that in substance it holds an entitlement to at least two of the equity holding rights:

Provided further that in the case of a holding falling within the purport of paragraph (*a*) above, the provisions of the said paragraph shall be deemed to be satisfied even where the minimum level of entitlement referred to in that paragraph exists at any time by reference to the circumstances referred to in the proviso to the definition of "equity holding";

"passive interest or royalties" shall mean interest or royalty income which is not derived, directly or indirectly, from a trade or business, where such interest or royalties have not suffered or suffered any foreign tax, directly, by way of withholding, or otherwise, at a rate of tax which is less than five per cent (5%);

"person" includes -

(*a*) a body of persons; and

(*b*) a responsible spouse in accordance with article 49;

"petroleum" means crude oil of whatever density, natural gas and other hydrocarbons and substances that may be extracted therefrom;

"portfolio investment" is an investment in securities such as shares, bonds, and such like instruments and which is held as one of many such investments for the purpose of investment by risk spreading where such an investment is not a strategic investment

and is made with no interest in and without the intention of influencing the management of the company invested in and in addition is made only to follow the share price and dividend policy of the company invested in to maximise investment returns and to sell the investment as soon as it appears that the shares may lose value;

"prescribed" means prescribed by rule under this Act;

"property company'' shall mean a company which owns immovable property situated in Malta or any real rights thereon or a company which holds, directly or indirectly, shares or other interests in any entity or person, which owns immovable property situated in Malta or any real rights thereon where five percent or more of the total value of the said shares or other interests so held is attributable to such immovable property or rights:

Provided that where a company, entity or person carrying on a trade or business owns immovable property situated in Malta or any real rights thereon, consisting only of a factory, showroom, warehouse or office used solely for the purpose of carrying on such trade or business, such company, entity or person shall, for the purpose of this definition, be treated as not owning immovable property if not more then fifty percent of the value of its assets consist of immovable property situated in Malta or any rights over such property and it does not carry on any activity the income from which is derived directly or indirectly from immovable property situated in Malta;

"property partnership" shall mean a partnership as defined in article 5(1)(b) which owns immovable property situated in Malta, or any real rights thereon, or a partnership which, directly or indirectly, holds shares or other proprietary interests in any entity or person, which owns immovable property situated in Malta, or any real rights thereon, where five percent or more of the total value of the said shares or other proprietary interests so held is attributable to such immovable property or rights:

Provided that where a partnership, entity or person carrying on a trade or business owns immovable property situated in Malta, or any real rights thereon, consisting only of a factory, showroom, warehouse or office used solely for the purpose of carrying on such trade or business, such partnership, entity or person shall, for the purpose of this definition, be treated as not owning immovable property if not more then fifty percent of the value of its assets consist of immovable property situated in Malta, or any real rights over such property, and it does not carry on any activity the income from which is derived directly or indirectly from immovable property situated in Malta;

"resident in Malta" when applied to an individual means an individual who resides in Malta except for such temporary absences as to the Commissioner may seem reasonable and not inconsistent with the claim of such individual to be resident in Malta; when applied to a body of persons, means any body of persons the control and management of whose business are exercised in Malta, provided that a company incorporated in Malta on or after 1st July 1994 shall be resident in Malta and any other company

incorporated in Malta shall be resident in Malta from 1st January 1995 where the management and control of the business of the company is exercised outside Malta;

"scholarship" includes a bursary, an award, a grant or an endowment of a similar nature, given or established for educational purposes;

"self assessment" has the meaning assigned to it in sub-articles (2) and (3) of article 10 of the Income Tax Management Act;

"the Special Commissioners" means the Commissioners appointed by the President of Malta under article 34 of the Income Tax Management Act; Cap. 372.

"spouse" shall include a partner registered as being in a civil union;

"tax" means the income tax imposed by the Income Tax Acts;

"taxed account" and "taxed accounts" shall mean any or all of the final tax account, immovable property account, foreign income account, Maltese taxed account and untaxed account;

"tax return date" with respect to a person for a year of assessment means the date prescribed pursuant to article 10(1) of the Income Tax Management Act for the submission by that person of the return of income for that year of assessment; Cap. 372.

"tax settlement date" has the meaning assigned to it in article 42(1A) of the Income Tax Management Act; Cap. 372.

"the Income Tax Acts" shall collectively mean this Act and the Income Tax Management Act;

"total income" means the aggregate amount of the income of any person from the sources specified in Part II of this Act, remaining after allowing the exemption under Part III and the deductions under Part IV, and computed in accordance with the provisions of Part V:

Provided that, subject to the provisions of article 12(3)(*b*) of the Income Tax Management Act, any income which is not required to be disclosed and is not disclosed in accordance with the provisions of the Income Tax Acts shall not form part of total income; Cap. 372.

"untaxed account" shall consist of those profits (or losses as the case may be), which represent the total distributable profits (a positive amount) or the total accumulated losses (a negative amount) as the case may be, and deducting therefrom the total sum of the amounts allocated to other taxed accounts;

"year of assessment" means the period of twelve months commencing on the first day of January, 1949 and each subsequent period of twelve months.

(2) Words and expressions used in this Act which are not known to the law of Malta but are known to the English Law, shall, so far as may be necessary to give effect to this Act and consistently with the provisions thereof, have the meaning assigned

to them in the English Law and be construed accordingly.

Administration of Act.
Substituted by: XXXV. 1972.2.
Added by: XVII. 1994.5.
Cap. 372.

3. The administration of this Act shall be vested in the Commissioner, and the provisions of articles 3 and 4 of the Income Tax Management Act shall apply to the Commissioner in the exercise of his powers and functions under this Act.

PART II

IMPOSITION OF INCOME TAX

Charge of Income Tax.
Amended by: XXV. 1960.4; VIII. 1969.3; XXXV. 1972.3; XLII. 1975.2; XXVIII. 1978.4; IX. 1983.4; XIII. 1983.5; VIII. 1987.2; XXXI. 1988.2; XIX. 1989.3; XXXVI. 1990.2; XVIII. 1993.3.
Renumbered by: XVII. 1994.2.
Amended by: XVII. 1994.4; XX. 1996.3; XI. 2000.3; L.N. 238 of 2000 IX. 2001.22; II. 2003.8; II. 2004.7; L.N. 409 of 2007; XIII. 2015.43.

4. (1) Subject to the provisions of this Act, income tax shall be payable at the rate or rates specified hereafter for the year of assessment commencing on 1st January, 1993 but only with respect to any capital gains made on or after the 25th November, 1992 and for each subsequent year of assessment upon the capital gains as defined in article 5 accruing or derived from Malta or elsewhere, and whether received in Malta or not, and for the year of assessment commencing on 1st January, 1949 and for each subsequent year of assessment upon the income of any person accruing in or derived from Malta or elsewhere, and whether received in Malta or not in respect of -

(*a*) gains or profits from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised including the profit arising from the sale by any person of any property acquired by him for the purpose of profit-making by sale, or from the carrying on or carrying out of any profit-making undertaking or scheme;

(*b*) gains or profits from any employment or office, including the value of any benefit provided by reason of any employment or office; and -

(i) for the purpose of this paragraph the Minister responsible for finance may by regulations prescribe the circumstances in which a person shall be treated as receiving a benefit from another person provided by reason of an employment or office and the value of any such benefit;

(ii) where in terms of the said regulations a person is treated as receiving a benefit provided by virtue of an employment or office after the termination thereof and that benefit has the nature of a pension the benefit shall be treated as a pension and the value determined in accordance with the said regulations shall constitute income chargeable to tax under paragraph (*d*).

(*c*) dividends, premiums, interest (which includes any gains from any sum of money in whatever currency deposited with a person carrying on the business of banking under the Banking Act in any account whatsoever) or discounts: Cap. 371.

Provided that, notwithstanding any other provision of this Act, such income of a company from an offshore banking subsidiary company shall constitute income chargeable to tax under paragraph (*a*) and the provisions of article 56(6) shall apply to such income;

(*d*) any pension, charge, annuity or annual payment;

(*e*) rents, royalties, premiums and any other profits arising from property;

(*f*) *Repealed by Act XX of 1996*;

(*g*) gains or profits not falling under any of the foregoing paragraphs:

Provided that:

(i) in the case of income arising outside Malta to a person who is not ordinarily resident in Malta or not domiciled in Malta, the tax shall be payable on the amount received in Malta;

(ii) no tax shall be payable on capital gains arising outside Malta to a person who is not ordinarily resident in Malta or not domiciled in Malta or to a person who is charged to tax at the rate of fifteen cents (0.15) in the euro as laid down in article 56(11);

(iii) in the case of any person who is charged to tax at the rate of fifteen cents (0.15) in the euro as laid down in article 56(11), the tax shall be payable only on any income or capital gains arising in Malta and on any amount of income arising outside Malta and received in Malta.

Sohowever also that paragraphs (i) and (ii) of this proviso shall not apply to an individual whose spouse is ordinarily resident and domiciled in Malta.

(2) Any sum realized under any insurance against a loss of profits shall be taken into account in the ascertainment of any profits or income.

(3) Where a person carries on in Malta an agricultural, manufacturing or other productive undertaking, the following provisions shall have effect, that is to say:

(*a*) if such person sells any product of the undertaking, in a wholesale market, outside Malta or for delivery outside Malta, whether the contract is made within Malta or outside Malta, the full profits arising from the sale shall be deemed to be income of such person accruing in or derived from Malta:

Provided that if it is shown to the satisfaction of the

Commissioner that the profit has been increased through treatment of the product outside Malta other than handling, grading, blending, sorting, packing or disposal, such increase of profits shall not be deemed to be income accruing in or derived from Malta;

(*b*) if such person otherwise disposes of, uses or deals with any product of the undertaking, outside Malta, the profit which might have been obtained if such person had sold the product to the best advantage in a wholesale market outside Malta shall be deemed to be the profit arising from such disposal, dealing or use, and to be the income of such person accruing in or derived from Malta.

(4) Where a body of persons carries on a club or similar institution and receives from its members not less than one half of its gross receipts on revenue account (including entrance fees and subscriptions), it shall not be deemed to carry on a business; but where less than one half of its gross receipts are received from members, the whole of the income from transactions both with members and others (including entrance fees and subscriptions) shall be deemed to be receipts from a business, and the body of persons shall be chargeable either in respect of the profits therefrom or in respect of the income which would be assessable if it were not deemed to carry on a business whichever is the greater.

In this sub-article "members" in relation to a body of persons means those persons who are entitled to vote at a general meeting of the body at which effective control is exercised over its affairs.

Nothing in this sub-article shall operate to annul or reduce an exemption granted in article 12, save as provided in sub-article (1)(*l*) thereof.

(5) Where under the provisions of article 24, a balancing charge falls to be made, the amount thereof shall be deemed to be income chargeable with tax under this Act.

(6) Subject to the provisions of sub-article (7), on the winding up, in full or in part, of any pension, saving, provident or other society or fund approved by the Commissioner for the purposes of article 53(1)(*b*)(ii), the following provisions shall have effect:

(*a*) any refund, reimbursement, gratuity, bonus, payment, compensation or other return or benefit paid or accruing to any person as a consequence of winding up shall, notwithstanding anything to the contrary contained in this Act or in any law, document, deed, contract, agreement or other instrument, be deemed to constitute income chargeable to tax in the hands of the said pension, saving, provident or other society or fund in the year of assessment in which it is granted or so accrues, and not to constitute income chargeable to tax in the hands of the person to whom it is paid or accrues; and

(*b*) no refund, reimbursement, gratuity, bonus, payment, compensation or other return or benefit shall be paid as aforesaid before payment has been effected of the tax chargeable in accordance with the provisions of this sub-article.

(7) Sub-article (6) shall not apply -

(i) to any benefit, or value thereof, chargeable with tax under sub-article (6) and which is paid or payable to members of the said pension, saving, provident or other society or fund, or other beneficiaries claiming through or under them, in accordance with the conditions under which the said pension, saving, provident or other society or fund was approved by the Commissioner;

(ii) to any capital sum exempt from tax under article 12(1)(*g*).

Profits or income prior to a change in residence or domicile. *Added by: I. 2010.11.*

4A. When a person -

(i) changes his residence and becomes resident in Malta and he was at no time domiciled or resident in Malta prior to such change in residence; or

(ii) changes his domicile and becomes domiciled in Malta and he was at no time domiciled or resident in Malta prior to such change in domicile; or

(iii) is "a company resulting from the merger" which is registered in Malta as set out in regulation 3(2) of the Cross-border Mergers of Limited Liability Companies Regulations (hereinafter referred to as "Cross-border Mergers Regulations") and none of the assets owned by the company on the day of the merger was owned by any merging company which is domiciled and, or resident in Malta at any time prior to the date of the particular merger, S.L. 386.12

and has made an election for the purpose of this paragraph by notice in writing to the Commissioner, all assets which are situated outside Malta and which were acquired by him, or in the case of a company resulting from the merger, by any non-resident merging company, prior to the above-mentioned change in domicile or residence or prior to the entry into force of the merger (each of which shall hereinafter be referred to as "occurrence"), shall be deemed, for the purpose of calculating any income that would not have been subject to tax had it arisen before the particular occurrence would have taken place, to be assets acquired on the date of the particular occurrence, at a cost which is proved to the satisfaction of the Commissioner to be the market value which it had on the date of the said occurrence:

Provided that such an election shall not be available unless the particular person exercises the election by not later than the end

of the year of assessment immediately following the basis year in which the occurrence takes place.

Capital gains.
Added by:
XVIII. 1993.4.
Renumbered by:
XVII. 1994.2.
Amended by:
XVII. 1994.7;
XXII. 1995.2;
XX. 1996.4;
V. 1998.8;
XVII. 1998.70;
XI. 2000.4;
IX. 2001.23;
II. 2004.8;
XIII. 2004.51;
II. 2006.7;
II. 2009.10;
I. 2010.12;
IV. 2011.8;
V. 2012.10;
L.N. 218 of 2012;
III. 2013.19;
XII. 2014.13;
XIII. 2015.44;
XXI. 2015.28;
XV. 2016.13;
XVI. 2017.15.

5.(1) (*a*) Capital gains derived by a person from the transfer of a capital asset shall be charged under article 4(1). Notwithstanding anything contained in any other part of this Act, such gains shall be ascertained as laid down in this article and in such manner as may be prescribed. The capital gains to which the provisions of this article shall apply are:

(i) gains or profits arising from any transfer of the ownership or usufruct of any immovable property or the assignment or cession of any rights over such property;

(ii) gains or profits arising from the transfer of the ownership or usufruct of or from the assignment or cession of any rights over any securities, business, goodwill, business permits, copyright, patents, trademarks and trade-names and any other intellectual property; and

(iii) gains or profits arising from a transfer of the beneficial interest in a trust in accordance with the provisions of subarticle (19). For the purposes of this subparagraph, "transfer of the beneficial interest in a trust" shall include a transfer of a full or partial beneficial interest in a trust and any alienation of any such full or partial interest as a result of a disclaimer of such interest or as a result of a person not remaining a beneficiary of such trust;

(iv) gains or profits arising from a transfer of securities as provided for in subarticle (9A) and from a transfer of value in securities as provided for in subarticle (13)(*b*)(ii); and

(v) gains or profits arising from the transfer of the ownership or usufruct of or from the assignment or cession of any rights over any interest in a partnership. For the purposes of this subparagraph "transfer" shall mean:

(*a*) a transfer of a full or partial interest and any alienation of any such full or partial interest in a partnership; and

(*b*) a deemed transfer of an interest in the partnership. Where a person acquires or increases a partnership share there is a deemed transfer of an interest in the partnership to that partner from the other partners;

(*b*) In this article -

"partnership" means -

(*a*) any partnership constituted under the Companies Act or under the Commercial Partnerships Ordinance, being either a commercial partnership *en nom collectif* or a commercial partnership *en commandite* the capital of which is not divided into shares; Cap. 386. Cap. 168.

(*b*) except for the purposes of sub-paragraph (v)(*b*), any other partnership having a legal personality distinct from that of its members constituted, incorporated or registered under any other law in force in Malta;

(*c*) any body of persons constituted, incorporated or registered outside Malta, and of a nature similar to the aforesaid partnerships;

(*d*) a European Economic Interest Grouping (EEIG) formed pursuant to the provisions of the Companies Act (European Economic Interest Grouping) Regulations; S.L. 386.08

"partnership share" means the share to which a person is entitled in the income of the partnership and to assets available for distribution on a winding up of the partnership;

"transfer" includes any assignment, sale, emphyteusis or sub-emphyteusis, partition, donation, settlement of property on trust, distribution and reversion of property settled on trust, sale by instalments, and any alienation under any title including any redemption, liquidation or cancellation of units or shares in a collective investment scheme as defined in article 2 of the Investment Services Act and maturity or surrender of linked long term policies of insurance, and any occurrence that is deemed to be a transfer in accordance with the provisions of subarticles (9A) and (13)(*b*), and for the avoidance of doubt includes any transfer of an asset by a company to its shareholders, or by a commercial partnership *en nom collectif* or commercial partnership *en commandite* the capital of which is not divided into shares to its members, in the course of winding up the company or partnership or in the course of a distribution of assets to its shareholders or partners pursuant to a scheme of distribution, but does not include a transfer *causa mortis*, or a transfer of property by the trustee of a disability trust or disability foundation to any one or more of the remaining beneficiaries of such trust or foundation or the heirs of the disabled beneficiary upon the death of the disabled beneficiary of such trust or foundation and where such remaining beneficiaries or heirs comprise only persons referred to in sub-article (2)(*e*)(i); for the purposes of this article, the expressions "disability trust" and "disability foundation" shall have the meaning assigned to them in article 12(1)(*z*); and Cap. 370.

"securities" shall mean shares and stocks and such like instrument that participate in any way in the profits of the company and whose return is not limited to a fixed rate of return, units in a collective investment scheme as defined in article 2 of the Investment Services Act, and units and such like instruments relating to linked long term business of insurance.

Cap. 370.

(2) For the purpose of ascertaining the gains or profits arising from any transfer of immovable property in terms of sub-article (1)(*a*)(i) -

(*a*) there shall be deducted in such manner and amount as may be prescribed, the cost of acquisition, the inflation element, any ground-rent paid on the property and for which a deduction is not due to the taxpayer under any other provision of this Act, maintenance, improvements, other expenses that have increased the value of the immovable property since it was acquired and other expenses directly related to the transfer;

(*b*) any transfer of immovable property by means of a deed of exchange shall be considered as if separate deeds of transfer were taking place between the parties to the deed;

(*c*) where immovable property is granted on emphyteusis or sub-emphyteusis for a period exceeding fifty years, or extendable to such periods, the following rules shall apply:

(i) where the premium exceeds the cost of acquisition in accordance with paragraph (*a*) hereof, such excess shall be deemed to be gains or profits;

(ii) where the cost of acquisition in accordance with paragraph (*a*) hereof exceeds the premium such excess shall be deductible from the gains or profits arrived at in accordance with sub-paragraph (iii) hereof;

(iii) no account shall be taken of any ground-rent or increase in ground-rent involved in the transfer unless and until such ground-rent or increase in ground-rent is redeemed, or the *directum dominium* or *sub directum dominium*, as the case may be, is transferred and in such case the gains or profits shall be deemed to be the price of redemption or sale less any deduction in accordance with sub-paragraph (ii) hereof;

(*d*) (i) a transfer shall not include a contract of partition where no owelty is due to any of the co-partitioners, and upon a transfer of any property by a co-partitioner the cost of acquisition shall be deemed to be the cost of acquisition of the property in question at the time of acquisition by the co-partitioner;

(ii) for the purposes of this paragraph only the immovable property held in common and partitioned shall be taken into account, and where money or other movables held in common is assigned to a co-partitioner in consideration for the reduction in the share of immovables assigned to him the partition shall be deemed to be one where an owelty has been paid;

(iii) where a person receives an owelty on a contract of partition he shall be deemed to have made capital gains as is equivalent to as much of the increase in the value of the property between the time of the acquisition by the co-partitioners and the time of partition, so however that tax on capital gains shall only be payable at the time of partition on such part of the capital gains made as is not included in the increase in the value of the property assigned to that co-partitioner between the time of acquisition by the co-partitioner and the partition, and where such co-partitioner transfers the property assigned to him the cost of acquisition shall be deemed to be the cost of acquisition of the immovables when acquired by the co-partitioners before the partition;

(iv) where a co-partitioner pays an owelty at the time of the partition, he shall be deemed to have made no capital gain at the time of the partition, and where such co-partitioner transfers any immovable property assigned to him in the partition, the cost of acquisition shall be deemed to be such portion of the sum of the cost of acquisition of the co-partitioner's share of all the immovables partitioned together with the owelty paid on the contract of partition, as is equivalent to the portion of the value of the immovable transferred to the total value of immovables assigned to the co-partitioner in the deed of acquisition;

(*e*) a donation shall be considered as a deemed sale made at the market value of the property at the time of transfer. Provided that no tax shall be payable where the donation is made by a person to:

(i) his spouse, descendants and ascendants in the direct line and their relative spouses, or in the absence of descendants to his brothers or sisters and their descendants, or

(ii) philanthropic institutions approved for the purposes of article 12(1)(*e*);

(*f*) without prejudice to the provisions of article 12(1)(*e*), where the property referred to in paragraph (*e*) is disposed of by the donee within five years of the

donation, the donee shall be charged on the gain ascertained in accordance with the provisions of this article by taking into account the cost of acquisition of the property at the time it was acquired by the donor; where the property is sold by the donee after the lapse of five years the cost of acquisition shall be deemed to be the value of the property as declared in the deed of donation;

(*g*) gains and profits relating to a transfer by donation, settlement of property in trust, or distribution or reversion of property settled in trust means the difference in the market value of the property at the time of the donation, settlement, distribution or reversion and the cost of acquisition of the property at the time of acquisition of the property by the donor, settlor or trustee as the case may be. The relevant instrument pursuant to which the said transfers were effected shall include a declaration of the said market value.

(3) For the purpose of ascertaining the gains or profits arising from any transfer of property in terms of sub-article (1)(*a*)(ii):

(*a*) the acquisition cost of shares acquired before the 25th November, 1992 shall be valued either on the Equity method of share valuation (net asset value) based on the last accounts submitted to the Commissioner by the 18th December, 1992 by taking into account the value of immovable property existing in the said accounts and adjusted in terms of sub-article (2)(*a*) or on the actual purchase price, whichever is the higher;

(*b*) listed shares quoted on a stock exchange on the 25th November, 1992 shall be valued at the price existing on that date; and in the case of shares quoted in foreign currency, the rate of exchange (middle rate of the Central Bank) on that date shall be used;

(*c*) shares acquired after the 25th November, 1992, shall be valued on the cost of acquisition:

Provided that with respect to shares acquired under a share option scheme the cost of acquisition shall be established in accordance with such rules as may be made by the Minister responsible for finance:

Provided further that where an amount standing to the credit of any of a company's reserve accounts, other than a capital redemption reserve and profits available for distribution, is applied in paying up to any extent any shares allotted by the company, the cost of acquisition of such shares shall be zero:

Provided also that the acquisition cost of shares resulting from a conversion of a partnership into a company as referred to in article 45B shall be the cost of acquisition of the interest (representing those shares) held in the partnership that had been converted into the said

company;

(*d*) where on a share transfer the rights pertaining to those shares are changed in any way, the transfer value of the shares shall be taken as if no such change has been made;

(*e*) any transfer consisting of an exchange shall be considered as if two separate transfers were taking place; and

(*f*) the provisions of sub-article (2)(*d*), (*e*), (*f*) and (*g*) shall apply *mutatis mutandis* to this sub-article;

(*g*) in the case of a transfer of shares listed on a stock exchange recognised under the Financial Markets Act, not being securities in a collective investment scheme and not being exempt from tax under the provisions of sub-article (6)(*b*): Cap. 345.

(i) the transfer value shall in no case exceed the market value of the said shares immediately upon being admitted to listing, and

(ii) the cost of acquisition taken into account shall be the cost of acquisition of the original shares:

For the purpose of this paragraph "original shares" shall have the same meaning assigned in sub-article (6)(*b*).

(3A) For the purpose of ascertaining the gains or profits arising from any transfer of property in terms of sub-article (1)(*a*)(v):

(*a*) the acquisition cost in each of the circumstances mentioned in this paragraph shall, subject to any adjustments that may be prescribed, be determined as follows:

(i) the acquisition cost of an interest acquired from an existing partner shall be the actual purchase price;

(ii) the acquisition cost of an interest acquired *causa mortis* shall be the lower of the value declared in a deed of transfer *causa mortis* and the price which that interest would have fetched had it been sold on the open market on the date of that acquisition;

(iii) the acquisition cost of an interest acquired by way of a capital contribution made to the partnership shall be the amount or value of such contribution;

(iv) the acquisition cost of an interest resulting from a conversion of a company into a partnership as referred to in article 45A shall be the cost of acquisition of the shares (representing that interest) held in the company that had been converted into the said partnership:

Provided that where the said shares consist of

shares whose return is limited to a fixed rate of return the acquisition cost shall be taken to be zero; and

(*b*) any transfer consisting of an exchange shall be considered as if two separate transfers were taking place; and

(*c*) the provisions of subarticle (2)(*d*), (*e*), and (*f*) and shall apply *mutatis mutandis* to this subarticle.

(4) The provisions of sub-article (2)(*d*) shall apply *mutatis mutandis* where the assets partitioned include both assets under sub-article (1)(*a*)(i) and (ii).

(5) The provisions of sub-article (1)(*a*)(i) shall not apply to gains or profits relating to transfer of immovable property:

(*a*) where a copy of the relevant deed of transfer dated prior to the 25th November, 1992 or of the relevant promise to transfer or acquire also dated prior to the 25th November, 1992, made in favour of the transferee, has been duly registered with the Inland Revenue Department by the 1st December, 1992 and a certificate to that effect has been issued by the Commissioner or, in the case of a deed of transfer, the deed has been duly enrolled in the Public Registry by the 1st December, 1992;

(*b*) where the Commissioner is satisfied that the property or undivided part of the property has been owned and occupied for a period of at least three years as the transferor's own residence immediately preceding the date of transfer and provided that the property is disposed of within twelve months of vacating the premises;

(*c*) for the purposes of paragraph (*b*) "own residence" means the principal residence owned by the taxpayer or his spouse being a dwelling house which has been the owner's only or main residence, including land, transferred through the same deed with the principal residence, which the owner has for his own occupation and enjoyment with that residence as its garden or grounds consisting of an area which, regard being had to the size and character of the dwelling house, is required for the reasonable enjoyment of it as a residence. A garage attached to or underlying a house or a block of flats, or a garage of not more than seventy square metres situated within five hundred metres of the dwelling house, and transferred through the same deed with the principal residence shall be deemed to be included as part of the residence. The period of residence includes the physical occupation of the premises and any absences from Malta such as on account of foreign employment, illness, holiday or study. Any part of the house, garden or grounds which is used exclusively for commercial purposes for any time

within two years of the transfer, or which is not required for the reasonable enjoyment of it as a residence shall not be considered as "own residence" and this part shall be apportioned on the basis of the area occupied for this purpose as a proportion of the whole area of the relative dwelling house, garden or grounds:

(*d*) where the property was taken over by Government and in respect of which a declaration by the President of Malta has been issued in terms of the Land Acquisition (Public Purposes) Ordinance before the 25th November, 1992; Cap. 88.

(*e*) where the property is assigned between spouses consequent to a judicial or consensual separation or a divorce;

(*f*) where the property formed part of the community of acquests between the spouses or was otherwise owned in common between them and is assigned to one of the spouses on the dissolution of the community or is partitioned between the spouses, or the surviving spouse and the heirs of the deceased spouse;

(*g*) where the property is assigned on emphyteusis for fifty years or less.

(6) The provisions of sub-article (1)(*a*)(ii) shall not apply to gains or profits relating to:

(*a*) (*deleted by Act II. 2009.10.*);

(*b*) transfer of shares listed, or in consequence of a listing, on a stock exchange recognised under the Financial Markets Act, not being securities in a collective investment scheme; Cap. 345.

(*c*) transfer of securities listed on a stock exchange recognised under the Financial Markets Act being securities in a collective investment scheme held in a prescribed fund as defined in article 41A(*b*); Cap. 345.

(*d*) transfer of units and such like instruments relating to linked long term business of insurance where the benefits are wholly determined by reference to the value of, or income from, securities to which either paragraph (*b*) or (*c*) applies;

(*e*) property transferred in the circumstances listed in subarticle (5)(*e*) and (*f*).

(6A) The provisions of subarticle (1)(*a*)(v) shall not apply to gains or profits relating to property transferred in the circumstances referred to in subarticle (5)(*e*) and (*f*).

(7) Where a person is entitled to capital allowances under article 14(1)(*f*) and (*j*) in respect of a capital asset which is sold at a price exceeding its cost of acquisition and any improvements made thereto, the cost of acquisition shall be computed on the cost of acquisition and the cost of any improvement made thereto.

(8) Where an asset referred to in sub-article (1)(*a*) used in a business for a period of at least three years is transferred and replaced within one year by an asset used solely for a similar purpose in the business, any capital gains realised on the transfer shall not be taxed but the cost of acquisition of the new asset shall be reduced by the said gain. When the asset is disposed of without replacement, the income, whether chargeable under this article or under article 4(1)(*a*), shall take into account the transfer price and the cost of acquisition reduced as aforesaid:

Provided that, unless otherwise authorised by the Commissioner, provisional tax as provided in article 43(1)(*b*) of that Act shall be payable on any transfer to which this sub-article applies:

Provided further that if the capital gain exceeds the cost of acquisition of the replacement property any excess is to be taxable in the year in which the replacement property was acquired and the cost of acquisition of the replacement property to be taken into account on a subsequent transfer will be zero.

(9) (i) Where an asset is transferred from one company to another company and such companies are:

(*a*) deemed to be a group of companies for the purposes of article 16, or

(*b*) controlled and beneficially owned directly or indirectly to the extent of more than fifty per cent by the same shareholders,

it shall be deemed that no loss or gain has arisen from the transfer. In ascertaining the income, whether chargeable under this article or under article 4(1)(*a*), where such an asset is subsequently transferred by a company to another company which does not fall within the provisions of paragraphs (*a*) or (*b*), or to another person, as the case may be, the base cost and the date of acquisition of the asset that would be considered shall be the original cost and the date when it was acquired before the transfer from the first company, being the company within the group, took place:

Provided that the Minister may by rules prescribe conditions for the relief envisaged in this subarticle that are different from those provided for in this paragraph, and those rules shall apply to transfers that are made after such date as may be prescribed.

(ii) Where an asset falling under the circumstances referred to in paragraph (i) is in the form of immovable property which is transferred by a company to another company that falls within the provisions of sub-paragraphs (*a*) and (*b*) of the said paragraph, or of rules prescribed in accordance with the said paragraph, or where the said immovable property is subsequently transferred to another company which does not fall within the said provisions, or to another person, as the

case may be, the notary publishing the relative deed of transfer shall attach to the said deed a notice made in such manner and containing such details as may be prescribed by the Minister.

(iii) Where the asset referred to in paragraph (i) consists of immovable property situated in Malta or shares in a property company, the provisions of this subarticle shall only apply where the individual direct or indirect beneficial owners of the companies referred to in paragraph (i) are the same and each such individual holds, directly or indirectly, substantially the same percentage interest in the nominal share capital and voting rights in each of the said companies. For the purpose of this paragraph the proviso to the definition of "property company" in article 2(1) shall not apply:

Provided that for the purpose of this paragraph an individual is deemed to hold substantially the same percentage interest in the nominal share capital and voting rights in each of the said companies where the difference between the percentage interest held in each company does not exceed twenty percent:

Provided further that where an individual holds, directly or indirectly, less than twenty percent of the nominal share capital and voting rights in only one of the said companies, such individual shall, for the purpose of this paragraph, not be taken into account in determining whether the individual direct or indirect beneficial owners of the said companies are the same:

Provided also that if more than one individual holds, directly or indirectly, less than twenty percent of the nominal share capital and voting rights in only one of the said companies, the previous proviso shall not apply where together such individuals hold, directly or indirectly, twenty percent or more of the nominal share capital and voting rights in that company:

Provided also that the whole of this paragraph shall not apply, where the companies referred to in paragraph (i) are directly or indirectly owned as to eighty percent or more by a company whose securities are listed on a stock exchange recognised under the Financial Markets Act. Cap. 345.

(iv) Where an asset, qualifying for tax relief under this article, is transferred from one company to another company and the company acquiring the asset issues shares in exchange for the acquired asset, whether to the transferring company or to any other person, the cost of acquisition of the said shares shall, for the purpose of calculating the gains or profits derived from the subsequent transfer of the said shares, be reduced (but not below zero) by an amount determined by deducting from the transfer value of the asset its cost

of acquisition to the transferring company:

Provided that this paragraph shall not apply where the said asset is charged to tax under the provisions of sub-article (9A) of this article or article 5A(12A).

(9A) (*a*) If a company ("the chargeable company") holds shares in a company, which had been acquired from another company, and such acquisition was exempt from tax under subarticle (9), this subarticle shall apply if the chargeable company ceases to be a member of the original group before the lapse of six years from the date of the said acquisition. References in this subarticle to a company ceasing to be a member of a group do not apply to cases where a company ceases to be a member of the original group by being wound up or dissolved or in consequence of another member of the original group being wound up or dissolved:

Provided that where a company ceases to be a member of the original group by being wound up or dissolved, for the purpose of determining whether the chargeable company ceases to be a member of the original group under paragraph (*b*), such company shall be deemed to have remained in existence.

(*b*) The chargeable company shall cease to be a member of the original group, if such company and the company from which it had acquired the shares referred to in paragraph (*a*) no longer satisfy the provisions of subarticle (9)(i) and (iii) and such determination shall be made by reference to the same individuals referred to in paragraph (iii) of the said subarticle taken into account in determining whether the two companies referred to in this paragraph satisfied the provisions of subarticle (9)(i) and (iii) on the date of the acquisition referred to in paragraph (*a*):

Provided that where the acquisition referred to in paragraph (*a*) took place before the 1st January 2010, subarticle (9)(iii) shall be disregarded for the purpose of determining whether a company ceases to be a member of a group:

Provided further that where the chargeable company ceases to be a member of the original group, solely as a result of a change in the direct or indirect individual shareholders of the company from which it had acquired the shares referred to in paragraph (*a*), the chargeable company shall, for the purpose of this paragraph, not be treated as ceasing to be a member of the original group as a result of such change, so however that for the purpose of determining whether the chargeable company ceases to be a member of the original group it shall be deemed that such change had not taken place and such determination shall be made by reference to the same individuals referred to in sub-

article (9)(iii) taken into account in determining whether the chargeable company and the company from which it had acquired the shares satisfied the provisions of sub-article (9)(i) and (iii) on the date of the acquisition referred to in paragraph (*a*).

(*c*) For the purpose of this subarticle the term "original group" shall mean the two companies referred to in paragraph (*b*), and the individual direct or indirect beneficial owners of the said companies who were taken into account in determining whether the provisions of subarticle (9)(i) and (iii) had been satisfied on the date of the acquisition referred to in paragraph (*a*):

Provided that where the two companies referred to in this paragraph are directly or indirectly owned as to eighty percent or more by a company whose securities are listed on a stock exchange recognised under the Financial Markets Act, the term "original group" shall mean the two companies referred to above and the company whose securities are listed on the said stock exchange as existing on the date of the acquisition referred to in the paragraph (*a*): Cap. 345.

Provided further that where an individual acquires shares in terms of a donation exempt from tax under the provisions of subarticle (2)(*e*), or a transfer *causa mortis*, such individual shall be deemed for all the purposes of this subarticle to have held such shares from the date such shares were previously acquired in an acquisition preceding the date of the donation or the transfer *causa mortis*.

(*d*) When the chargeable company ceases to be a member of the group it shall be treated for all the purposes of this article as if, immediately after its acquisition of the shares referred to in paragraph (*a*), it had transferred and immediately re-acquired the shares at that time.

(*e*) The base cost and the date of acquisition of the shares that is taken into account for the purpose of determining any gain or loss shall be the original cost and the date when the shares had previously last been acquired by a company by means of a transfer that did not qualify for an exemption in terms of subarticle (9) or by means of an allotment, which ever is the later.

(*f*) (i) For the purpose of ascertaining the gains or profits arising under this subarticle, the acquisition cost of shares acquired before the 25th November, 1992 shall be valued either on the Equity method of share valuation (net asset value) based on the last accounts submitted to the Commissioner by the 18th December, 1992 or on the actual purchase price, whichever is the

higher.

(ii) Shares acquired on or after the 25th November 1992, shall be valued on the cost of acquisition:

Provided that where an amount standing to the credit of any of a company's reserve accounts other than a capital redemption reserve and profits available for distribution, is applied in paying up to any extent any shares allotted by the company, the cost of acquisition of such shares shall be zero.

(*g*) Any gain or loss on the transfer referred to in paragraph (*d*) shall be treated as accruing to the chargeable company immediately before the company ceases to be a member of the group in accordance with paragraph (*b*).

(*h*) For the purpose of paragraph (*a*) the term "shares in a company" shall mean shares in a company which, on the date of the acquisition referred to in the said paragraph owned, directly or indirectly, any immovable property situated in Malta or any real rights thereon and the said property or any part thereof is still, directly or indirectly, owned by such company on the date it ceases to be a member of the group in accordance with the provisions of paragraph (*b*). For the purpose of this paragraph a company is treated as indirectly owning immovable property if it holds, directly or indirectly, shares or other interests in any entity or person, which owns immovable property situated in Malta or any real rights thereon where five percent or more of the total value of the said shares or other interests so held is attributable to such immovable property or rights.

(*i*) Where in accordance with paragraph (*d*) the chargeable company is treated as having transferred and immediately reacquired the shares, and a chargeable gain or a capital loss accrues to the chargeable company on the deemed transfer, the chargeable gain or capital loss accruing on the deemed transfer shall be treated as accruing not to the chargeable company but to a related company ("company A") if -

(i) at the time of accrual, company A was incorporated in Malta, and

(ii) a joint election under this paragraph is made by the chargeable company and company A to treat the chargeable gain or capital loss as accruing to company A, and

(iii) such joint election is made by notice given to the Commissioner not later than twelve months after the end of the accounting period of the chargeable company or company A (whichever is the earlier) in which the time of accrual fell, and

(iv) provisional tax payable in accordance with article 43 of the Income Tax Management Act, is paid by company A at a rate of thirty-five percent of the market value of the shares deemed transferred within the period prescribed in the said article. Cap. 372.

For the purpose of this paragraph company A is related to the chargeable company if both companies form a group for the purposes of subarticle (9) at the time of accrual and "time of accrual" means the time at which, by virtue of paragraph (*d*), the gain or loss is treated as accruing to the chargeable company.

(10) (*a*) A capital loss shall be computed in the same manner as a capital gain.

(*b*) Any loss resulting from the transactions falling under sub-article (1) shall not be set off against other income for the year of assessment but shall be carried forward and set off against capital gains in respect of subsequent years of assessment until the full loss is absorbed.

(*c*) Bad debts incurred in relation to the said transactions proved to the satisfaction of the Commissioner to have become bad during the year immediately preceding the year of assessment, notwithstanding that such bad debts were due and payable prior to the commencement of the said year, shall be allowed as a deduction against the capital gains in the year in which they were incurred and if there are no gains for that year shall be carried forward and set off against future gains:

Provided that all sums recovered in respect of amounts previously allowed as bad debts shall be treated as gains for the purposes of this article and charged accordingly for the year in which they are recovered.

(11) The gains or profits from any transaction chargeable under paragraph of article 4(1)(*a*) shall not be chargeable again as capital gains in relation to the same transaction under this article.

(12) (*a*) The market value of an asset shall be the price which that asset would fetch if sold on the open market at the time of transfer;

(*b*) where the market value of an asset is required to be determined by the Commissioner he may seek the opinion or assistance of any appraiser, architect or other valuer; and

(*c*) the person making the appraisement or valuation on behalf of the Commissioner shall for the purpose of carrying out the task so entrusted to him be deemed to be a person serving in the Department of the Commissioner and as having an official duty under this Act.

(13) (*a*) Where a person transfers an asset which, at the time of acquisition, formed an undivided part of a larger asset (hereinafter in this paragraph referred to as "the whole asset"), the deductions allowable in ascertaining the gain arising from that transfer shall be equivalent to such proportion of the cost of acquisition of the whole asset and of the other deductions that would be due in terms of this article had that person transferred the whole asset, as the consideration for the transfer bears at the time of the transfer to the market value of the whole asset.

(*b*) (i) A reduction of the share capital of a company shall be deemed to be a transfer of such proportion of the holding of the owner as is equal to the proportion of the reduction of the capital of the company and shall constitute a gain or loss for the purpose of this article in the year in which such reduction is effected:

Provided that where there is a proportionate reduction in the shareholding of all the shareholders, such that the proportion of the shareholding of each shareholder with respect to number, type, class, voting rights and value of shares is equal before and after the reduction is effected, it shall be deemed that no loss or gain has arisen from the transfer.

(ii) Where the market value of shares held by a person ("the transferor") in a company has been reduced as a result of a change in the issued share capital of such company, or a change in voting rights attached to such shares, and such value passes into other shares in or rights over the company held by any other person ("the transferee"), the transferor shall be deemed to have made a transfer of such value so reduced to the transferee. Any gains or profits shall be calculated by taking into account the difference between the market value of the shares held immediately before and after the said change:

Provided that this paragraph shall not apply where the change in the issued share capital or change in voting rights does not produce any change in the individual direct or indirect beneficial owners of the said company and in the proportion in the value of the said company represented by the shares owned beneficially directly or indirectly by each such individual:

Provided further that this paragraph shall not apply where the change in the issued share capital consists of an allotment of shares in a company as a result of an exchange of shares on a restructuring of holdings exempt from tax

under the provisions of subarticle (14):

Provided also that this paragraph shall not apply where the said company is a company whose securities are listed on a stock exchange recognised under the Financial Markets Act: Cap. 345.

Provided also that this paragraph shall not apply where the transfer of value is made by the transferor to a person referred to in subarticle (2)(*e*)(i):

Provided also that this paragraph shall not apply where the said company is not a "property company" and it can be shown to the satisfaction of the Commissioner that the said change is effected for *bona fide* commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes is avoidance of liability to tax. For the purpose of this paragraph the proviso to the definition of "property company" in article 2(1) shall not apply.

(*c*) On any subsequent transfer of the shares referred to in paragraph (*b*)(i), the cost of acquisition shall be deemed to be the residual part of the cost of acquisition not taken into account on the reduction of capital.

(14) Where a transfer involving the exchange of shares on restructuring of holding upon mergers, demergers, divisions, amalgamations and reorganisation takes place it shall be deemed that no loss or gain has arisen from such transfer and the cost of acquisition upon a subsequent transfer of the original shares or the new shares shall be deemed to be the cost of acquisition of the original shares.

For the purposes of this subarticle -

"original shares" means shares held before and involved in the restructuring, and

"new shares" means, in relation to any original shares, the shares in the company which, as a result of the restructuring, represent the original shares:

Provided that the provisions of this subarticle shall only apply in such manner and in such circumstances as may be prescribed by the Minister:

Provided further that the first proviso hereof shall not apply to divisions and mergers where the draft terms of the said divisions and mergers had been forwarded to the Registrar of Companies for registration in terms of the provisions of the Companies Act on or prior to the 24th November, 2003 and the Registrar had published the relevant statement in the Government Gazette in terms of the said Act on or prior to the 31st December, 2003, provided that a copy of the relative publication is attached to the relative deed. Cap. 386.

(15) Where a business or a partnership *en nom collectif*, as a going concern is incorporated into a limited liability company, which is beneficially owned to the extent of not less than seventy-five per cent by the same person who owned the business or the partnership *en nom collectif* and there is a transfer of assets it shall be deemed that no loss or gain has arisen from the transfer. Provided that where such assets are subsequently transferred by the company, the base cost and date of acquisition of the assets that would be considered, whether chargeable under this article or under article 4(1)(*a*), shall be the original cost and the date when it was acquired before the first transfer took place:

Provided further that this article shall apply only where an individual or a partnership *en nom collectif* transfers to a company a business as a going concern, together with the whole assets of the business, or together with the whole of those assets other than cash, and the business is so transferred wholly in exchange for shares issued by the company to the person transferring the business:

Provided also that for the purpose of computing any chargeable gain accruing on the disposal of the said shares, the cost of acquisition taken into account shall be reduced by any chargeable gain that would have resulted on the transfer of the said business had this subarticle and article 5A not been applied.

(16) For the purposes of this article the value of the usufruct and of the *nuda proprietas* shall be computed in accordance with the provisions set out in the Duty on Documents and Transfers Act.

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(17) The Minister may make rules making provision for the purpose of removing the effect of any scheme made for the purpose of avoiding, reducing or postponing any tax due under this article, and in addition the Minister may make rules providing that any transfer of any right referred to in subarticle (1) shall only be valid if it is made by agreement in writing and if payment of such portion of the provisional tax on the capital gains due thereon is made as may be prescribed and if the said agreement is registered in such manner as may be prescribed with such authority as may be prescribed.

Settlement of property.

(18) On the settlement of property on trust, where the trust is established or evidenced by means of a written instrument it shall be deemed, for the purposes of this article that -

(*a*) no transfer had taken place where the sole settlor is also the sole beneficiary of such trust;

(*b*) such property had been donated directly by the settlor of such trust to the beneficiaries that are persons other than the settlor himself:

Provided that -

(i) the relevant trust instrument specifically provides that the beneficiaries have an irrevocable vested right to receive all the property settled in trust as specified in the said written instrument; and

(ii) the relevant trust instrument specifically

provides that the beneficiaries are, in relation to each settlor, persons referred to in subarticle (2)(*e*)(i), whether they are in existence or not at the time of such settlement, or are persons referred to in paragraph (*e*)(ii) of the said subarticle in each case, such persons being either alone or with the settlor himself; and

(iii) the beneficiaries include persons who are in existence at the time of the settlement of such property on trust;

(*c*) no loss or gain had arisen:

Provided that -

(i) the relevant trust instrument specifically provides that the beneficiaries of such trust comprise only persons referred to in subarticle (2)(*e*)(i), whether they are in existence or not at the time of such settlement, in relation to each settlor and may also include the said settlor himself; and

(ii) the beneficiaries of such trust include at the time of such settlement a person who by reason of an interdiction, incapacitation, or of a physical or mental impairment, or by reason of an irregular or dissolute lifestyle is substantially limited in his ability to administer or manage the property settled in trust, or include at the time of such settlement a person who by reason of a physical or mental impairment is or may become unable to fully provide for his own maintenance, and where the trustee of such trust provides the Commissioner with the necessary evidence proving such interdiction, incapacitation, impairment or inability in the form of medical certificates, court orders or any other relevant documents which the Commissioner may deem necessary; and

(iii) the beneficiaries of such trust include persons who are in existence at the time of the settlement of such property.

Transfers of beneficial interest.

(19) (*a*) For the purposes of the provisions of subarticle (1)(*a*)(iii), gains or profits shall be deemed to arise on the date of the execution of a written instrument (hereinafter in this subarticle referred to as "transfer instrument") whereby there is a transfer of the beneficial interest in a trust which includes taxable trust property. For the purposes of this subarticle "taxable trust property" means property referred to in subarticle (1)(*a*):

Provided that this phrase includes only such property, the transfer of which, had it been carried out directly by the relevant beneficiary, would have given rise to

gains or profits chargeable to tax in accordance with the provisions of this Act.

(*b*) The gain or profit arising from the transfer of the beneficial interest in a trust which has taxable trust property shall be equal to the consideration for the said beneficial interest as declared in the relevant transfer instrument. No deductions shall be allowable against the consideration payable to the transferor.

(*c*) The gain or profit that is determined in accordance with paragraph (*b*) shall be taxable at the rate specified in article 56(6). No relief, reduction, credit or set-off of any kind shall be made in respect of such tax.

Cap. 16.

(*d*) In addition to the requirements laid down in Sub-Title VII of Title VI of Part II of Book Second of the Civil Code, any person transferring the beneficial interest in a trust which includes taxable trust property shall, within forty-five days of the date on which the transfer instrument was executed, provide the trustee of such trust with an authenticated copy of the said transfer instrument and shall require the trustee to collect an amount of tax equal to the tax determined in accordance with the provisions of paragraph (*c*) for onward payment to the Commissioner.

(*e*) The tax so collected by the trustee from the transferor in accordance with the provisions of paragraph (*d*) shall be a debt due from the trustee to the Commissioner payable by not later than the fourteenth day following the end of the month in which the trustee had collected the tax. Together with this payment, the trustee shall provide the Commissioner with -

(i) an account of the gains or profits together with a list of all the assets making up the taxable trust property on the date the transfer instrument was executed on such form as may be prescribed;

(ii) an authenticated copy of the relevant transfer instrument; and

(iii) a copy of the last financial statements of the trust.

(*f*) The trustee of the relevant trust shall, by not later than fifteen days from the date when he receives acknowledgement from the Commissioner of receipt of the tax and documents referred to in paragraph (*e*), furnish the parties to the transfer instrument with a certificate evidencing that the tax has been paid and that his obligations under paragraph (*e*) have been fulfilled.

Cap. 16.

(*g*) Notwithstanding the provisions of Sub-Title VII of Title VI of Part II of Book Second of the Civil Code, any transfer of a beneficial interest in a trust which includes taxable trust property shall not take place and

shall not have any effects for the purposes of any law unless the said transfer is made by means of a transfer instrument and unless the transferor and the trustee have fulfilled their obligations in accordance with the provisions of paragraphs (*d*) and (*e*).

(*h*) Subject to the provisions of article 10A of the Income Tax Management Act, the person transferring the beneficial interest in a trust which includes taxable trust property shall not be obliged to disclose the existence of such gains or profits in any return made pursuant to the provisions of the Income Tax Acts and no further tax shall be payable on such gains or profits. Cap. 372.

(*i*) The provisions of this article shall not apply -

(i) where the Commissioner is satisfied that an irrevocable disclaimer of a beneficial interest was not effected with the sole or main purpose of avoiding, reducing or postponing liability to tax and where he has, at his discretion, ordered in writing that the provisions of this article are not applicable to such a disclaimer;

(ii) to any transfer of beneficial interest in a trust where the trustee holds property solely for the purpose of a designated commercial transaction as defined in subarticle (24).

Transfers of property in the administration of trusts.

(20) (*a*) Where, in the administration of a trust, the trustee transfers property of such trust, gains shall be ascertained in accordance with the provisions of this article and the cost of acquisition shall be determined in accordance with the provisions of paragraphs (*b*) and (*c*).

(*b*) In the case where such property had been settled in trust in any of the circumstances described in subarticles (18) and (24) where the settlor is also a beneficiary of the trust**,** the cost of acquisition shall be equal to the cost of acquisition of such property at the time it was originally acquired by the settlor of such trust. Where the property had been settled in the circumstances described in subarticle (18)(*a*) or subarticle (24)(*a*), it shall be deemed for the purposes of this article that the settlor has directly transferred such property.

(*c*) Subject to the provisions of paragraph (*b*), the cost of acquisition shall be the cost of acquisition at the time when such property was first acquired as trust property of that trust whether by way of settlement or otherwise.

Distribution of property settled on trust.

(21) (*a*) For the purposes of this article, property is distributed to beneficiaries of a trust when the trustee transfers property of a trust to any beneficiary of such trust provided that such transfer does not constitute a reversion of property settled on trust as defined in subarticle (22)(*a*).

(*b*) Where property which had been settled on trust is distributed to the beneficiaries it shall be deemed that for the purpose of this article -

(i) no transfer took place in the case where such property had been settled in the circumstances described in subarticle (18)(*b*) provided that the property was distributed to beneficiaries which were not settlors of the trust;

(ii) property distributed to persons referred to in subarticle (2)(*e*)(i) in relation to the settlor, was donated directly by the settlor to such beneficiaries where such property had been settled in the circumstances described in subarticle (18)(*c*);

(iii) notwithstanding the relevant deeming provisions of subarticle (18), such property was donated directly by the original settlor of that property to such beneficiaries where such property had been settled in the circumstances described in subarticle (18)(*b*) and (*c*) and was subsequently distributed to a beneficiary that was also a settlor of such trust:

Provided that the said beneficiary is a person referred to in subarticle (2)(*e*)(i) in relation to the said original settlor who had owned such property prior to its settlement in trust.

(*c*) The provisions of subarticle (20) shall apply *mutatis mutandis* in the circumstances of a distribution of property as they apply to the transfer of property in the administration of a property of a trust.

Reversion of property to settlor.

(22) (*a*) For the purpose of this article, property settled on trust reverts where there is a transfer to a person who is the settlor of a trust (even where such person is a beneficiary of that same trust) of property which had, immediately before its settlement into such trust, been owned by that same settlor.

(*b*) Where property which had been settled in trust in the circumstances described in subarticle (18) reverts back to the settlor, notwithstanding the relevant deeming provisions of subarticle (18)**,** it shall be deemed for the purposes of this article that such property had never been settled into such trust.

(*c*) Where property had been settled into trust in circumstances other than those described in paragraph (*b*), and where such property reverts back to the settlor for the reasons referred to in article 16 of the Trusts and Trustees Act, it shall be deemed for the purpose of this article that no loss or gain had arisen in the event of such reversion.

Cap. 331.

(*d*) The provisions of subarticle (20) shall apply *mutatis*

mutandis in the circumstances of a reversion of property settled on trust as they apply to the transfer of property in the administration of a property of a trust.

Subsequent transfers by settlors or beneficiaries.

(23) In the case of a subsequent transfer of property by a settlor or beneficiary, as the case may be -

(*a*) where such property had reverted to such settlor; or

(*b*) where such property was distributed to the beneficiaries, and where -

(i) such distribution was deemed, in accordance with the provisions of this article, to be a direct donation from the settlor of the trust to the said beneficiaries of such trust; and

(ii) such property is transferred by such beneficiaries within the period of time referred to in subarticle (2)(*f*) from the date of such deemed donation;

capital gains shall be ascertained in accordance with the provisions of this article by taking into account the cost of acquisition of such property at the time it was originally acquired by the settlor of the trust before the relevant settlement.

Transfers involving changes in trustees and particular commercial reasons.

(24) (*a*) No transfer of the property shall be deemed to have taken place -

(i) on the settlement of property consisting of shares in one company when the settlor who owned the said shares prior to the settlement thereof on trust is also the sole beneficiary of the trust;

(ii) on the settlement of property consisting of shares in one company when the settlement is made by more than one settlor, and the said settlors are the only beneficiaries of the trust, and the beneficiaries are entitled to benefit in accordance with the terms of the trust in the same proportion as they would have done as settlors;

(iii) on the reversion to the settlors of the shares referred to in subparagraphs (i) and (ii) in the same proportion which the settlors would have been entitled to when the property was owned by them as settlors immediately prior to the settlement;

(iv) upon the transfer of shares in one company purchased by a trustee with money settled in trust by a settlor for the purpose of acquiring, purchasing or subscribing to such shares, when the said transfer is made to the sole beneficiary of the trust who is also the original settlor;

and in each case, the trustee is a person authorised or not required to be so authorised to act as a trustee in terms of articles 43 and 43A of the Trusts and Trustees Act.

Cap. 331.

(*b*) No transfer of the property of a trust shall be deemed to have taken place where the trustee of such trust transfers all the property of such trust, which transfer involves only a change in the trustee of such trust and there is no change in the beneficiaries or in the beneficial interest.

(*c*) No loss or gain shall be deemed to have arisen where property is settled into a trust and where the trustee holds such property for the purpose of designated commercial transactions or where such property so settled reverts to the settlor. Where such property is transferred by the trustee of such trust to its beneficiaries (or to any person through a judicial sale or otherwise), the cost of acquisition shall be the cost at which the settlor of such trust had acquired the said property. In such a case, the provisions of subarticle (10) can be availed of by the settlor in the same manner as if the transfer of the property by the trustee had been made directly by the settlor himself. Where such property is not so transferred but reverts to the settlor, or where the settlor waives his right to a reversion of the property, and there is a subsequent transfer of such property, the cost of acquisition shall be the cost at which the settlor had acquired the said property prior to its settlement into the said trust. Subject to the approval of the Commissioner, the provisions of this paragraph shall also be applicable where a property is settled into a trust for the purpose of a commercial transaction not being a designated commercial transaction. For the purposes of this paragraph, "designated commercial transactions" means the custody of investment instruments, the establishment or holding of real or personal security interests (including hypothecs, privileges, pledges and guarantees), and any other commercial transaction which may be prescribed, while "commercial transaction" shall have the meaning assigned to it in article 2 of the Trusts and Trustees Act.

Transfers of shares involving fiduciary relationships. Cap. 331.

(25) (*a*) Where a person that is authorised or not required to be so authorised to act as a trustee in terms of articles 43 and 43A of the Trusts and Trustees Act holds in its own name shares in a company on behalf of the beneficial owner of such shares, and where such person transfers or otherwise disposes of the beneficial ownership of such shares to a third party, such a transaction shall be deemed to constitute a transfer of shares for the purposes of this article.

(*b*) Where a change in the registered holder of shares in a company does not involve a change in the beneficial ownership thereof, such change shall not be deemed to constitute a transfer of shares for the purposes of this article provided that the registered holder of such shares remains a person authorised or not required to be so authorised to act as a trustee in terms of articles 43 and 43A of the Trusts and Trustees Act. Cap. 331.

(*c*) For the purposes of this subarticle "beneficial owner" means a person who is the real owner of, or who is otherwise beneficially entitled to, the shares which are subscribed or held on his behalf and in his interest by a person authorised or not required to be so authorised to act as a trustee in terms of articles 43 and 43A of the Trusts and Trustees Act and "beneficial ownership" shall be construed accordingly. Cap. 331.

(*d*) When the shares referred to in this subarticle are transferred either by the trustee to a person other than the settlor or by the settlor to a third party after the shares have reverted to the settlor, the acquisition cost shall be deemed to be the cost of acquisition of the shares by the settlor when the shares were originally purchased or subscribed by the settlor prior to the shares being settled into the trust.

(26) The Minister may make regulations determining the method of calculation of capital gains in relation to transfers involving trusts and to prescribe any matter that may be prescribed in relation to such transfers. Power to make rules.

5A. (1) Notwithstanding any other provision of the Income Tax Acts, tax shall be chargeable and payable on any transfer to which this article applies in such amount, at such rate and in such manner as provided herein. Property transfers. *Added by: II. 2006.8. Amended by: II. 2007.4; IV. 2007.8; II. 2009.11; I. 2010.13; IV. 2011.9; V. 2012.11; L.N. 218 of 2012; III. 2013.20; XII. 2014.14; XIII. 2015.45; XV. 2016.14; XVI. 2017.16.*

(2) (*a*) In this article, unless the context otherwise requires -

"own residence" has the meaning assigned to it in article 5(5)(*c*);

"project" means property that has been developed by the owner into more than one transferable unit or divided for transfer into more than one transferable portion;

"property" means any immovable property situated in Malta and any right over such property;

"transfer" has the meaning assigned to it in article 5(1)(*b*) and includes any assignment or cession of any rights over property, and any occurrence that is deemed to be a transfer in terms of subarticle (12A) of this article and any provision of article 5. It shall not include a partition of property where no owelty is due. When property is transferred by means of a deed of exchange the parties shall be deemed to have made two separate deeds of transfer.

(*b*) Saving the provisions of subarticle (7), property assigned to a co-partitioner under a deed of partition shall be deemed to have been acquired by that co-partitioner at the time that he had acquired his undivided share before that partition and by virtue of the same transfer *causa mortis* or *inter vivos* under which he had acquired that undivided share.

(*c*) In determining whether an owelty is due on a contract of partition, the provisions of article 5(2)(*d*) shall apply *mutatis mutandis*.

(*d*) Any gains or profits derived from the assignment of any right obtained in terms of a promise of sale (*konvenju*), including a promise to alienate in any manner immovable property or a promise in respect of emphyteusis, shall in all cases be deemed to be gains or profits derived from a trade, business, profession or vocation falling within the scope of article 4(1)(*a*): provided that for the purpose of ascertaining the total income resulting from any such assignment no deductions shall be allowable except as and to such extent as may be prescribed.

(3) Saving the other provisions of this article, this article applies to any transfer of property made on or after the 1st November, 2005, excluding:

(*a*) a transfer in respect of which all the following conditions are satisfied:

(i) a notice of a promise of sale or transfer relating to that transfer has been given to the Commissioner in accordance with the provisions of article 3(6) of the Duty on Documents and Transfers Act or of rules made under that Act by not later than the 22nd November, 2005;

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(ii) the transfer is made on or after the 1st November, 2005 but not later than the 31st March, 2006 and is made pursuant to and for the consideration and at the same terms provided for in that promise of sale or transfer;

(iii) a notice of that transfer is given to the Commissioner in accordance with the said Act by not later than the 15th May, 2006;

(iv) the transferor elects, by means of a declaration made to the notary at the time of the publication of the deed of the transfer and recorded in the said deed, to exclude that transfer from the scope of this article;

(*b*) a transfer of property that is made not later than twelve years after the date of the acquisition thereof if the transferor elects, by means of a declaration made to the notary at the time of the publication of the deed of the transfer and recorded in the said deed, to exclude

that transfer from the scope of this article:

Provided that, where a transfer of property made not later than twelve years after the date of the acquisition thereof is made on or after the 1st January, 2015, an election as aforesaid, to exclude that transfer from the scope of this article, may only be made if the following conditions are satisfied:

(i) a notice of a promise of sale or transfer relating to that property has been given to the Commissioner before the 17th November, 2014;

(ii) the said property is transferred to the same person or persons appearing on the said promise of sale agreement; and

(iii) the said property is transferred before the 1st January, 2016:

Provided also that in the case of a transfer that is made on or after the 1st March, 2006, of property that forms part of a project:

(i) an election as aforesaid may only be made if the transfer is the first transfer made by the said transferor, on or after the said date but before the 1st January, 2015, of property forming part of that project; and

(ii) when an election as aforesaid has been made it shall also apply to all subsequent transfers of property forming part of that project made by the said transferor not later than twelve years from the date of the acquisition thereof, and all such transfers shall accordingly be transfers to which this article shall not apply;

(iii) notwithstanding the previous sub-paragraph (ii) when an election as aforesaid has been made it shall not apply to transfers of property forming part of that project made by the said transferor on or after the 1st January, 2015 in respect of which a notice of a promise of sale or transfer relating to that property has not been given to the Commissioner in accordance with the provisions of article 3(6) of the Duty on Documents and Transfers Act or of rules made under that Act before the 17th November, 2014:

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(iv) notwithstanding the provisions of sub-paragraph (i) of this proviso, in the case of a transfer of property that forms part of a project made on or after 1st January, 2015, where the first transfer of property forming part of such project is made on or after 1st January, 2015, an election as aforesaid may be made if a notice of a promise of sale or transfer relating to that property has been given to the Commissioner before the 17th November, 2014, so however that the provisions of sub-paragraph (ii)

of this proviso shall not apply where the first transfer of property forming part of a project is made on or after 1st January, 2015:

Provided further that, for the purposes of determining whether the property has been transferred not later than twelve years from the date of its acquisition, where the transferor is a company that had acquired the property by means of a transfer that qualified for an exemption in terms of subarticle (4)(*f*) or article 5(9) ("intra-group exemption"), it shall be deemed to have acquired the property on the date on which the property had previously last been acquired by a company by means of a transfer that did not qualify for the intra-group exemption;

(*c*) a transfer of property situated within a special designated area, as defined in the Immovable Property (Acquisition by Non-Residents) Act, if it is made by the person who was the owner of that property on the date when that area first became a special designated area and if the transferor elects, by means of a declaration made to the notary at the time of the publication of the deed of the transfer and recorded in the said deed, to exclude that transfer from the scope of this article:

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Provided that an election as aforesaid, to exclude that transfer of property situated within a special designated area from the scope of this article, may only be made in the case of a transfer that is made before the 1st January, 2015:

Provided aldo that -

(i) in a transfer that is made on or after the 1st March, 2006, an election as aforesaid may only be made if the transfer is the first transfer of property situated within that special designated area made by the said transferor on or after the said date but before the 1st January, 2015; and

(ii) when an election as aforesaid has been made it shall also apply to all subsequent transfers of property situated within that special designated area, made at any date by the said transferor, and all such transfers shall accordingly be transfers to which this article shall not apply;

(iii) notwithstanding the previous sub-paragraph (ii) when an election as aforesaid has been made it shall not apply to transfers of property situated within that special designated area made by the said transferor on or after the 1st January, 2015 in respect of which a notice of a promise of sale or transfer relating to that property has not been given to the Commissioner in accordance with the provisions of article 3(6) of the Duty on

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Documents and Transfers Act or of rules made under that Act before the 17th November, 2014;

(*d*) a transfer in respect of which all the following conditions are satisfied:

(i) the property was, immediately before the transfer, co-owned by two individuals and the transfer is made by one of the co-owners to the other;

(ii) the co-owners had, for the purposes of article 32(4)(*a*) of the Duty on Documents and Transfers Act, declared in the deed of the acquisition of that property that they had acquired it for the purpose of establishing therein or constructing thereon their sole ordinary residence; Cap. 364.

(iii) the transferor elects, by means of a declaration made to the notary at the time of the publication of the deed of the transfer and recorded in the said deed, to exclude that transfer from the scope of this article;

(*e*) a transfer in respect of which all the following conditions are satisfied:

(i) it is a transfer of property to the Government of Malta made pursuant to an acquisition of that property in terms of the Land Acquisition (Public Purposes) Ordinance; Cap. 88.

(ii) the Government had taken possession of that property, or an Order of the President has been issued in respect thereof, before the 1st November, 2005 and this fact is evidenced by a letter signed by the Commissioner of Land and attached to the deed of transfer. The transferor shall produce that letter to the notary publishing the deed. The notary shall attach that letter to the deed of the transfer and shall deliver a certified copy thereof to the Commissioner in such manner as may be prescribed;

(iii) the transferor elects, by means of a declaration made to the notary at the time of the publication of the deed of the transfer and recorded in the said deed, to exclude that transfer from the scope of this article;

(*f*) a transfer made by means of a judicial sale by auction or in the course of a winding up by the Court except for a transfer to which sub-article (5)(*c*)(ii) applies;

(*g*) a transfer of property that had been used in a business for a period of at least three years and that is replaced within one year by property ("the new property") used solely for a similar purpose of the business:

Provided that:

(i) this paragraph shall only apply, and accordingly article 5(8) shall apply, if the transferor so elects by means of a declaration made to the notary at the time of the publication of the deed of the transfer and recorded in the said deed;

(ii) when, subsequent to a transfer to which article 5(8) applied, including a transfer made before 1st November, 2005, the new property is disposed of and that disposal does not qualify for the tax relief under article 5(8), that disposal shall also be a transfer to which this article 5A does not apply, and the income, whether chargeable under article 4(1)(a) or under article 5, derived therefrom shall be determined as provided in article 5(8);

(iii) this paragraph shall not apply, and accordingly article 5(8) shall not apply, if the replacement property is disposed of or ceases to be used in such business, within a period of two years starting from the date the replacement property was acquired or such shorter period as the Commissioner may determine;

(*h*) a transfer of property by a person who is not resident in Malta and who is resident for tax purposes in another country if that person produces to the notary who publishes the deed of transfer a statement signed by the tax authorities of the country of that person's residence that confirms that person's residence in that country and that certifies that that person is subject to tax in that country on gains or profits derived from the transfer of immovable property situated in Malta. The notary shall attach that statement to the deed and shall deliver an authenticated copy thereof to the Commissioner in such manner as may be prescribed:

Provided that such person is not owned or controlled by, directly or indirectly, nor acts on behalf of, an individual or individuals who is or are resident in Malta:

Provided also that, notwithstanding anything said in the Income tax Acts provisional tax paid relating to the transfer of such property made on or after the 1st January, 2015, under the provisions of article 43(1)(*b*) of the Income Tax Management Act shall not be available for refund under article 48 of the said Act and the provisions of article 43(4)(*b*) of the said Act shall not apply to such transfer;

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(*i*) a transfer of property pursuant to a lease agreement that included the option of purchase of the property at an agreed price, where the said arrangements had been made prior to, but the transfer occurs after, the 1st November 2005;

(*j*) a transfer of property forming part of a project made by a company which has issued debt securities to the public and such debt securities are listed on a stock exchange recognised under the Financial Markets Act, Cap. 345. and if the transferor elects, by means of a declaration made to the notary at the time of the publication of the deed of the transfer and recorded in the said deed, to exclude that transfer from the scope of this article:

Provided that:

(i) an election as aforesaid may only be made if the transfer is the first transfer made by the said transferor, on or after 1st April, 2015, of property forming part of that project; and

(ii) when an election as aforesaid has been made it shall also apply to all subsequent transfers of property forming part of that project made by the said transferor and all such transfers shall accordingly be transfers to which this article shall not apply:

Provided also that this paragraph shall only apply where the reason for the offer and use of proceeds, as disclosed in the prospectus published when the debt securities are offered to the public, is solely to develop and construct the said project.

(4) No tax shall be chargeable on a transfer to which this article applies where that transfer is:

(*a*) a donation made by a person:

(i) to his spouse, to his descendant or ascendant in the direct line, or to the spouse of any such descendant or ascendant, or, in the absence of any descendants in the direct line, to his brother or sister or to a descendant of his brother or sister,

(ii) to a philanthropic institution approved for the purposes of article 12(1)(*e*);

(*b*) a donation deemed to have been made in terms of article 5(18)(*b*) or 5(21)(*b*)(ii) by a person to a person or institution mentioned in paragraph (*a*);

(*c*) a transfer of property, consisting of a dwelling house, that has been owned and occupied by the transferor as his own residence for a period of at least three consecutive years immediately preceding the date of transfer and provided that the property is disposed of within twelve months of vacating the premises or such other period or condition as may be prescribed and provided that such property is declared by the transferor to be his main residence through an election made to the Commissioner in such manner and subject to such rules as may be prescribed:

Provided that:

(i) any period during which the transferor has occupied the property as his own residence with the permission of the Housing Authority pursuant to a promise of sale (*konvenju*) by that Authority shall be deemed to be a period during which the transferor owned that property;

(ii) where the property was inherited by the transferor from a direct ascendant, the period during which the said ascendant had owned and occupied the property as his own residence shall be deemed to be a period during which the property had been owned by the transferor;

(iii) where the transferor had acquired the property under an assignment to which paragraph (*d*) or (*e*) refers, the period during which the person making that assignment had owned the property and used it as his own residence shall be deemed to be a period during which the property had been owned by the transferor;

(iv) where any condition for the exemption under this paragraph is satisfied in respect only of an undivided part of the property the exemption shall be restricted proportionately;

(v) where the property was inherited by the transferor from his or her spouse, the period during which the said spouse had owned and occupied the property as his or her own residence shall be deemed to be a period during which the property had been owned by the transferor;

(vi) where at any time in the period of ownership there is a change in the dwelling house or the part of it which is occupied as the individual's residence, whether on account of a reconstruction or conversion of a building or for any other reason, or there have been changes as regards the use of part of the dwelling house for the purpose of a trade, business or profession or for any other purpose, the relief given by this sub-article may be adjusted in such manner as the Commissioner may determine in an assessment;

(*d*) the assignment of property between spouses consequent to a judicial or consensual separation or a divorce:

Provided that the provisions of this paragraph shall also apply where the property to be assigned is owned by a company which is fully owned by any or both spouses;

(*e*) the assignment of property that formed part of the community of acquests between the spouses or was otherwise owned in common between them, to one of

the spouses on the dissolution of the community, or the partition of such property between the spouses or the surviving spouse and the heirs of the deceased spouse:

Provided that on a subsequent transfer of the said property, the date of acquisition of the share assigned as aforesaid shall be the original date when the property was acquired by the two spouses;

(*f*) a transfer of property from one company to another which, would qualify for tax relief under article 5(9) but for the provisions of this article:

Provided that the provisions of article 5(9)(ii) and (iv) shall also apply to the said transfer:

Provided further that if such transfer does not qualify for tax relief under article 5(9) solely for the reason that it is not a transfer of a capital asset, such transfer shall be exempt from tax under the provisions of this paragraph if the said transfer is part of a restructuring, involving the transfer of the whole or part of a company's business to another company and the said property has been owned by the transferring company for a period exceeding twelve years:

Provided also that on a subsequent transfer of the said property made within a period of twelve years after the date of the acquisition thereof as determined in accordance with the second proviso to subarticle (3)(*b*), the cost and date of acquisition of the said property shall, where the transferor elects to exclude the transfer from the scope of this article, be the original cost and the date referred to in article 5(9)(i).

(*g*) the transfer of property upon the incorporation of a business or a partnership *en nom collectif* as a going concern into a limited liability company that satisfies the conditions laid down in article 5(15):

Provided that this paragraph shall not apply, and accordingly article 5(15) is not applicable, if the business is disposed of or ceases to exist, within a period of two years starting from the date the business is transferred to the said company or such shorter period as the Commissioner may determine:

Provided further that, for the purposes of determining whether the property has been transferred not later than twelve years from the date of its acquisition, under subarticle (3)(*b*), where the transferor is a company that had acquired the property by means of a transfer that qualified for an exemption in terms of this subarticle or article 5(15), it shall be deemed to have acquired the property on the date on which the property had previously been acquired by the person transferring the property to the said company;

(*h*) the settlement of property on trust, or the distribution

or reversion of property settled on trust, or the transfer of all the property of a trust involving only a change in the trustee of a trust and where there is no change in the beneficiaries or in the beneficial interest:

Provided that for the purposes of the provisions of article 5(18) to (25), it is deemed that in such instances, no transfer has taken place, or that no loss or gain has arisen;

(*i*) except as may be otherwise prescribed, the transfer of property by a person whose income or capital gains from the transfer of that property is exempt from tax in terms of article 12(1), or an exemption order made under article 12(2), or any other provision of the Income Tax Acts or any other law;

(*j*) A transfer of property by a company to its shareholder or to an individual related to its shareholder in the course of winding up or in the course of a distribution of assets pursuant to a scheme of distribution, where the said shareholder is an individual or his spouse, who owns or own, directly or indirectly, not less than 95% of the share capital and voting rights of the said company transferring the property as aforesaid.

For the purpose of this paragraph an individual is related to the said shareholder if such individual is his spouse, his descendant or ascendant in the direct line, or the spouse of any such descendant or ascendant, or, in the absence of any descendants in the direct line, his brother or sister or a descendant of his brother or sister:

Provided that this paragraph shall only apply where all the following conditions have been satisfied:

(i) the said shareholder held, directly or indirectly, not less than 95% of the share capital and voting rights of the company transferring the property for a period exceeding five years immediately preceding the date of the transfer of the property as aforesaid;

(ii) the said property consists of any immovable property, including land;

(iii) the said property is held as a capital asset by the company and has been so held for a period exceeding five years immediately preceding the date of the transfer of the property as aforesaid:

Provided further that, on a subsequent transfer of the said property by the said shareholder or related individual, the provisions of subarticle (3)(*b*) shall not apply:

Provided also that where the said property is subsequently transferred by the said shareholder or related individual, as the case may be, to a person

referred to in subarticle (4)(*a*)(i), and such person subsequently transfers the said property within a period of five years from the date of its acquisition the provisions of subarticle (3)(*b*) shall not apply:

Provided also that every company resident in Malta shall allocate the distributable profits derived from a transfer to which this paragraph applies, and on which no tax is payable in accordance with this paragraph, to the final tax account.

(5) (*a*) Subject to the other provisions of this sub-article, the tax on a transfer to which this article applies shall be chargeable at the rate of 12% of the transfer value:

Provided that in the case of transfers of property made on or after the 1st January, 2015, other than property forming part of a project as referred to in the second proviso to sub-article (3)(*b*) of this article and property situated within a special designated area as referred to in sub-article (3)(*c*) of this article in respect of which a notice of a promise of sale or transfer relating to the said property forming part of a project or situated within a special designated area has been given to the Commissioner in accordance with the provisions of article 3(6) of the Duty on Documents and Transfers Act or of rules made under that Act before the 17th November, 2014, the tax on a transfer to which this article applies shall be chargeable at the rate of 8% of the transfer value: Cap. 364.

Provided that where a notice of a promise of sale or transfer relating to a property given to the Commissioner in accordance with the provisions of article 3(6) of the Duty on Documents and Transfers Act or of rules made under that Act before the 17th November, 2014 is either cancelled after the said date or expired and, either the said property is transferred to the same person or persons appearing on the said promise of sale which has been cancelled or, another property forming part of the same project or situated within the same special designated area is transferred to the same person or persons appearing on the said promise of sale which has been cancelled or has expired, any of such transfers shall for the purpose of this article be deemed to be transfers in respect of which a notice of a promise of sale or transfer has been given to the Commissioner in accordance with the provisions of article 3(6) of the Duty on Documents and Transfers Act or of rules made under that Act before the 17th November, 2014; Cap. 364.

(*b*) When a transfer to which this article applies is a transfer of property -

(i) that was acquired by the transferor in terms of a transfer *causa mortis* that happened after the 24th November, 1992; or

(ii) that was acquired by the transferor in terms of a donation made more than five years before the date of the transfer in question,

the tax thereon shall be chargeable at 12% of the excess, if any, of the transfer value over its acquisition value:

Provided that this paragraph (*b*) shall not apply where the property transferred consists of a transfer of a property forming part of a project. For the purpose of this proviso "project" means property that was acquired by the transferor in the circumstances referred to in sub-paragraph (ii) above and which has been developed by the said transferor into more than one transferable property.

(*c*) When a transfer to which this article applies is a transfer of property that was acquired by the transferor in terms of a transfer *causa mortis* and -

(i) the said acquisition *causa mortis* happened before the 25th November 1992; or

(ii) the said acquisition *causa mortis* happened on or after the 25th November 1992, and the property is transferred by means of a judicial sale by auction,

the tax thereon shall be chargeable at the rate of 7% of the transfer value.

(*d*) Subject to the provisions of paragraphs (*b*) and (*c*), when a transfer to which this article applies is a transfer of property in the circumstances referred to in article 31C(1), the tax thereon shall be chargeable at the rate of 10% of the transfer value:

Provided that in the case of transfers of property referred to in this paragraph made on or after the 1st January 2015 and before the 1st January 2016 in respect of which a notice of a promise of sale or transfer relating to that property has not been given to the Commissioner in accordance with the provisions of article 3(6) of the Duty on Documents and Transfers Act or of rules made under that Act before the 17th November, 2014 the tax thereon shall be chargeable at the rate of 7% of the transfer value. The second proviso to paragraph (*a*) of this sub-article shall apply accordingly.

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(*e*) When a transfer to which this article applies, made on or after the 1st January, 2015, is a transfer of property not forming part of a project that is made not later than five years after the date of the acquisition thereof, the tax thereon shall be chargeable at the rate of 5% of the transfer value:

Provided that, for the purposes of determining whether the property has been transferred not later than five years from the date of its acquisition, where the

transferor is a company that had acquired the property by means of a transfer that qualified for an exemption in terms of sub-article (4)(f) or article 5(9) ("intra-group exemption"), it shall be deemed to have acquired the property on the date on which the property had previously last been acquired by a company by means of a transfer that did not qualify for the intra-group exemption:

Provided also that this paragraph (*e*) shall not apply where the said property was, at any time within the period of five years preceding the transfer, owned by a person related to the transferor and the property formed part of a project at such time.

For the purpose of these provisos -

(i) an individual is deemed to be related to the transferor if the transferor is a body of persons of which the said individual is, directly or indirectly, a shareholder, partner or member; and

(ii) two bodies of persons are deemed to be related persons if they are, directly or indirectly, controlled or beneficially owned as to more than twenty-five percent by the same persons.

(*f*) Notwithstanding the previous paragraphs (*a*), (*d*) and (*e*) when a transfer to which this article applies, made on or after the 1st January, 2015, is a transfer of property that was acquired by the transferor before the 1st January, 2004 and in respect of which a notice of a promise of sale or transfer relating to that property has not been given to the Commissioner in accordance with the provisions of article 3(6) of the Duty on Documents and Transfers Act or of rules made under that Act before the 17th November, 2014, the tax on a transfer to which this article applies shall be chargeable at the rate of 10% of the transfer value. The second proviso to paragraph (*a*) of this sub-article shall apply accordingly. In the case where such notice of promise of sale has been given before the 17th November, 2014, the tax chargeable shall be at the rate of 12% of the transfer value: Cap. 364.

Provided that, for the purposes of determining whether the property has been acquired by the transferor before the 1st January, 2004, where the transferor is a company that had acquired the property by means of a transfer that qualified for an exemption in terms of sub-article (4)(*f*) or article 5(9) ("intra-group exemption"), it shall be deemed to have acquired the property on the date on which the property had previously last been acquired by a company by means of a transfer that did not qualify for the intra-group exemption.

(*g*) When a transfer to which this article applies, made on or after the 1st January, 2015, is a transfer of property that was immediately before the transfer owned by an individual, or co-owned by two individuals, who had for the purposes of article 32(4)(*a*) of the Duty on Documents and Transfers Act declared in the deed of the acquisition of that property that the said property had been acquired for the purpose of establishing therein or constructing thereon his or their sole ordinary residence, and the transfer is made not later than three years after the date of the acquisition thereof, the tax thereon shall be chargeable at the rate of 2% of the transfer value:

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Provided that this paragraph shall only apply where the said individual does not own any other residential property at the time of the transfer. The notary who receives any deed of such a transfer shall record in the deed a written declaration by the individual so transferring that he does not own any other residential property at the time of the transfer and the notary shall warn the said individual of the importance of the truthfulness of such declaration.

(*h*) Notwithstanding paragraphs (*a*), (*e*) and (*f*), when a transfer to which this article applies is a transfer of property situated in an urban conservation area or scheduled by the Malta Environment and Planning Authority (MEPA) in terms of article 81 of the Environment and Development Planning Act, and the transferor declares to the notary receiving the deed of the transfer that he has carried out works on that property in compliance with a permit issued by MEPA providing for the restoration and, or rehabilitation of that property upon an application for that purpose that was filed with MEPA on or after 1 January 2015, the tax on the transfer shall be chargeable at the rate of 5% of the transfer value if the following conditions are satisfied:

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(i) the transfer is made on or after the 1st January 2016;

(ii) the provisions of this paragraph or of paragraph (*d*) were not applied in respect of any previous transfer of the same property;

(iii) the restoration and, or rehabilitation works have been certified by MEPA as having been completed in compliance with the relative permit;

(iv) the certificate referred to in sub-paragraph (iii) is produced to the notary who receives the deed of the transfer and the notary produces a certified copy of the certificate to the Commissioner together with the notice required by article 51 of the Duty on Documents and

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Transfers Act;

(v) the person who transfers the property submits any forms and documentation that the Commissioner may require in connection with the said works and with the transfer.

(6) (*a*) The transfer value of property is the higher of the market value of that property and the consideration paid or payable for the transfer. In a contract of emphyteusis and in any transfer of property where the consideration consists of or includes periodical payments to which article 4(1)(d) or (e) applies, the ground rent or any such other periodical payment payable shall be chargeable as income in accordance with the provisions of article 4 and shall not be included in the transfer value of a transfer to which this article applies.

(*b*) The acquisition value of property shall be determined in such manner as may be prescribed.

(7) In a partition of property where an owelty is paid -

(*a*) any person to whom an owelty is due shall be deemed to have sold part of the property assigned to him. That sale shall be deemed to be made on the date of the partition for a consideration equivalent to the owelty; and

(*b*) any person by whom an owelty is due shall be deemed to have bought part of the property assigned to him. That purchase shall be deemed to be made on the date of the partition for a consideration equivalent to the owelty.

(8) (*a*) When a transfer is a transfer of property that was acquired under more than one acquisition, and the tax chargeable on the transfers of the parts so acquired or on the gains or profits derived therefrom would fall, if those parts were transferred separately, to be determined in accordance with different provisions of the Income Tax Acts, those provisions shall apply as if more than one transfer has taken place and the transfer value of each such transfer shall be determined separately and in such manner as may be prescribed.

(*b*) When property is transferred in part the acquisition value of the part that is transferred shall be a proportion of the acquisition value of the whole determined in such manner as may be prescribed.

(9) (*a*) Except as may be prescribed, the amount on which tax is chargeable in accordance with this article shall not be reduced by any deduction whatsoever.

(*b*) No losses or bad debts arising from, or expenditure incurred in respect of, a transfer to which this article applies shall be allowable as a deduction against any income or capital gains.

(10) (*a*) Tax payable on a transfer to which this article applies shall be final and shall be separate and distinct from that paid or payable under any other provisions of this Act or of the Income Tax Management Act. It shall not be available as a credit against the tax liability of any person or taken into account for the purpose of determining the amount of any refund payable under the said Acts. No provisional tax shall be payable under article 43 of the Income Tax Management Act in respect of any transfer to which this article applies.

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(*b*) Saving the other provisions of this article, no tax shall be chargeable in terms of any provision of the Income Tax Acts on gains or profits derived from any transfer to which this article applies to the extent that they are attributable to a transfer whose transfer value has been correctly declared in the deed of the transfer or a transfer which has been correctly declared to be exempt or out of the scope of this article, or determined by means of an order in writing that is made under subarticle (12)(*c*) and that has become final and conclusive.

(*c*) Any person who owns immovable property situated in Malta shall keep an account in such manner as may be prescribed of all proceeds and expenditure relating to transfers to which this article applies in addition to any other accounts and records that he is required to keep in accordance with the other provisions of the Income Tax Acts.

(*d*) Every company resident in Malta shall allocate the distributable profits derived from transfers to which this article applies, and on which tax is payable in accordance with this article, to the final tax account. The said distributable profits shall be determined in such manner as may be prescribed.

(*e*) Any party to a transfer to which this article applies or to a promise of sale relating to such a transfer shall furnish the Commissioner with such particulars relating to that transfer as the Commissioner may require or as may be prescribed.

(11) Tax chargeable under this article shall be due by the transferor and shall be remitted to the Commissioner within fifteen working days of the relative transfer. Except where the Commissioner orders otherwise, either in a general manner or in respect of particular cases, this payment is to be made by the notary who publishes the transfer deed by means of a bank draft or a cheque drawn on that notary`s personal bank account, payable to the Commissioner.

(12) (*a*) The parties to any transfer of property shall be obliged to declare to the notary publishing the deed of transfer all the facts that determine if the transfer is one to which this article applies and that are relevant for

ascertaining the proper amount of tax chargeable or any exemption, including the value which, in their opinion, reasonably reflects the market value of the said property, if this value is higher than the consideration for the transfer.

(*b*) The notary publishing a deed of transfer shall warn the parties about the importance of the truthfulness of declarations made therein and shall record in the deed the fact that he has given the said warning.

(*c*) Where it appears to the Commissioner that -

(i) tax is chargeable on a transfer which is declared in the deed to be a transfer on which no tax is payable; or

(ii) the tax chargeable on a transfer is, for any reason, more than that declared to be payable in the deed,

he may issue an order in writing to the transferor stating therein the tax which in his opinion is properly chargeable in the circumstances and the additional tax as specified in paragraph (*e*).

(*d*) An order under this sub-article may be made not later than six years from the end of the year in which the transfer is notified to the Commissioner:

Provided that an order that is made solely on account of the fact that the market value of the property in question is higher than the transfer value declared in the deed -

(i) may only be made if the declared transfer value is less than eighty-five per cent of the market value; and

(ii) may not be made later than twelve months after the date on which the transfer is notified to the Commissioner.

(*e*) The additional tax referred to in paragraph (*c*) shall be equivalent to the difference between the amount of tax payable as declared in the deed and the amount of tax payable in accordance with the order referred to in paragraph (*c*).

(*f*) The additional tax referred to in paragraphs (*c*) and (*e*) shall be payable by the transferor in addition to the tax which is payable on the transfer value of the property in accordance with the other provisions of this article.

(*g*) If any amount of tax due in accordance with this article is not remitted to the Commissioner within the time set out in subarticle (11), interest shall be charged thereon at the rate of one per cent per month or part thereof for the period ending on the day on which that amount is remitted:

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 said amount of tax:

Provided further that for any period or part thereof commencing on or after 1st January 2014 interest shall be calculated at the rate established by the provisions of article 44(2A) of the Income Tax Management Act and the total interest shall not exceed the said amount of tax.

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(*h*) Saving the other provisions of this article, the provisions of the Income Tax Acts relating to the collection and remission of the tax, interest and additional tax shall apply to any tax, interest and additional tax due under this article as if the tax, interest and additional tax referred to in the said provisions included also the tax, interest and additional tax chargeable and payable under this article.

(*i*) A transferor who disagrees with an order served upon him under paragraph (*c*) shall have the same rights to object to that order and to appeal from a decision of the Commissioner refusing that objection as if that order were an assessment issued under the Income Tax Management Act and the relevant provisions of that Act relating to objections and appeals shall apply *mutatis mutandis*.

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(12A)(*a*) If a company ("the chargeable company") owns property which had been acquired from another company and such acquisition was exempt from tax under subarticle (4)(*f*) or article 5(9), this subarticle shall apply if the chargeable company ceases to be a member of the original group before the lapse of six years from the date of the said acquisition. References in this subarticle to a company ceasing to be a member of a group of companies do not apply to cases where a company ceases to be a member of a group by being wound up or dissolved or in consequence of another member of the group being wound up or dissolved:

Provided that where a company ceases to be a member of the original group by being wound up or dissolved, for the purpose of determining whether the chargeable company ceases to be a member of the original group under paragraph (*b*), such company shall be deemed to have remained in existence.

(*b*) The chargeable company shall cease to be a member of the original group, if such company and the company from which it had acquired the property referred to in paragraph (*a*) no longer satisfy the provisions of article 5(9)(i) and (iii) and such determination shall be made by reference to the same individuals referred to in paragraph (iii) of the said article taken into account

in determining whether the two companies referred to in this paragraph satisfied the provisions of article 5(9)(i) and (iii) on the date of the acquisition referred to in paragraph (*a*):

Provided that where the acquisition referred to in paragraph (*a*) took place before the 1st January 2010, article 5(9)(iii) shall be disregarded for the purpose of determining whether a company ceases to be a member of a group:

Provided further that where the chargeable company ceases to be a member of the original group, solely as a result of a change in the direct or indirect individual shareholders of the company from which it had acquired the property referred to in paragraph (*a*), the chargeable company shall, for the purpose of this paragraph, not be treated as ceasing to be a member of the original group as a result of such change, so however that for the purpose of determining whether the chargeable company ceases to be a member of the original group it shall be deemed that such change had not taken place and such determination shall be made by reference to the same individuals referred to in article 5(9)(iii) taken into account in determining whether the chargeable company and the company from which it had acquired the property satisfied the provisions of article 5(9)(i) and (iii) on the date of the acquisition referred to in paragraph (*a*).

(*c*) For the purpose of this subarticle the term "original group" shall mean the two companies referred to in paragraph (*b*), and the individual direct or indirect beneficial owners of the said companies who were taken into account in determining whether the provisions of article 5(9)(i) and (iii) had been satisfied on the date of the acquisition referred to in paragraph (*a*):

Provided that where the two companies referred to in paragraph (*b*) are directly or indirectly owned as to eighty percent or more by a company whose securities are listed on a stock exchange recognised under the Financial Markets Act, the term "original group" shall mean the two companies referred to above and the company whose securities are listed on the said stock exchange as existing on the date of the acquisition referred to in paragraph (*a*): Cap. 345.

Provided also that where an individual acquires shares consequent to a judicial or consensual separation, in terms of a donation, exempt from tax under the provisions of article 5(2)(*e*), or a transfer *causa mortis* such individual shall be deemed for all the purposes of this subarticle to have held such shares from the date such shares were previously acquired in an acquisition preceding the date of the judicial or consensual

separation, donation or the transfer *causa mortis*.

(*d*) When the chargeable company ceases to be a member of the group it shall be treated for all the purposes of this article as if, immediately after its acquisition of the property referred to in paragraph (*a*), it had transferred and immediately re-acquired the property at that time and the transfer value to be taken into account is the value at which the chargeable company had acquired the said property from the group company in an acquisition to which subarticle (4)(*f*) applies.

(*e*) The tax on a transfer to which this subarticle applies shall be charged at the rate of eight percent (8%) of the transfer value as established in paragraph (*d*): provided that the said rate shall be ten percent (10%) if the acquisition of property referred to in paragraph (*c*) occurred before the 1st January, 2004..

(*f*) Tax chargeable under this subarticle shall be due by the chargeable company and shall be remitted to the Commissioner within fifteen working days from the date on which such company ceases to be a member of the group as provided in paragraph (*b*).

(*g*) Where in accordance with paragraph (*d*) the chargeable company is treated as having transferred and immediately reacquired the property, the tax chargeable on the deemed transfer in accordance with paragraph (*f*) shall be treated as being due not by the chargeable company but by a related company ("company A") if:

(i) company A is incorporated in Malta;

(ii) a joint election under this paragraph is made by the chargeable company and company A to treat the tax chargeable on the deemed transfer as being due by company A;

(iii) such joint election is made by notice given to the Commissioner not later than fifteen working days from the date on which the chargeable company ceases to be a member of the group as provided in paragraph (*b*); and

(iv) the tax chargeable referred to in paragraph (*f*) is paid by company A within the period referred to in the said paragraph.

For the purpose of this paragraph company A is related to the chargeable company if both companies form a group for the purposes of article 5(9) at the time the original group ceases to exist.

(13) The Minister may make rules for the better implementation of the provisions of this article and, without prejudice to the generality of the foregoing, such rules may provide for:

(*a*) the manner in which the value of any property or of

any part of property to which this article applies is to be determined;

(*b*) the manner in which the tax due under this article is to be paid and collected and the obligations of any person in respect of the payment of such tax;

(*c*) the manner in which any apportionment of tax due is to be made for the purposes of this article; and

(*d*) any matter that may be prescribed under this article.

Investment Services and Insurance Expatriate. *Added by: XVII. 1994.8. Amended by: XVII. 1998.70; L.N. 409 of 2007; I. 2010.14; V. 2012.12; XIII. 2015.46.* Cap. 370.

6. (1) For the purposes of this article, an "investment services expatriate" shall mean any individual who is an employee of, or provides services to, an investment services company which holds an investment services licence issued under article 6 of the Investment Services Act or a company which is recognised by the relevant competent authority for the purposes of article 9A of that said Act, and whose activities solely comprise the provision of management, administration, safekeeping or investment advice to collective investment schemes as defined in the aforesaid Act, and an "insurance expatriate" shall mean any individual who is an employee of, or provides services to, an insurance company as defined in sub-article (4), and either:

(*a*) is not ordinarily resident and not domiciled in Malta; or

(*b*) was not resident in Malta for a minimum period of three years immediately preceding the year in which he commences such employment with or provides services to any investment services company or insurance company as aforesaid and provided that during the said three years such individual has been engaged on a full time basis in a similar position outside Malta.

(2) An investment services expatriate or insurance expatriate, for the period from the year preceding the first year of assessment in which he is first liable to tax under the provisions of this Act up to and including the year preceding the tenth year of assessment, may opt not to be liable to tax on income relating to the following expenditure incurred for the benefit of the investment services expatriate or insurance expatriate or his immediate family by the investment services company or insurance company of which he is an employee or to which he provides investment or insurance services:

(*a*) removal costs in respect of relocation to or from Malta;

(*b*) accommodation expenses incurred in Malta;

(*c*) travel costs in respect of visits by the investment services expatriate or insurance expatriate and his immediate family to or from Malta;

(*d*) provision of a car for the use of the investment services expatriate or insurance expatriate in Malta;

(*e*) a subvention of not more than six hundred euro (600)

per calendar month;

(*f*) medical expenses and medical insurance; and

(*g*) school fees in respect of the children of the investment services expatriate or insurance expatriate.

(3) An investment services expatriate or insurance expatriate shall be treated as not resident in Malta for the purposes of article 12(1)(*c*).

Cap. 403. Cap. 487.

(4) For the purposes of this article, an "insurance company" shall mean a company authorised under article 7 of the Insurance Business Act, an insurance manager as defined in article 2 of the Insurance Intermediaries Act and a company carrying on the business of insurance broking under article 12 of the Insurance Intermediaries Act.

Year of assessment 1973. *Added by: XXXV.1972.4. Amended by: XXXI. 1988.3; XXXVI.1990.3. Renumbered by: XVII. 1994.2. Amended by: XVII. 1994.9.*

7. (1) No tax shall be payable upon the income of any person which but for the provisions of this article would have been chargeable for the year of assessment commencing on 1st January, 1973.

(2) Notwithstanding the provisions of sub-article (1) hereof, tax shall still be chargeable for the year of assessment 1973 in respect of any bonus share and any unduly large dividend distributed by any company by resolution taken between the 27th July, 1972 and the 31st December, 1972, and in respect of any other unduly inflated income chargeable under any of the paragraphs of article 4(1) where the Commissioner is of the opinion that such income accrued to or was derived by any person between the 27th July, 1972 and the 31st December, 1972 who was in a position to determine the amount thereof.

(3) The income still chargeable to tax for the year of assessment 1973 in accordance with the provisions of sub-article (2) shall be computed by considering the said bonus share and the excessive part of the unduly large dividend and income to be the highest part of the chargeable income which, but for the provisions of that sub-article, would have been charged to tax for the year of assessment 1973.

(4) For the purposes of sub-article (2) any dividend declared during the period 27th July, 1972 to 31st December, 1972 which exceeds by twenty per cent the highest dividend declared by the same company between the 1st January, 1969 and the 26th July, 1972, shall, unless the contrary is proved, be deemed to be unduly large.

(5) Saving the foregoing provisions of this article, the provisions of this Act shall still apply for the year of assessment 1973.

(6) The provisions of this article shall not apply in the case of any individual who, in any year of assessment up to the year of assessment 1972, was entitled to a deduction under article 53(4), (5) or (6) as in force at the relative time:

Provided that the personal deductions for the year of

assessment 1973 shall in any such case be increased by an amount equal to what would have been the individual's chargeable income for the said year but for the provisions of this sub-article.

(7) In any case referred to in sub-article (6), no surtax shall be payable for the year of assessment 1973.

(8) Where, in respect of the year of assessment 1973 -

(i) a company is entitled to deduct tax from a dividend paid to any person in accordance with the provisions of article 59(1) hereof; or

(ii) tax has been paid by deduction from the income of any person in accordance with the provisions of article 59(6) or article 73 hereof,

such tax shall, saving any other provisions of this Act, be set off against the liability to tax of the said person for such year of assessment as the Commissioner may elect.

(9) Any excess remaining after tax has been set off as provided in sub-article (8) shall be refunded in accordance with the provisions of article 48 of the Income Tax Management Act. Cap. 372.

(10) The provisions contained in sub-article (1) shall not apply to the income of any body of persons arising from activities relating or ancillary to oil-prospecting, banking, sound or television broadcasting, film renting or insurance (excluding commissions derived from the sale of insurance by bodies of persons residing in Malta).

Special provisions in respect of certain formerly undeclared income. *Added by: XXXV.1972.5. Amended by: XX.1973.2; XXVI.1977.4; IX.1983.5; XIII.1983.4,5. Renumbered by: XVII. 1994.2. Amended by: XVII. 1994.10; L.N. 409 of 2007.* Cap. 239 - Revoked.

8. (1) Notwithstanding the provisions of this Act and of the Succession and Donation Duties Ordinance, hereinafter in this article referred to as "the Ordinance", or of the Death and Donation Duty Act, the provisions of this article shall apply to any income omitted by any person from a return submitted by him to the Commissioner before the 27th July, 1972 in respect of any year of assessment up to the year of assessment 1972 and to any income not returned to the Commissioner by the said date by any person who has not submitted a return for any year of assessment up to the year of assessment 1972; provided that there shall be excluded any such income -

(*a*) brought to charge to tax in any assessment -

(i) which became final and conclusive before the 27th July, 1972; or

(ii) which was raised by the Commissioner before the 27th July, 1972 on any person who was not domiciled in Malta during 1971; or

(*b*) which accrued to or was derived by any person who had no chargeable income for any year of assessment up to the year of assessment 1972.

(2) The income to which this article applies shall be determined by reference to any capital asset which existed on the 31st December, 1971, being an accumulation thereof or the source giving rise to the said income: the value of such asset on the said

date being taken to be the cost of acquisition, or the actual amount or value thereof, whichever is the less.

(3) The income to which this article applies shall be deemed to be chargeable income for the year of assessment 1974, separate and distinct from any other chargeable income for the said year of assessment.

(4) The rate of tax applicable to the chargeable income herein contemplated shall be three cents (0.03) in the euro.

Cap. 372.

(5) Notwithstanding any other provision of the Income Tax Acts, other than article 31 of the Income Tax Management Act, the Commissioner may at any time after the 1st October, 1972, raise an assessment on the chargeable income referred to in sub-article (3) and proceed for the collection of the tax due.

(6) The provisions of this article shall not apply to the income specified in sub-article (1) hereof unless the capital asset referred to in sub-article (2) is declared on the prescribed form which shall be filed with the Commissioner within nine months commencing from the 1st October, 1972.

(7) The declaration referred to in sub-article (6) hereof shall not be deemed to have been filed with the Commissioner unless the prescribed form is fully and accurately completed.

(8) Tax charged under the provisions of this article shall not be deemed to be part of any tax paid or payable under this Act for the purposes of articles 59, 76 and 89.

Cap. 239 - Revoked.

(9) No proceedings under this Act or under the Ordinance or under the Death and Donation Duty Act, shall be taken against any person in respect of the income referred to in sub-article (1) hereof, nor shall any fiscal penalty apply thereunder in respect of the said income, if the person in question was liable to have proceedings taken against him or to have a fiscal penalty applied by reason of any act or event happening before the 27th July, 1972.

Cap. 239 - Revoked.

(10) No tax or duty beyond the tax specified in sub-article (4) hereof shall be levied under this Act or under the Ordinance or under the Death and Donation Duty Act, on the income in respect of which immunity from proceedings is granted by sub-article (9) hereof.

Cap. 239 - Revoked.

(11) The provisions of sub-article (9) and (10) hereof shall apply to the duties, penalties and proceedings contemplated by the Ordinance or by the Death and Donation Duty Act, only in so far as the assets referred to in sub-article (2) -

(i) were left out from a notice in which they should have been declared for the purposes of the Ordinance if the said notice was filed with the Commissioner before the 27th July, 1972, or

(ii) were transmitted under a succession opening on the death of a person or on the taking of vows by a person in a monastic order outside Malta and no notice thereof was filed with the Commissioner before the 27th July, 1972:

provided that the time limit set out in article 33(*a*)(iii) of the Ordinance for the filing of the said notice had lapsed before the said date, or

(iii) were transmitted under a gratuitous disposition *inter vivos* and no notice thereof was filed with the Commissioner before the 27th July, 1972, provided that the time limit set out in article 33(*c*) of the Ordinance for the filing of the said notice had lapsed before the said date.

(12) Nothing contained in this article shall apply to the duty charged under the Ordinance in respect of any assessment raised before the 27th of July, 1972.

(13) Notwithstanding the other provisions of this article, where the capital asset referred to in sub-article (2) remains undeclared by any person either in whole or in part within the period specified in sub-article (6) -

(*a*) the rate of tax set out in sub-article (4)(*c*) shall be substituted by the rate of thirty cents (0.30) in the euro in respect of such undeclared income or part thereof; and

(*b*) if such person is convicted on a charge that he has knowingly failed to declare the said capital asset, he shall be liable to a fine (*multa*) of not less than two hundred and thirty euro (230) and not exceeding two thousand and three hundred euro (2,300), and to imprisonment for a term not exceeding two years.

(14) The amount of any levy paid under the Bearer Accounts Levy Act by the 31st of December, 1971, shall be deducted from any tax charged under the provisions of this article in respect of any holding in the relative bearer account and of any interest derived therefrom, so however that such deduction shall not exceed the tax chargeable under this article in respect of such holdings: Cap. 219.

Provided that nothing in this article contained shall be deemed to empower the Commissioner to charge to tax any holding in a bearer account with any bank except by way of an assessment raised on the person holding the title to such an account.

(15) Any person may elect by notice in writing filed with the Commissioner within the period specified in sub-article (6) hereof that the provisions of this article shall not apply to the income referred to in sub-article (1):

Provided that in such cases nothing in this Act contained shall prevent the Commissioner from raising an assessment on such income at any time in accordance with the provisions of the other articles of this Act.

Further special provisions in respect of certain formerly undeclared income.
Added by: XX. 1973.3. Renumbered by: XVII. 1994.2. Amended by: XVII. 1994.11.

9. (1) Subject to the provisions of this article, article 8 shall also apply to the income of any person not returned to the Commissioner in respect of the year preceding any year of assessment up to the year of assessment 1972, if -

(*a*) the Commissioner is satisfied that the said person had submitted to him before the 27th July, 1972, a return for any other year of assessment but not for the year of assessment in question; and

(*b*) the income accrued to or was derived by any person other than a company.

(2) In any case falling under sub-article (1), or under the said sub-article and of article 8(1), the minimum amount of tax payable shall be the higher of the following two amounts:

(*a*) the tax computed in accordance with the provisions of article 8(2), (3), (4) and (5), or

(*b*) the total amount of tax charged under article 56(1), (2), (3) and (10) for the last year of assessment on account of which an assessment or assessments to tax that were all final and conclusive on the 27th July, 1972, had been raised by the said date, multiplied by the number of years for which no return had been filed as aforesaid.

(3) Any person may elect not to avail himself of the provisions of this article.

Cap. 372.

(4) If a person does not elect as provided in sub-article (3), the requirements of article 10 of the Income Tax Management Act shall not be enforced in his regard in respect of any year of assessment on account of which the provisions of sub-article (1) apply.

Spontaneous declaration of undeclared income.
Added by: XXII.1995.3. Amended by: XX.1996.5; L.N. 409 of 2007.

9A. (1) Notwithstanding any other provision of the Income Tax Acts, a person, apart from the return for the year of assessment 1995, may present a spontaneous declaration on the prescribed form and the income of that person falling under articles 4 and 5 for the years of assessment prior to the said year of assessment shall be deemed to be the income as arrived at under the following provisions of this article.

(2) The spontaneous declaration shall show as income falling under article 4(1) for the years of assessment 1994, 1993, 1992 and 1991 a sum based on a true declaration of the income declared by that person falling under article 4(1) (but excluding any investment income as defined in article 41 and capital gains falling under article 5) for the year of assessment 1995 as follows:

(*a*) for the year of assessment 1994, a sum equivalent to 80% of the relative income declared in the return for the year of assessment 1995, excluding any investment income as defined in article 41 and capital gains falling under article 5 as aforesaid;

(*b*) for the year of assessment 1993, a sum equivalent to 90% of the sum declared under paragraph (*a*) hereof;

(*c*) for the year of assessment 1992, a sum equivalent to 90% of the sum declared under paragraph (*b*) hereof; and

(*d*) for the year of assessment 1991 a sum equivalent to 90% of the sum declared under paragraph (*c*) hereof:

Provided that where a person was in any of the years of assessment 1991 to 1994 not registered as a taxpayer and had no income liable to tax under this Act, he shall under paragraphs (*a*) to (*d*) hereof, only declare that he received no income for the years of assessment therein referred to previous to the year of assessment in which he first became liable to tax under this Act.

(3) The spontaneous declaration shall also make a statement of any undeclared capital gains falling under article 5 in respect of each year of assessment where such gains were so undeclared.

(4) Where a spontaneous declaration has been made in accordance with the provisions of this article:

(*a*) the income of the person making the declaration and subject to tax under the provisions of this Act other than this article shall be deemed to be the income declared by that person in the return for the relative year of assessment:

Provided that:

(i) where in respect of any year of assessment the income of that person has been arrived at in an assessment which is final and conclusive the income so arrived at shall be deemed to be the income so declared; and

(ii) where any income falling under article 4(1) has been or is reported by an employer or other person paying the income to the Commissioner in any return required for the purposes of the Deduction of Tax (PAYE) Rules, 1972, or in accordance with such rules ought to be so reported, such income shall be deemed declared by such person;

(*b*) the assessment for the relative year of assessment shall be raised on the basis of the income declared or deemed declared in accordance with paragraph (*a*) hereof:

Provided that in the case where a return was not submitted to the Commissioner by the 31st March 1995, the assessment for the relative year of assessment shall be raised on the following basis:

(i) If the return is in respect of any of the years of assessment 1991 to 1994, the income for the relative year of assessment shall subject to the provisions of paragraph (*a*)(ii) hereof be considered to be that declared by such person in the relative return or the income determined in

accordance with sub-article (2), whichever is the higher;

(ii) If the return is in respect of a year of assessment prior to year of assessment 1991, the income for the relative year of assessment shall subject to the provisions of paragraph (*a*)(ii) hereof be considered to be that declared by such person in the relative return or a sum equal to the income determined in accordance with sub-article (2)(*d*), whichever is the higher; and

(*c*) any additional tax under article 56(12) in respect of any year of assessment for which there is not an assessment which is final and conclusive, shall be waived.

(5) For the purposes of sub-article (2), (4) and (7), income under article 4(1) and capital gains falling under article 5, means the income as adjusted in accordance with the provisions of this Act.

(6) The income declared in a spontaneous declaration in accordance with this article shall be deemed to be separate chargeable income for the year of assessment 1995, and shall, subject only to the deductions as provided in sub-article (7) be subject to tax at the rate of twenty-five cents (0.25) in the euro.

(7) There shall only be deducted from the income declared in respect of each year of assessment under sub-article (2), the income declared or deemed declared in accordance with sub-article (4), by the taxpayer for the respective year of assessment being income falling under article 4(1) not being investment income as defined in article 41 or capital gains falling under article 5:

Provided that:

(*a*) where in respect of a year of assessment the income falling under article 4(1)(*a*) as declared in accordance with sub-article (4) is a loss, such income shall for the purposes of this article be deemed to be nil; and

(*b*) where in respect of a year of assessment the income declared in accordance with sub-article (4) falling under article 4(1) (excluding investment income as defined in article 41 or capital gains falling under article 5) is greater than the income declared under sub-article (2) in respect of the same year of assessment, the income declared in accordance with sub-article (4) shall be deemed to be equal to that declared under sub-article (2) in respect of the same year of assessment.

(8) The tax on income chargeable under this article shall be payable in three instalments as follows:

(*a*) fifty per cent by not later than the 15th December 1995 together with the submission of the spontaneous declaration to the Commissioner;

(*b*) twenty per cent by not later than the 29th March, 1996; and

(*c*) thirty per cent by not later than the 30th September, 1996.

(9) The Commissioner shall send by registered post to each person who makes a valid spontaneous declaration in accordance with this article, a notice stating the amount of his separate chargeable income for the year of assessment 1995 and the amount of tax payable thereon by him, and the provisions of Part VII and of article 32 of the Income Tax Management Act shall apply to such notice. Cap. 372.

(10) The spontaneous declaration referred to in the previous sub-articles to this article shall be deemed not to have been filed with the Commissioner unless:

(*a*) the prescribed form is fully and accurately completed and is submitted in duplicate to the Commissioner not later than the 15 December, 1995;

(*b*) all returns for the years of assessment up to and including the year of assessment 1995 are submitted to the Commissioner by the time the declaration is made; and

(*c*) payment of the first instalment of tax is made as laid down in sub-article (8).

(11) Where it results to the Commissioner that a person who filed a valid spontaneous declaration under this article has underdeclared his income for the year of assessment 1995 or has underdeclared any income which ought to be declared under sub-article (3) hereof or has under the proviso to sub-article (2) hereof declared that he has received no income for any year of assessment in which he was liable to tax, the Commissioner shall recompute the separate chargeable income on the basis of the reassessed income for the year of assessment 1995, and, or as ought to have been declared under sub-article (3), and, or disregarding the provisions of the proviso to sub-article (2) hereof as the case may be, and raise a tax thereon at the rate of sixty-five cents (0.65) in the euro. The Commissioner shall thereupon issue a fresh notice of assessment and any previous notice issued under this article shall be cancelled and any tax already paid in respect of the previous notice or together with the filing of the spontaneous declaration shall be set off from any tax due in accordance with this sub-article.

(12) The relevant provisions of Part VII of the Income Tax Management Act shall apply to the tax due under sub-article (11): Cap. 372.

Provided that a person shall have a right of objection and appeal as laid down in articles 33, 35 and 37 of the Income Tax Management Act against a notice of assessment issued in accordance with sub-article (11). Cap. 372.

(13)(*a*) Tax charged under the provisions of this article shall not be deemed to be part of any tax paid or payable under this Act for the purposes of articles 59, 76 and 89.

(*b*) Nothing contained in this article shall affect the provisions of articles 43, 44 and 45.

(14) Where a person makes a spontaneous declaration in accordance with the provisions of this article, the Commissioner shall disregard the provisions of article 14(1)(*g*) regarding the carrying forward of losses incurred during any year preceding the year of assessment 1995 with respect to the year of assessment 1995 and subsequent years of assessment.

(15) The Minister may make rules generally for carrying out the provisions of this article and may in particular by those rules provide for the form of returns, claims, statements and notices under this article.

Assets registered under the Investment Registration Scheme.
Added by: II. 2002.43.
Amended by: IX. 2005.7; IX. 2007.3; XXIII. 2014.8.
Cap. 123 and 372.
Cap. 239.
Cap. 294.
Cap. 364.
Cap. 233.

9B. (1) In this article:

"relevant laws" means the Income Tax Acts, the Succession and Donation Duties Ordinance (Cap. 70 of the revised edition of the Laws of Malta, 1942), the Death and Donation Duty Act, the Duty on Documents Act and the Duty on Documents and Transfers Act;

"qualifying asset" means an asset that is registered in accordance with a scheme made under article 39 of the Exchange Control Act or article 11 of the External Transactions Act;

"tax" means any tax or duty chargeable under any provision of the relevant laws.

(2) Subject to the provisions of subarticle (3), there shall be exempt from tax otherwise chargeable under any provision of the relevant laws:

(*a*) any income, including capital gains, derived from a qualifying asset at any time before the date on which that asset is registered as a qualifying asset;

(*b*) any income, including capital gains, to the extent that a qualifying asset represents such income or an undeclared part of such income or an accumulation thereof, at any time before the date on which that asset is registered as a qualifying asset, derived by any person during the year immediately preceding any year of assessment in respect of which that person has furnished a return of his income to the Commissioner before the 31st March, 2005, or during the year immediately preceding any year of assessment commencing on or before the 1st January, 2005, in respect of which that person was not required to furnish a return of his income;

(*c*) any transfer *inter vivos* or transmission *causa mortis* of any asset, any document of transfer of such an asset and any assignment of an asset made or happening before the 31st March, 2005, or in respect of the undeclared part of the value or consideration of such transfer or transmission, to the extent that a qualifying asset represents such asset or the value in consideration of such transfer or transmission at any

time before the date on which that asset is registered as a qualifying asset.

(3) The exemption from tax on income referred to in subarticle (2)(*a*) and (*b*) shall apply to the extent that the said income has not been declared in any income tax return furnished to the Commissioner, and no tax has been assessed with respect thereto in any assessment raised under the Income Tax Acts and notified before the 31st March, 2005, and the exemption from tax referred to in paragraph (*c*) of the said subarticle shall apply to the extent that no return, declaration or notice of the relative transfer, transmission or assignment has been furnished to the Commissioner and no tax has been paid or assessed thereon in an assessment raised and notified before the said date under any provision of the relevant laws or to the extent that the value or consideration or transfer or transmission has been undeclared and represented as aforesaid by the qualifying asset.

(4) No person shall be bound to make or furnish, or be considered to have ever been bound to make or furnish, any return, declaration, act or notice that would otherwise have been required to be made or furnished in accordance with any provision of the relevant laws relating to income, transfer, transmission, assignment or document that is exempt from tax in terms of subarticle (2), and any responsibility which the said person would have had under the relevant laws for the failure to make or to furnish any such return, declaration, act or notice shall be considered as never having existed, and every person who, under any scheme made by the Government or any public entity or under any law, whichever it may be including this Act, before such registration was considered to be entitled to any benefit, exemption or other advantage as a result of not having declared such eligible assets (or income therefrom) in connection with any claim for such benefit, exemption or advantage, shall not be considered as having committed an offence as a result of not having declared those assets (or income therefrom) and shall not be required to refund that benefit, exemption or other advantage acquired before that declaration:

Provided that if such person, after the date of registration of those eligible assets (or income therefrom) continues for a period after the declaration to take that benefit, exemption or advantage without being entitled thereto, such person shall be considered as never having been exempted from liability for the offence, and shall forfeit the right not to refund any benefit, exemption or advantage acquired before the registration:

Provided further that nothing in this article shall be construed as exempting any person from refunding any benefit, exemption or other advantage demanded to be paid back by the competent authority before the making of such declaration:

Provided also that in the case of a qualifying asset that is registered under the Investment Registration Scheme Regulations, 2014, made under the External Transactions Act, the references to the dates "31st March, 2005" and "1st January, 2005" in subarticle (2) and "31st March, 2005" in subarticle (3) shall be construed as references to "4th November, 2013", "1st January, 2013" and “31st May, 2014”, respectively. Cap. 233.

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Cap. 233.

Provided also that in the case of a qualifying asset that is registered under the Special Registration Scheme Regulations, made under the External Transactions Act, the references to the dates "31st March, 2005" and "1st January, 2005" in subarticles (2) and (3) of this article shall be construed as references to "15th March, 2007" and "1st January, 2006", respectively.

(5) Where a person has availed himself of this article with respect to the Investment Registration Scheme Regulations, 2014, any losses referred to in article 5(10)(*a*) and article 14(1)(*g*) declared in the return for year of assessment 2013 and for any preceding year of assessment, whenever submitted, shall not be carried forward and set off against the total income of the said person for the year preceding the year of assessment 2014 or in any subsequent year.

Cap. 372.

(6) (*a*) A person who is served with a notice of enquiry referred to in article 13(7) of the Income Tax Management Act shall, within thirty days from the date of service of the said notice, submit to the Commissioner the Registration Certificate referred to in regulation 9 of the Investment Registration Scheme Regulations, 2014.

(*b*) Notwithstanding the provisions of subarticle (2), the exemption referred to in the said subarticle shall not apply if the person referred to in paragraph (*a*) fails to submit the said Certificate within thirty days from the date of service of the said notice:

Provided that the Commissioner, upon being satisfied that the said person was prevented from submitting the said Certificate within such period owing to absence from Malta, sickness or other reasonable cause, may extend the period as may be reasonable in the circumstances.

Basis of assessment.
Renumbered by: XVII. 1994.2.

10. Tax shall be charged, levied and collected for each year of assessment upon the chargeable income of any person for the year immediately preceding the year of assessment.

Accounting periods.
Amended by: XXII.1976.4.
Substituted by: XXVI.1977.5.
Amended by: IX. 1981.2.
Renumbered by: XVII. 1994.2.
Amended by: XIII. 2015.47.

11. (1) Every person shall each year make up the accounts of his trade or business which he is required to keep in accordance with the provisions of this Act to the day immediately preceding the next following year of assessment.

(2) Notwithstanding the provisions of sub-article (1) hereof, the Commissioner may permit any person to whom this sub-article applies to make up the said accounts to a date other than the day immediately preceding a year of assessment and, where permission has been granted as aforesaid, the gains or profits for that year of assessment and subsequent years of assessment shall be computed on the income of the year terminating on the date in the year immediately preceding the year of assessment on which the Commissioner has permitted that the accounts be made up.

(3) Sub-article (2) applies to any -

(*a*) company;

(*b*) commercial partnership *en nom collectif*, or commercial partnership *en commandite* which has not elected to be treated as a company in terms of article 27(6) of the Income Tax Management Act; Cap. 372.

(*c*) body corporate established by law;

(*d*) undertaking required by article 30(7)(*d*) to be dealt with as a separate body of persons.

(4) In granting his permission for the purposes of sub-article (2), the Commissioner may impose such conditions as he deems fit and reasonable, and where the person who has requested permission for a change in accounting date accepts the conditions laid down by the Commissioner and the accounting date of the trade or business is changed accordingly, such conditions shall be operative notwithstanding any other provisions of this Act.

(5) The Minister responsible for finance may make rules prescribing -

(*a*) the method by which changes in an accounting date may be authorized by the Commissioner for the purposes of this article; and

(*b*) the conditions which may be imposed or required by the Commissioner in authorizing changes as aforesaid.

PART III

EXEMPTIONS

Exemptions.
Amended by:
XX. 1955.2;
XV.1958.2;
XXV. 1960.5;
XXIV. 1961.2;
XXV. 1962.2,4;
L.N. 4 of 1963;
X. 1963.2;
XIV. 1963.2;
XXXI. 1966.2;
XXVII. 1967.20;
VIII. 1969.4;
XLIX. 1974.3;
XLII. 1975.3;
XXII. 1976.4;
XXXIX. 1976.8;
XXVIII. 1978.5;
XXI. 1980.3;
IX. 1981.3;
IX. 1983.6;
XIII. 1983.5;
XIV. 1984.3;
VIII. 1987.3;
XXXI. 1988.4;
XIX. 1989.4;
XXXVI. 1990.4;
VIII. 1991.2;
XIII. 1992.2.
Renumbered by:
XVII. 1994.2.
Amended by:
XVII. 1994.12;
XX. 1996.6;
XVII. 1998.70;
IX. 2001.24;
II. 2002.44;
II. 2003.9;
II. 2004.9;
II. 2007.5;
IV. 2007.9;
XVII. 2009.45;
I. 2010.15;
IV. 2011.10;
V. 2012.13;
L.N. 218 of 2012;
III. 2013.21;
XII. 2014.15;
XXII. 2014.13;
XXXVII. 2014.2;
XIII. 2015.48;
XV. 2016.15.
Cap. 318.
Cap. 370;
XVI. 2017.17.

12. (1) There shall be exempt from the tax -

(*a*) the income of the University of Malta;

(*b*) the allowances and benefits as may be specified by the Minister responsible for finance by notice published in the Gazette which are payable under the Social Security Act, or in consequence of any measure announced in the annual Budget Speech;

(*c*) (i) any interest, discount, premium or royalties accruing to or derived by any person not resident in Malta:

Provided that the exemption under this sub-paragraph shall not apply in respect of any year in which the said person is engaged in trade or business in Malta through a permanent establishment situated therein and where the royalties or the debt claim in respect of which the interest, discount or premium, is paid are effectively connected with such permanent establishment;

(ii) any gains or profits accruing to or derived by any person not resident in Malta on a transfer of any units in a collective investment scheme as defined in article 2 of the Investment Services Act, of any units and such like instruments relating to linked long term business of insurance, including the surrender or maturity of linked long term policies of insurance, of any interest in a partnership which is not a property partnership and of any shares or securities in a company (which for the avoidance of doubt includes redemption, liquidation or cancellation) which is not a property company and for the purpose of this paragraph the word "transfer" shall have the same meaning assigned to it under article 5(1)(*b*):

Provided that the beneficial owner of the interest, royalty, gain or profit, as the case may be, is a person not resident in Malta and such person is not owned and controlled by, directly or indirectly, nor acts on behalf of an individual or individuals who are ordinarily resident and domiciled in Malta;

(iii) (A) any dividend paid by a company registered in Malta to an individual out of profits allocated to the any of the taxed accounts, other than the final tax account and the untaxed account, where such individual's chargeable income, excluding such dividend, is equal to or exceeds the relevant

threshold:

Provided that, in the case where such individual is entitled to claim a deduction against a dividend declared in a tax return, the amount or portion of such dividend, up to the amount of the said deduction, shall not be exempt from tax:

Provided further that in the case where the said individual's chargeable income excluding such dividend is less than the relevant threshold, the amount or portion of such dividend to be exempt from tax shall be an amount determined by deducting from his chargeable income the relevant threshold:

Provided also that the preceding proviso shall not apply where the said individual's chargeable income does not exceed the relevant threshold.

(B) Any dividend or part thereof, exempt from tax under paragraph (iii)(A), shall, for the purpose of paragraph (*a*) of the last proviso to article 60 and paragraph (*a*) of the last proviso to article 48(1) of the Income Tax Management Act, be a dividend to which the said paragraphs refer. Cap. 372.

(C) For the purpose of article 12(1)(*c*)(iii):

(*a*) Where such individual has more than one such dividend, the aggregate amount of such dividends shall be treated as one dividend;

(*b*) "Relevant threshold" is as follows:

(i) in the case where the rates prescribed under article 56(1)(*a*) apply, the relevant threshold is €28,700;

(ii) in the case where the rates prescribed under article 56(1)(*b*) apply, the relevant threshold is €19,500;

(iii) in the case where the rates prescribed under the last proviso to article 56(1)(*b*) apply, the relevant threshold is €21,200:

Provided that this sub-paragraph (iii) shall not apply in the case of dividends arising out of shares listed on a stock exchange recognised under the Financial Markets Act and distributed to an

individual whose holding of such shares in a company represents less than 0.5% of the paid-up share capital of the said company:

Provided also that the preceding proviso shall only apply to distributions of dividends made out of profits derived in the year preceding the year of assessment 2018 or later;

(*d*) the income of any retirement fund or retirement scheme licensed, registered or otherwise authorized under the Special Funds (Regulation) Act or any Act replacing the said Act, other than income from immovable property situated in Malta;

Cap. 450.

(*e*) the income of any institution, trust, bequest or foundation, of a public character, and of any other similar organization or body of persons, also of a public character, which is engaged in philanthropic work and either qualifies for exemption under this paragraph in accordance with rules made for this purpose by the Minister responsible for finance under article 96 or is named by the said Minister as engaged in philanthropic work for the purposes of this paragraph and there is not in respect of it a declaration by the said Minister that it has ceased to be so named;

(*f*) the income of any political party including the income of clubs adhering to political parties;

(*g*) wound and disability pensions granted in respect of wounds or disabilities caused by war and any pensions granted to dependent relatives of members of the armed forces of the Commonwealth killed on war service;

(*h*) any capital sum received by way of commutation of pension (up to a maximum of thirty percent (30%) of the total pension), retiring or death gratuity or received as consolidated compensation for death or injuries; (for the purposes of this paragraph, "total pension" means the total value of the pension available to provide pension payments):

Provided that in the case of commutation of pensions in relation to retirement schemes, licensed, registered or otherwise authorised under the Special Funds (Regulation) Act or any Act replacing the same, the maximum capital sum that may benefit from this exemption shall, unless provided otherwise by means of rules prescribed by the Minister, be as provided under that Act, including any regulations or directives issued thereunder;

Cap. 450.

(*i*) the income arising from a scholarship held by a person receiving full time instruction at a university, college or similar educational institution:

Provided that this paragraph shall not apply to income, by whatever name called, paid out of funds disbursed or otherwise provided by the employer of the recipient which the recipient would have received by reason of his employment if he had not held such scholarship; and any income to which this paragraph does not apply shall be deemed to be income chargeable to tax in accordance with the provisions of article 4(1)(*b*);

(*j*) the income of any trade union registered under the Employment and Industrial Relations Act in so far as such income is not derived from a trade or business carried on by such trade union; Cap. 452.

(*k*) the profits of a non-resident shipowner as defined in article 28, provided that the country to which such non-resident shipowner belongs extends a similar exemption to shipowners who are not resident in such country but who are resident in Malta;

(*l*) the income of a club or similar institution which the Commissioner is satisfied is organised and operated exclusively for social welfare, civic improvement, pleasure or recreation, or for any other purpose except profit, no part of the income of which is payable to, or is otherwise available for the personal benefit of, any proprietor, member or shareholder, so long as such club or similar institution is not deemed to carry on a business in accordance with article 4(4);

(*m*) *Repealed by Act XX of 1996.*

(*n*) the income of a philharmonic society which the Commissioner is satisfied constitutes a *bona fide* band club, provided that such society has regular premises registered with the Police as a club and that such premises are in daily use as a place of resort by its members;

(*o*) the income of a club or similar institution which the Commissioner is satisfied constitutes a *bona fide* sports club, provided that no part of the income of which is payable to, or is otherwise available for the personal benefit of, any proprietor, member or shareholder, and provided also on winding up of such club or institution, no funds are distributed or available to such proprietor, member or shareholder;

(*p*) any dividend paid by a company whose main source of income in the relevant year is charged at the rate provided for in article 56(13) in respect of a Contractor;

(*q*) the income of a co-operative society;

(*r*) such subsidy as may be prescribed related to the Common Agricultural Policy or to any other similar scheme introduced in accordance with international or supra-national agreements;

(*s*) the income of a collective investment scheme other than income from immovable property situated in Malta and investment income to which article 41A(a) refers;

(*t*) any financial assistance, as determined by the courts of a European Union or a European Economic Area (hereinafter "EU/EEA") Member State or by the courts of another country as the Commissioner may approve or as agreed by a public deed of personal separation under the authority of the courts of a EU/EEA Member State or by the courts of another country as the Commissioner may approve, or as ordered by the courts of a EU/EEA Member State in a divorce judgment or decree or by the courts or other authorities of another country as the Commissioner may approve, received by an individual from his estranged spouse in respect of the maintenance of a child;

(*u*) (1) any income or gains derived by a company registered in Malta from a participating holding or from the transfer of such holding, where the taxpayer has not shown such income or gain as part of his chargeable income in the return made pursuant to article 10 of the Income Tax Management Act (Cap. 372):

Provided that with respect to a dividend derived from a participating holding acquired on or after 1 January 2007 the exemption contemplated by this paragraph shall only apply when the conditions set out in either paragraph (i) or paragraph (ii) 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 registered 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 dividends received from a participating holding acquired before the 1 January 2007:

Provided also that in respect of participating holdings in companies and partnerships *en commandite* the capital of which is not divided into shares, which are resident in Malta, the provisions of this paragraph shall only apply to gains or profits derived from the transfer of such holdings:

Provided further that for the purpose of this paragraph the word "transfer" shall have the same meaning assigned to it under article 5(1)(*b*);

(*u*) (2) any income or gains derived by a company registered in Malta (hereinafter "the particular company") which are attributable to a permanent establishment (including a branch) situated outside Malta or to the transfer of such permanent establishment, whether such permanent establishment belongs exclusively or in part to the particular company, including a permanent establishment operated through any entity or relationship other than a company, in which the particular company has an interest, where the taxpayer has not shown such income or gains as part of its chargeable income in the return made pursuant to article 10 of the Income Tax Management Act, and for these purposes "profits or gains" shall be calculated as if the permanent establishment is an independent enterprise operating in similar conditions and at arm's length: Cap. 372.

Provided that where, in the opinion of the Commissioner, a series of transactions is effected with the sole or main purpose of reducing the amount of tax payable in terms of this Act by any person by reason of the operation of this provision, such a person shall be assessable as if this provision did not apply and, for the purpose of this provision, a series of transactions shall mean any two or more corresponding or circular transactions carried out by the same person, either directly or indirectly, as the case may be:

Provided further that for the purpose of this paragraph the word "transfer" shall have the same meaning assigned to it under article 5(1)(*b*):

Provided further that as from 1st January, 2016, in the case of distributed profits received from a participating holding by a parent company that is resident in Malta or

the permanent establishment of a parent company that is resident in another EU Member State, which permanent establishment is situated in Malta and which benefit from the exemption from withholding tax set out in article 5 of EU Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States as amended, the exemption under the provisions of sub-paragraph (u)(1) shall only apply to the extent that such profits are not deductible by the relevant subsidiary in that other EU Member State.

For the avoidance of doubt, notwithstanding any other provision to the contrary in this Act, distributed profits received by the said parent company or permanent establishment that are deductible by the relevant subsidiary in such other EU Member State shall fall under the charging provisions of sub-article (1) of article 4**.** This proviso implements the provisions of Article 1(1) of EU Directive 2014/86/EU of 8th July, 2014 amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States and the terms used herein shall, unless the context requires otherwise, be interpreted in terms of EU Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States as amended;

(*v*) royalties, advances and similar income derived from -

(i) patents in respect of inventions

(ii) copyright

(iii) trademarks

whether in the course of a trade, business, profession or vocation or otherwise, subject to the satisfaction of such terms and conditions (including any limits on the maximum amount of the exempt income) and obtaining such determinations as may be prescribed:

Provided that where any income which is exempt from tax in terms of this paragraph is derived by a company, the distribution of the particular profits by way of dividend by such company shall also be exempt from tax in the hands of the shareholders, so however that where the person in receipt of such dividend is itself a company (hereinafter referred to as "the second company"), any dividend paid to the members of the second company shall, to the extent that such dividend is paid out of profits which are exempt in terms of this paragraph, not be charged to tax under this Act, and where a member of the second company is again a company, the provisions of this proviso shall apply *mutatis mutandis* as though references to the second company were references to that member, and the

principle set out in this proviso shall continue to be applied for as long as the exempt profits referred to in this paragraph are distributed by way of dividends:

Provided further that where such royalties, advances or similar income are derived by a company, this exemption shall not apply where the company has shown such income as part of its chargeable income in the return made pursuant to article 10 of the Income Tax Management Act; Cap. 372.

(*w*) the income from employment (other than employment derived from the holding of an office of director) of a married person who is over forty years of age and starts in employment after having been absent from any gainful occupation for at least five years, and whose name was not during the said time on the unemployment register (Parts 1 and 2) as established by JobsPlus, and where such income does not exceed the amount mentioned in rule 2(a) of the Deduction (Income from Employment) Rules and the said person is chargeable to tax jointly with her or his spouse at the rates specified in article 56(1)(a): S.L. 123.149

Provided that this paragraph shall apply for a period of five consecutive years of assessment commencing from the basis year in which the person started work;'

(*x*) interest payable to an individual in his own name by:

(i) a person carrying on the business of banking in accordance with the laws of any European Union Member State in respect of a sum of money deposited into a special individual saving account recognised as such by the Commissioner, and

(ii) interest payable to an individual in his own name by the Government of a European Union Member State or by any agency thereof, by a corporation or authority established by law, or in respect of a public issue by a company, entity or other legal person howsoever constituted and whether resident in Malta or otherwise, where the relevant interest-bearing securities are credited for the benefit of the individual to a special individual saving account recognised as such by the Commissioner:

Provided that the aggregate amount of the deposits into such account and the value of the interest-bearing securities credited for the benefit of the individual into such account do not together exceed one thousand euro (€1,000) in any year or such other amount as may be prescribed by the Minister from time to time;

(*y*) any stipend or maintenance grant paid to a student by the Government or any Government institution;

Disability Trusts and Disability Foundations.

(*z*) any income or gains derived by the trustee of a disability trust or by a disability foundation upon the transfer of immovable property forming part of the disability trust or the disability foundation where the sale proceeds from the transfer of such property are to be exclusively utilised by the trustee or foundation for the maintenance of the disabled beneficiary, and an undertaking to that effect is made by the trustee or the foundation in the deed of sale:

Provided that if the disabled beneficiary dies before all the sale proceeds are utilised for his maintenance, then any balance thereof distributed by the trustee of the disability trust or the disability foundation to the parents of the disabled beneficiary and, or the other beneficiaries of the disability trust or foundation shall be taxed as follows:

(i) if less than eighty *per centum* (80%) of the sale proceeds have been applied for the maintenance of the disabled beneficiary up to his death, the remaining portion which is distributed to the parents and, or the other beneficiaries of the disability trust or foundation will be taxed at the rate of 8% of the transfer value, and the tax is to be paid by the trustee or foundation before any distributions are made to the parents of the disabled beneficiary and, or the other beneficiaries of the disability trust or foundation; or

(ii) if eighty *per centum* (80%) or more of the sale proceeds have been applied for the maintenance of the disabled beneficiary up to his death, no tax shall be payable on the remaining portion which is distributed by the trustee or the foundation to the parents of the disabled beneficiary and, or the other beneficiaries of the disability trust or foundation.

For the purpose of this paragraph, "disability trust" and "disability foundation" mean any protected disability trust or foundation, as the case may be, which qualify as such in terms of the Trusts and Trustees Act, any other applicable law regulating foundations, or any regulations made thereunder, and provided that:

Cap. 331

(i) the trustee or administrator thereof shall not have the power to appoint new beneficiaries after the creation of the trust or foundation;

(ii) the trust terminates on the death of the disabled beneficiary; and

(iii) the relevant trust instrument or foundation deed specifically provides that the beneficiaries of such trust or foundation comprise only:

(*a*) a person or persons who is/are on the Register of Persons with Disability kept by the National Commission Persons with Disability set up in terms of the Equal Opportunities (Persons with Disability) Act, and Cap. 413.

(*b*) persons referred to in article 5(2)(*e*)(i), whether they are in existence or not at the time of such settlement, in relation to the disabled person:

Provided that nothing in this subarticle shall be construed as granting any exemption from the filing of a return in respect of any such income, or as exempting in the hands of the recipients any dividends, interests, annuities, emoluments, pensions or other gains or profits paid wholly or in part out of the income so exempted.

(2) The Minister responsible for finance may exempt any person or class of persons with or without retrospective effect from all or any of the provisions of this Act on any ground which to him may seem sufficient. Any such exemption may be made subject to such conditions or the payment of such other rate or rates of tax, whether related to income or otherwise, or to both such conditions and payment, as the Minister may deem appropriate.

(3) The Minister responsible for finance may by order published in the Government Gazette provide that the interest payable on any loan charged on the public revenue of Malta shall be exempted from the tax, either generally or only in respect of interest payable to persons not resident in Malta, and such interest shall, as from the date and to the extent specified in the order, be exempt accordingly.

(4) The Minister responsible for finance may by order published in the Government Gazette provide that the interest payable on any debentures, debenture stock or other securities issued by the Malta Development Corporation under the Malta Development Corporation Act, as security for any authorised borrowing of the said Corporation, shall be exempted from the tax, either in whole or in part and to such extent as he may deem appropriate, and such interest shall, as from the date and to the extent specified in the order, be exempt accordingly. Cap. 202.

13. Tax shall not be payable in respect of any income arising outside Malta to any person who is in Malta for some temporary purpose only and not with any intent to establish his residence therein and who has not actually resided in Malta at one or more times for a period equal in the whole to six months in the year preceding the year of assessment. Temporary residents. *Renumbered by: XVII. 1994.2.*

PART IV

DEDUCTIONS

Deductions allowed.
Amended by:
XX.1955.3;
V.1958.3;
XV.1958.2;
XXV.1960.6;
XXV.1962.2,4;
L.N. 4 of 1963;
X.1973.2;
XLII.1975.4;
XXVI.1977.6;
XXVIII.1978.6;
XXI. 1980.4;
IX.1981.4;
XIII. 1983.4;
XXXVI. 1990.5;
XVIII. 1993.5.
Renumbered by:
XVII. 1994.2.
Amended by:
XX.1996.7;
IV. 2001.35;
IX. 2001.25;
II. 2002.45;
II. 2003.10;
II. 2007.6;
IV. 2007.10;
IX. 2007.4;
L.N. 409 of 2007;
I. 2010.16;
IV. 2011.11;
XII. 2014.16;
XV. 2016.16;
XVI. 2017.18.

14. (1) For the purpose of ascertaining the total income of any person there shall be deducted all outgoings and expenses incurred by such person during the year preceding the year of assessment to the extent to which such outgoings and expenses were wholly and exclusively incurred in the production of the income, including -

(*a*) sums payable by such person by way of interest upon any money borrowed by him, where the Commissioner is satisfied that the interest was payable on capital employed in acquiring the income;

(*b*) rent paid by any tenant of land or buildings occupied by him for the purpose of acquiring the income;

(*c*) any sum expended for repairs of premises, plant or machinery employed in acquiring the income, or for the renewal, repair or alteration of any implement, utensil or article so employed;

(*d*) bad debts incurred in any trade, business, profession or vocation, proved to the satisfaction of the Commissioner to have become bad during the year immediately preceding the year of assessment notwithstanding that such bad debts were due and payable prior to the commencement of the said year:

Provided that all sums recovered during the said year on account of amounts previously written off or allowed in respect of bad debts shall for the purposes of this Act be treated as receipts of the trade, business, profession or vocation for that year;

(*e*) any sum contributed by an employer to a pension, saving, provident or any other society or fund which may be approved by the Commissioner as may be prescribed;

(*f*) a deduction in respect of the wear and tear of any plant and machinery, and any premises being an industrial building or structure, arising out of the use or employment of such property in the production of the income; and where such property is employed on such terms that the burden of wear and tear thereof falls upon the person making use of the property in the production of the income, but such property does not belong to him, he shall be entitled to any deduction to which he would have been entitled had the property belonged to him:

Provided that -

(i) the amount to be deducted in respect of premises being an industrial building or structure shall not exceed two per cent of the cost thereof, not including the cost of the land on which the

building or structure is erected;

(ii) where the total deductions allowable under this paragraph and under paragraph (*j*) cannot be given effect to in full in any year because there are no profits or gains chargeable for that year from the source of income in respect of which they are allowable or because the profits or gains chargeable from that source are less than the deductions, the deductions or such part of the deductions to which effect has not been given, shall be added to the deduction for wear and tear in respect of that source for the following year and deemed to be part of that deduction, or if there is no such deduction in respect of that source for that year, be deemed to be the deduction for that year and so on for subsequent years;

(iii) the aggregate of the deductions made under this paragraph and under paragraph (*j*), added to the wear and tear, if any, or to such part thereof as may be appropriate, which occurred prior to the commencement of this Act, shall not exceed the original cost, or such part of it as may be appropriate, of such plant, machinery or premises, having regard to the extent to which they were wholly and exclusively used in the production of the income, and -

(*a*) the wear and tear which occurred prior to the commencement of this Act shall be computed at the prescribed rates, and

(*b*) the cost of the land on which the building or structure is erected shall in all cases be excluded from the original cost of the premises;

(*g*) the amount of a loss incurred by any person, solely or in partnership, in any trade, business, profession or vocation during the year preceding the year of assessment which, if it had been a profit, would have been assessable under this Act; and in computing such loss account shall be taken of all deductions which would have been allowable under the other paragraphs of this sub-article, except paragraphs (*f*) and (*j*), if it had been a profit; and where the amount of a loss incurred and computed as aforesaid is such that it cannot be set off against capital gains or income from other sources for the year preceding the year of assessment, it shall, to the extent to which it cannot be wholly set off against capital gains or income for the said year, be carried forward and set off against what would otherwise have been the total income for subsequent years in succession:

Provided that nothing in this paragraph shall be construed as permitting the set off of any loss incurred outside Malta which, if it had been a profit and had been retained outside Malta, would not have been chargeable to tax under this Act:

Provided further that a loss as aforesaid shall not be deducted against income which stands to be allocated to the final tax account and any loss resulting from activities or sources the profit derived from which would have been allocated to the final tax account shall not be a loss to which this paragraph applies:

Provided also that, subject to the "group relief provisions", no person shall, notwithstanding anything contained in any other Act, be entitled to a deduction under this paragraph in respect of any loss incurred by another person:

Provided also that:

S.L. 123.140

(i) where any merger or division referred to in the Rulings (Income Tax and Duty Treatment of Mergers and Divisions) Rules is being effected for *bona fide* purposes to the satisfaction of the Commissioner; and

(ii) as a result of such merger or division, a trade or business previously carried on by a company or other person involved in the particular merger or division (hereinafter referred to as "the First Company") or any part thereof, shall thereafter be carried on by another company or companies or other person involved in such merger or division (hereinafter collectively referred to as "the Second Company"); and

(iii) the First Company is entitled to any loss or to the balance of any loss incurred by the First Company in any year preceding the year of assessment or to any wear and tear or initial allowances, or to the balance of any such allowances due in respect of any year as aforesaid;

the Commissioner shall be entitled to grant his permission for the losses and, or wear and tear and, or initial allowances or such part thereof as he may deem fit, in the light of the trade or business or any part thereof which shall thereafter be carried on by the Second Company, to be claimed by the Second Company and to be set-off against its gains or profits as the case may be in determining its chargeable income, in lieu of the First Company. In granting his permission the Commissioner may impose such conditions as he deems fit and reasonable, and where the person who has requested permission accepts the conditions laid down by the Commissioner, such

conditions shall be operative notwithstanding any other provisions of this Act.

(*h*) any expenditure on scientific research incurred by a person engaged in any trade, business, profession or vocation and proved to the satisfaction of the Commissioner to have been incurred for the use and benefit of the trade, business, profession or vocation:

Provided that any such expenditure of a capital nature, unless it is an expenditure in respect of which a deduction is allowable under paragraphs (*f*) and (*j*), shall be spread equally over the year in which it has been incurred and the five succeeding years:

Provided further that no deduction shall be allowed under the provisions of this paragraph in the case of any such expenditure on plant or machinery or premises, in respect of which any deduction is allowed under paragraphs (*f*) and (*j*):

Provided further that the deduction due under this paragraph may, at the option of the person, be allowed at one hundred and fifty per cent of the actual amount of the expenditure incurred; and when a person exercises his option as aforesaid, the total increased deduction shall not, for any year of assessment, exceed five per cent of the turnover of the person for that year; and if this total increased deduction is such that the full amount thereof cannot be allowed as a deduction in the year in which it would, but for the stated five per cent limitation, have been deductible, that part which cannot be so allowed shall be added to any deduction due under the provisions of this paragraph for the following year and be deemed to be part of that deduction or, if there is no such deduction for that year, be deemed to be the deduction for that year, and so on for subsequent years.

For the purposes of this paragraph "scientific research" shall include:

(i) basic research comprising activities undertaken for the advancement of scientific or technological knowledge;

(ii) applied research where a specific application is in view;

(iii) development work involving the use of the results of basic and applied research as aforesaid for the purpose of creating new or improving existing materials, devices, products or processes.

(*i*) (*Deleted by: XV. 2016.16*).

(*j*) in respect of plant and machinery first used and employed in the year immediately preceding the year of assessment, an initial deduction of one-fifth of the capital expenditure thereon, and in respect of premises

being an industrial building or structure first used and employed in the year immediately preceding the year of assessment, an initial deduction of one-tenth of the capital expenditure thereon:

Provided that deductions made under this paragraph shall be restricted, set off and carried forward as laid down in the second and third provisos to paragraph (*f*):

Provided further that the deduction contemplated by this paragraph in respect of plant and machinery shall no longer be applicable with effect from such year of assessment as may be determined by the Minister by order in the Gazette;

(*k*) any sum or expenses proved to the satisfaction of the Commissioner to have been paid or incurred by or on behalf of a candidate for election as member of the House of Representatives on account of or in respect of the conduct or management of such election:

Provided that such deduction shall only be allowed in the case of an elected candidate and shall not exceed the maximum amount of expenditure permissible under the General Elections Act, in respect of one candidate or the amount actually incurred by such candidate, whichever is the lesser;

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(*l*) any expenditure incurred by a person engaged in a trade, business, profession or vocation for the purpose of promoting that trade, business, profession, or vocation including any expenditure on market research and obtaining market information, advertising or other means of soliciting business, providing samples, and participating in fairs and exhibitions;

(*m*) any expenditure of a capital nature on intellectual property or any intellectual property rights incurred by a person and proved to the satisfaction of the Commissioner to have been incurred in the production of the income of such person:

Provided that any such expenditure shall be spread equally over the life of the relevant intellectual property or rights in a reasonable manner and to the satisfaction of the Commissioner, but in any case over a minimum period of three consecutive years, the first year being that in which the said expenditure has been incurred:

Provided further that any sums receivable from any sales of such intellectual property or rights and all other income receivable in respect thereof shall be included as total income for the year when receivable;

(*n*) any sum proven to the satisfaction of the Commissioner to have been paid by an employer to a licensed or registered childcare centre as fees in respect of childcare services for the children of his

employees, up to a maximum of nine hundred and thirty-five Euro (€935) per child;

(o) such sums in respect of risk capital as are aimed at approximating neutrality between debt and equity financing, as the Minister may prescribe.

(2) (*a*) The Minister responsible for finance may make rules prescribing the method of calculating or estimating the deductions allowable under this article, and may by such rules also determine the amount of the deduction.

(*b*) The Minister responsible for finance may by such rules also prescribe tax credits and deductions other than those listed in subarticle (1), and may also by such rules determine the class of persons to whom such tax credits or deductions shall apply and the method of calculating or estimating such tax credits or deductions and the amounts thereof.

(3) Where any person incurs expenditure before he begins to carry on his trade or business, and the expenditure -

(*a*) is incurred not more than eighteen months before that time; and

(*b*) is not deductible in ascertaining the trading or business income of that person, but would have been so deductible under subarticle (1) had it been incurred after that time,

such expenditure as may be prescribed shall be treated as incurred on the day on which the trade or business is first carried on by that person.

(4) Where a person derives income from work carried out on or in relation to immovable property situated in Malta, consisting of brokerage and professional services, construction work, project management of construction work and work of tradesmen, or from the granting of loans or from any form of credit to finance the acquisition, development, construction, refurbishment, renovation of immovable property or any right thereon and any other matter which increases or enhances the value of such immovable property or any right thereon, and such property is owned by a related person, the following shall have effect:

(*a*) the income derived from the work, loans or credit, or from the transfer of such immovable property or any right thereon to which such work, loans, or credit is related, shall be deemed to constitute separate chargeable income for the purpose of this subarticle;

(*b*) in determining the chargeable income derived from the said work, the total deductions allowable under this article shall not exceed the amount of the consideration received or receivable for the said work; and

(*c*) in determining the chargeable income derived from the transfer of such immovable property or any right thereon, the total deductions allowable under this

article shall not exceed the consideration received or receivable for the said immovable property or right thereon, in so far that such excess consists of any amounts paid or payable in respect of the work, loans, or credit referred to in this subarticle.

For the purpose of this paragraph any amounts paid or payable in respect of the said work, loans, or credit shall for the purpose of determining the chargeable income to be taken into account only after all other allowable deductions have been taken into account:

Provided that paragraph (*c*) shall not apply with respect to income derived from loans or credit, where it can be proved to the satisfaction of the Commissioner that the amount paid or payable in respect of the loans or credit referred to in this subarticle reflects the amount that would have been paid or payable if the persons referred to in this subarticle were not related.

For the purpose of this subarticle -

(i) an individual is deemed to be related to another person if that other person is a body of persons of which the said individual is, directly or indirectly, a shareholder, partner or member; and

(ii) two bodies of persons are deemed to be related persons if they are, directly or indirectly, controlled or beneficially owned as to more than twenty-five percent by the same persons.

(5) Notwithstanding the other provisions of this article, when a person incurs expenditure for a supply of goods or services in respect of which the supplier is required to issue a tax invoice or other document in terms of article 50 or 51 of the Value Added Tax Act, no deduction shall be allowed under this article in respect of that expenditure unless that person is in possession of a tax invoice or other document issued in accordance with the said article 50 or 51 and produces such tax invoice or other document if required to do so by the Commissioner.

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Alimony payments. *Added by: XX.1996.8. Amended by: II. 2002.46; I. 2010.17; L.N. 218 of 2012. Substituted by: XII. 2014.17.*

14A. Notwithstanding anything to the contrary contained in this Act, if an individual proves to the satisfaction of the Commissioner that in the year preceding a year of assessment he has paid to his estranged spouse an alimony payment as determined by the courts of a European Union or a European Economic Area (hereinafter "EU/EEA") Member State or by the courts of another country as the Commissioner may approve or as agreed by a public deed of personal separation under the authority of the courts of a EU/EEA Member State or by the courts or other authorities of another country as the Commissioner may approve, or as ordered by the courts of a EU/EEA Member State in a divorce judgment or decree or by the courts of another country as the Commissioner may approve, he shall be allowed as a deduction against his income the lesser of these amounts -

(*a*) the amount actually paid in accordance with the Court order or public deed;

(*b*) the individual's chargeable income for the year.

School fees.
Added by:
II. 2002.47.
Amended by:
II. 2005.7;
IV. 2007.11;
XXXII. 2007.33;
L.N. 409 of 2007;
IV. 2011.12;
V. 2012.14.

14B. (1) Notwithstanding anything to the contrary contained in this Act, if an individual proves to the satisfaction of the Commissioner that in the year preceding a year of assessment he has paid school fees in respect of his children attending a registered private kindergarten or a school named by the Minister he shall be allowed as a deduction against his income the lesser of these amounts -

(*a*) the amount actually paid as certified by the head of the relative school or kindergarten;

(*b*) two thousand three hundred euro (€2,300) in respect of each child who attended such secondary school, or one thousand six hundred euro (€1,600) in respect of each child who attended such primary school, or one thousand three hundred euro (€1,300) in respect of each child who attended such kindergarten:

Provided that the deduction shall only be allowed if the payment and the details of the individual making the claim are confirmed by information provided, in such format and content as determined by the Commissioner, by the head of the relative school or kindergarten.

(2) Any individual qualifying under the provisions of subarticle (1) who proves to the satisfaction of the Commissioner that in the said year he has paid fees to the named school in respect of his child with special needs for the services of a facilitator, shall be allowed as a deduction against his income the fees so paid up to a maximum of nine thousand and three hundred and twenty euro (9,320), provided that advice shall have been given by a board established for the purpose by the Minister responsible for education to the effect that the said facilitator is necessary for that child.

(3) Where the parents of a child who attends a named school as provided in subarticles (1) and (2) live separately and they jointly contribute towards the payment of the school fees, the allowable deduction in respect of that child shall be apportioned between them in proportion to the amount of their contribution.

Child care fees.
Added by:
IV. 2007.12.
Amended by:
L.N. 409 of 2007;
II. 2009.12;
I. 2010.18;
V. 2012.15;
XII. 2014.18.

14C. Notwithstanding anything to the contrary contained in this Act, if an individual proves to the satisfaction of the Commissioner that in the year preceding a year of assessment he has paid fees in respect of childcare services for his children who were below the age of twelve years to a *bona fide* childcare centre he shall, for each child, be allowed as a deduction against his income the lesser of these amounts -

(*a*) the amount actually paid as confirmed by official receipts;

(*b*) two thousand euro (€2,000):

Provided that the Minister may by rules prescribe the conditions under which this deduction shall be allowed.

Fees in respect of homes for the elderly and the disabled.
Added by: XXXII. 2007.34.
Amended by: V. 2012.16; III. 2013.22.

14D. Notwithstanding anything to the contrary contained in this Act, if an individual proves to the satisfaction of the Commissioner that in the year preceding a year of assessment he has paid fees on his own behalf or on behalf of a family member, in respect of residence in a private home for the elderly or the disabled, or at a respite centre for the disabled, he shall be allowed as a deduction against his income the lesser of these amounts -

(*a*) the amount actually paid;

(*b*) two thousand five hundred euro (€2,500):

Provided that, for any year of assessment, the total deductions claimed in respect of any resident shall not exceed the amount as stipulated in this article:

Provided further that the deduction shall only be allowed if the payment and the details of the individual making the claim are confirmed by information provided, in such format and content as determined by the Commissioner, by the person running the home or centre.

Sports fees.
Added by: XXXII. 2007.35.
Substituted by: II. 2009.13.
Amended by: XII. 2014.19.
S.L. 455.03

14E. Notwithstanding anything to the contrary contained in this Act, if an individual proves to the satisfaction of the Commissioner that in the year preceding a year of assessment he has paid fees in respect of his children who have not attained the age of sixteen years, attending sports activities organised either by a person registered under the Sport Persons (Registration) Regulations or by the Kunsill Malti għall-Isport, he shall, for each child, be allowed as a deduction against his income the lesser of these amounts -

(*a*) the amount actually paid;

(*b*) one hundred euro:

Provided that the deduction shall only be allowed if the payment and the details of the individual making the claim are confirmed by information provided by the registered person through the Kunsill Malti għall-Isport or by the Kunsill Malti għall-Isport as the case may be, in such format and content as determined by the Commissioner:

Provided further that in the case of attendance at regular sports activities organised by entities outside Malta, registration as aforesaid shall not be necessary and the claim for deduction shall be made directly by the individual concerned in such format and content as determined by the Commissioner.

Proof of payment of fees.
Added by: I. 2010.19.

14F. If an individual proves to the satisfaction of the Commissioner that he has paid fees in respect of his studies at a recognised tertiary education institution, whether locally or abroad, he shall be allowed a deduction against his income in respect of such fees in such manner and subject to such conditions as may be prescribed.

Fees for cultural activities. *Added by: V. 2012.17. Amended by: XII. 2014.20.*

14G. Notwithstanding anything to the contrary contained in this Act, if an individual proves to the satisfaction of the Commissioner that in the year preceding a year of assessment he has paid fees in respect of his children who have not attained the age of sixteen years, attending creative or cultural courses organised by institutions or persons licensed or accredited by the Malta Council for Culture and the Arts, he shall, for each child, be allowed as a deduction against his income the lesser of these amounts -

(*a*) the amount actually paid;

(*b*) one hundred euro (€100):

Provided that the deduction shall only be allowed if the payment and the details of the individual making the claim are confirmed by information provided by the licensed or accredited person or institution through the Malta Council for Culture and the Arts, in such format and content as determined by the Commissioner:

Provided further that in the case of attendance at creative or cultural courses organised by entities outside Malta, accreditation as aforesaid shall not be necessary and the claim for deduction shall be made directly by the individual concerned in such format and content as determined by the Commissioner.

School transport fees. *Added by: XIII. 2015.49.*

14H. Without prejudice to the provisions of this Act, where an individual proves to the satisfaction of the Commissioner that in the year preceding a year of assessment he has paid fees for the use of school transport in respect of his children, who have not attained the age of sixteen years and who attend a church school or private school, he shall be allowed as a deduction against his income the fees paid, up to a maximum of €150 per child:

Provided that the deduction shall only be allowed if the payment and the details of the individual making the claim are confirmed by information provided to the Commissioner by Transport Malta in such format and content as determined by the Commissioner.

Investment services companies. *Added by: XVII. 1994.13. Amended by: II. 2003.11; II. 2004.10.* Cap. 370.

15. (1) For the purposes of this article investment services company shall mean a company which on the 1st October, 2003 held an investment services licence issued under article 6 of the Investment Services Act, or a company which, on the 1st October, 2003 was recognised by the relevant competent authority for the purposes of article 9A of that said Act, and whose activities solely comprise the provision of management, administration, safekeeping, or investment advice to collective investment schemes as defined in the aforesaid Act.

(2) For the purposes of ascertaining the total income of an investment services company for any year up to the year immediately preceding the year of assessment commencing on such date that the Minister may by notice in the Gazette appoint*, the amounts specified in paragraphs (*a*) to (*e*) shall, at the company's option, be allowed as deductions in addition to or as a replacement

* 1st January, 2011 - see the Notice of Appointed Date (Income Tax Act) Order - S.L.123.125

for, as the case may be, the amounts allowed under article 14(1) and shall be subject to the conditions stipulated in that article. For this purpose:

(*a*) rental, energy costs, building maintenance, building insurance and other building occupancy costs incurred in the period from the year preceding the first year of assessment in which the investment services company first becomes liable to tax under this Act up to and including the year preceding the tenth year of assessment shall be allowed as an additional one hundred per cent of such expenditure;

(*b*) a one hundred per cent deduction shall replace the deductions provided for under article 14(1)(*f*) and (*j*) in respect of expenditure which is incurred in the period commencing from the year preceding the first year of assessment in which the investment services company first becomes liable to tax under the provisions of this Act up to and including the year preceding the fifth year of assessment and, in addition, expenditure in respect of office premises shall be eligible for such deduction as if the said premises were industrial buildings;

(*c*) the amounts invested by an investment services company for its own account in a collective investment scheme managed by that company shall be allowed as a deduction if such investment is made during the period commencing from the year preceding the first year of assessment in which the investment services company first becomes liable to tax under the provisions of this Act up to and including the year preceding the fifth year of assessment:

Provided that such funds so invested are not disinvested from such collective investment scheme within two years of the making of the said investment:

Provided further that this additional deduction shall not affect the amount which is to be taken as the cost of acquisition of such investment for the purposes of any other provision of this Act, and also provided that such deductions shall not be carried forward as part of a loss to be set off against the company's liability in respect of a capital gain arising on the disposal of its investments in the collective investment scheme;

(*d*) remuneration paid by an investment services company to its employees who are resident in Malta shall be allowed as an additional one hundred per cent of that remuneration if such expenditure is incurred during the period commencing from the year preceding the year of assessment in which the investment services company first becomes liable to tax under the provisions of this Act up to and including the year preceding the tenth year of assessment;

(*e*) there shall be allowed as a deduction any other expenses and outgoings incurred by the investment services company wholly and exclusively for the purposes of carrying on its business and which would otherwise not have been allowed as a deduction under the provisions of article 14(1).

(3) Where an investment services company incurs expenditure before it begins to carry on its business, and the expenditure -

(*a*) is incurred not more than five years before that time; and

(*b*) is not deductible in ascertaining the total income of the investment services company, but would have been so deductible under article 14(1) or under sub-article (2)(*e*) had it been incurred after that time,

such expenditure shall be treated as incurred on the day on which the business is first carried on by the investment services company, and of sub-article (2)(*a*) to (*d*) shall apply in respect of such expenditure.

(4) The additional deductions specified in sub-article (2) represent the maximum deductions allowed for the purposes of that sub-article, and an investment services company need not claim the full amount of such maximum deductions in respect of any year of assessment.

(5) The additional deductions provided for in this article shall not be taken into account in determining the amount of loss, if any, available for surrender under the provisions of articles 16 to 22 (group relief provisions) of this Act.

Companies authorised to act as insurance managers. *Added by: XVII. 1998.70. Amended by: II. 2004.11.* Cap. 403.

15A. The provisions of article 15 relating to investment services companies shall, where applicable, apply *mutatis mutandis* to companies which, on the 1st October, 2003 were authorised to act as insurance managers under article 13 of the Insurance Business Act.

Definition of group. *Added by: XVII. 1994.13.*

16. For the purposes of this article and of articles 17 to 22, hereinafter collectively referred to (including this article) as the "group relief provisions", two companies resident in Malta but neither of which is resident for tax purposes in any other country shall be deemed to be members of a group of companies if one is the fifty-one per cent subsidiary of the other or both are fifty-one per cent subsidiary of a third company resident in Malta.

For the purposes of the group relief provisions, a company shall be deemed to be a fifty-one per cent subsidiary of another company, hereinafter referred to as the "parent company":

(*a*) if and so long as more than fifty per cent of its ordinary share capital and more than fifty per cent of its voting rights are owned directly or indirectly by the parent company; and

(*b*) the parent company is beneficially entitled either

directly or indirectly to more that fifty per cent of any profits available for distribution to the ordinary shareholders of the subsidiary company; and

(*c*) the parent company would be beneficially entitled either directly or indirectly to more than fifty per cent of any assets of the subsidiary company available for distribution to its ordinary shareholders on a winding up.

Surrender of relief between members of groups.
Added by: XVII. 1994.13.

17. (1) Subject to, and in accordance with, the provisions of this article and of articles 18 to 22, allowable losses may, in the case set out in sub-article (2), be surrendered by a company, hereinafter referred to as "the surrendering company", and, on the making of a claim by another company, hereinafter referred to as "the claimant company", be allowed to the claimant company as a deduction called "group relief". A claim made by virtue of this sub-article is hereinafter referred to as a "group claim".

(2) Group relief shall be available where the surrendering company and the claimant company are both members of the same group throughout the year preceding the year of assessment for which the relief is claimed.

(3) For any year of assessment, two or more claimant companies may make group claims relating to the same surrendering company.

(4) A payment for group relief -

(*a*) shall not be taken into account in computing profits or losses of either company for the purposes of tax imposed by this Act; and

(*b*) shall not, for any of the purposes of this Act, be regarded as a distribution.

For the purposes of this sub-article "payment for group relief" means a payment made by the claimant company to the surrendering company in pursuance of an agreement between them in respect of an amount surrendered by way of group relief, being a payment not exceeding that amount.

Losses which may be surrendered by way of group relief.
Added by: XVII. 1994.13. Amended by: II. 2007.7; L.N. 409 of 2007; XIII. 2015.50.

18. (1) (*a*) If in the year preceding a year of assessment the surrendering company has incurred an allowable loss, the amount of the loss may be set off for the purposes of tax against the total income of the claimant company for the corresponding year of assessment and, where applicable, for subsequent years of assessment provided that in the year in which the surrendering company incurs the loss both companies have accounting periods which begin and end on the same dates:

Provided that where the surrendering company makes up accounts and pays tax in a currency other than that of the claimant company any loss surrendered shall be set off against the total income of the claimant company as aforesaid, after such amount is converted to the currency in which the claimant company makes up accounts and pays tax. Such conversion shall be carried out by

reference to the mean rate or rates of exchange between such currency or currencies and the euro ruling on the last day of the accounting period to which such loss refers as issued by the Central Bank of Malta.

(*b*) A surrendering company may surrender allowable losses by way of group relief in excess of the total income of the claimant company in the year preceding a year of assessment, in which case the claimant company may carry forward and set off those losses in accordance with the provisions of article 14(1)(*g*) as if they were losses of its own trade.

(*c*) Where the allowable loss, had it been a profit, would have been allocated to the immovable property account or the Maltese taxed account of the surrendering company, the claimant company may deduct such loss from its income which stands to be allocated to either its immovable property account or its Maltese taxed account, and such loss may only be carried forward against the claimant company's total income arising in subsequent years as would stand to be allocated to any of these taxed accounts.

(*d*) Where the allowable loss, had it been a profit, would have been allocated to the foreign income account of the surrendering company, the claimant company may only deduct such loss from its total income as would stand to be allocated to its foreign income account and such loss may only be carried forward against the claimant company's total income arising in subsequent years as would stand to be allocated to its foreign income account.

(*e*) For the purposes of paragraphs (*c*) and (*d*) any election made in accordance with rule 9(*a*) of the Tax Accounts (Income Tax) Rules shall be ignored. S.L. 123.101

(2) Notwithstanding the provisions of sub-article (1), a company which is either -

(*a*) newly incorporated and at all times after its incorporation satisfies the conditions to be deemed a member of the same group of companies as another company in the year preceding a year of assessment and has the same accounting period end date as that other company in that year preceding the year of assessment, or

(*b*) wound up part way through its accounting period and until it is so wound up satisfied the conditions to be deemed a member of the same group as another company in the year preceding a year of assessment and has the same accounting period start date as that other company in that year preceding the year of assessment,

will be deemed for the purposes of sub-article (1)(*a*) to have an accounting period which begins and ends on the same date as that of the other company and group relief shall be available in full for that year.

Group relief anti-avoidance. *Added by: XVII. 1994.13.*

19. If, apart from this article, a company is a member of a group of companies, and arrangements are in existence the sole or main purpose of which is to reduce any company's tax liability, and by virtue of the said arrangements that company would cease to be a member of that group of companies, then that company shall be treated as not being a member of that group of companies for any year preceding a year of assessment in which the said arrangements are in existence.

Exclusion of double reliefs. *Added by: XVII. 1994.13.*

20. (1) Relief shall not be given more than once, whether by giving group relief and by giving some other relief (in respect of any year of assessment) to the surrendering company, or by giving group relief more than once, in respect of the same amount.

(2) In accordance with the provisions of sub-article (1), two or more claimant companies cannot, in respect of any one loss, obtain in total more relief than could be obtained by a single claimant company.

Claims and adjustment. *Added by: XVII. 1994.13. Amended by: III. 2013.22.*

21. A claim for group relief:

(*a*) need not be for the full amount available,

(*b*) shall include the consent of the surrendering company set out in such form as the Commissioner may require, and

(*c*) must be made by the later of -

(i) the tax return date for the relative year of assessment in respect of which the claim is made, or

(ii) twelve months following the end of the company's accounting period, which date falls within the year immediately preceding the year of assessment for which the claim is made.

Definitions. *Added by: XVII.1994.13.*

22. For the purpose of the group relief provisions:

(*a*) a reference to "allowable loss" or "allowable losses" shall be construed as a reference to the loss or losses referred to in article 14(1)(*g*), to the extent that they are incurred in the year preceding the year of assessment and are not unrelieved losses carried forward from previous years; and

(*b*) references to "total income" shall have the meaning assigned to it by article 2 but shall be computed before any deduction is made in respect of group relief.

Single taxable person basis. *Added by: III. 2013.24.*

22A. The Minister for finance may make rules providing for bodies of persons under common ownership to be entitled to elect to compute and bring to charge their chargeable income or losses as the case may be, on a collective basis, and for the consequent carrying out of the relevant provisions and obligations under the Income Tax Acts as if they are a single body of persons, subject to such terms and conditions as may be laid down in such rules.

Profits from production of petroleum.
Added by: V.1958.4. Amended by: XV.1958.2; XXV.1962.2,4; L.N. 4 of 1963; L.N. 46 of 1965; VIII.1969.5; X.1977.3; XXVIII.1978.7; XXXVI. 1990.6. Renumbered by: XVII. 1994.2. Amended by: XX.1996.9. Substituted by: IV. 2011.13.
Cap. 156.
Cap. 535.
S.L. 156.01

23. (1) Where any person engaged in the business of exploration for, and the production of, petroleum (hereinafter referred to as "the Contractor") derives, or aims to derive, gains or profits through a Production Sharing Contract (hereinafter referred to as "the Contract") granted to such person by the Government of Malta by way of licence in accordance with the provisions of the Petroleum Production Act, the Continental Shelf Act and the Petroleum (Production) Regulations, or any provision amending or substituting the said Acts or Regulations, the chargeable income of the said person from such business shall be determined as set out in this article.

(2) (*a*) The gains or profits derived by the Contractor from the production of petroleum for any basis year, being the year immediately preceding a year of assessment, shall be arrived at by deducting the recoverable costs as defined in the Contract and not yet fully recovered by the Contractor, from the total of the value of the cost recovery petroleum and of the share of profit petroleum, as defined in the Contract, allotted to the Contractor for that year, to which shall be added any ancillary or incidental income for the same year.

(*b*) Where after such deduction as is referred to in paragraph (*a*) there remains any balance of unabsorbed recoverable costs, the amount of such unabsorbed costs shall be carried forward to the following year and shall be added to and become part of the recoverable costs for that year.

(*c*) The procedure referred to in paragraph (*b*) shall be followed in subsequent years until all recoverable costs shall have been absorbed.

(3) (*a*) For the purposes of this article, particularly for the purposes of subarticle (2), each Contract shall be deemed to constitute a separate and distinct source of income and any Contractor deriving gains or profits from more than one Contract shall be subject to tax as if he were a separate and unconnected person with respect to each such Contract.

(*b*) Where more than one petroleum field is in production in an area covered by the same Contract, the gains or profits from each such field shall be determined as if each such field constitutes a separate and distinct source of income arising to a separate person, so however that the Contractor shall have the right to identify the fields in the said area where the cost of exploration and development operations are to be taken into account in determining the relative gains or profits.

(4) The provisions of articles 16 to 22 shall not apply in the case of any company in any year in which the company is operating under a licence referred to in subarticle (1).

(5) (*a*) Notwithstanding anything contained in the Income Tax

Acts, where a non-resident sub-contractor renders services to a Contractor in Malta, such Contractor shall withhold tax at the rate set out in article 56(13)(*b*) on payments made to the sub-contractor for services rendered in Malta and shall pay to the Commissioner any tax so withheld within thirty days from the making of the deduction.

(*b*) Where a Contractor fails to deduct and pay tax in accordance with paragraph (*a*), the provisions of article 73(4) of this Act and of article 40(1) of the Income Tax Management Act shall apply *mutatis mutandis*.

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(*c*) The tax withheld in accordance with paragraph (*a*) shall be considered as a final withholding tax unless the sub-contractor notifies the Commissioner that this tax is to be considered as a provisional tax payment to be credited against the tax liability of the said sub-contractor's chargeable income for the relevant year of assessment computed in accordance with the provisions of the Act.

(*d*) The notification referred to in paragraph (*c*) shall be made by not later than the tax return date for the relevant year of assessment and in such form as the Commissioner may require.

(6) Except for gains or profits derived from the production of petroleum referred to in subarticles (1) and (2), any income or deemed income derived by a Contractor and subject to tax under any of the provisions of this Act shall be so brought to charge in accordance with the said provisions and at the applicable rates, but no deduction shall be granted thereagainst in respect of any loss or outgoing expense incurred in connection with the exploration for or the production of petroleum.

Balancing statement, balancing allowance and charge. *Added by: XXV. 1960.7. Amended by: XLII. 1975.5; XXVI.1977.7; XXVIII. 1978.8. Renumbered by: XVII. 1994.2. Amended by: XVII. 1994.14.*

24. (1) Where, under the provisions of article 14(1)(*f*) and (*j*), any deduction has been allowed in any year of assessment in ascertaining the total income of any person and any of the following events occurs in the year immediately preceding the year of assessment in the case of any property in respect of which any deduction has been allowed as aforesaid, that is to say, either the property or any part thereof -

(*a*) is sold or otherwise transferred under an onerous title, whether still in use or not; or

(*b*) is destroyed; or

(*c*) is put out of use as being worn out or obsolete or otherwise useless or no longer required,

and the event in question occurs before the source of income in respect of which the deduction has been allowed has ceased to exist or to belong to the said person, he shall, in the year of assessment, render to the Commissioner, at the same time as he renders his return of income under article 10 of the Income Tax Management Act, a statement (hereinafter referred to as a "balancing

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statement"), in respect of the property in question showing the following items, that is to say:

(i) the amount of the capital expenditure on the provision thereof; and

(ii) the total depreciation which has occurred by reason of wear and tear since the date of the acquisition of such property, taking into account the aggregate amount of all deductions previously allowed under the provisions of article 14(1)(*f*) and (*j*) and of any deductions or charges previously allowed or made under sub-article (2)(*a*) or (*b*);

(iii) the amount of all sale, insurance, salvage or compensation monies in respect thereof and, where the property has been transferred by exchange, the value thereof, or, if put out of use, the disposal value thereof.

(2) In ascertaining the total income of a person who is required under sub-article (1) to render a balancing statement to the Commissioner, a deduction (hereinafter referred to as a "balancing allowance") shall be allowed or, as the case may be, an addition (hereinafter referred to as a "balancing charge") shall be made and such balancing allowance or balancing charge shall be calculated by reference to the balancing statement or statements rendered by the person in respect of the year immediately preceding the year of assessment, as follows:

(*a*) the amount of a balancing allowance shall be the amount by which the amount of item (i) of the balancing statement exceeds the sum of the amounts of item (ii) and item (iii) of that statement; or

(*b*) the amount of the balancing charge shall be the amount by which the sum of the amounts of item (ii) and item (iii) of the balancing statement exceeds the amount of item (i) of that statement:

Provided that -

(i) the balancing charge shall in no case exceed the aggregate amount of any deductions previously allowed under the provisions of article 14(1)(*f*) and (*j*) and included in item (ii) of the balancing statement;

(ii) where the property in respect of which a balancing allowance falls to be allowed or a balancing charge falls to be made was used only partly in the production of the income, only so much of the balancing allowance that would otherwise have been allowed, or of the balancing charge that would otherwise have been made shall be allowed or made as may be appropriate having regard to the extent of use for the said purpose.

(3) Where property, in the case of which any of the events mentioned in sub-article (1) has occurred, is replaced by the owner thereof and a balancing charge falls to be made on him by reason of that event or, but for the provisions of this sub-article, would have fallen to be made on him by reason thereof, then, if by notice in writing to the Commissioner he so elects, the following provisions shall have effect, that is to say:

(*a*) if the amount of the balancing charge which would have been made is greater than the capital expenditure on providing the new property -

(i) the balancing charge shall be an amount equal to the difference; and

(ii) no balancing allowance under sub-article (2) and no deduction under article 14(1)(*f*) and (*j*) shall be made or allowed in respect of such new property or the capital expenditure on the provision thereof; and

(iii) in considering whether any, and, if so, what balancing charge falls to be made in respect of the capital expenditure on providing such new property, the aggregate amount of all deductions, previously allowed in respect of such property under the provisions of this article and of article 14(1)(*f*) and (*j*), shall be deemed to be equal to the full amount of such expenditure;

(*b*) if the capital expenditure on providing the new property is equal to, or greater than the amount of the balancing charge that would have been made -

(i) the balancing charge shall not be made; and

(ii) the amount of any deductions in respect of the said expenditure under the provisions of article 14(1)(*f*) and (*j*) shall be calculated as if the capital expenditure on providing such new property had been reduced by the amount of the balancing charge which would have been made; and

(iii) in considering whether any, and, if so, what balancing allowance or balancing charge falls to be made in respect of the capital expenditure on providing such new property, the aggregate amount of all deductions, previously allowed in respect of such property under the provisions of this article and under article 14(1)(*f*) and (*j*), shall be deemed to have been increased by an amount equal to the amount of the balancing charge that would have been made:

Provided that where the new property is only partly employed in the production of the income, only so much of the capital expenditure incurred in providing the property shall be taken into account for the purposes of this sub-article as may be appropriate having regard to the extent to which such property is

wholly and exclusively employed in the production of the income.

(4) Where any person has delivered a balancing statement, the Commissioner may -

(*a*) accept the statement and make a balancing allowance or balancing charge accordingly; or

(*b*) refuse to accept the statement and, to the best of his judgment, determine the amount of the balancing allowance or balancing charge and make a balancing allowance or balancing charge accordingly.

(5) Where a person has not delivered a balancing statement and the Commissioner is of the opinion that a balancing charge would fall to be made upon such person in respect of any such property, then the Commissioner may, according to the best of his judgment, determine the amount of such balancing charge and assess him accordingly.

(6) Nothing in sub-article (4) and (5) contained shall prevent the decision of the Commissioner in the exercise of the power conferred upon him by those sub-articles from being questioned in an appeal in accordance with the provisions of articles 35 and 37 of the Income Tax Management Act. Cap. 372.

(7) For the purpose of this article -

(*a*) the expression "property" means plant and machinery, and premises being an industrial building or structure owned and employed by any person in the production of his income;

(*b*) the capital expenditure on providing any property shall be the amount which, in the opinion of the Commissioner, such property would have cost if bought in the open market at the time it was provided;

(*c*) the price in respect of any property sold or the value of any property otherwise transferred under an onerous title shall be the amount which, in the opinion of the Commissioner, such property would have fetched if sold or otherwise transferred under an onerous title on the open market at the time it was sold or transferred;

(*d*) the disposal value in respect of any property which is put out of use shall be the amount which, in the opinion of the Commissioner, such property would have fetched if sold or otherwise transferred under an onerous title in the open market at the time it was put out of use.

(8) Where in any year of assessment full effect cannot be given to any balancing allowance owing to there being no profits or gains chargeable for that year from the source of income in respect of which such allowance is claimed or owing to the profits or gains chargeable from that source being less than the allowances, then so long as the source of income in respect of which the allowance falls to be made continues to exist and to belong to the person entitled to the said allowance, the balance of such allowance shall be added to,

and be deemed to from part of, the allowance, if any, for the next succeeding year of assessment, and if no such allowance falls to be made for that year, shall be deemed to constitute the allowance for that year, and so on for subsequent years of assessment.

Applicability of articles 14 to 24. *Added by: XVII. 1994.15. Substituted by: II. 2007.8.*

25. For the purposes of articles 14 to 24 both inclusive, expenses incurred in the production of, and allowable deductions given in respect of, income derived from profits which are allocated to a taxed account must first be deducted against such income.

Deductions not to be allowed. *Amended by: V.1958.5; XXII. 1976.4; XXIV.1976.3; XXVI.1977.8; XXVIII. 1978.9. Renumbered by: XVII. 1994.2. Amended by: XX.1996.10; II. 2002.48; IV. 2011.14.*

26. For the purpose of ascertaining the total income of any person no deduction shall be allowed in respect of -

(*a*) domestic or private expenses other than those specifically allowed by this Act;

(*b*) any outgoings and expenses to the extent to which they are not wholly and exclusively incurred in the production of the income and, in the case of gains or profits chargeable under article 4(1)(*b*), not being furthermore necessarily incurred in the performance of the duties of the relative employment or office;

(*c*) any loss, diminution, exhaustion or withdrawal of capital, any sum employed or intended to be employed as capital or any expenditure for a capital purpose or of a capital nature save as provided in article 14 and 23;

(*d*) the cost of any improvements;

(*e*) any loss or expense which is recoverable under any insurance or contract of indemnity;

(*f*) rent of any premises or part of premises not paid for the purpose of producing the income;

(*g*) any payments of a voluntary nature;

(*h*) any interest, discount or premium paid or payable to a person not resident in Malta where -

(i) the person not resident in Malta derives or benefits from the said interest, discount or premium, directly or indirectly, from the granting of loans or from any form of credit to finance the acquisition, development, construction, refurbishment, renovation of immovable property situated in Malta or any right thereon including professional fees related thereto (including fees related to the acquisition of finance) and any other matter which increases or enhances the value of such immovable property or any right thereon; and

(ii) the said interest, discount or premium is exempt from tax under the provisions of article 12(1)(*c*)(i); and

(iii) the payor of the interest, discount or premium is a person related to the person not resident in

Malta.

For the purpose of this paragraph a person is deemed to be related to a person not resident in Malta if:

(i) that person and the person not resident in Malta are, directly or indirectly, controlled or beneficially owned to the extent of more than 10% by the same persons; or

(ii) that person owns, directly or indirectly, more than 10% of the ordinary share capital or voting rights of the person not resident in Malta.

PART V

SPECIAL PROVISIONS

Business of insurance. *Amended by: XXII. 1976.4. Substituted by: XXI. 1980.5. Re-numbered by: XVII. 1994.2. Substituted by: XVII. 1998.70. Amended by: II. 2003.12; V. 2012.18; III. 2013.25; XV. 2016.17.*

27. (1) Where any person derives gains or profits wholly or in part from the business of insurance as insurer, then, so far as concerns the gains or profits derived by such person from the business of insurance, the total income of such person shall, as from the year of assessment 2000 be ascertained as follows:

(*a*) in the case of a person carrying on general business, other than a person carrying on long term business, the total income shall be ascertained by taking for the year immediately preceding the year of assessment -

(i) technical provisions at the commencement of the year;

(ii) the equalisation reserve at the commencement of the year;

(iii) gross premiums written;

(iv) reinsurance recoveries received;

(v) income from investments received and receivable and interest income earned;

(vi) profits or gains from the sale or disposal of investments;

(vii) capital gains subject to tax under the provisions of this Act;

(viii) realised differences on exchange;

(ix) other technical income including commissions, allowances and fees received and receivable;

(x) profits or gains not falling under any of the foregoing sub-paragraphs,

and deducting from the aggregate of the above the aggregate of the following:

(xi) technical provisions at the end of the year;

(xii) the equalisation reserve at the end of the year;

(xiii) the deductions allowable under Part IV of this Act, including:

(1) claims paid;

(2) reinsurance premiums paid;

(3) losses from the sale or disposal of investments;

(*b*) in the case of a person carrying on long term business, either exclusively or in addition to general business, the total income derived from the general business shall be ascertained as provided in paragraph (*a*) and the total income derived from the long term business shall be ascertained by taking for the year immediately preceding the year of assessment -

(i) income from investments received and receivable and interest income earned, other than those of a long term fund;

(ii) capital gains subject to tax under the provisions of this Act, not being gains derived from a long term fund;

(iii) commissions, allowances and fees received and receivable not credited to a long term fund;

(iv) profits or gains from the sale or disposal of investments not relating to a long term fund;

(v) realised differences on exchange not relating to a long term fund;

(vi) the surplus in a long term fund which shall be ascertained by taking -

(1) technical provisions at the commencement of the year;

(2) gross premiums written;

(3) reinsurance recoveries received;

(4) income from investments received and receivable and interest income earned, relating to the long term fund;

(5) profits or gains from the sale or disposal of investments, which gains or profits shall, for the purposes of this paragraph, in all cases be deemed to be gains or profits falling within the purport of article 4(1)(*a*), so however that where any investments were capital assets as at the thirty-first (31st) day of December 2008, the cost of acquisition of such investments for the purpose of this paragraph shall be the market value applicable thereto as at that date;

(6) capital gains subject to tax under the provisions of this Act and derived from the transfer of assets other than investments referred to in sub-paragraph (5) and realized differences on exchange relating to the long term fund;

(7) other technical income including

commissions, allowances and fees received and receivable;

and deducting from the aggregate of the above the aggregate of the following:

(8) the deductions allowable under Part IV relating to the income of the long term fund including -

(i) claims, maturities and surrenders paid, including, for the avoidance of doubt, the tax paid by the insurer in respect of determinable amounts due in relation to contracts of long term business in terms of sub-article (2);

(ii) reinsurance premiums paid;

(iii) other technical charges including commissions and allowances paid and payable;

(9) losses from the sale or disposal of investments and other assets of the long term fund referred to in sub-paragraphs (5) and (6), so however that where any investments were capital assets as at the thirty-first (31st) day of December 2008, the cost of acquisition of such investments for the purpose of this paragraph shall be the market value applicable thereto as at that date; and

(10) technical provisions at the end of the year;

(vii) gains or profits not falling under any of the foregoing paragraphs not being gains or profits derived from a long term fund,

and deducting from the aggregate of the above -

(viii) the deductions allowable under Part IV of this Act and which have not been taken into account in the determination of the surplus in a long term fund; and

(ix) any deficit arising out of the computation in sub-article (1)(*b*)(vi):

Provided that where the person is not resident in Malta and the gains or profits accrue in part in Malta and in part outside Malta, the total income on which tax shall be payable shall -

(*a*) in the case of a person doing general business, be ascertained as provided for in sub-article (1)(*a*)(i) to (xiii) on the business carried on in or from Malta;

(*b*) in the case of a person carrying on long term business, be ascertained by taking the surplus in the long term fund computed in accordance with sub-article (1)(*b*)(vi) of the business earned in or from Malta;

(*c*) in determining the total income as aforesaid, any income from investments held outside Malta to back

Malta business, where such income cannot be readily ascertained, shall be computed by taking a proportion of the person's worldwide investment income in the year preceding the year of assessment equal to the proportion which the investments as aforesaid bore to the person's worldwide investments.

(2) (*a*) Where, in relation to a contract of long term business, a determinable amount becomes due by an insurer on or after the first day of January, 1999, and the policyholder is a person resident in Malta, the insurer shall pay tax at the rate of fifteen per cent (15%) on the profit attributable to such contract which profit shall be deemed to have accrued during the period from the first day of January, 1999, or the date when the contract was commenced, whichever date is the later, to the date on which the amount becomes due.

For the purposes of this sub-article "a determinable amount" means an amount payable by an insurer in the event of a maturity, surrender or in any other circumstance, other than a death claim, or a claim referring to a critical illness or a permanent total disability, specified in the contract, as the case may be, where the total amount payable can be determined in whole or in part on the date it becomes due and whether payment is effected in one lump sum or otherwise.

(*b*) (i) The profit referred to in paragraph (*a*) shall be calculated by taking the total determinable amount due to be paid by the insurer and subtracting therefrom the total amount of premiums paid within the period referred to in paragraph (*a*), and in those cases where the contract commenced before the first day of January, 1999, subtracting also an amount equal to the actuarial valuation of the contract on this date. The profit so calculated shall not be affected by any other provision of this Act and no person shall be charged to further tax on such profits.

(ii) An insurer shall, not later than the thirty-first day of March, 1999, forward in writing to the Commissioner a list of contracts of insurance relating to long term business, other than contracts of term insurance, outstanding on the first day of January, 1999, and indicating, in respect of each such contract, the actuarial valuation on that date. The list shall not specify the identity of the policyholder or the beneficiaries there under.

For the purposes of this sub-article, "term insurance" means a contract of insurance which provides solely for the payment by the insurer of a sum

of money or other consideration upon the happening of death within a term which is specified in the contract, and which is not extendible by any of the parties thereto.

(*c*) The insurer shall render an account to the Commissioner of all tax paid in accordance with the provisions of this sub-article, but shall not specify the identity of the policyholders or beneficiaries. Every amount of tax due to be so paid shall be a debt due from the insurer to the Commissioner payable not later than the fourteenth day following the end of the month in which the amount becomes due as aforesaid and shall be recoverable as such. Where the insurer fails to pay the above mentioned tax, the provisions of article 73(4) and of article 40(1) of the Income Tax Management Act shall apply *mutatis mutandis*. Cap. 372.

(3) Notwithstanding the provisions of sub-articles (1) and (2), a non-resident person carrying on long term business of insurance who derives gains or profits accruing in part in Malta and in part outside Malta and who has ceased to issue new contracts of long term insurance before the first day of January, 1999, may elect to have the chargeable income from the long term business of insurance computed by taking, for the year immediately preceding the year of assessment, the investment income relating to that business less the management expenses including commission incurred in relation thereto in a proportion which the premiums received in Malta bore to the total premiums received by such person in Malta and elsewhere:

Provided that such election shall be irrevocable and shall be notified in writing to the Commissioner by not later than the 31st day of March, 1999:

Provided further that where such a person issues new contracts of long term insurance on or after the 1st January, 1999, the election shall cease to have effect in respect of the year of assessment following the year in which the first new contract is issued and in respect of subsequent years of assessment.

(4) (*a*) For the purposes of computing the surplus or deficit arising out of the computation in sub-article (1)(*b*)(vi), no account shall be taken of income and deductions relating to linked long term business of insurance in so far as they relate to the linked portion of a contract of insurance.

(*b*) Any tax payable under sub-article (2) shall, in the case of a linked long term contract of insurance, be computed by reference to the profit attributable to the unlinked portion of a contract of insurance and any references to "a determinable amount" and "premiums" shall be construed as references to the amount due and premiums paid on the unlinked portion of a contract of insurance.

(5) (*a*) Subject to the provisions of paragraph (*b*), the

provisions contained in Part IV shall apply to persons referred to in subarticle (1) provided that in determining what deductions are allowable under this article there shall be excluded any deductions allowed under any other Part of this Act.

(*b*) Persons referred to in subarticle (1) may not claim group relief nor surrender losses under the group relief provisions of this Act.

(6) For the purposes of this article and of article 41, the term "linked portion of a contract of insurance" means the portion of a linked long term contract of insurance the benefits of which are determined by reference to the value of, or the income from, property of any description (whether or not specified in the contracts) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified) and "unlinked portion of a contract of insurance" means the portion of a linked long term contract of insurance the benefits of which are not so determined.

(7) Words and expressions used in this article and in other parts of this Act which relate to business of insurance, shall, in so far as their meanings are not defined by this Act, have the meanings assigned to them in the Insurance Business Act, the Insurance Intermediaries Act, and any rules and regulations made thereunder.

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(8) Notwithstanding anything contained in the provisions of sub-article (1), the Minister may, by rules, prescribe the manner in which the total income referred to in the said sub-article (1) should be determined, so as to take into account:

(*a*) the provisions of any Directive of the European Union governing solvency requirements applicable to persons carrying on the business of insurance;

(*b*) the provisions of any International Financial Reporting Standard (IFRS) as adopted by the European Union, governing accounting for contracts of insurance;

(*c*) any modification of the provisions of any directive or financial reporting standard referred to in paragraphs (*a*) and, or (*b*) may be permitted in terms of International Financial Reporting Standards (IFRSs) as adopted by the European Union.

Tax treatment of mergers, divisions of companies, etc.
Added by: II. 2003.13.

27A. Notwithstanding the provisions contained in the Income Tax Acts, the Minister may make rules regulating the tax treatment of companies and their members and other similar bodies or persons concerning mergers and divisions of companies, transfer of assets between companies and exchange of shares concerning companies and for the purposes of this article:

(*a*) "merger" shall mean an operation whereby:

- one or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to another existing company in exchange for the issue to their

shareholders of securities representing the capital of that other company, and, if applicable, a cash payment not exceeding such percentage as may be prescribed of the nominal value, or, in the absence of a nominal value, of the accounting par value of those securities,

- two or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to a company that they form, in exchange for the issue to their shareholders of securities representing the capital of that new company, and, if applicable, a cash payment not exceeding such percentage as may be prescribed of the nominal value, or in the absence of a nominal value, of the accounting par value of those securities,
- a company, on being dissolved without going into liquidation, transfers all its assets and liabilities to the company holding all the securities representing its capital;

(*b*) "division" shall mean an operation whereby a company, on being dissolved without going into liquidation, transfers all its assets and liabilities to two or more existing or new companies, in exchange for the pro rata issue to its shareholders of securities representing the capital of the companies receiving the assets and liabilities and, if applicable, a cash payment not exceeding such percentage as may be prescribed of the nominal value or, in the absence of a nominal value, of the accounting par value of those securities;

(*c*) "transfer of assets" shall mean an operation whereby a company transfers without being dissolved all or one or more branches of its activity to another company in exchange for the transfer of securities representing the capital of the company receiving the transfer;

(*d*) "exchange of shares" shall mean an operation whereby a company acquires a holding in the capital of another company such that it obtains a majority of the voting rights in that company in exchange for the issue to the shareholders of the latter company, in exchange for their securities, of securities representing the capital of the former company, and, if applicable, a cash payment not exceeding such percentage as may be prescribed of the nominal value or, in the absence of a nominal value, of the accounting par value of the securities issued in exchange;

(*e*) "transferring company" shall mean the company transferring its assets and liabilities or transferring all or one or more branches of its activity;

(*f*) "receiving company" shall mean the company receiving the assets and liabilities or all or one or more

branches of the activity of the transferring company;

(*g*) "acquired company" shall mean the company in which a holding is acquired by another company by means of an exchange of securities;

(*h*) "acquiring company" shall mean the company which acquires a holding by means of an exchange of securities;

(*i*) "branch of activity" shall mean all the assets and liabilities of a division of a company which from an organizational point of view constitute an independent business, that is to say an entity capable of functioning by its own means.

Taxation of trusts. *Added by: XIII. 2004.52.*

27B. (1) Where at least one of the trustees of a trust is a person resident in Malta, tax shall be payable on any income attributable to a trust accruing or deriving in the year immediately preceding the year of assessment commencing on such date as the Minister responsible for finance may, by notice in the Government Gazette, appoint and for each subsequent year.

(2) For the purposes of this article, "income attributable to a trust" means the aggregate of any relevant income referred to in article 4 which has accrued to or is derived by a trustee or trustees of a trust from property which was settled in such trust and from property which was acquired in the administration of such trust including any income from the employment of such property.

Trustees. *Added by: XIII. 2004.52.*

27C. The trustee of a trust shall be answerable for doing all matters and things required to be done under the Income Tax Acts for the purposes of the determination, assessment and payment of tax in connection with the income attributable to a trust. Where two or more persons act in the capacity of trustees of the same trust, they shall be jointly and severally so answerable.

Trusts treated as companies. *Added by: XIII. 2004.52. Amended by: II. 2007.9; IV. 2011.15.* Cap. 331.

27D.(1)(*a*)The trustee of a trust that has been granted authorisation under subarticle of article 43(3) of the Trusts and Trustees Act where such trustee is a person resident in Malta (hereinafter a resident trustee) may elect, in accordance with the provisions of this subarticle, to have the income attributable to a trust treated in the manner provided for in paragraph (*c*). Such election, which shall be irrevocable, is to be effected on the date of the establishment of such trust, or the date of appointment of the said resident trustee, whichever is the later, and is to be made on such form and under such conditions as may be prescribed. The said trustee shall submit such form to the Commissioner not later than thirty days from the date of the establishment of such trust or the appointment of a resident trustee whichever is the later.

(*b*) An election as provided for in this subarticle may only be made where the trust is established by a written instrument which specifically provides that the income attributable to a trust shall comprise only of income in

the form of royalties, dividends, capital gains, interest, rents or any other income from investments. For the purposes of paragraph (*c*), such income shall not constitute income from a trade, business, profession or vocation.

(*c*) Where an election has been made in accordance with the provisions of this subarticle, the trustee of such trust shall compute the chargeable income in relation to the income attributable to a trust for the relevant year of assessment as if such income was derived by a company ordinarily resident and domiciled in Malta. Tax thereon shall be charged at the rate specified in article 56(6) and payable in the same manner applicable to such companies. Distributable profits shall be allocated in the same manner applicable to such companies and distributions of such allocated profits to beneficiaries of such trust shall be treated as if they were dividends distributed to shareholders of such a company. For the purposes of this subarticle, distributable profits of a trust shall mean the total profits which would be available for distribution to the beneficiaries resulting from the income attributable to a trust. The trustee shall keep all records and submit all returns and documents to the Commissioner as is required in the case of such companies. Where the Income Tax Acts require documents which are to comply with the Companies Act, the trustee shall submit similar documents, certified by a certified public auditor, and which are either provided for under the Trusts and Trustees Act or, in the absence of such provision, which comply as far as is possible, with the Companies Act.

Trusts of a temporary nature. Cap. 371. Cap. 376.

(2) The trustee of a trust where such trustee is a person in possession of a valid licence issued in terms of the Banking Act or the Financial Institutions Act may apply to the Commissioner for a determination that property has been settled into such trust as a result or consequence of another transaction or set of transactions, and that the duration of such trust is of a temporary nature lasting only until such time as is necessary so that the said transaction or transactions may be effectively concluded. Such an application may be made on such form and under such conditions as may be prescribed. Where the Commissioner makes, at his discretion, such a determination -

(i) no deduction or exemption contemplated by this Act shall be allowable or granted in relation to the income attributable to a trust; and

(ii) the said income shall be taxable at the rate specified in article 56(6); and

(iii) the tax payable as provided for in this subarticle shall not be reduced whether by way of relief of double taxation or otherwise, and no set-off or credit shall be made or allowed in respect of

such tax. The resulting tax shall be payable by such time as may be prescribed; and

(iv) the trustee of such trust shall declare such income and property settled in trust on such form as may be prescribed and no further disclosure of such income shall be required by the beneficiaries of such trust; and

(v) no further tax shall be payable on such income.

Other trusts.

(3) (*a*) Where neither an election in accordance with subarticle (1) nor a determination in accordance with subarticle (2) has been made the provisions of paragraphs (*b*), (*c*), (*d*) and (*e*) shall apply.

(*b*) In the case where -

(i) all the income attributable to a trust consists of income either arising outside Malta or income referred to in article 12(1)(*c*); and

(ii) all the beneficiaries of the trust are persons who are either not ordinarily resident in Malta or not domiciled in Malta, or are persons whose income is totally exempt from tax under the provisions of article 12,

it shall be deemed that such income is not income attributable to a trust but is income derived directly by such beneficiaries, and that where the income arising outside Malta is received in Malta by the trustee of the trust, it shall be deemed to be received in Malta by such beneficiaries. The trustee shall notify the beneficiary of such income and shall inform him of his duties under the Income Tax Acts.

(*c*) In the case where the income attributable to a trust comprises solely income referred to in paragraph (*b*)(i) or dividends distributed out of the profits allocated to the foreign income account or out of the profits of an international trading company which were derived by such company whilst it was an international trading company, or both such income and dividends, and all the beneficiaries of such trust are persons not resident in Malta, and the trustee of such trust provides the Commissioner with a certificate as referred to in article 5(3) of the Income Tax Management Act, it shall be deemed that such income does not constitute income attributable to a trust and that such income is derived directly by such beneficiaries:

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Provided that the income referred to in this paragraph shall also include dividends paid out of profits allocated to any of the taxed accounts.

(*d*) Without prejudice to the provisions of paragraphs (*b*) and (*c*), capital gains derived in accordance with the provisions of article 5 from the transfer of property settled in trust in the administration of such trust or in

the distribution or reversion of such property shall form part of the income attributable to a trust.

(*e*) The chargeable income in relation to the income attributable to a trust shall be computed as if the trust was a person that is ordinarily resident and domiciled in Malta but shall exclude amounts of income attributable to a trust allocated to beneficiaries as determined in accordance with the provisions of subarticle (4).

(4) For the purpose of subarticle (3)(*e*) - Income attributable to a trust allocated to beneficiaries.

(*a*) amounts of income attributable to a trust allocated to beneficiaries shall consist of -

(i) amounts over which beneficiaries had a vested right in the year immediately preceding the year of assessment; and

(ii) amounts over which an entitlement had been bestowed to beneficiaries other than in the manner referred to in subparagraph (i), and where such entitlement had been so bestowed by the end of the year immediately preceding the year of assessment; and

(iii) amounts representing income attributable to a trust for the year of assessment which were distributed to beneficiaries by the end of the year immediately preceding the year of assessment, and which amounts do not form part of the amounts referred to in subparagraphs (i) and (ii).

(*b*) In order that the amounts referred to in paragraph (*a*) may be excluded in terms of subarticle (3)(*e*), the trustee must ensure that -

(i) the return referred to in article 24A of the Income Tax Management Act has been submitted in accordance with the provisions of that same article; and Cap. 372.

(ii) he has furnished the beneficiaries in question with a certificate indicating, for the relative year of assessment and where applicable, the relevant amounts referred to in paragraph (*a*) on such form and giving such additional details as may be prescribed; and

(iii) where the amounts referred to in paragraph (*a*)(i) and (ii) were not distributed to the beneficiaries by the 31st March following the end of the year immediately preceding the relevant year of assessment, a payment of tax has been made on behalf of the beneficiaries equivalent to the tax which would result were the said amounts charged to tax at the rate specified in article 56(6). Where such distribution is not made by the said date, this tax becomes a debt due from

the relevant trustee to the Commissioner payable by not later than the 30th June following the end of the said year. The tax so paid shall be available as a credit against the beneficiary's tax liability, or for a refund as the case may be, for the relevant year of assessment.

Rate of taxation.

(5) Except as provided in article 56(4), tax shall be charged upon the chargeable income in relation to the income attributable to a trust at the rate specified in article 56(6).

Foreign tax deemed to be paid by trust.

(6) (*a*) Where foreign tax has been paid on the income attributable to a trust, such tax shall be deemed to have been paid by a trustee of such trust, whether it was paid by a trustee or a beneficiary of such trust.

(*b*) A claim for relief of double taxation with respect to the tax referred to in paragraph (*a*), may only be made through the provisions of articles 79 to 88. Any reference in these articles to a person shall, for the purposes of this subarticle, be deemed to be a reference to a trustee of a trust while any reference to income or income of a person, shall be deemed to be a reference to the income attributable to a trust.

Tax on income attributable to a trust is final.

(7) Unless otherwise provided for in this article, no person shall be charged to further tax under this Act in respect of income attributable to a trust which has been charged to tax in accordance with the provisions of subarticles (1), (2) and (3).

Taxation of beneficiaries.

(8) (*a*) Amounts allocated to beneficiaries referred to in subarticle (4)(*a*) shall be aggregated with other income of the said beneficiaries for the purposes of article 4 and tax shall be charged accordingly for the year of assessment commencing on such date as the Minister responsible for finance may, by notice in the Government Gazette, appoint and for each subsequent year of assessment.

(*b*) Amounts allocated to beneficiaries referred to in subarticle (4)(*a*) shall be treated as income derived by the beneficiary at the time it vests, or the beneficiary becomes entitled to it, or it is distributed, as the case may be.

(*c*) Income distributed to beneficiaries shall retain its character as to type and country of source. A claim for relief of double taxation with respect to such income may be made in accordance with the provisions referred to in article 74 notwithstanding that foreign tax may have been paid by the trustee or the beneficiary himself:

Provided that the provisions of this subarticle shall apply *mutatis mutandis* where none of the trustees of a trust is a person resident in Malta and the beneficiaries of the such trust include persons that are -

(i) ordinarily resident and domiciled in Malta; or

(ii) ordinarily resident or domiciled in Malta and the relevant income is received in Malta.

(9) (*a*) For the purposes of this article the terms "beneficiary", "settlor", "trust" and "trustee" shall have the meaning assigned to them by article 2 of the Trusts and Trustees Act. Interpretation. Cap. 331.

(*b*) Words and expressions used in this article and in other parts of the Income Tax Acts which relate to the income attributable to a trust, shall, in so far as their meanings are not defined by the Income Tax Acts, have the meaning assigned to them in the Trusts and Trustees Act and any rules and regulations made thereunder. Cap. 331.

(10) (*a*) Where in the opinion of the Commissioner, transactions involving a trust are carried out with the sole or main purpose of reducing the amount of tax payable by a person, the Commissioner shall disregard such trust and the income of such person shall be determined as if it had been derived without the involvement of such trust.

(*b*) Article 57 of the Income Tax Management Act shall apply *mutatis mutandis* in the circumstances relating to trustees. References in that article to - Cap. 372.

(i) "warrant holder" shall be construed as references to any person acting as trustee as provided for under the Trusts and Trustees Act; Cap. 331.

(ii) "Board" shall be construed as references to the Malta Financial Services Authority;

(iii) "article 14(1)(*a*)(i) of the Accountancy Profession Act" shall be construed as references to article 51 of the Trusts and Trustees Act; Cap. 331.

(iv) "documents" shall be construed as references to any document required to be produced by a trustee in relation to a trust under Maltese law;

(v) "1st January, 1998" shall be construed as references to the date of the coming into force of the Trusts and Trustees Act. Cap. 331.

27E. The Minister may make regulations in relation to the tax treatment of a foundation, including the application of the provisions of this Act relating to trusts, settlors and beneficiaries of trusts to foundations, their founders and beneficiaries thereunder, as well as to any persons who are donors of property to foundations, and generally for the better application of this Act to foundations. Regulations in relation to tax treatment of a foundation. *Added by: XIII. 2007.15.*

Regulations in relation to the conversion of a legal person into another legal form. *Added by: XIII. 2007.15.* Cap. 16.

27F. The Minister may make regulations in relation to the tax treatment of any conversion of a legal person into another legal form or into a trust as is referred to in article 21 of the Second Schedule to the Civil Code.

Transfers of property by listed companies. *Added by: XIII. 2015.51. Amended by: XV. 2016.18.*

27G. (1) Notwithstanding anything to the contrary contained in the Income Tax Acts or any rules or regulations made thereunder, the provisions of this article shall apply to any person that has elected under article 5A(3)(*j*), by means of a declaration made in accordance with the said article, to exclude the transfer of immovable property from the scope of article 5A.

(2) Income derived during the year preceding the year of assessment from the transfer of immovable property forming part of a project, in respect of which an election under article 5A(3)(*j*) has been made, shall be deemed to constitute separate chargeable income to be taxed separately at the rate of thirty-five cents (€0.35) on every euro. For the purpose of this article, where a person owns more than one project each project shall be deemed to constitute a separate and distinct source of income.

(3) The provisional tax payment as referred to in article 43(1)(b) of the Income Tax Management Act shall be equivalent to 8% of the consideration relating to the transfer of the property forming part of the project: Cap. 372.

Provided that in the case where the said property was acquired by the transferor before the 1st January, 2004 the said provisional tax payment shall be equivalent to 10% of the said consideration.

(4) Provisional tax paid referred to in sub-article (3), during or in respect of the year preceding any year of assessment, shall be set-off for the purposes of collection against the tax charged on the chargeable income referred to in sub-article (2), and 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 set-off for the purposes of collection against the tax charged on other sources of income, as may be allowed under the provisions of the Income Tax Acts, 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 of the Income Tax Management Act: Cap. 372.

Provided that an amount of provisional tax paid during or in respect of the year preceding any year of assessment as determined by the following formula (hereinafter referred to as "unutilised provisional tax"), shall not be available for set-off against the tax charge in respect of other sources of income as aforesaid and shall not be available for refund for any purposes of the Income Tax Acts:

Unutilised provisional tax = (0.625 x A) - B

Where -

(i) "A" is the total provisional tax paid as referred to in sub-article (3), during or in respect of the year preceding any year of assessment; and

(ii) "B" is the tax charged on the chargeable income

referred to in sub-article (2), and in respect of the same year of assessment:

Provided further that where the amount determined in accordance with the said formula is a negative amount, such amount shall be taken to be zero.

(5) Unutilised provisional tax for any year of assessment shall be carried forward to subsequent years of assessment, and set-off for the purpose of collection only against the tax charged on the chargeable income referred to in sub-article (2) for subsequent years of assessment:

Provided that the maximum amount that shall be available for set-off as aforesaid in any subsequent year of assessment shall not exceed an amount determined by the following formula:

Y = C - D

Where -

(i) "Y" represents the amount to be determined;

(ii) "C" is the tax charged on the chargeable income referred to in sub-article (2) in respect of the particular subsequent year of assessment; and

(iii) "D" is the total provisional tax paid as referred to in sub-article (3), during or in respect of the year preceding the same year of assessment:

Provided that where the amount determined in accordance with the said formula is a negative amount, such amount shall be taken to be zero.

(6) The amount of a loss, computed as provided in sub-article (7), incurred by a person during the year preceding the year of assessment from the transfer of immovable property forming part of a project as referred to in sub-article (2), which, if it had been a profit, would have been assessable under this Act, shall not be set off against capital gains or income from other sources, including income derived from the transfer of immovable property forming part of other projects, for the year preceding the year of assessment or any subsequent years of assessment, and shall not be treated as an allowable loss for the purpose of the group relief provisions, but shall be carried forward and set off only against what would otherwise have been the chargeable income referred to in sub-article (2) for subsequent years in succession.

(7) In computing the loss referred to in sub-article (6), account shall be taken of all deductions wholly and exclusively incurred in the production of the income referred to in sub-article (2), which would have been allowable under the paragraphs of article 14(1), except paragraphs (*f*), (*g*) and (*j*), if it had been a profit.

(8) For the purpose of ascertaining the chargeable income referred to in sub-article (2), subject to sub-article (6), no losses provided for under article 14(1)(*g*), whether arising before election from the source to which this article applies, or from any other source, or claimed under the group relief provisions, shall be allowable as a deduction against the said income.

(9) No person in receipt of a dividend distributed out of profits charged to tax under sub-article (2) shall be entitled to a refund or set-off

of the tax paid by the company distributing the said dividend. For the purpose of this sub-article where the person in receipt of the said dividend is another company such dividend shall be deemed to be profits charged to tax under sub-article (2).

(10) Every company registered in Malta shall allocate the distributable profits derived from transfers to which this article applies, and on which tax is payable in accordance with this article, to the final tax account. The said distributable profits shall be determined in such manner as may be prescribed.

Non-resident shipowners. *Amended by: XX.1996.11.*

28. (1) Subject to the provisions of article 12(1)(*k*), where a person not resident in Malta carries on the business of shipowner or charterer and any ship owned or chartered by him calls at a port in Malta, his full profits arising from the carriage of passengers, mails, livestock or goods shipped in Malta shall be deemed to accrue in Malta:

Provided that this article shall not apply to goods which are brought to Malta solely for transhipment.

(2) Where for any accounting period such person produces the certificate mentioned in sub-article (3), the profits arising in Malta from his shipping business for such period, before deducting any allowances for depreciation, shall be a sum bearing the same ratio to the sums receivable in respect of the carriage of passengers, mails, livestock and goods shipped in Malta as the ratio for the said period shown by the certificate of the total profits to the total sum receivable by him in respect of the carriage of passengers, mails, livestock and goods.

(3) The certificate shall be one issued by or on behalf of any income tax authority with regard to which the Commissioner is satisfied that it computes and assesses the full profits of the non-resident person from his shipping business, on a basis not materially different from that prescribed by this Act, and shall certify for any accounting period as regards such business -

(*a*) the ratio of the profits or, where there are no profits, of the loss, as computed for the purposes of income tax by that authority, without making any allowance by way of depreciation, to the total sums receivable in respect of carriage of passengers, mails, livestock or goods; and

(*b*) the ratio of the allowance for depreciation as computed by that authority to the said total sums receivable in respect of the carriage of passengers, mails, livestock and goods.

(4) Where at the time of assessment, the provisions of sub-article (2) cannot for any reason be satisfactorily applied, the profits arising in Malta may be computed on a fair percentage of the full sum receivable on account of the carriage of passengers, mails, livestock and goods shipped in Malta:

Provided that where any person has been assessed for any year of assessment by reference to such percentage, he shall be entitled to claim at any time within six years after the end of such

year of assessment that his liability to tax for that year be recomputed on the basis provided by sub-article (2).

(5) Where the Commissioner decides that the call of a ship belonging to a particular non-resident shipowner or charterer at a port in Malta is casual and that further calls by that ship or others in the same ownership are improbable, the provisions of this article shall not apply to the profits of such ship and no tax shall be chargeable thereon.

Non-resident air transport, cable and wireless undertakings. *Substituted by: XLIX. 1974.4. Renumbered by: XVII. 1994.2. Amended by: I. 2010.20.*

29. (1) The provisions of this Act relating to non-resident shipowners and charterers, including the provisions relating to their agents, shall apply *mutatis mutandis* to any person not resident in Malta who carries on the business of the transmission of messages by cable or wireless telegraphy, and to the agent of such person.

(2) Where a person owns, leases, or operates any one or more aircraft or aircraft engine (irrespective of the country of registration of the said aircraft or aircraft engine) which is used for or employed in the international transport of passengers or goods, any income of such person which is derived or otherwise arises from the ownership, leasing, or operation of such aircraft or aircraft engine shall, for the purposes of the Income Tax Acts, be deemed to have arisen outside Malta regardless of whether the aircraft may have called at, or operated from, any airport in Malta.

Ecclesiastical and allied income. *Added by: XLII. 1975.6. Amended by: XXII. 1976.4; XXVI. 1977.9; XXVIII. 1978.10; XXI. 1980.6; IX. 1981.5; XL. 1981.2; XIII. 1983.4,5; XIV. 1984.4; VIII. 1987.4; XXXVI. 1990.7. Renumbered by: XVII. 1994.2. Amended by: XX. 1996.12; IX. 1999.14; XIII. 2004.53; L.N. 409 of 2007.*

30. (1) Notwithstanding anything to the contrary contained in this Act, the provisions of this article shall apply in the case of any of the following:

(*a*) a diocese, including, in respect of any income accruing to him or vested in him by reason of his office, the bishop thereof;

(*b*) a parish;

(*c*) a church not falling under the jurisdiction of a parish and not due to be dealt with under paragraph (*d*);

(*d*) an ecclesiastical community as defined in sub-article (9) hereof;

(*e*) a province or similar division of any religious order;

and each of the aforesaid is in this article referred to as "entity":

Provided that the Commissioner may, in such circumstances and subject to such conditions as he may deem appropriate, treat as one entity any two or more of the entities aforesaid.

(2) There shall be brought to charge to tax in the hands of any entity to which this article applies the income accruing to or derived by such entity as well as the income accruing to or derived by any associated, linked or allied institution, foundation, bequest, or other similar organisation or body of persons.

(3) The total gross receipts on revenue account of any entity to which this article applies, ascertained in accordance with the provisions of sub-article (2), shall be deemed to be receipts of a trade or business and the entity shall be chargeable accordingly:

Provided that the provisions of article 14(1)(*g*) shall not apply in respect of any such entity.

(4) In the case of any ecclesiastical community, there shall be included in the gross receipts on revenue account any income received in his own right by any individual member thereof during the year immediately preceding the year of assessment:

Provided that any part of such income which is in excess of two thousand and three hundred and thirty euro (2,330) shall be excluded.

(5) An entity shall be chargeable to tax in respect of its income for the year immediately preceding any year of assessment on the greater of the following two amounts:

(*a*) the income from all sources ascertained in accordance with the provisions of sub-articles (2), (3) and (4);

(*b*) that part of the income chargeable to tax under the provisions of article 4(1)(*d*), (*e*) and (*f*) to which there shall be added, in the case of an ecclesiastical community, the income received in his own right by any individual member thereof; in ascertaining the total amount of the income as aforesaid -

(i) the provisions of sub-article (2) shall be taken into account;

(ii) no deductions shall be allowed in respect of expenses or other charges other than ground-rent and other burdens on immovable property;

(iii) there shall be excluded such part of the income received in his own right by any individual member of an ecclesiastical community which is in excess of two thousand and three hundred and thirty euro (2,330).

(5A) An ecclesiastical community shall be entitled to a further deduction against its income as established under sub-article (5) equivalent to two thousand and three hundred and thirty euro (2,330) in respect of every individual who was a member thereof during the year immediately preceding the year of assessment:

Provided that no such deduction shall be allowed under this sub-article in respect of any individual member who receives remuneration or other income from the ecclesiastical community of which he is an individual member.

(6) The provisions of sub-articles (4), (5) and (5A) shall not affect the liability to tax of any individual member of an ecclesiastical community on any income received by him in his own right.

(7) For the purposes of this article -

(*a*) a parish which is entrusted to an ecclesiastical community shall be deemed to be a separate entity from the said community;

(*b*) where more than one ecclesiastical community belong

to the same religious order, each such community shall be dealt with as a separate entity for the purposes of this article if it is so considered by the statute of the order;

(*c*) the province or similar division of a religious order shall be deemed to be a separate entity from any of the communities falling under that order;

(*d*) where an entity to which this article applies operates on its own account a trading or commercial undertaking, including a school, printing press, hospital or cinema, the entity and the undertaking shall be chargeable to tax separately and only the entity shall be dealt with in accordance with the provisions of this article, the undertaking being considered and dealt with as a separate body of persons for all purposes of this Act:

Provided that -

(i) no profits or other income arising from the said undertaking in favour of the entity shall be included with the gross receipts of the entity for the purpose of any of the provisions of this Act;

(ii) no deductions shall be allowed in computing the total income of the undertaking in respect of any payments made to the entity on account of any expenses or charges whatsoever;

(*e*) total gross receipts on revenue account in all cases shall include income chargeable to tax in accordance with the provisions of article 4.

(8) Where any income accrues to or is in any way vested in the head of a diocese in virtue of his office and does not actually constitute personal gains or profits of the said head, such income together with any income accruing to or vested in the diocese, shall, for the purposes of this article, be deemed to be derived by one separate entity under the management and control of the head of the diocese; and the income accruing to the Archbishop of Malta and to the Bishop of Gozo in virtue of their office shall, notwithstanding any other provision of the law, be deemed to be six thousand and five hundred and fifty euro (6,550) and three thousand and five hundred euro (3,500) *per annum* respectively, or such higher sum as the Minister responsible for finance, from information given or otherwise obtained, determines to be the income received by them in virtue of their office, and the said income shall be added for assessment purposes to their personal income:

Provided that the Commissioner shall grant such relief from the tax to any other person or entity as will, in his opinion, prevent the said amounts of six thousand and five hundred and fifty euro (6,550) and three thousand and five hundred euro (3,500) (or any higher sums determined as aforesaid) being brought to charge both in the hands of the said bishops and in the hands of any other person or entity in the same year of assessment.

(9) For the purposes of this article and of article 56(4) -

"ecclesiastical community" means a number of individuals living together in a community in accordance with the rules of a religious order recognised as such by the Commissioner;

"individual member", in relation to an ecclesiastical community, means any individual, lay or religious, who formed part of such community on the thirty first day of December during the year immediately preceding the year of assessment.

Income from certain dividends to include tax thereon. *Amended by: XXII. 1976.4; XXVI. 1977.10. Renumbered by: XVII. 1994.2.*

31. The income of a person arising from a dividend paid by a company liable to tax under this Act shall, where such tax has been deducted therefrom, be the gross amount before making such deduction; where no such deduction has been made, the income arising shall be the amount of the dividend increased by an amount on account of such taxes corresponding to the extent to which the profits, out of which the said dividend has been paid, have been charged with such taxes.

Taxation of rental income received from the Housing Authority. *Added by: IV. 2007.13.*

31A. (1) Notwithstanding any other provision of the Income Tax Acts or any regulations issued thereunder, this article shall apply where any person rents immovable property to the Housing Authority for a period of not less than ten years.

(2) The tax chargeable in the circumstances mentioned in subarticle (1) shall be at the rate of 5% of the gross rental income received. Such tax shall be final and not be available as a credit against the tax liability of the said person or refundable to him in any way.

(3) The Housing Authority shall deduct the tax mentioned in subarticle (2) when making any payments of rent to which this article applies and shall render an account to the Commissioner of all amounts so deducted specifying amounts and details of the recipient.

(4) The Housing Authority shall remit the tax deducted in accordance with subarticle (3), together with the account mentioned in the said subarticle, to the Commissioner by the fourteenth day following the end of the month during which the rent was paid.

Rental income on Housing Authority subsidised rent. *Added by: V. 2012.19.*

31B. (1) Notwithstanding any other provision of the Income Tax Acts or any regulations made thereunder, this article shall apply where any person who is an owner of immovable property rents such property to a person receiving rent subsidy under any scheme administered by the Housing Authority and the said owner is registered with the Housing Authority for this purpose and complies with any conditions imposed by the Housing Authority.

(2) The tax chargeable in the circumstances mentioned in sub-article (1) shall be at the rate of 10% of the gross rental income received. Such tax shall be final and not be available as a credit against the tax liability of the said person or refundable to him in any way.

(3) The Housing Authority shall deduct the tax from the rent subsidy mentioned in sub-article (1) and shall render an account to

the Commissioner of all such amounts deducted specifying amounts together with the details of the person receiving the rent.

(4) The Housing Authority shall remit the tax collected in accordance with sub-article (3), together with the account mentioned in the said sub-article, to the Commissioner by the fourteenth day following the end of the month during which the rent subsidy was paid.

Rental income from restored property. *Added by: V. 2012.19.*

31C. (1) Notwithstanding any other provision of the Income Tax Acts, this article shall apply to any person who is the owner of immovable property which has been restored in accordance with any scheme issued for this purpose by the Malta Environment and Planning Authority providing for the restoration of grade 1 or grade 2 scheduled property or property situated in an urban conservation area, provided that the said person complies with any conditions imposed by the Malta Environment and Planning Authority in connection with such scheme and submits such forms and documentation as the Commissioner may require.

(2) Where the person referred to in sub-article (1) rents immovable property in the circumstances mentioned in the said sub-article, the tax chargeable shall be at the rate of 10% of the gross rental income received where the rent is for a residential purpose, and at the rate of 15% of the gross rental income received where the rent is for a commercial purpose. Such tax shall be final and not be available as a credit against the tax liability of the said person or refundable to him in any way. The tax as aforesaid shall be remitted to the Commissioner, together with the forms and documentation referred to in sub-article (1) by not later than the 30th June of the year following that to which the income refers.

(3) The Malta Environment and Planning Authority shall provide the Commissioner with a yearly account of the details of all persons who availed themselves of any such scheme and such account shall be provided in such manner as the Commissioner may require.

Taxation of rental income derived from the letting of a tenement. *Added by: XII. 2014.21. Amended by: XXXVII. 2014.3; XXI. 2015.29; XV. 2016.19.*

31D. (1) Notwithstanding any other provision of the Income Tax Acts or any regulations made thereunder, the provisions of this article shall apply where, during a relevant year, any person rents a tenement.

(2) The tax chargeable in the circumstances mentioned in sub-article (1) shall, at the option of the person referred to in the said sub-article, be at the rate of fifteen cents (0.15) on every euro of the gross rental income received. Such tax shall be final and notwithstanding any other provision of the Income Tax Acts, no set-off or refund shall be granted to any person in respect of the tax so charged.

(3) Where the option referred to in sub-article (2) has been exercised, such income shall be deemed to constitute separate chargeable income for the purpose of the Income Tax Acts and shall not form part of the chargeable income of the person exercising the said option and where such person is an individual he shall not be required to declare such income, in any return made

pursuant to the Income Tax Acts.

(4) Where a person, in a relevant year, derives rental income from the letting of more than one tenement and the option referred to in sub-article (2) has been exercised for such year, the said sub-article shall apply to the total rental income received in the said year from all the tenements let out by such person.

(5) Irrespective of whether the option referred to in sub-article (2) is exercised or not, where an enquiry has been conducted and the Commissioner determines that any rental income which should have been declared was not so declared, such income shall be charged to tax at the rate of 35 cents (0.35) on every euro of the gross rental income received and such tax shall be in addition to any interest and additional tax payable under the Income Tax Acts. Such tax shall be final and notwithstanding any other provision of the Income Tax Acts, no set-off or refund shall be granted to any person in respect of the tax so charged.

(6) Every company resident in Malta shall allocate the distributable profits resulting from income to which this article applies, and on which tax is payable in accordance with this article, to the final tax account.

(6A) Where an individual has failed to declare rental income derived from a tenement leased as a residence or garage during the relevant period in any return and such individual opts to declare such rental income in the relevant form referred to in article 42(4)(*c*) of the Income Tax Management Act, which is required to be submitted by not later than the 30th June 2015, and pays the tax referred to in sub-article (2) of this article on such rental income, it shall be deemed for the purpose of the Income Tax Acts that such rental income was received during basis year 2014. The individual exercising the said option shall pay to the Commissioner the tax in such manner as may be prescribed in accordance with the provisions of article 42 of the Income Tax Management Act:

Cap. 372.

Provided that where an individual exercises the said option and declares rental income for more than one year, the total amount subject to the tax referred to in sub-article (2) of this article shall not exceed an amount determined as follows:

$$Y = (a / b) \times 2$$

Where -

(*a*) "Y" represents the amount to be determined;

(*b*) "a" is the total rental income declared in the said relevant form;

(*c*) "b" is the number of years comprised in the relevant period in respect of which rental income is declared:

Provided also that where following an enquiry there is evidence that an individual who exercises the option referred to in this sub-article has overstated the amount of rental income declared in the relevant form for the purpose of obtaining a tax advantage, the preceding proviso shall not apply and the total amount of rental income declared in the said form shall be subject to tax at the rate

of 15%.

For the purpose of this sub-article "relevant period" means the period of eight years preceding basis year 2013.

(7) The person exercising the option referred to in sub-article (2) shall pay to the Commissioner the tax referred to in the said sub-articles in such manner as may be prescribed in accordance with the provisions of article 42 of the Income Tax Management Act. Cap. 372.

(8) For the purposes of this article:

(*a*) "tenement" means -

(i) a tenement, not being a commercial tenement as defined in article 1525 of the Civil Code, which consists of either a dwelling house or part thereof which is to be occupied or is occupied as a home or residence by the occupier or a garage; or Cap. 16.

(ii) a "commercial tenement" or a "club", both terms having the meaning assigned to them respectively in article 1525 of the Civil Code, when the property is not rented to or from a related body of persons, and for the purpose of this sub-paragraph -

(A) a body or persons is related to an individual if it is owned or controlled, directly or indirectly, as to more than twenty-five percent by that individual; and

(B) two bodies of persons are related if they are owned or controlled, directly or indirectly, as to more than twenty-five percent by the same persons;

(*b*) "relevant year" means the calendar year during which the gross rental income is received.

31E. (1) Notwithstanding any other provision of the Income Tax Acts except for article 31B, this article shall apply, in such manner as may be prescribed, where any person who is an owner of immovable property rents such property to another person for at least seven years under a scheme administered by the Housing Authority, and the said owner is registered with the Housing Authority for this purpose and complies with any conditions imposed by the Housing Authority. Housing Authority Schemes. *Added by: XVI. 2017.19.*

(2) The tax chargeable in the circumstances mentioned in sub-article (1) shall be at the rate of 5% of the gross rental income received. Such tax shall be final and not be available as a credit against the tax liability of the said person or refundable to him in any way.".

Taxation of certain investment income by deduction.
Added by: XVII. 1994.16.
Amended by: II. 2003.14.

32. Notwithstanding anything to the contrary contained in this Act, articles 32A to 42, both inclusive, and which together with this article are referred to as "the investment income provisions", shall apply wherever the context so requires.

Payor to register.
Added by: II. 2003.15.

32A. A payor shall register as such with the Commissioner in such manner as may be prescribed.

Obligation of payor to deduct tax from investment income.
Added by: XVII. 1994.16.
Amended by: II. 2005.8; II. 2007.10; IV. 2007.14; L.N. 409 of 2007; I. 2010.21; IV. 2011.16.

33. (1) A payor shall deduct tax from every payment to a recipient of investment income, howsoever made, at a rate of fifteen cents (0.15) on every euro of such payment:

Provided that where the recipient derives, or is deemed to have derived pursuant to the provisions of article 43(6)(*a*), (*b*) or (*c*), investment income referred to in article 41(*a*)(viii), tax shall be deducted at the rate specified in article 56(6) or such other rate as may be prescribed and rules may also be prescribed on how the investment income provisions are to be applied in particular circumstances.

(2) A payor shall render an account to the Commissioner of all amounts so deducted, but shall not specify the identity of the recipient and, subject to the provisions of sub-article (3), every amount deducted shall be a debt due from such payor to the Commissioner payable not later than the fourteenth day following the end of the month in which the payment was made and shall be recoverable as such.

(3) The payor shall upon making a payment of investment income furnish each recipient with a certificate in a form acceptable to the Commissioner setting forth the gross amount paid by the payor, and the tax deducted.

(4) Where a payor makes a payment of investment income to a person not resident in Malta (and therefore not a recipient within the definition contained in article 41(*c*)), the payor shall be obliged to obtain a certificate of non-residence from the person receiving such payment in such form as the Commissioner shall require.

(5) For the purposes of the investment income provisions, tax shall be deducted on the amount of the investment income before deducting any foreign tax, whether charged directly or by way of witholding.

(6) Where the tax deductible in accordance with the provisions of this article is not remitted to the Commissioner within the time stipulated in subarticle (2), or an account of amounts deducted is not rendered to the Commissioner as required under this article, the payor shall become liable to a penalty of not more than twenty-three thousand euro (23,000) as may be prescribed by the Minister.

Payor not to deduct tax where recipient elects to be paid gross.
Added by. XVII. 1994.16.
Amended by: II. 2003.16; I. 2010.22.

34. (1) A payor shall not deduct tax under article 33 where a recipient elects under the provisions of article 35, to be paid investment income without such deduction being made.

(2) A payor shall render an account to the Commissioner of all payments of investment income made during any year in respect of which an election has been made. The account shall be submitted to

the Commissioner by the 31st January following the year for which the election has been made, or within thirty days of the request, whichever date is later. Such account shall include details of the recipient's name, address and the income tax registration number as well as the amount of investment income paid gross by the payor to the recipient during that year:

Provided that the Commissioner may only request such an account for a complete year which has passed in respect of which an election has been made under the provisions of article 35:

Provided further that a payor shall not be required to render an account to the Commissioner once nine years have elapsed following the end of the year in which the investment income becomes payable.

(3) Where an account is not rendered to the Commissioner in the manner required under this article, the payor shall become liable to a penalty of not more than twenty-three thousand euro (€23,000) as may be prescribed by the Minister.

Election by recipient to be paid without deduction of tax.
Added by: XVII. 1994.16. Amended by: II. 2003.17; II. 2007.11.

35. (1) Except in respect of investment income referred to in article 41(*a*)(viii)(2), (3) and (4), a recipient may elect to be paid investment income without deduction of tax being made and such an election shall be made in writing and sent to the payor.

(2) Subject to the provisions of sub-article (3), an election will be effective as from fourteen days following the receipt of such notice of election by the payor. Such an election may be revoked at the option of the recipient by notice in writing and such revocation shall be effective as from fourteen days following the receipt by the payor of such notice.

(3) An election made on the opening of a bank account in respect of which investment income is payable, or on the purchase of bonds, loan stock, debentures, or any other instrument in respect of which the investment income is payable, or on any transaction giving rise to capital gains within the meaning of article 41(*a*)(v), shall have immediate effect.

Obligation on recipient to declare where an election is made.
Added by: XVII. 1994.16. Amended by: IX.1999.14.
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36. Where an election under the provisions of article 35 has been made, a recipient shall, subject to the provisions of article 12 of the Income Tax Management Act, declare the investment income to which the election relates on his tax return for the relevant year of assessment and where a declaration is made as aforesaid any tax due shall be determined as if the investment income provisions had not been enacted.

Tax withheld under article 33(1).
Added by: XVII. 1994.16. Substituted by: II. 2002.49; V. 2012.20; XII. 2014.22.

37. Where any tax has been withheld under article 33(1), such tax shall not be available as a credit against the recipient's tax liability or for a refund, as the case may be, for the relevant year of assessment.

Presumption of deduction.
Added by: XVII. 1994.16.

38. Except in respect of a year of assessment for which an election under article 35 applies, it shall be presumed, so far as the tax liability of the recipient is concerned, that a deduction and

payment which ought to have been made pursuant to the provisions of article 33 have been made.

Where presumption applies, no need to declare.
Added by:
XVII. 1994.16.
Amended by:
II. 2002.50;
V. 2012.21;
XII. 2014.23.

39. Where the presumption referred to in article 38 applies:

(*a*) a recipient who is an individual shall not be obliged to disclose the existence of the investment income in any return made pursuant to the provisions of this Act, and

(*b*) no person shall be charged to further tax in respect of the investment income under this Act.

Extent of payor's liability.
Added by:
XVII. 1994.16.
Substituted by:
II. 2003.18;
Amended by:
II. 2005.9;
II. 2007.12.
Cap. 372.

40. (1) Where a payor fails to deduct and pay tax in accordance with the investment income provisions, the provisions of article 73(4) of this Act and of article 40(1) of the Income Tax Management Act shall apply *mutatis mutandis*.

(2) The provisions of article 39 of this Act and the provisions of article 17 of the Income Tax Management Act shall not be applicable, and a payor shall not be bound by a duty of professional secrecy on a request for information by the Commissioner where investment income referred to in article 41(*a*)(iv), 41(*a*)(vii) and 41(*a*)(viii)(1) are derived from a person, other than a physical person that is not resident in Malta is paid to a recipient provided that:

(*a*) the asset from which the investment income is derived is not a qualifying asset as defined in the provisions of article 9B; and

(*b*) the recipient has not declared, in accordance with the provisions of the relevant laws as defined in the provisions of article 9B, income and transfers referred to in article 9B(2)(*a*) to (*c*) in relation to the asset from which the investment income is derived.

(3) Any person (hereinafter in this subarticle referred to as the "first person") who is in a position to receive or be deemed to have received the income referred to in article 41(*a*)(viii)(2), (3) and (4):

(*a*) shall inform in writing the person who would be the payor of such income if the first person were to receive or be deemed to have received such income, that in such an eventuality the first person would be the recipient of that income; and

(*b*) when the first person has received or has been deemed to have received such income, he shall, unless the payor has paid the tax in accordance with the investment income provisions, pay such tax himself within seven days from the date that the payor should have paid the tax; and

(*c*) without prejudice to any other provisions of the Income Tax Acts, any such person who does not make the payment referred to in paragraph (*b*) when he ought to have made it shall, in addition to the payment of the tax due, be liable to pay additional tax of seven per cent of the amount of such tax for every month or

part thereof that the tax remains unpaid commencing from the month in which the tax should have been paid and any payment made by the said person in respect of the tax payable by him in terms of this subarticle shall first be applied against any additional tax due thereon.

(4) The provisions of subarticle (3) shall not be applicable when the person referred to therein proves to the satisfaction of the Commissioner that he did not know and could not reasonably have known that he was a recipient and for this purpose it shall be presumed that such person was fully cognisant of the provisions and implications of the Income Tax Acts.

(5) Where the payor has not deducted or paid the tax from the income referred to in article 41(*a*)(viii)(2), (3) and (4), the provisions of articles 38 and 39 shall not be applicable.

Interpretation of the investment income provisions. *Added by: XVII. 1994.16. Amended by: XVII. 1998.70; XI. 2000.5; IX. 2001.26; II. 2003.19; II. 2004.12; II. 2005.10; II. 2007.13; I. 2010.23; IV. 2011.17; XII. 2014.24.* Cap. 371.

41. For the purposes of the investment income provisions, the following phrases shall have the meanings given below:

(*a*) "investment income" shall mean only the following categories of income:

(i) interest payable by a person carrying on the business of banking under the Banking Act, in respect of a sum of money in whatever currency deposited with it in any account whatever (except interest payable in respect of any bearer account);

(ii) interest, discounts or premiums payable by the Government of Malta or by any agency thereof;

(iii) interest, discounts or premiums payable by a corporation or authority established by law;

(iv) interest, discounts or premiums payable in respect of:

(1) a public issue by a company, entity or other legal person howsoever constituted and whether resident in Malta or otherwise; and

(2) a private issue by a company, entity or other legal person howsoever constituted and resident in Malta paid to a collective investment scheme;

(v) (1) capital gains arising on the disposal of shares or units in a collective investment scheme where the collective investment scheme redeems, liquidates or cancels such shares or units, such capital gains to be calculated by reference to the price at which the shares or units were allotted or issued by the collective investment scheme or to a value determined in such manner and on the basis of such criteria as may be prescribed:

Provided that this item shall not apply to:

(i) capital gains arising on the disposal of shares or units held in a prescribed fund of a collective investment scheme; and

(ii) capital gains arising on the disposal of shares or units held in a fund of a collective investment scheme that is not resident in Malta if such a fund is not a prescribed fund and the disposal is not made through the services of an authorised financial intermediary;

(2) capital gains arising on the surrender or maturity of units and such like instruments relating to linked long term business of insurance where the benefits are at least eighty five per cent determined by reference to the value of units or shares in, or income derived from, collective investment schemes:

Provided that in calculating such capital gains -

(i) no account shall be taken of any part of the said benefits that is determined by reference to the value of units or shares in collective investment schemes that were held in prescribed funds for a continuous period spanning the whole life of the relevant linked long term contract of insurance or three years from the date of the relevant maturity or surrender whichever period is the lesser;

(ii) the cost of acquisition shall be calculated by reference to the total amount of premiums paid in relation to the linked portion of the contract of insurance or to a value determined in such manner and on the basis of such criteria as may be prescribed;

(3) capital gains arising on the redemption, liquidation or cancellation of securities not referred to in items (1) and (2) hereof and not being shares in a company;

(vi) profits distributed by a collective investment scheme that is not resident in Malta that are paid through the services of an authorised financial intermediary out of profits that had been allocated in that collective investment scheme to a fund that is not a prescribed fund;

(vii) interest payable by a person carrying on the business of banking in accordance with foreign legislation in respect of a sum of money in whatever currency deposited with it in any account whatever where the payment of the income from investment is made through an authorised financial intermediary as is provided for in items (i), (ii) or (iii) of paragraph (*c*) of article 41A;

(viii) (1) profits distributed by a company that is not resident in Malta (and that is not a collective investment scheme), and where such profits are paid through the services of an authorised financial intermediary to an individual who is resident in Malta, provided that such distributed profits constitute income in the hands of such individual that is derived from shares in such company, each share being a qualifying asset as defined in the provisions of article 9B;

(2) the amount of the net dividend paid by a company registered in Malta in respect of which the recipient shareholder is registered for the purpose of article 48(4) or article 48(4A) of the Income Tax Management Act; Cap. 372.

(3) the amount paid pursuant to article 48(4) or article 48(4A) of the Income Tax Management Act; Cap. 372.

(4) the dividend referred to in article 43(6)(*a*) and the income or gains referred to in article 43(6)(*c*);

(5) the income referred to in article 43(6)(*b*);

(*b*) "payor" shall mean the person who is liable to make, or if different, who makes a payment of investment income and with respect to investment income referred to in paragraph (*a*)(viii)(4) shall mean the company which earned the profits deemed distributed pursuant to article 43(6)(*a*) and article 43(6)(*c*) and with respect to investment income referred to in paragraph (*a*)(viii)(5) shall mean the Commissioner;

(*c*) "recipient" shall mean:

(i) a person who is resident in Malta during the year in which investment income is payable to him or which is payable to a person under sub-paragraphs (ii) or (iii) (other than a person who during that year carried on banking business under the Banking Act, or a person carrying on the business of insurance or any other company (hereinafter "owned and controlled company") which is owned and controlled, directly or indirectly, by such persons, excluding an owned and controlled company not carrying on the business of banking or insurance which is listed on a stock exchange recognised under the Financial Markets Act and in respect of which the Commissioner, at his discretion, has issued a determination that such company falls within the purport of this definition, or a company which is registered under article 24 of the Malta Financial Services Authority Act), or

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(ii) a receiver, guardian, tutor, curator, judicial sequestrator or committee acting on behalf of a person referred to in sub-paragraph (i) of this paragraph, or

(iii) a trustee or foundation pursuant to or by virtue of which any money or other property whatsoever shall for the time being be paid or applied to or for the benefit of a person referred to in sub-paragraph (i), or

(iv) an EU/EEA individual (and his or her spouse where applicable) in the circumstances envisaged by the first and second provisos to article 56(1)(*c*):

Provided that with respect to the investment income referred to in paragraph (*a*)(viii)(2) and (3) a recipient shall be an individual who is resident in Malta and with respect to the investment income referred to in paragraph (*a*)(viii)(4) and (5) a recipient shall be the individual referred to in article 43(6)(*a*), (*b*) and (*c*), as the case may be, and in the circumstances referred to in article 43(6)(*e*) such individual must be ordinarily resident and domiciled in Malta.

Investment income of collective investment schemes. *Added by: IX. 2001.27. Amended by: II. 2003.20; L.N. 409 of 2007.*

41A. For the purposes of the investment income provisions and notwithstanding anything to the contrary contained therein:

(*a*) when any income referred to in article 41(*a*) is paid to a collective investment scheme it shall be treated as investment income only to the extent that -

(i) it falls to be accounted for by that collective investment scheme as profits of a prescribed fund; and

(ii) it is not paid by another collective investment scheme;

(*b*) "prescribed fund" means a collective investment scheme or, in the case of a collective investment scheme divided into sub-funds, a sub-fund of that scheme, that satisfies such conditions as may be prescribed for the purpose of this definition;

(*c*) "payor" includes an authorised financial intermediary and all the obligations of a payor shall apply to such an intermediary with respect to all payments of investment income effected through his services. A payment of investment income is effected through the services of an authorised financial intermediary when such payment -

(i) is made to the intermediary who holds the relevant investment for the benefit of the recipient;

(ii) is made directly to the recipient who requires that an authorised financial intermediary collects an amount of tax equal to fifteen per cent of such income for onward payment to the Commissioner;

(iii) is made through an arrangement approved by the Commissioner, which arrangement enables the collection of tax on such income through an authorised financial intermediary;

(*d*) "authorised financial intermediary" means a person holding an investment services licence issued under the Investment Services Act who is registered with the Commissioner and who satisfies such other conditions as may be prescribed; Cap. 370.

(*e*) "recipient" includes a collective investment scheme resident in Malta;

(*f*) a payor shall deduct tax from every payment of investment income referred to in paragraph (*a*) at the rate of fifteen cents (0.15) on every euro of such payment or at such other rate or rates, not being more than the said rate and not less than ten cents (0.10) on every euro of the said payment, as may be prescribed;

(*g*) a collective investment scheme shall not have the right to elect to be paid investment income without deduction of tax being made;

(*h*) in no case shall a refund be made to a collective investment scheme in respect of tax withheld in accordance with the provisions of this article from investment income paid to that collective investment scheme.

Powers of the Minister. *Added by: IX. 2001.27.*

41B. The Minister may make regulations determining how the investment income provisions shall apply in relation to particular types or categories of securities, making such modifications to the operation thereof as he may deem necessary in respect of particular types or categories of securities, and prescribing any matter that

may be prescribed in accordance with any of the said provisions.

Anti-avoidance provisions. *Added by: XVII. 1994.16.*

42. Where, in the opinion of the Commissioner, a series of transactions is effected with the sole or main purpose of reducing the amount of tax payable by a person by reason of the operation of the investment income provisions, such a person shall be assessable as if the aforesaid provisions did not apply, and any tax withheld in respect of income received under one or more of the aforesaid transactions shall be available as a credit against the tax liability of the person receiving such income, or for a refund as the case may be, for the relevant year of assessment.

For the purposes of this article, a "series of transactions" shall mean any two or more corresponding or circular transactions, carried out by the same person, either directly or indirectly, as the case may be.

Certain undistributed profits to be deemed to be distributed. *Amended by: VI.1953.2; XXVIII.1978.11; VIII.1987.5 Renumbered by: XVII. 1994.2. Amended by: XVII. 1994.17; II. 2007.14; I. 2010.24; IV. 2011.18; XVI. 2017.20.*

43. (1) Where the Commissioner is of the opinion that any company (other than a company incorporated or registered outside Malta and not resident therein) has not distributed as dividends its profits or some part of its profits and that the effect of such non-distribution is the avoidance or reduction of tax otherwise payable by the shareholders, he may order by notice in writing that such undistributed profits or part thereof shall be deemed, for the purposes of this Act, to have been distributed by way of dividend by the company in such amount, and on such date or dates, as to him appears to be reasonable, and the shareholders concerned shall be assessed thereon accordingly:

Provided that -

(*a*) no order shall be issued as aforesaid if the company proves that the main purpose or one of the main purposes of non-distribution was -

(i) to provide for the development or expansion of its trade or business from internal sources, whether alone or in combination with other sources; or

(ii) to repay any loan, overdraft or other capital borrowed from external sources (which are neither directly nor indirectly linked with the company's shareholders) and used in the expansion of the company's trade or business;

(*b*) no order issued under this sub-article shall have effect-

(i) where it is made in respect of any profits chargeable in the company's hands in respect of any year of assessment prior to that beginning on 1st January, 1976, if an assessment has been raised for that year or, where no such assessment has been raised, if the order is made after 31st December, 1979;

(ii) where it is made in respect of any profits chargeable in the company's hands in respect of any year of assessment prior to that beginning on

1st January, 1984, if it is made after 31st December, 1986; and

(iii) where it is made in respect of any profits so chargeable for any other year of assessment, if it is made after the lapse of eight years from the end of the year of assessment in which the profits to which the order relates were chargeable to tax;

(*c*) where, under the provisions of this sub-article any dividend would require to be treated as received by any shareholder of a company (in this proviso referred to as "the first company") and the shareholder in question is also a company (in this proviso referred to as "the second company"), that dividend shall not be chargeable to tax as income of the second company, but shall be treated as distributed by the second company by way of dividend on the date determined by the Commissioner as aforesaid, and the shareholders of the second company shall be assessed thereon accordingly; and where any shareholder of the second company is again a company, then, in relation to the sum which is to be treated as distributed to that shareholder, the preceding provisions of this proviso shall apply *mutatis mutandis* as though references therein to the first company were references to the second company and as though references therein to the second company were references to that shareholder, and so on until, applying the principles of this proviso, there remains no part of the undistributed profits to which the directions of the Commissioner relate which falls to be treated as distributed to a company.

(2) Where any person who has been assessed to tax, or has had his assessment revised, in accordance with the provisions of sub-article (1) fails to pay on due date the tax, or any part of the tax, attributable to his share of any undistributed profits which are treated as distributed, such tax or the part thereof shall thereupon become a debt due to Government from the company by reason of whose failure to distribute the profits the directions of the Commissioner under sub-article (1) were given, and shall be recoverable as such.

(3) Where any undistributed profits taxable by virtue of sub-article (1) are subsequently distributed, they shall not be treated as taxable income in the hands of the recipients thereof.

(4) Where any undistributed portion of the profits taxable by virtue of sub-article (1) has been deemed, by notice given under the provisions of this article, to have been distributed as dividends to the shareholders of that company, the company shall within twenty-one days of the date of service of the said notice furnish each shareholder with a certificate setting forth the amount of the dividend deemed to have been distributed to that shareholder and the amount of tax which the company would have been entitled to

deduct from such dividend under the provisions of article 59 if such dividend had been paid.

(5) Nothing contained in this article shall prevent the decision of the Commissioner in the exercise of the power conferred upon him by sub-article (1) from being questioned in an appeal in accordance with the provisions of articles 35 and 37 of the Income Tax Management Act.

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(6) (*a*) Where an individual resident in Malta is registered for the purpose of article 48(4) or article 48(4A) of the Income Tax Management Act, or is beneficially entitled, directly or indirectly, to the profits of a person or entity which is so registered, such individual shall be deemed to have received a dividend or dividends corresponding to the amount of profits (that is, the profits net of the tax paid or payable by the company in respect of which he or the said person or entity are so registered) that he is beneficially entitled to receive directly or indirectly from such company, on the first day of the accounting period following that in which such profits were earned by the said company or on the date such profits where distributed whichever is the earlier:

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Provided that this paragraph shall not apply where the said profits were distributed to such individual resident in Malta registered for the purpose of article 48(4) or article 48(4A) of the Income Tax Management Act by way of dividends in the accounting period in which such profits were earned by the said company:

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Provided further that when an individual resident in Malta registered for the purpose of article 48(4) or article 48(4A) of the Income Tax Management Act has been deemed to have received a dividend or dividends on the first day of the accounting period following that in which such profits were earned by the said company such dividend or dividends shall for the purpose of article 41(*a*)(viii)(2) be deemed to have been paid on such day.

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(*b*) An individual resident in Malta beneficially entitled, directly or indirectly, to the profits of a person or entity which has received the income referred to in article 41(*a*)(viii)(3), shall be deemed to have received, at the time that the said person or entity has received the said income, so much of that income as corresponds to his, direct or indirect, entitlement to receive that income by way of dividend or other means through or from any person or entity in any manner whatsoever:

Provided that in the case of income referred to article 41(*a*)(viii)(2) the said person shall not be deemed to have received such income if and to the extent that the distributable profits resulting in such income have been deemed to be income referred to in paragraph (4) of the said article 41(*a*)(viii) paid to a recipient as defined in the investment income provisions.

(*c*) Where an individual resident in Malta is beneficially entitled, directly or indirectly, to the profits (whether or not distributed) of a company which has applied the provisions of article 12(1)(*u*) to any of its income or gains or has applied any deduction in terms of rules issued pursuant to article 14(1)(*o*) in determining its chargeable income or gains, such individual shall be deemed to have received, at the time that the said company has submitted its tax return in which the said income or gains would have been charged to tax but for the fact that it applied the said exemption or deduction, or the last date on which such a tax return is due to be submitted, whichever is the earlier, so much of that income or gains as corresponds to his, direct or indirect, entitlement to receive that income or gains by way of dividend or other means through or from any person or entity in any manner whatsoever and for the purpose of this paragraph if the company would have already distributed such income or gains or part thereof it shall be deemed that no such distribution has been made.

(*d*) (i) Notwithstanding any other provision in the Income Tax Acts, where an individual becomes beneficially entitled, directly or indirectly, to the profits of a person or entity or any such entitlement is increased in any way and such person or entity has received but not yet distributed, or is entitled to receive (at the time such individual became so entitled or had his entitlement so increased), directly or indirectly, the income referred to in article 41(*a*)(viii)(2) and (3), such individual shall be deemed to have received a dividend chargeable to tax under this Act at the time that he became so entitled or had his entitlement so increased as corresponds to his, direct or indirect, entitlement or increased entitlement to receive that income by way of dividend or other means through or from any person or entity in any manner whatsoever and such individual shall be obliged to declare the said dividend in his return of income:

Provided that the provisions of this paragraph shall not be applicable where the Commissioner is satisfied that the events referred to in this paragraph were not the result of some arrangement or scheme the sole or main purpose of which was the avoidance of or postponement of the payment of tax.

(ii) Notwithstanding any other provision in the Income Tax Acts, where an individual not resident in Malta changes his residence and becomes resident and domiciled in Malta and at the time of the change becomes or is beneficially entitled, directly or indirectly, to the profits of a person or entity and such person or entity has

received, directly or indirectly, but not yet distributed the income referred to in article 41(*a*)(viii)(2) and (3), such individual shall be deemed to have received a dividend chargeable to tax under this Act at the time that he becomes resident and domiciled in Malta as corresponds to his, direct or indirect, entitlement to receive that income by way of dividend or other means through or from any person or entity in any manner whatsoever and such individual shall be obliged to declare the said dividend in his return of income:

Provided that the provisions of this paragraph shall not be applicable where the said individual was not at any time resident in Malta throughout the whole of the period of five years immediately preceding the date such individual changes his residence and becomes ordinarily resident and domiciled in Malta.

(iii) Notwithstanding any other provision in the Income Tax Acts, where an individual not resident in Malta, whether or not registered for the purpose of article 48(4) or article 48(4A) of the Income Tax Management Act, receives, directly or indirectly, the income referred to in article 41(*a*)(viii)(2) and (3), and such individual was at any time within the five year period preceding the date on which he received, directly or indirectly the said income, resident and domiciled in Malta, such income shall be chargeable to tax under this Act and the said individual shall be obliged to declare the said income in a return of income.

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(iv) For the purpose of paragraphs (i) to (iii) above the reference to "recipient" in article 42(*a*)(viii)(2) shall mean any person or entity.

(*e*) Where the immediate shareholder of the company, person or entity referred to in paragraphs (*a*), (*b*) and (*c*) is not an individual and is not resident in Malta, the provisions of the said paragraphs shall only be applicable when the said individual is ordinarily resident and domiciled in Malta.

(*f*) Where the direct or indirect beneficial entitlement referred to above is an entitlement to the profits of a public company or other entity, and where one or more individuals, ordinarily resident and domiciled in Malta, do not own or control a substantial part of such company or entity, or are not beneficially entiled to a substantial part of the profits or income of such company or entity, and the shares or other similar security in relation to such company or entity -

(i) are listed on a stock exchange determined by the

Commissioner for the purpose of this provision, and the Commissioner is satisfied that the shares or other similar security are widely held and frequently traded; or

(ii) although not listed on such a recognised stock exchange or not frequently traded, are widely held,

the Commissioner may, in his absolute discretion, determine that the provisions of this subarticle are not applicable.

(*g*) For the purpose of this subarticle the word "entity" means a person other than an individual and shall include any trust or body of persons.

Special provisions in respect of certain profits deemed distributed. *Added by: XXXVI.1990.8. Renumbered by: XVII. 1994.2. Amended by: L.N. 409 of 2007.*

44. (1) A company (other than a company incorporated or registered outside Malta and not resident therein) may apply to the Commissioner in writing to have any profits which the Commissioner has ordered to be deemed distributed in terms of article 43 to be deemed distributed as follows:

(*a*) twenty *per centum* of the said profits on such date or dates as the Commissioner has ordered;

(*b*) eighty *per centum* of the said profits in the year immediately preceding the year of assessment 1991:

Provided that where an assessment raised on a shareholder as a consequence of the said deemed distribution has become final and conclusive, the assessment shall not be reopened by way of the provisions of this sub-article:

Provided further that an application made by a company for the purposes of this sub-article shall not be valid if it is made after the 30th June, 1991.

(2) In the case where a company is served with a deemed distribution order by the Commissioner in terms of article 43 in respect of any year immediately preceding any of the years of assessment 1984 to 1989 and after the 23rd November, 1990, the company may apply to the Commissioner in writing to have the undistributed profits for the said years to be deemed distributed by the Commissioner as follows:

(*a*) twenty *per centum* of the said profits on such date or dates as the Commissioner may order;

(*b*) eighty *per centum* of the said profits in the year immediately preceding the year of assessment 1991:

Provided that an application made by a company for the purposes of this sub-article shall not be valid if it is made after the lapse of thirty days from the date of service of the deemed distribution order or the 30th June 1991, whichever is the later.

(3) Notwithstanding any other provisions of this Act, where an application is made in terms of this article, the profits deemed distributed by the Commissioner shall be charged to tax on the

company at the following additional rate of tax:

(*a*) 25c on every euro of profits deemed distributed for any year preceding the year of assessment 1990;

(*b*) 0.025c on every euro of profits deemed distributed for the year of assessment 1991.

(4) (*a*) For the purposes of this article, when the profits deemed distributed are subsequently distributed by the company to the shareholders, the dividend shall be grossed up as set out in article 31 without taking into account the tax charged additionally on the company in terms of sub-article (3).

(*b*) The tax payable by the company under sub-article (3) shall not be availed of for set-off in terms of article 60 when the profits deemed distributed are subsequently distributed to the shareholders.

Further special provision in respect of profits deemed distributed. *Added by: XXXVI.1990.8. Renumbered by: XVII. 1994.2.*

45. Any distribution made by a company after the 1st January, 1990 in respect of its profits for any year preceding the year of assessment 1989 shall be considered as having not been distributed in determining the amount of undistributed profits for the purposes of article 43.

Conversion of a commercial partnership. *Added by: IX. 1999.14. Substituted by: XIX. 2010.58. Amended by: XIII. 2015.52.* Cap. 386. Cap. 372.

45A. Notwithstanding anything contained in this Act, where:

(i) in accordance with the provisions of the Companies Act, a company is converted into a commercial partnership *en nom collectif* or a commercial partnership *en commandite* which does not make an election to be treated as a company in terms of article 27(6) of the Income Tax Management Act, or

(ii) where a partnership or EEIG referred to in sub-paragraph (iii) of paragraph (*a*) or sub-paragraph (ii) of paragraph (*b*) of the definition "company" in article 2(1) elects not to be treated any longer as a company in terms of article 27(6) of the Income Tax Management Act,

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the following shall apply:

(*a*) it shall be deemed for all the purposes of the Income Tax Acts that any balance of distributable profits allocated to any of the tax accounts, existing on the day the company ceases to be a company, to have been distributed by way of dividend on the said day and the provisions of articles 61 to 67 shall apply accordingly to such profits;

(*b*) subject to paragraph (*c*), it shall be deemed for all the purposes of the Income Tax Acts that no transfer or acquisition of assets has taken place and for the purpose of determining the chargeable income or gains on a transfer of the said assets by the partnership, the cost and date of acquisition taken into account shall be

the cost and date as applicable to the company that has been converted;

(*c*) where the assets of the company ("the chargeable company") include shares in a company or immovable property situated in Malta which have been acquired from another company ("the transferor") under a transfer which qualified for tax relief under the provisions of articles 5(9) or 5A(4)(*f*), it shall be deemed for the purposes of articles 5(9A) and 5A(12A) that the chargeable company ceases to be a member of the original group and the provisions of the said articles shall apply accordingly;

(*d*) where the transferor company referred to in the preceding paragraph is converted into a partnership, for the purpose of determining whether the chargeable company referred to in articles 5(9A) and 5A(12A) ceases to be a member of the original group, it shall be deemed that the conversion had not taken place and such determination shall be made by reference to the same individuals referred to in article 5(9)(iii) taken into account in determining whether the chargeable company and the transferor company satisfied the provisions of article 5(9)(i) and (iii) on the date of the acquisition referred to in paragraph (*c*) above;

(*e*) where the company has available for set-off capital losses referred to under article 5(10), such losses shall be carried forward and set off only against capital gains derived by the partnership in the manner prescribed in the said article as would have applied had the conversion not taken place;

(*f*) where the company has available for set-off losses referred to under article 14(1)(*g*), such losses shall be carried forward and set off only against the total income derived by the partnership in the manner prescribed in the said article as would have applied had the conversion not taken place.

Conversion of a partnership into a company. *Added by: IV. 2011.19. Amended by: XIII. 2015.53.* Cap. 386. Cap. 372.

45B. Notwithstanding anything contained in this Act, where, in accordance with the provisions of the Companies Act, a commercial partnership *en nom collectif* or a commercial partnership *en commandite* is converted into a company or elects to be treated as a company pursuant to an election made in terms of article 27(6) of the Income Tax Management Act, it shall be deemed for all the purposes of the Income Tax Acts that no transfer or acquisition of assets has taken place and for the purpose of determining the chargeable income or gains on a transfer of the said assets by the company, the cost and date of acquisition taken into account shall be the cost and date as applicable to the commercial partnership that has been converted.

Loans to shareholders. *Renumbered by: XVII. 1994.2.*

46. (1) If any amounts are advanced or any assets distributed by a company to any of its shareholders by way of advances or loans, or any payment is made by the company on behalf of, or for

the individual benefit of, any of its shareholders, so much, if any, of these advances, loans or payment, as, in the opinion of the Commissioner represents distribution of income shall, for all purposes of this Act, be deemed to be dividends paid by the company to those shareholders out of profits derived by it.

(2) Where the amount of any advance, loan or payment is deemed, under the last preceding sub-article, to be a dividend paid by a company to its shareholders, and in any year subsequent to that in which the dividend is so deemed to be paid, the company sets off any dividend distributed by it in that subsequent year, in satisfaction of the whole or part of the amount of that advance, loan or payment, that dividend shall, to the extent to which it is so set off, be deemed not to be a dividend for the purposes of this Act.

Certain distributions to shareholders or to partners deemed to be dividends or profits.. *Renumbered by: XVII. 1994.2. Amended by: I. 2010.25.*

47. Distributions to shareholders of a company or to partners in any partnership by a liquidator in the course of winding up the company or the partnership, to the extent to which they represent income derived by the company or by the partnership (whether before or during liquidation) and any distributions from the untaxed account shall, for the purposes of this Act, be deemed to be dividends paid to the shareholders by the company out of the profits derived by it, or profits distributed to the partners, as the case may be.

Special provisions for computation of income derived from sale or other disposal or trading stock. *Renumbered by: XVII. 1994.2. Amended by: XVII. 1994.18.*

48. (1) Where any trading stock is sold together with other assets of a business, the part of the consideration attributable to the trading stock shall, for the purposes of this Act, be determined by the Commissioner, and the part of the consideration so determined shall be deemed to be the price paid for the trading stock by the purchaser.

(2) For the purposes of this article any trading stock which has been disposed of otherwise than by sale shall be deemed to have been sold, and any trading stock so disposed of and any trading stock which has been sold for a consideration other than cash shall be deemed to have realised the market price of the day on which it was so disposed of or sold, but, where there is no market price, trading stock shall be deemed to have realised such price as the Commissioner determines.

(3) Nothing contained in this article shall be deemed to impair the right of an assessee to appeal against an assessment of tax under the provisions of articles 35 and 37 of the Income Tax Management Act.

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Special provisions regarding certain income derived by outworkers on a part-time basis. *Added by: XXII. 1995.4. Amended by: L.N. 409 of 2007.*

48A. (1) Where a VAT registered person engages any individual for the carrying out of hand knitting, lace making, crochet and embroidery activities at home against a net remuneration in any one year preceding a year of assessment not exceeding five hundred euro (500) the tax due in respect of the income paid to any such outworker and the deductions that may be made in respect thereof by the person engaging them shall be regulated in accordance with such rules as may be made under this article:

Provided that the work carried out by such outworkers shall

in all cases be handmade and not machine-made.

(2) The Minister may by order extend the provisions of subarticle (1) to the remuneration of such workers as may be prescribed in the Order under such conditions as may be set out in the said Order.

Special provisions regarding certain income derived under article 4(1)(*a*) of the Act. *Added by: II. 2002.51.*

48B. The Minister responsible for finance may make regulations prescribing the manner in which the chargeable income, falling under article 4(1)(*a*), of such persons as may be prescribed is to be calculated or estimated under such conditions as may be set out in the said regulations.

Married couples. *Amended by: XLIX.1974.5. Renumbered by: XVII. 1994.2. Substituted by: XX. 1996.13. Amended by: IX. 1999.14.*

49. (1) The income of a married couple, where both spouses are living together, shall be charged to tax in the name of the responsible spouse so elected by the spouses themselves for the purposes of the Income Tax Acts and any return and any declaration relating to a year of assessment for which the income is so chargeable shall be signed by both spouses:

Provided that if the return or declaration is signed only by the responsible spouse or the other spouse on behalf of the responsible spouse, it shall in all cases be presumed *juris et de jure* to have been made with the consent of both spouses:

Provided further that if the spouses fail to appoint the responsible spouse, the Commissioner shall at his discretion decide who of the spouses shall be the responsible spouse.

(2) Where a joint return is required to be filed by a married couple in accordance with the provisions of subarticle (1), both spouses will be jointly and severally responsible for the performance of all obligations pursuant to the provisions of the Income Tax Acts, and in default the Commissioner shall be entitled, at his discretion, to take such action to enforce performance of those obligations against either or both of the spouses:

Provided that in no case may any criminal action be taken against a spouse for any act or omission for which he or she may not be directly responsible.

(3) Where a married couple elects that one of the spouses is to be the responsible spouse, such election shall remain effective for a minimum period of five successive years unless the Commissioner, at his sole discretion and for a reasonable cause, authorises a change following a petition signed by either spouse and filed with the Commissioner not later than six months before the first day of the year of assessment in respect of which such change is requested.

Separate computation on certain income derived by married couples.
Added by: XXXVI.1990.9. Renumbered by: XVII. 1994.2. Amended by: XVII. 1994.19. Substituted by: XX.1996.13. Amended by: V. 1998.8; XI. 2000.6; II. 2002.52.

50. (1) Notwithstanding the provisions of article 49, where in any year immediately preceding the year of assessment the spouse not being the responsible spouse, derives income subject to tax under the provisions of article 4(1)(*a*) or (*b*) in so far as it does not refer to any fees derived from the holding of an office of a director or of paragraph (*d*) of the said sub-article in so far as it refers to a pension which is received in view of the past employment the responsible spouse may elect in writing that the tax on the chargeable income in respect of such income derived by the other spouse be computed separately. In such a case the spouse's income shall not be aggregated with the responsible spouse's total income for that year of assessment:

Provided that where such an election is made, then, notwithstanding anything contained in this Act, any income of the spouses, other than income referred to in this sub-article and subject to tax under the provisions of article 4(1)(*a*), (*b*) and (*d*), shall be aggregated with the total income of the spouse having the higher income subject to tax under the said provisions or where such total income of the spouses is equal, it shall be aggregated with the total income of the responsible spouse, and the tax charged shall be computed accordingly.

(2) The tax computed separately for each year of assessment in respect of the income referred to in subarticle (1) hereof shall be charged in the name of the responsible spouse.

(3) No election referred to in subarticle (1) may be made in respect of income which is subject to tax under any of the provisions of article 4(1)(*b*) or (*d*) where such income consists solely of income which is deemed to constitute a benefit provided by reason of employment or office in terms of the regulations referred to in article 4(1)(*b*)(ii).

When arrears of pension are to be brought to charge.
Added by: II. 2003.21.

50A. Notwithstanding anything to the contrary contained in this Act, where during the year immediately preceding the year of assessment 2004 or during subsequent years of assessment a person receives income subject to tax under the provisions of article 4(1)(*d*), insofar as it refers to income accrued during an earlier year of assessment, such income shall be brought to charge to tax in the year to which it refers:

Provided that any such income referring to any year of assessment prior to the year of assessment 1999 shall be brought to charge in the year of assessment 1999.

Tax avoidance.
Substituted by: XXVIII. 1978.12. Amended by: XXXVI. 1990.10. Renumbered by: XVII. 1994.2. Amended by: XX. 1996.14; I. 2010.26; XXXIII. 2015.106.

51. (1) Where any scheme which reduces the amount of tax payable by any person is artificial or fictitious or is in fact not given effect to, the Commissioner shall disregard the scheme and the person concerned shall be assessable accordingly.

(2) (a) Where any person, as a direct or indirect result of any scheme of which the sole or main purpose was the obtaining of any advantage which has the effect of avoiding, reducing or postponing liability to tax, or of obtaining any refund or set-off of tax, has obtained or is in a position to obtain such an advantage, the Commissioner shall, by order in writing, determine the liability to tax or the entitlement to a refund or set-off of tax of the said person, or of any other person, for any year of assessment, in such manner and in such amount as may be necessary, in the circumstances of the case, to nullify or modify the said scheme and the consequent advantage. A person who disagrees with an order served upon him as aforesaid shall have the same rights to object to that order and to appeal from a decision of the Commissioner refusing that objection as if that order were an assessment issued under the Income Tax Management Act and the relevant provisions of that Act relating to objections and appeals shall apply *mutatis mutandis*.

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(*b*) The benefits of EU Council Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (as amended) shall not be granted to any arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the said EU Council Directive 2011/96/EU, are not genuine having regard to all relevant facts and circumstances.

For the purpose of this paragraph -

(i) an arrangement may comprise more than one step or part;

(ii) without prejudice to any remaining genuine steps or parts of any particular arrangement, an arrangement or a series of arrangements shall be regarded as not genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality; and

(iii) where a single step or part in an arrangement or a series of arrangements is, by itself and without regard to the remainder of the arrangement or series of arrangements, not genuine, the provisions of this paragraph shall apply only to such step or part that is not genuine, without prejudice to the remainder of the arrangement or series of arrangements that are genuine.

The provisions of this paragraph -

(i) implement EU Council Directive 2015/121 of 27 January 2015 amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States; and

(ii) shall not preclude the application of any other provision in the Income Tax Acts or any rules issued thereunder concerning the prevention of tax evasion, tax fraud or abuse.

(3) Where, as a direct or indirect result of any disposition made during the life of the disponer, any income is payable to or for the benefit of a child in the year immediately preceding the year of assessment, the income shall, if at the commencement of that year the child was unmarried or has not yet reached the age of eighteen years, be treated for the purposes of this Act as the income of the disponer for that year and not as the income of the said child.

(4) Where, as a direct or indirect result of any scheme or of any change in the shareholding of a company income has been received by or has accrued to the company in the year immediately preceding the year of assessment, then, unless it is proved that the said scheme had not been entered into, or the said change had not been effected, solely or mainly for the purpose of obtaining the benefit of any loss, or of the balance of any loss incurred by the company in any year preceding the year of assessment, or of any wear and tear or initial allowances, or of the balance of any such allowances due in respect of any year as aforesaid, so as to avoid liability on the part of that company or of any other person to the payment of any tax -

(*a*) the provisions of articles 5(10)(*b*) and 14(1)(*g*) shall not apply in respect of any loss incurred by the company during the year in which such scheme was entered into or such change was effected, or in respect of any loss or balance of loss which would otherwise fall to be carried forward into that year or from that year into subsequent years;

(*b*) the provisions of the second proviso to article 14(1)(*f*) shall not operate so as to allow any deductions to which the company may otherwise be entitled during the year in which such scheme was entered into or such change was effected, in respect of allowances contemplated under the provisions of sub-article (1)(*f*) and (*j*) of that article, or in respect of such deductions or of the balance of such deductions which may otherwise fall to be carried forward from that year into subsequent years;

(*c*) the provisions of article 24 shall be applied as though the provisions of the preceding paragraphs of this sub-article had not taken effect.

(5) In this article -

"child" includes:

(*a*) a stepchild, or an adopted child, or an illegitimate child of the individual or of the individual's spouse; or

(*b*) a child orphan of or abandoned by either of the parents and living with the individual or the individual's spouse;

"scheme" includes any disposition, agreement, arrangement, trust, grant, covenant, transfer of assets, increase in the share capital of a company and alienation of property, whatsoever, irrespectively of the date on which such scheme was made, entered into or set up.

Advance Revenue Rulings. *Added by: XVII. 1994.20. Amended by: II. 2007.15.*

52. (1) The Commissioner shall, on the application of a company which is a party to any transaction, notify his ruling that the provisions of article 51 shall not apply to that transaction provided that the Commissioner is satisfied that the transaction is to be effected for *bona fide* commercial reasons.

(2) The Commissioner shall, on the application of any person, notify his ruling that the provisions of paragraph (*f*) of the definition of "participating holding" as defined in article 2 in respect of a participating holding will apply to a particular shareholding or to a shareholding which is to be acquired by the applicant.

(3) The Commissioner shall, on the application of any person which is a company, notify his ruling on the tax treatment of any transaction which concerns any financial instrument or other security.

(4) The Commissioner shall, on the application of any person, notify his ruling on the tax treatment of any transaction which involves international business, provided that the determination of what constitutes international business for the purposes of this sub-article shall be at the discretion of the Commissioner.

(5) The Commissioner shall, on the application of any person, notify his ruling as to whether a company qualifies as an international trading company:

Provided that no such ruling shall be notified in respect of 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 further that companies registered in Malta between the 18 April 2006 and 31 December 2006 shall only be entitled to apply for a ruling in terms of this subarticle by not later than 30 June 2007.

(5A) The Commissioner shall, on the application of any person, notify his ruling that a company is not precluded from being a company to which article 48(4A)(*b*) of the Income Tax Management Act refers to as a consequence of paragraph (ii) thereof: Cap. 372.

Provided that where the Commissioner has notified his ruling as aforesaid, such ruling shall only remain binding and valid

as long as such company together with the filing of its income tax return also submits the following documents:

(*a*) a declaration, signed by all the directors of the company or by the company secretary where such declaration is approved by the board of directors of the company, confirming that throughout the relevant accounting period the company's activities consisted solely of the activities referred to in the company's application for the said ruling. Where the declaration is signed by the company secretary it shall also state:

(i) whether all the directors of the company were present at the meeting approving the declaration and, if not all the directors were present, whether the meeting was properly convened as required by the company's memorandum and articles;

(ii) whether the declaration was unanimously approved by all the directors present at the meeting and, if approval was not unanimous, the number of votes against and the number of votes for the motion; and

(*b*) a declaration, signed by the auditor of the company for the accounting period in question, confirming that, to the best of his knowledge and belief, the declaration referred to in paragraph (*a*) is correct.

(6) The notification of a ruling specified in this article may be given in advance of any transaction in respect of which an application for a ruling is made.

(7) (*a*) All applications under this article shall be made in writing and shall contain all material particulars of the transactions to be effected.

(*b*) Where the Commissioner requires further particulars for the purposes of enabling him to make a decision on an application under this article, the Commissioner shall, within thirty days of the receipt of the application, or of the receipt of any further particulars previously required under this paragraph, by written notice, require the applicant to furnish such further particulars, and if any such notice is not complied with within thirty days, or such longer period as the Commissioner may allow, the Commissioner need not proceed further with the application.

(*c*) The Commissioner shall notify his ruling to the applicant within thirty days of receiving the application or, if he gives a notice under paragraph (*b*), within thirty days after the notice has been complied with.

(*d*) If any particulars furnished under this article do not fully and accurately disclose all facts and considerations material for the ruling of the

Commissioner, any resulting ruling shall be void.

(8) (*a*) Subject to the provisions of sub-article (7)(*d*), a ruling by the Commissioner will be and shall remain binding on the Commissioner for a period of two years from the time of any relevant change in statutory provisions subsequent to such ruling, or for a period of five years from the time of such ruling, whichever is the lesser.

(*b*) A ruling by the Commissioner may, at the option of the applicant, be renewed for a further period of five years. An application for renewal shall be submitted in writing to the Commissioner, stating whether or not there have been any material changes to the facts and considerations contained in the original application and the nature of any such changes. Such renewal shall not be unreasonably withheld by the Commissioner.

(*c*) Notwithstanding the provisions of the preceding paragraphs of this subarticle no ruling pursuant to subarticle (5) including any renewal of such ruling shall be effective on or after the 1 January 2011.

Rules in respect of finance leasing. *Added by: XI. 2000.7.*

52A. The Minister responsible for finance may make rules for carrying out the provisions of the Income Tax Acts with respect to finance leasing arrangements generally, and may in particular by such rules provide for the way in which deductions incurred in the production of the income shall be allowed with respect to the lessor and the lessee as well as provide the manner and extent to which, if any, losses with respect to any finance leasing arrangement may be set off against gains arising from any other source of income.

E.U Directives and Regulations. *Added by: II. 2004.13.*

52B. (1) The Minister responsible for Finance may by regulations under this article make provision implementing and giving effect to any Directive of the European Union (hereinafter in this article referred to as "E.U. Directive") relating to any matter which affects the operation of the Income Tax Acts or to enable the better operation of any regulation of the European Union (hereinafter in this article referred to as "E.U. Regulations") and may by such regulations provide anything that may be required to be provided for by such E.U. Directive or E.U. Regulation.

(2) Any regulations made under this article shall make reference to the relevant E.U. Directive or E.U. Regulation and shall have effect if in conformity therewith notwithstanding anything to the contrary contained in the Income Tax Acts or any other enactment relating to this matter.

PART VI

PERSONAL DEDUCTIONS

Resident individual.
Amended by: VI.1953.3; V.1964.2; VIII.1969.6; XXXV.1972.6; X.1973.4; XLIX.1974.6; XLII.1975.7; XXII.1976.4; XXIV.1976.4; XXVI.1977.11; XXVIII.1978.13; XXI.1980.7; IX.1981.6; XL.1981.3; IX.1983.7; XIII.1983.5; XIV.1984.5; VIII.1987.5; XXXI.1988.5. Substituted by: XXVI.1990.11. Amended by: XVIII.1993.6. Renumbered by: XVII. 1994.2. Amended by: XVII.1994.21.

53. *Repealed by: XX.1996.15.*

Non-resident allowance.
Amended by: XV.1958.2; XXV.1960.8; XXV. 1962.2,4; L.N. 4 of 1963; L.N. 46 of 1965. Renumbered by: XVII. 1994.2.

54. *Repealed by: XX.1996.15.*

Claims under this Part.
Amended by: VIII.1969.7. Substituted by: XXVI.1977.12. Amended by: XXVI. 1990.12. Renumbered by: XVII. 1994.2. Amended by: XVII. 1994.22.

55. *Repealed by: XX.1996.15.*

PART VII

RATE OF TAX

Normal rate of tax on individuals and certain bodies of persons.
Amended by: V. 1958.6; XVI. 1959.2; XXIV. 1961.3; XXV. 1962.5; XIV. 1963.3; V. 1964.3; VIII. 1969.8; XXVIII. 1972.2; X. 1973.5; XLII. 1975.8; XXII. 1976.4; XXIV. 1976.5; XXVI. 1977.13; XXVIII. 1978.14; IX. 1981.7; XL. 1981.4; XIII. 1983.4,5; XIV. 1984.6; VIII. 1987.7; XXXI. 1988.6. Substituted by: XIX. 1989.13; XXVI. 1990.13. Renumbered by: XVII. 1994.2. Amended by: XVII. 1994.23; XXII. 1995.5; XX. 1996.16; V. 1998.8; IX. 1999.14; XI. 2000.8; IV. 2001.35; II. 2002.53; II. 2003.22 III. 2004.160; XIII. 2004.54; II. 2005.11; II. 2006.9; II. 2007.26; IV. 2007.15; XXXII. 2007.36; L.N. 409 of 2007; II. 2009.14; I. 2010.27; IV. 2011.20; XVI. 2011.57; V. 2012.22; L.N. 218 of 2012; III. 2013.26; XII. 2014.25; XIII. 2015.54; XV. 2016.20 XVI. 2017.21.

56. (1) Saving the other provisions of this article, the tax upon the chargeable income of every person shall be determined as follows:

(*a*) in the case of a married couple resident in Malta in the year immediately preceding the year of assessment and to whom article 49 applies saving where the responsible spouse has opted for a separate computation for the purposes of article 50 -

(i) Where the chargeable income does not exceed €12,700 the tax is to be determined by multiplying the chargeable income by 0%;

(ii) Where the chargeable income exceeds €12,700 but is less than €21,201 the tax is to be determined by multiplying the chargeable income by 15% and then subtracting €1,905 from the result;

(iii) Where the chargeable income exceeds €21,200 but is less than €28,701 the tax is to be determined by multiplying the chargeable income by 25% and then subtracting €4,025 from the result;

(iv) Where the chargeable income exceeds €28,700 but is less than €60,001 the tax is to be determined by multiplying the chargeable income by 25% and then subtracting €3,905 from the result;

(v) Where the chargeable income exceeds €60,000 the tax is to be determined by multiplying the chargeable income by 35% and then subtracting €9,905 from the result:

Provided that in the case of an individual who is a national of a European Union or European Economic Area member state, such individual may qualify for the rates specified in this paragraph even where his or her spouse is not resident in Malta if the other conditions mentioned in this paragraph are satisfied and the Commissioner is satisfied that at least 90% of the couple's world-wide income is derived from Malta;

(*b*) in the case of any other individual resident in Malta including each spouse where the responsible spouse has opted for a separate computation for the purposes of article 50 -

(i) Where the chargeable income does not exceed €9,100 the tax is to be determined by multiplying the chargeable income by 0%;

(ii) Where the chargeable income exceeds €9,100 but is less than €14,501 the tax is to be

determined by multiplying the chargeable income by 15% and then subtracting €1,365 from the result;

(iii) Where the chargeable income exceeds €14,500 but is less than €19,501 the tax is to be determined by multiplying the chargeable income by 25% and then subtracting €2,815 from the result;

(iv) Where the chargeable income exceeds €19,500 but is less than €60,001 the tax is to be determined by multiplying the chargeable income by 25% and then subtracting €2,725 from the result;

(v) Where the chargeable income exceeds €60,000 the tax is to be determined by multiplying the chargeable income by 35% and then subtracting €8,725 from the result:

Provided that:

(*a*) notwithstanding the other provisions of this paragraph where an individual was unmarried or a widow or a widower, or was a spouse separated *de jure* or *de facto*, or was divorced, the rates applicable to the chargeable income of such individual for the year of assessment 2000 and for any year of assessment thereafter shall, subject to the provisions of paragraph (*b*) of this proviso, be those laid down in paragraph (*a*);

(*b*) paragraph (*a*) of this proviso applies where the said individual, in the year preceding the year of assessment:

(i) maintained under his or her custody a child who was not over 16 years of age or, if over that age, was receiving full-time instruction at any university, college or other educational establishment, or was serving an apprenticeship with a view to qualifying in a trade or profession, or was incapacitated by infirmity from maintaining himself or herself, and who, in any case, was not in receipt of income, in his or her own right, in excess of €2,400;

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(ii) where a children's allowance is payable in respect of that child under the Social Security Act, was recognised by the Director (Social Security) as the beneficiary of the children's allowance payable in respect of the said child;

(iii) was not in receipt of any financial assistance in respect of the maintenance of the said child from the other parent of the said child;

(iv) was not living or residing at the same house with the other parent of the said child:

Provided further that where, in the year preceding the

year of assessment, a parent maintained under his or her custody a child, or paid maintenance in respect of his or her child as provided in article 12(1)(*t*), and such child was not over 18 years of age (or not over 23 years if receiving full-time instruction at any university, college or other educational establishment) and not gainfully occupied, or if gainfully occupied did not earn income in excess of €2,400, then the said parent shall be entitled to be charged to tax as follows:

(i) Where the chargeable income does not exceed €10,500 the tax is to be determined by multiplying the chargeable income by 0%;

(ii) Where the chargeable income exceeds €10,500 but is less than €15,801 the tax is to be determined by multiplying the chargeable income by 15% and then subtracting €1,575 from the result;

(iii) Where the chargeable income exceeds €15,800 but is less than €21,201 the tax is to be determined by multiplying the chargeable income by 25% and then subtracting €3,155 from the result;

(iv) Where the chargeable income exceeds €21,200 but is less than €60,001 the tax is to be determined by multiplying the chargeable income by 25% and then subtracting €3,050 from the result;

(v) Where the chargeable income exceeds €60,000 the tax is to be determined by multiplying the chargeable income by 35% and then subtracting €9,050 from the result;

(*c*) in the case of any individual who is not resident in Malta during the year immediately preceding the year of assessment -

For every euro of the first €700..... 0c
For every euro of the next €2,400..... 20c
For every euro of the next €4,700..... 30c
For every euro of the remainder 35c:

Provided that -

(i) in the case of an individual who is a national of a European Union or European Economic Area Member State (hereinafter "EU/EEA individual"), where the Commissioner is satisfied that at least 90% of the said individual's worldwide income is derived from Malta, the rates specified in paragraph (*b*) of this sub-article shall apply;

(ii) the EU/EEA individual may alternatively qualify for the rates specified in paragraph (*a*) of this sub-article even where his or her spouse is not resident in Malta if the other conditions

mentioned in paragraph (*a*) are satisfied and the Commissioner is satisfied that at least 90% of the couple's worldwide income is derived from Malta;

(iii) where the rates specified in paragraphs (*a*) or (*b*) are applicable, the provisions of the Income Tax Acts that are applicable with regards to exemptions, deductions, credits and refunds shall be the same as those applicable to persons resident in Malta;

(iv) in the case of an EU/EEA individual who does not qualify for the treatment under sub-paragraphs (i) to (iii) of this proviso, the tax resulting after applying the rates under this paragraph shall not be higher than the amount that results after dividing the income charged to tax at the rates under this paragraph by the individual's worldwide income and multiplying the result thereof by the amount of tax that would result by charging the said individual's worldwide income at the rates under paragraph (*a*) or (*b*), as applicable;

(*d*) in the case of any other person -

For every euro of the first €2,400 ..... 15c
For every euro of the next €2,400..... 20c
For every euro of the next €3,500..... 30c
For every euro of the remainder ..... 35c.

(2) Notwithstanding the provisions of sub-article (1), the tax upon the chargeable income of individuals referred to in the said sub-article shall be charged at the following special rates:

(*a*) In the case of an individual born outside Malta who was resident in Malta in the year immediately preceding the year of assessment and who proves to the satisfaction of the Commissioner that he has received in Malta at one or more times during the year immediately preceding the year of assessment an amount of income of not less than one thousand and eight hundred and seventy euro (1,870) arising outside Malta and chargeable to tax under the provisions of this Act -

(i) being a married individual to whom article 49 applies -

For every euro of the first €5,900 ..... 0c
For every euro of the remainder..... 15c;

(ii) being any other such individual -

For every euro of the first €4,200 ..... 0c
For every euro of the remainder 15c:

Provided that subject to the provisions in the next following paragraph, the rates laid down in sub-paragraphs (i) and (ii) hereof will not apply if the individual was domiciled in Malta or ordinarily

resident in Malta before the first day of January, 1958.

(*b*) The Minister responsible for finance may in his discretion authorise the application of paragraph (*a*) in regard to any individual born outside Malta, notwithstanding that he was domiciled and/or ordinarily resident in Malta before the first day of January, 1958, if the Minister is satisfied that the said individual was absent from Malta in the period between the said date and the thirty-first day of December, 1963, saving occasional visits.

(*c*) In the case of an individual born in Malta who was resident in Malta in the year immediately preceding the year of assessment and who proves to the satisfaction of the Commissioner that he has actually resided outside Malta for an aggregate period of not less than twenty years after the first day of January, 1938 and that he has received in Malta at one or more times during the year immediately preceding the year of assessment an amount of income of not less than one thousand and two hundred euro (1,200) arising outside Malta and chargeable to tax under the provisions of this Act, the rates laid down under paragraph (*a*)(i) or (ii) hereof, as the case may be, shall apply:

Provided that -

(i) no such rates shall apply unless the Commissioner is satisfied that the individual was ordinarily resident and domiciled in Malta in the year immediately preceding the year of assessment;

(ii) in computing the said aggregate period of twenty years there shall be excluded all calendar years during which the individual was ordinarily resident in Malta, and all periods prior to a date which precedes by thirty years the first day of the year of assessment in which the individual first satisfies all the other conditions stipulated in this sub-article.

(*d*) In paragraphs (*a*), (*b*) and (*c*) -

"individual born outside Malta" means an individual not born in Malta whose parents were not domiciled in Malta or not ordinarily resident in Malta on the date of his birth or at any time during the ten years previous to such date;

"received in Malta" means the excess of the amount of income arising outside Malta and received in Malta over any sum transferred out of Malta.

(*e*) The rates mentioned in paragraphs (*a*), (*b*) and (*c*) shall apply only to any individual who was entitled to a further personal deduction of one thousand and one hundred and sixty euro (1,160) in any year of

assessment up to the year of assessment 1972, and, in the event of his demise, to the surviving spouse.

(*f*) Notwithstanding the provisions of article 49 the responsible spouse shall for the purpose of this article be the spouse in whose name the residence permit has been issued.

(3) Nothing in sub-article (2) shall in any way be considered as overriding the provisions of sub-article (13).

(4) The tax shall be charged at the rate of twenty cents (0.20) on every euro of the chargeable income of -

(*a*) every entity to which article 30 applies; and

(*b*) any foundation, bequest, trust, institution, or other organization or body of persons the income whereof is specifically due to be wholly applied in providing income to members of the clergy:

Provided that where the Commissioner is satisfied that any part of such income has in fact been so applied in respect of members of the clergy resident in Malta or of ecclesiastical communities so resident, such part of the said income shall be exempt from the tax in the hands of the foundation, bequest, trust, institution, or other organization or body of persons aforesaid, even where such foundation, bequest, trust, institution or other organization or body of persons is one to which article 30(2) applies.

(5) Notwithstanding the provisions of sub-article (3), no tax charged under the provisions of that sub-article shall be deemed to be part of any tax available for set-off for the purpose of collection in accordance with article 60.

(6) The tax shall be charged at the rate of thirty-five cents (0.35) on every euro of the chargeable income of every -

(*a*) company;

(*b*) body corporate established by law; and

(*c*) undertaking required by article 30(7)(*d*) to be dealt with as a separate body of persons.

(7) *Deleted by Act II. 2002.53.*

(8) Notwithstanding the provisions of this article, a person in receipt of a dividend distributed by an international trading company out of profits derived by the company while it was an international trading company, shall be charged to tax in respect of such dividend at a rate of twenty-seven and a half per cent (27.5%) of such amount as if such dividend constitutes separate chargeable income, where such person is either:

(*a*) not resident in Malta and who is, where applicable, not owned and controlled, directly or indirectly by, nor acts on behalf of, an individual or individuals ordinarily resident and domiciled in Malta; or

(*b*) 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, nor acts on behalf of, an individual or individuals ordinarily resident and domiciled in Malta:

Provided that 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:

(i) the provisions of this subarticle 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, and

(ii) the conditions set out in paragraphs (*a*) and (*b*) above shall not apply in respect of such dividends paid to any recipient shareholder who is registered for the purpose of article 48(4) or article 48(4A) of the Income Tax Management Act. Cap. 372.

(9) Saving the provisions of sub-article (12), the tax chargeable under the other provisions of this article shall in no case exceed the rate of - Maximum rate of tax in certain cases.

(*a*) ten cents (0.10) on every euro of the chargeable income of every trade union; and

(*b*) thirty cents (0.30) on every euro of the chargeable income of every club or other similar non-proprietary institution if the Commissioner is satisfied that no part of the income is distributable to, or is otherwise available for the personal benefit of any proprietor or member thereof in his capacity as such; and

(*c*) thirty cents (0.30) on every euro of the chargeable income in respect of a transfer of property in the circumstances referred to in article 31C(1), provided that such income shall be deemed to constitute the last part of the person's total income for the year.

(10) Notwithstanding the provisions of subarticles (1) and (2) - Special rates of tax and minimum tax liability.

(*a*) in the case of an individual who has been granted a residence permit under article 7 of the Immigration Act before the first day of May, 2004 or who satisfies the conditions that may be prescribed by the Minister, the tax upon the chargeable income, other than income mentioned in paragraph (*b*) shall be charged - Cap. 217.

(i) in the case of an individual who has been granted such residence permit on or after the fourteenth day of November, 1972, but before the first day of January, 1988, at the rates laid down in sub-paragraph (i) or (ii), as the case may be, of subarticle (2):

Provided that the minimum tax payable by

such individual in respect of any year of assessment shall be two thousand and three hundred and twenty- five euro (2,325);

(ii) in the case of an individual who has been granted such residence permit on or after the first day of January, 1988 but before the first day of May, 2004 or who satisfies the conditions that may be prescribed by the Minister, at 15 cents (0.15) on every euro:

Provided that the minimum amount of income which shall be chargeable to tax in respect of any year of assessment shall be deemed to be twenty-seven thousand and nine hundred and fifty euro (27,950) and the resulting tax thereon, after taking into account any double taxation relief to which such individual may be entitled, shall not be less than the tax which would result from applying the said rate on the deemed minimum chargeable income;

(*b*) income derived from Malta and chargeable to tax under articles 4 or 5, shall be deemed to constitute chargeable income to be taxed separately at the rates laid down in subarticle (1)(*a*) or (*b*) and such income shall be deemed to constitute the last part of the individual's total income for the relative year;

(*c*) Where income has been deemed to be derived directly under the provisions of article 27D(3)(*b*) by an individual who has been granted a residence permit under article 7 of the Immigration Act, such income shall be charged to tax at the rate of 15 cents (0.15) on every euro as if such income constitutes separate chargeable income.

Cap. 217.

(11) (*a*) (i) The tax upon the chargeable income other than income mentioned in sub-paragraph (ii) of this paragraph, of any individual born in Malta who, after emigrating has returned as a resident in Malta after the first day of January 1988, shall be charged at the rates laid down in sub-article (1), or if he so elects, and until such election is not renounced by him, at the rates laid down in sub-article (2)(i) or (ii) thereof. The said election may not be availed of again once it is renounced:

Provided that the provisions of this sub-article shall only apply where such an individual proves to the satisfaction of the Commissioner that either:

(*a*) he had actually resided outside Malta for an aggregate period of 20 years falling within a period of 25 years preceding the first day of the year of assessment in which the individual returns as resident in Malta after the first day of January 1988, and that he has received in Malta at one or more times during the year immediately preceding the year of assessment an amount of income of not less than fourteen thousand

euro (14,000) arising outside the island and chargeable to tax under the provisions of this Act, provided that in the case of a married person the said amount of income of fourteen thousand euro (14,000) shall be increased by two thousand and four hundred euro (2,400) in respect of every dependant relative including a spouse; or

(*b*) he is not a Maltese national and does not satisfy the period of residence outside Malta referred to in paragraph (*a*) of this proviso, and that he satisfies conditions similar to those established by the Minister responsible for immigration under article 7 of the Immigration Act, for the issue of a residence permit as existing at the time such an individual returns to Malta: Cap. 217.

Provided further that the minimum liability of any such individual for any year of assessment in which the individual elects to pay at the rates laid down in sub-article (2)(*a*)(i) or (ii) hereof shall, after taking into account any double taxation relief to which such individual may be entitled, be two thousand and three hundred and twenty-five euro (2,325).

(ii) In the case of income derived from Malta and chargeable to tax under articles 4 or 5, such income shall be deemed to constitute chargeable income to be taxed separately at the rates laid down in sub-article (1)(*a*) or (*b*) and such income shall be deemed to constitute the last part of the individual's total income for the relative year.

(*b*) In the event of the demise of any individual to which paragraph (*a*) applies and who is charged to tax at the rates laid down in sub-article (2)(*a*)(i) hereof, the surviving spouse shall be entitled to elect to be charged to tax in the same manner and under the same conditions as the deceased individual and charged at the rates laid down in sub-article (2)(*a*)(ii) hereof, and until such election is not renounced, the surviving spouse shall be considered to have satisfied in his own right the qualifying period of absence from Malta stipulated therein.

(12) Any person who -

(*a*) makes default in furnishing a return in respect of any year of assessment preceding the year of assessment 1999, shall be chargeable for such year of assessment with a tax of treble the amount of tax for which he is liable for that year under the other sub-articles of this article or with such lesser amount of tax as may be determined by the Commissioner but which shall in no case be less than twenty-three euro (23) or one-half per cent of the said amount of tax for which he is liable whichever is the greater; or

(*b*) omits from his return for any year of assessment preceding the year of assessment 1999 any amount which should have been included therein, shall be

chargeable with an amount of tax equal to twice the difference between the tax as calculated in respect of the income returned by him and the tax properly chargeable in respect of his income as determined after including the amounts omitted,

and shall be required to pay such amount of tax in addition to the tax properly chargeable in respect of his true income; or

(*c*) makes default in furnishing a return in respect of the year of assessment 1999 or any subsequent year of assessment or omits from his return for the year of assessment 1999 or any subsequent year of assessment any amount which should have been included therein, shall be chargeable for such year of assessment with additional tax in the amount or amounts specified in the Schedule to this Act, and shall be required to pay such amount of tax in addition to the tax properly chargeable on the total income for that year.

(*d*) Where a person has taken action under a Mutual Agreement Procedure in terms of an arrangement referred to in article 76 including Convention 90/436/EEC of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, any additional tax chargeable in terms of paragraph (*c*) shall not apply for the period between the date when the said action under the Mutual Agreement Procedure is initiated and the date when the issue is concluded under the said procedure:

Provided that if the Commissioner is satisfied that the default in rendering the return or any such omission as referred to in paragraphs (*a*) and (*b*) was not due to any fraud, art, contrivance or gross or wilful neglect, he shall remit the whole of the treble or additional tax and in any other case may remit such part or all of the said treble or additional tax specified in the said paragraphs as he may think fit:

Provided further that in the case of a body of persons the Commissioner shall not reduce any tax chargeable under paragraph (*a*) to less than two euro (2) or ten per cent of the total tax chargeable under the other sub-articles of this article for the relative year of assessment, whichever is the greater:

Cap. 372.

Where the Commissioner has sent to any person a notice referred to in article 12(3) of the Income Tax Management Act, such person shall be required to pay, in respect of each such notice, an additional tax as may be specified in such notice for the year of assessment in respect of which the default has occurred but which shall in no case exceed twenty-three euro (23). The Commissioner may only remit this additional tax where he is satisfied that owing to absence from Malta, sickness or other reasonable cause such person was prevented from submitting a return in accordance with the provisions of article 10 or 11 of the Income Tax Management Act:

Provided further that:

(i) the powers conferred upon the Commissioner by this sub-article shall be in addition to any right conferred upon him to commence proceedings in respect of an offence under Part IX of the Income Tax Management Act; Cap. 372.

(ii) any person who in determining his total income and the tax liability thereon, as disclosed by his return, deducts or sets off any amount, the deduction or set-off whereof is not allowed under the provisions of the Income Tax Acts, or shows as an expenditure or loss any amount which he has not in fact expended or lost, or provides or withholds information the result of which is a reduction of the amount of tax payable by him or an increase in the amount of tax repayable to him, shall be deemed for the purposes of this subarticle to have made an omission from his return;

(iii) any tax charged under the provisions of this sub-article shall be deemed not to be part of any tax paid or payable for the purposes of the preceding sub-articles of this article, or of articles 59, 76 and 89, or of articles 51 and 52 of the Income Tax Management Act; Cap. 372.

(iv) where the default or omission has been made in connection with a return required by the provisions of the Income Tax Acts to be furnished by another person on behalf of a company, such company shall be liable for the additional tax chargeable under the provisions of this sub-article.

(13) (*a*) The tax upon the chargeable income of any person referred to as a Contractor in article 23 shall be levied at the rate of 35 cents (€0.35) on every euro of the chargeable income in so far as such income is to be computed in accordance with the provisions of the said article 23(1) and (2). Other income arising to a Contractor shall be charged at the appropriate rate or rates.

(*b*) The rate at which tax shall be withheld by a Contractor from payments made to a sub-contractor in accordance with the provisions of article 23(5) shall be at 10 cents (€0.10) of every euro of the payments made as aforesaid.

(14) (*Deleted by Act IV. 2011.20*).

(15) (*Deleted by Act IV. 2011.20*)).

(16) (*Deleted by Act IV. 2011.20*)).

(17) Where, during the year immediately preceding any year of assessment, any individual derives income subject to tax under article 4(1)(*b*), being emoluments payable under a contract of

employment requiring the performance of work or of duties mainly outside Malta, excluding however any service on board a ship, aircraft or road vehicle owned, chartered or leased by a Maltese company and any service for the Government of Malta, and received in respect of work or duties carried out outside Malta, or in respect of any period spent in Malta in connection with such work or duties, or on leave during the carrying out of such work or duties, notwithstanding anything to the contrary contained in this Act, and unless such individual opts to have the said income charged to tax at the rates laid down in subarticle (1)(*a*) or (1)(*b*), such income shall be deemed to constitute the first part of that individual's total income for that year and shall be charged to tax at 15 cents (0.15) on every euro.

(18) The tax on the income referred to in article 4(6) shall be at the rate of ten cents (0.10) on every euro thereof, and, notwithstanding anything to the contrary contained in this Act, no set-off or refund shall be granted to any person in respect of the tax so charged.

(18A) Notwithstanding any other provisions of this article, where a non-resident derives income from entertainment activities exercised in Malta for a period not exceeding fifteen days in the year preceding a year of assessment, the tax shall be charged at the rate of ten cents (0.10) on every euro of the gross payment receivable in respect of the said activities, and no set-off or refund shall be granted to any person in respect of the tax so charged:

Provided that where the said activities are exercised in Malta for a period exceeding fifteen days, the non-resident person shall declare his income from entertainment activities in a return made in accordance with the Income Tax Acts and he will be charged on such income at the rates laid down in subarticle (1)(*c*), and in any such case any tax paid on such income in accordance with this article shall be available as a credit against that person's tax liability and where any tax so paid is in excess of such liability it shall be refunded.

(19) Notwithstanding the other provisions of this article, but without prejudice to those of sub-article (12), the Minister responsible for finance may, in the interests of economic expediency, direct by notice published in the Gazette, that:

(*a*) in the case of small assessments charging tax not exceeding an amount specified in the said notice, the assessment shall not be raised; and

(*b*) in determining the chargeable income and the amount of tax due by any person and in allowing any set-offs, the Commissioner may round up or down any amount to the nearest euro.

(20) (*a*) Where a member of a company resident in Malta is a resident of a State or territory with which Malta has made an arrangement under the provisions of this Act for the grant of relief from double taxation, and under that arrangement a dividend, or part thereof,

distributed by such a company is subject to income tax in Malta at a rate lower than that chargeable on the income out of which the dividend is distributed, such company shall be entitled to require that the gains or profits, or part thereof, derived by it from its trade or business for the year of assessment 2001 and for subsequent years of assessment and which are distributable by way of dividend subject to tax at a lower rate as aforesaid shall, notwithstanding that the dividend, or part thereof has not been distributed, be taxed at the said reduced rate and not at the rate properly chargeable under this Act on the gains or profits of the company:

Provided that the provisions of this paragraph shall only be applicable with respect to companies which do not sell by retail and a person shall be deemed not to sell by retail if its sales of goods or services are made to:

(i) a person who carries on a trade, business, profession or vocation and the goods or services so sold to such person are either resold by such person or are used by such person for the purpose of his trade, business, profession or vocation; or

(ii) a person, other than an individual, who uses those goods for the purposes of an undertaking carried on by such person:

Provided further that where a company has opted to be taxed at a reduced rate of income tax as provided by this paragraph, no person in receipt of a dividend paid by such company out of profits which have been subject to tax at such reduced rate of tax shall be entitled to claim a refund under the provisions of the Income Tax Acts in respect of that dividend other than a refund in terms of article 48(4A) of the Income Tax Management Act: Cap. 372.

Provided also that where a company has opted to be taxed at a reduced rate of income tax as provided by this paragraph and such company distributes gains or profits derived by it from its trade or business which have been subject to tax at the rate properly chargeable under this Act to the member resident in the said state or territory, such member shall not be entitled to claim a refund under the provisions of the Income Tax Acts in respect of any dividend paid by such company out of the said gains or profits:

Provided also that where a company has opted to be taxed at a reduced rate of income tax as provided by this paragraph and such company distributes gains or profits derived by it from its trade or business which have been subject to tax at such reduced rate of tax to any person not entitled to a reduced rate of tax under

any arrangement as aforesaid, such gains or profits shall be taxed at a rate being the difference between the rate referred to in article 56(6) and the rate actually applied and such tax shall be tax payable by the company in the year of assessment in which such profits are distributed.

(*b*) Where the provisions of paragraph (*a*) have been applied and subsequently there is a change in the shareholding of the company in consequence of which the new shareholders will not be entitled to a reduced rate of tax under any arrangement as aforesaid or if so entitled the rate applicable in such arrangement is more than the rate applicable to the outgoing shareholder, then any profits which have been subject to tax at such lower rate as aforesaid and which have not been distributed at the end of the last financial year of the company preceding the date of change in shareholding less any of such profits distributed to the outgoing shareholder in the current financial year shall be taxed at a rate being the difference between the rate of tax which would be applicable had the new shareholder held the shares when such profits were earned, and the rate actually applied, and such tax shall be a tax payable by the company in the year of assessment in which such profits are distributed:

Provided that where a member of a company is also a company incorporated under Maltese law, the provisions of this article shall apply to the same extent as if the members of the latter company had owned the shares directly in the company.

(*c*) The provisions of this subarticle shall apply where a member of a company resident in Malta is a resident of a State or territory with which Malta has made an arrangement under the provisions of this Act for the grant of relief from double taxation, and under that arrangement the said company is entitled to require that the gains or profits, or part thereof, derived by it and which are distributable by way of dividend, be subject to tax at a lower rate as aforesaid, notwithstanding that the dividend, or part thereof has not been distributed.

(21) Where, during the year immediately preceding the year of assessment 2011 or any subsequent year of assessment, an individual derives income subject to tax under article 4(1)(*b*), being emoluments payable under a qualifying contract of employment, and received in respect of work or duties carried out in Malta, or in respect of any period spent outside Malta in connection with such work or duties, or on leave during the carrying out of such work or duties, then, notwithstanding anything to the contrary contained in this Act, that individual may opt to have the said income charged to tax at the rate of 15 cents on every euro:

Provided that:

(*a*) where the said option is exercised, the income that is charged to tax at the said rate shall be deemed to constitute the first part of that individual's total income for the year of assessment in question and the tax on the remaining income shall be calculated at the rate or rates that would have been applicable to that remaining income had the option not been exercised;

(*b*) where the said option is exercised, the minimum amount of income which shall be chargeable to tax at the said rate in respect of the year of assessment in question shall be deemed to be such amount as may be prescribed and the tax thereon shall not be less than the tax which results from applying the said rate on the deemed minimum amount;

(*c*) the applicability of this subarticle shall be subject to such conditions and restrictions as may be prescribed, including:

(i) the conditions under which a contract of employment is to be deemed as a qualifying contract of employment for the purposes of this subarticle;

(ii) the maximum period or number of years for which, the said option may be exercised;

(iii) the procedure to be used for the exercise of the said option;

(iv) such other conditions and restrictions as the Minister may deem fit.

(22) *Deleted by: XVI of 2017.*

(23) Notwithstanding the provisions of sub-articles (1) and (2) in the case of an individual who, after 1 January 2011, has been granted a special tax status under such terms and conditions as the Minister may prescribe, the tax upon the chargeable income of that individual, other than income mentioned in sub-article (10)(*b*) shall be charged at the rate of fifteen cents (0.15) or such other rate or rates as the Minister may prescribe and the Minister may prescribe different rates or rates depending on the special tax status applicable to the particular individual: Cap. 345.

Provided that the Minister shall prescribe the minimum tax payable by such individual in respect of any year of assessment.

(24) In the case of an individual or individuals who, after 1 January 2011, has or have been granted a special temporary tax status under such terms and conditions as the Minister may prescribe, the tax upon the chargeable income, other than income mentioned in sub-article (10)(*b*) shall be charged at the rate of fifteen cents (0.15) on every euro thereof:

Provided that the Minister shall prescribe the minimum tax payable by such individual or individuals in respect of any year of assessment.

(25) An individual who is established in a field of excellence

and returns as an ordinary resident in Malta may opt to have his income from employment exercised in Malta charged to tax at the rate of 15 cents on every euro, provided that he has been ordinarily resident in Malta for at least twenty years but has not been ordinarily resident in Malta for the ten consecutive years prior to his return, and subject to such terms and conditions as may be prescribed, including the minimum income chargeable and the number of years over which the benefit may be availed of.

(26) An individual who derives income being emoluments from a full-time or part-time sports activity, either as a registered player or athlete or as a licensed coach shall, unless he opts to have the said income charged to tax at the rates laid down in sub-article (1)(*a*) or (1)(*b*), be charged to tax on all such income at the rate of seven point five cents (€0.075) on every euro.

For the purposes of this sub-article:

"Council" means the Kunsill Malti għall-Isport established by the Sports Act;

"sports activity" refers to a sport recognized by the Council and practised wholly or mainly in Malta;

"registered player or athlete" means a player or athlete registered with a club or team which is a registered member of the national regulatory body for that particular sport and the aforesaid regulatory body is registered or recognized by the Council;

"licensed coach" means a person registered as a coach with a club or team which is a registered member of the national regulatory body for that particular sport and the aforesaid regulatory body is registered or recognized by the Council, and whose license to coach is recognized by the Council.

Personal retirement schemes.

57. (1) An amount which is equal to the lower of:

(*a*) fifteen *per centum* (15%) of the aggregate of any contributions made or premiums paid by a person during the year immediately preceding a year of assessment in respect of membership in any personal retirement schemes as defined in the Special Funds (Regulation) Act or any Act substituting the said Act, or a policy of insurance held with a company authorised to carry on long term business under the Insurance Business Act; and

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(*b*) one hundred and fifty euro (€150) or such other amount as may be prescribed by the Minister from time to time,

is to be allowed as a credit against the income tax chargeable in Malta to any person who is a member of, and makes contributions to, any one or more personal retirement schemes or pays a premium in relation to a policy of insurance in the year immediately preceding the year of assessment, and the amount of the income tax so chargeable shall be reduced by the amount of the credit:

Provided that the credit shall only be allowed in respect of

qualifying schemes or policies of insurance as may be prescribed by the Commissioner and if the details of such person and amounts contributed by him to the personal retirement scheme/s or the premiums paid by him in relation to the policy of insurance in the relevant year are confirmed by a certificate issued by a licence holder in such format and content as determined by the Commissioner.

(2) In the case of a married couple resident in Malta, and irrespective of whether or not the responsible spouse has opted for a separate computation in terms of article 50, each of the spouses may claim the credit referred to in this article.

(3) The credit referred to in this article shall only be available in respect of the income tax chargeable for the year during which the contribution was made by a person to personal retirement scheme/s or the premiums paid by him in relation to the policy of insurance, and such credit may not be carried forward to subsequent years if it is not so utilised.

(4) The income in respect of which a credit is granted under this article shall be deemed to constitute the first part of that person's total income for the relative year of assessment.

(5) No refund of tax may be claimed by a person for an amount which is equal to the credit allowed under this article where such refund would have been otherwise due as a result of the person having availed himself of the credit in terms of this article.

(6) For the purposes of this article, a licence holder shall mean any person, whether a natural person or otherwise, who holds a licence under the Special Funds (Regulation) Act or any Act substituting the said Act, or to carry on long term business under the Insurance Business Act, and is recognised by the Commissioner for the purpose of issuing certificates in terms of this article.

Cap. 450.

Cap. 403.

PART VIII

Added by: XXXVI. 1990.14.

TAX REBATE

57. *Repealed by: XX.1996.17.*

Rebate of tax. *Renumbered by: XVII. 1994.2. Amended by: XVIII.1993.7.*

58. *Repealed by: XX.1996.17.*

Further rebate. *Added by: VIII.1991.3. Amended by: XVIII. 1993.8. Substituted by: I.1994.2. Renumbered by: XVII. 1994.2. mended by: XXII.1995.6.*

PART IX

PERSONS ASSESSABLE

Deduction of tax.
Amended by:
XLI. 1961.2;
VIII. 1969.9;
XXVIII. 1972.3;
XXIV. 1976.6;
XXVI. 1977.14;
XIII. 1983.5;
XXXVI. 1990.15.
Renumbered by:
XVII. 1994.2.
Amended by:
XVII. 1994.24;
V. 1998.8;
IX. 1999.14;
II. 2007.16;
L.N. 409 of 2007;
I. 2010.28;
IV. 2011.21;
XIII. 2015.55.

59.(1)(*a*) Every company registered in Malta, not being a company referred to in paragraph (*b*), shall be entitled to deduct from the amount of any dividend, other than a dividend paid out of distributable profits allocated to the untaxed account, paid to any shareholder, a tax at the rate paid or payable by the company, relief of double taxation being left out of account, on the income out of which such dividend is paid:

Provided that where tax is not paid or payable by the company on the whole income out of which the dividend is paid, the deduction shall be restricted to that portion of the dividend which is paid out of income on which tax is paid or payable by the company.

(*b*) (i) Every collective investment scheme shall be entitled to deduct from the amount of any dividend, other than a dividend paid out of distributable profits allocated to the untaxed account, paid to any shareholder, a tax at the rate paid, payable or suffered by the collective investment scheme, whichever rate is the highest, relief of double taxation being left out of account, on the income out of which such dividend is paid:

Provided that where tax is not paid, payable or suffered by the collective investment scheme on the whole income out of which the dividend is paid, the deduction shall be restricted to that portion of the dividend which is paid out of income on which tax is paid, payable or suffered by the collective investment scheme.

(ii) The provisions of article 31 shall apply to the income of a person arising from a dividend referred to in sub-paragraph (i).

(2) Where in respect of any year of assessment the rate of tax chargeable under article 56 upon the chargeable income of a company is increased and any company constituted under the law in force in Malta or resident in Malta has, before the date of the commencement of the enactment imposing the increased rate of tax, deducted from a dividend paid to a shareholder (hereinafter in this sub-article referred to as "the original dividend") tax at a rate lower than that paid or payable by the company for that year in respect of the income out of which such dividend is paid, the company shall be entitled -

(*a*) on the occasion of the next payment of dividend by the company (hereinafter in this sub-article referred to as "the next dividend"), to make up from that dividend the amount of such under-deduction in addition to making any other deduction which the company is entitled to make from that dividend, irrespective of whether or not the person who is entitled to the next dividend, is the person who was entitled to the original

dividend; or

(*b*) with the written permission of the Commissioner, to recover from the person to whom the original dividend was paid the amount of such under-deduction (which shall be specified in such written permission) as if such amount were a debt due to the company; and in any proceedings for the recovery of such amount, such written permission shall be evidence of such debt, and proof of the Commissioner's signature upon such written permission shall not be required unless the court for special cause directs otherwise.

(3) Where in respect of any year of assessment any company constituted under the law in force in Malta or resident in Malta, not being a company referred to in sub-article (1)(*b*), has deducted from a dividend paid to a shareholder (hereinafter in this sub-article referred to as "the original dividend") tax at a rate higher than that paid or payable by the company for that year in respect of the income out of which such dividend is paid, then, unless the company has paid the amount of such over-deduction in accordance with the provisions of sub-article (4), the company shall, on the occasion of the next payment of dividend by the company (hereinafter in this sub-article referred to as "the next dividend") make good such amount by a reduction of the amount of tax deducted by the company from that dividend, irrespective of whether or not the person who is entitled to the next dividend is the person who was entitled to the original dividend.

(4) Where any such company has, in paying a dividend to a shareholder, made such an over-deduction as is mentioned in sub-article (3), the company shall, within fourteen days from the tax return date relevant to the income out of which such dividend was paid, render an account to the Commissioner of the amount of such over-deduction and the Commissioner may, at any time after such account has been rendered as aforesaid but before such over-deduction has been made good in accordance with the provisions of sub-article (3), by notice in writing served upon the company, require the company to pay such amount to the Commissioner and such amount shall thereupon become a debt due to the Government, payable within one month from the date of service of such notice, and shall be recovered as such.

(5) (*a*) Every company shall upon payment of a dividend, whether tax is deducted therefrom or not, furnish the shareholder with a dividend certificate:

Provided that a dividend certificate in respect of a dividend paid out of profits earned in the accounting period in which the dividend is paid need not be furnished at the time of payment of a dividend but shall be so furnished as soon as practicable after the end of the accounting period in which the dividend is paid and in any such event shall be furnished by not later than the tax return date of the year of assessment relative to that accounting period.

(*b*) The dividend certificate shall be in such form as the Commissioner shall require and shall show, in respect of the dividend distributed to the particular shareholder, the following information:

(i) the gross taxed amount of the distributed profits, in respect of each taxed account, before deduction of any tax chargeable on the company in respect of such distributed profits;

(ii) the total tax chargeable on the company in respect of the distributed profits, showing separately:

(1) the Malta tax payable after all reliefs of double taxation have been given and all tax credits deducted; and

(2) the foreign tax in respect of which relief of double taxation has been given under the double taxation relief, relief in respect of Commonwealth income tax, and unilateral relief provisions; and

(3) the amount which has been set off against Malta tax pursuant to a claim for relief of double taxation under the flat-rate foreign tax credit provisions;

(4) the amount and description of tax credits deducted from the tax chargeable on the company;

(iii) the amount of the distributed profits from each taxed account, after deducting the tax referred to in sub-paragraph (ii) of this paragraph;

(iv) the tax payable on distribution pursuant to articles 62, 67 and 67A which shall be shown separately from the tax referred to in sub-paragraph (ii);

(v) the net amount of the dividend paid to the shareholder;

(vi) where the tax paid or payable by the company on the profits so being distributed is affected by relief of double taxation, the rate, hereinafter in this Act referred to as "the net Malta rate", of the tax paid or payable by the company after taking relief of double taxation into account;

(vii) where the profits being distributed have been exempt from tax and the distribution of such profits by the company is exempt from tax in the hands of the shareholder, a note quoting the relevant law giving such exemption;

(viii) where the profits being distributed by a company (the first company) include a dividend received from another company (the second company), in respect of which the first company is entitled to make a claim for a refund under article 48(4) of the Income Tax Management Act, in respect of the tax paid thereon by the second company, a statement declaring that the first company is entitled to make such a claim in respect of those distributed profits; Cap. 372.

(ix) an analysis of the profits out of which the dividend is paid distinguishing between:

(1) profits which are chargeable to tax in the year of assessment 2007 and previous years of assessments; and

(2) profits which are chargeable to tax in the year of assessment 2008 and subsequent years of assessment showing separately the amount of such profits pertaining to each such year of assessment;

(x) such other information as the Commissioner shall require.

(6) Every company constituted under the law in force in Malta or resident in Malta shall, upon payment of debenture interest or of interest on any other loan advanced to a company for a capital purpose (excluding interest on customer's deposits and current accounts), deduct therefrom tax at the rate of twenty-five cents (0.25) on every euro of such interest where such payment is made to a person other than a company, and at the rate chargeable under article 56(6) on such interest where the payment is made to a company, and shall forthwith render an account to the Commissioner of the amount so deducted and every such amount shall be a debt due from such company to the Government payable within one month from the date of payment of such interest and shall be recoverable as such:

Provided that where the Commissioner gives a certificate in writing that to the best of his belief the total income of a recipient will be less than the minimum liable to income tax or, in the case of a person other than a company, such income will be liable to a rate of income tax less than twenty-five per cent, the company shall, until such certificate is cancelled by the Commissioner, pay the debenture interest or interest on any other loan without deduction or deduct tax at such less rate as the case may be.

(7) Every such company shall upon payment of such interest furnish each person to whom such payment is made with a certificate setting forth the amount of the interest paid to him and the amount of the tax which the company has deducted from such interest.

(8) Any account required to be rendered or any certificate required to be furnished under this article shall be rendered or furnished, as the case may be, by the manager or other principal

officer of the company.

(9) For the purposes of this article and of article 60:

"company" includes a collective investment scheme;

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

"relief of double taxation" means any credit or other relief for foreign tax allowable by virtue of the reliefs stipulated in article 74;

"shareholder" includes any person holding units in a collective investment scheme; and

"tax chargeable on the company" includes tax suffered by a collective investment scheme, whether by deduction or otherwise.

Set-off of tax in certain cases. *Amended by: XLII. 1975.9; XXIV. 1976.7; XXVIII. 1978.15; XIV. 1984.7. Renumbered by: XVII. 1994.2. Amended by: XVII. 1994.25; II. 2003.23.*

60. Any tax which a company had deducted or is entitled to deduct under article 59 from a dividend paid to a shareholder, from debenture interest payable to a debenture holder or from interest on any other loan payable to a creditor, and any tax applicable to the share to which any person is entitled in the income of a body of persons assessed under this Act, shall, when such dividend or interest or share is included in the chargeable income of such shareholder or person, be set off for the purposes of collection against the tax charged on that chargeable income:

Provided that, notwithstanding anything in this article or in the last preceding article but subject to the following proviso, where a company has deducted tax, the amount of tax actually deducted by a company from any dividend paid by the company to a shareholder shall be set off against the tax due from the recipient of such dividend, irrespective of whether in paying the dividend the company has made an under-deduction or an over-deduction or any adjustment of a previous under-deduction or over-deduction of tax, except where a company has recovered the amount of any under-deduction under the provisions of article 59(2)(*b*) in which case a set-off shall be allowed of the amount of tax actually deducted by the company and of the amount of tax recovered by the company under those provisions:

Provided further that no set-off as aforesaid shall be made unless the certificate referred to in article 59(5) or (7) is produced to the Commissioner and unless tax has actually been paid:

Provided also that in no case shall any set-off 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), or under article 27(3) and (4) of the Income Tax Management Act. Cap. 372.

Definitions. *Added by: XVII. 1994.26. Amended by: XIII. 2004.55; II. 2007.27; XII. 2014.26.*

61. For the purposes of articles 62 to 69:

(*a*) a "recipient" shall mean:

(i) a person, other than a company, resident in Malta in the year in which a dividend is received by him or by any person on his behalf; or

(ii) a non-resident person (including a non-resident company) who is owned and controlled by, directly or indirectly, or who acts on behalf of, an individual who is ordinarily resident and domiciled in Malta; or

(iii) a trustee of a trust where the beneficiaries of such trust are persons referred to in subparagraphs (i) and (ii); or

(iv) an EU/EEA individual (and his or her spouse where applicable) in the circumstances envisaged by the first and second provisos to article 56(1)(*c*);

(*b*) an "untaxed dividend" shall mean a dividend paid by a company resident in Malta to the extent that it is paid out of distributable profits allocated to its untaxed account.

Tax on dividend from untaxed account. *Added by: XVII. 1994.26.*

62. (1) Every company shall, on payment of untaxed dividend to a recipient, deduct therefrom tax at a rate of fifteen per cent.

(2) Every amount deducted under sub-article (1) shall be a debt due from such company to the Commissioner payable not later than the fourteenth day following the end of the month in which such dividend was paid and shall be recoverable as such:

Provided that the provisions of this article shall not apply in respect of untaxed dividend payments to persons who are exempt from tax.

Presumption of deduction. *Added by: XVII. 1994.26.*

63. It shall be presumed, so far as the tax liability of the recipient of a dividend is concerned, that a deduction and payment which ought to have been made pursuant to the provisions of article 62 have been made.

Where presumption applies. *Added by: XVII. 1994.26.*

64. Where the presumption referred to in article 63 applies:

(*a*) a recipient of a dividend shall not be obliged to disclose the dividend in any return made pursuant to the provisions of this Act; and

(*b*) subject to the provisions of article 65, no person shall be charged to further tax under this Act in respect of the dividend.

Option for recipient to declare. *Added by: XVII. 1994.26.*

65. A recipient of an untaxed dividend may declare such dividend on his tax return and where a declaration is made as aforesaid any tax (or repayment) due shall be determined as if article 64 did not apply, and any tax withheld pursuant to article 62 shall be credited against the recipient's income tax liability and, where applicable, shall be available for any refund which may be

due in respect of that tax for the relevant year of assessment.

Untaxed dividend paid to non-recipient.
Added by: XVII. 1994.26.

66. Where an untaxed dividend is paid to a person, who is not a recipient as defined under article 61, such dividend shall not be charged to tax under this Act in the hands of such person and where such person is not resident in Malta such person shall not be obliged to disclose the existence of the dividend in any return made pursuant to the provisions of the Income Tax Acts.

Payment of dividend out of taxed account or foreign income account.
Added by: XVII. 1994.26. Amended by: II. 2007.17.

67. (1) Where a company pays a dividend to a person resident in Malta out of profits allocated to immovable property account, the Maltese taxed account or the foreign income account and which profits have suffered tax at a rate of tax which is less than the rate of tax chargeable applicable at the time of the distribution, under article 56(6), only by reason of the fact that a different rate of tax was applicable at the time the profits being distributed were chargeable to tax, the company shall deduct tax at a rate equivalent to the difference between the current rate and that actually suffered as aforesaid on the amount of the dividend before deducting any tax which it has suffered on the profits so being distributed:

Provided that the provisions of this sub-article shall not apply in respect of such dividend payments to persons who are exempt from tax.

(2) Every amount deducted under sub-article (1) shall be a debt due from such company to the Commissioner payable not later than the fourteenth day following the end of the month in which such dividend was paid and shall be recoverable as such.

(3) The provisions of article 63 to 65 shall apply *mutatis mutandis* as they apply to distributions from the untaxed account and references in those articles to article 62 shall be construed as references to sub-article (1).

(4) For the purposes of this article a person resident in Malta shall include a non-resident person (including a non-resident company) who is owned and controlled by, directly or indirectly or who acts on behalf of, an individual who is ordinarily resident and domiciled in Malta.

Profits distributed by a collective investment scheme.
Added by: XVII. 1994.26. Substituted by: II. 2004.14. Amended by: II. 2005.12; II. 2007.18.

67A. (1) Notwithstanding the provisions contained in the definition of "foreign income account" in article 2, but without prejudice to any obligation to allocate profits to the final tax account and the immovable property account, in the case of a collective investment scheme:

(*a*) no profits shall be allocated to the foreign income account; and

(*b*) profits resulting from dividends distributed out of the foreign income account of another company shall be allocated to the Maltese taxed account.

(2) Where a collective investment scheme, which is not constituted as a company, distributes profits to persons resident in Malta, there shall be deducted tax as if, for the purposes of this article, such a collective investment scheme is constituted as a company. In this respect tax shall be deducted from every

distribution of profits which, had the collective investment scheme been constituted as a company, would have been allocated to the untaxed account:

Provided that the provisions of this subarticle shall not apply in respect of such payments to persons who are exempt from tax.

(3) Every amount deducted under subarticle (2) shall be a debt due from such collective investment scheme to the Commissioner payable not later than the fourteenth day following the end of the month in which the distribution was made and shall be so recoverable.

(4) Articles 63 to 65 shall apply *mutatis mutandis* in the circumstances set out in subarticle (2) of this article as they apply to distributions from the untaxed account. References in those articles to article 62 shall be construed as references to subarticle (2) of this article, and references to dividend or untaxed dividend shall, where the context so requires, be construed as a reference to profits distributed by a collective investment scheme.

(5) For the purposes of this article a person resident in Malta shall include a non-resident person (including a non-resident company) who is owned and controlled by, directly or indirectly or who acts on behalf of an individual who is ordinarily resident and domiciled in Malta.

(6) An equalisation reserve shall form part of the distributable profits of a collective investment scheme.

(7) For the purposes of this Act, in the case of a collective investment scheme:

"equalisation reserve" means an allocation of income, whether annual or interim, made in respect of units created or issued or sold during an accounting period, whether annual or interim, representing the best estimate of the relevant management company or of the scheme, of the amount of income included in the price by reference to which the issue or selling price of such units were determined;

"dividend" includes amounts distributed out of an equalisation reserve.

No obligation to disclose.
Added by: XVII. 1994.26. Amended by: II. 2007.19; IX. 2007.5; IV. 2011.22; XIII. 2015.56.

68. (1) (*a*) Any person who is not resident in Malta or any individual who is resident in Malta and who is in receipt of a dividend paid out of profits allocated to any of the taxed accounts other than the final tax account shall not be obliged to disclose the existence of such dividend in any return made pursuant to the provisions of the Income Tax Acts.

(*b*) No person shall be charged to further tax under this Act in respect of the income referred to in paragraph (*a*).

(*c*) Any dividends paid out of profits allocated to the final tax account shall not be charged to further tax and shall not form part of the chargeable income of any person and no person may claim a credit or refund in respect of any tax directly or indirectly paid on

such profits and for the purpose of this paragraph a dividend received from a company not registered in Malta shall to the extent that such dividend, directly or indirectly comprises a dividend paid by a company registered in Malta from profits allocated to the final tax account, shall, to that extent, be deemed to be a dividend paid by such company registered in Malta from profits allocated to the final tax account directly to the person in receipt of the dividend from the company not registered in Malta.

(2) (*a*) Any person, not being a company resident in Malta, shall not be obliged to disclose in any return made pursuant to the provisions of the Income Tax Acts those profits distributed by a collective investment scheme not constituted as a company, where such profits would have been allocated to the foreign income account or to the Maltese taxed account, had the collective investment scheme been constituted as a company.

(*b*) No person shall be charged to further tax under this Act in respect of the profits referred to in paragraph (*a*).

(3) A dividend paid by a company shall be paid out of profits allocated to the immovable property account before any profits allocated to the Maltese taxed account are distributed.

(4) A dividend paid by a company which was resident in Malta before the 1 January 2007 out of profits allocated to the Maltese taxed account shall be deemed to be paid out of profits earned in accounting periods commencing prior to the 1 January 2011, and only when such profits are wholly distributed shall profits earned in subsequent accounting periods be considered as being distributed for the purpose of the Income Tax Acts; and for this purpose any dividend paid on or after the 1 January 2007 which did not involve the actual payment of a dividend in cash shall be ignored and deemed to never have been made.

(5) When any person is registered in terms of article 48(4A) of the Cap. 372. Income Tax Management Act for the purposes of claiming a refund of tax chargeable on a company and that company has any profits allocated to its Maltese Taxed Account or its foreign income account the whole or part of which are actually distributed or deemed to be distributed under any provision of the Income Tax Acts, such person who is so registered shall be deemed to have received, whether upon an actual distribution or deemed distribution as aforesaid, so much of such profits from each such account as corresponds to his percentage entitlement to participate in a distribution of profits of the said company. Any provisions in the memorandum and articles of association of the company or in any agreement which provide that a shareholder, who is so registered, shall be entitled to be paid dividends solely or mainly from the Maltese Taxed Account or the foreign income account shall be disregarded for the purpose of the Income Tax Acts:

Provided that where profits have been subject to tax at a rate Cap. 325. pursuant to article 15 of the Business Promotion Act or article 56(20) of this Act, the provisions of this subarticle shall not apply as regards such profits and unless the shares (including any shares substituting the original shares resulting from any share exchange or

reorganisation) which gave rise to the entitlement that such profits be taxed in accordance with the aforementioned articles are no longer in existence, such profits shall be distributable only to the person in respect of whom the aforementioned articles were applicable or to any other person who acquired the shares from such person.

Extent of liability.
Added by:
XVII. 1994.26.

69. Where any person fails to deduct and pay tax in accordance with the provisions of article 62, 67 and 67A, the provisions of article 73(4) and the provisions of article 40(1) of the Income Tax Management Act shall *mutatis mutandis* apply.

Cap. 372.

Chargeability of administrators, etc.
Amended by:
XLIX. 1975.10.
Renumbered by:
XVII. 1994.2.
Amended by:
IX.1999.14;
XIII. 2004.56.

70. (1) A receiver, administrator, guardian, tutor, curator, judicial sequestrator or committee, having the direction, control or management of any property or concern on behalf of any person shall be chargeable to tax in respect of income derived from such property or concern in like manner and to the like amount as such person would be chargeable if he had received such income, and every such receiver, administrator, guardian, tutor, curator, judicial sequestrator or committee shall be answerable for doing all matters and things required to be done under this Act for the purposes of determination, assessment and payment of tax:

Provided that nothing in this article shall affect the liability of any person represented by any such receiver, administrator, guardian, tutor, curator, judicial sequestrator or committee to be himself charged to tax in his own name.

(2) Any person who is entrusted with the management or administration of any property referred to in article 30, or of any foundation, bequest, institution, or other organisation or body of persons referred to in article 56(3)(*b*), or who is in receipt of income on their behalf, shall, for the purposes of sub-article (1), be deemed to be an administrator in respect of that property or income.

Deceased persons.
Amended by:
XXV. 1960.10.
Substituted by:
XLIX. 1974.7.
Renumbered by:
XVII. 1994.2.

71. Where any individual dies during the year preceding the year of assessment and such individual would but for his death have been chargeable to tax for the year of assessment or where any individual dies during the year of assessment or within five years after the expiration thereof and he has not been assessed or has been assessed at a lesser amount than that which ought to have been charged for the year of assessment, the heirs or the legal representative of such individual shall be liable to and charged with the payment of the tax with which such individual would have been chargeable and shall jointly and severally be answerable for doing all such acts, matters and things as such individual if he were alive would be liable to do under this Act. In the case of any individual dying during the year preceding the year of assessment, if his estate is distributed before the commencement of the year of assessment, the heirs or such legal representative shall pay the tax at the rate or rates in force at the time of his death.

Joint trustees.
Renumbered by:
XVII. 1994.2.

72. (*Deleted by Act XIII. 2004.57.*).

Income paid to non-resident.
Amended by: XXIV.1961.4; XXVIII.1972.4; XXIV.1976.8. Substituted by: XXVI.1977.15. Amended by: XIII. 1983.5. Renumbered by: XVII. 1994.2. Amended by: IX. 1999.14; XI. 2000.9; L.N. 409 of 2007.
Cap. 372.

73. (1) Where any person pays to a person not resident in Malta, or to a person resident in Malta on behalf of such non-resident person, any income chargeable to tax under the provisions of this Act, he shall upon paying such income, unless he is himself liable to pay tax thereon under the provisions of article 5 of the Income Tax Management Act, deduct tax therefrom:

(*a*) at the rate of twenty-five cents (0.25) in the euro where payment is made to or on behalf of any non-resident person other than a company or a person to whom article 56(18A) applies;

(*b*) at the rate chargeable under article 56(6) where payment is made to or on behalf of a non-resident company; and

(*c*) at the rate chargeable under article 56(18A):

Provided that the Commissioner may, by notice in writing given to any person required to effect a deduction of tax in accordance with paragraphs (*a*) and (*b*), authorise such person to deduct tax at a rate lower than that hereinbefore mentioned, or to pay such income without any deduction of tax:

Provided further that the provisions of this sub-article shall not apply to income from which tax has been deducted under the provisions of article 59 or under the provisions of article 23 of the Income Tax Management Act.
Cap. 372.

(2) Any amount of tax deducted from income in accordance with the provisions of sub-article (1) shall be a debt due to the Government by the person effecting the deduction as aforesaid, payable within thirty days from the making of the deduction, and such amount shall be accounted for and remitted to the Commissioner within the said period.

(3) Deductions of tax made under sub-article (1)(*a*) and (*b*) shall, when paid to the Commissioner as provided in sub-article (2), be set off for the purposes of collection against the tax charged on the non-resident person in respect of the relative income. Any excess shall be refunded in accordance with the provisions of article 48 of the Income Tax Management Act.
Cap. 372.

(4) Where any person fails to deduct tax in accordance with the provisions of this article or, after deducting such tax fails to pay it to the Commissioner within the period mentioned in subarticle (2) -

(*a*) such person shall be chargeable with the tax which should have been deducted or paid as aforesaid and, in addition, with twice the amount of such tax;

(*b*) the tax and additional tax shall be recoverable from the said person in the same manner as other tax charged upon him under this Act;

(*c*) a notice given by the Commissioner to any person and stating the tax which was due to be deducted or paid by him as aforesaid and any additional tax to which he became liable for having failed to deduct or 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;

(*d*) the Commissioner may in his discretion remit wholly or in part any additional tax chargeable under the provisions of this sub-article;

(*e*) additional tax charged under this sub-article shall be borne by the person required to deduct or pay the tax and shall not be recoverable by such person, whether wholly or in part, from the person receiving the income;

(*f*) additional tax charged under the provisions of this sub-article shall not be deemed to be part of any tax paid or payable for the purposes of articles 59, 76 and 89 and articles 42, 51 and 52 of the Income Tax Management Act. Cap. 372.

PART X

Amended by: XVII. 1994.28.

RELIEF OF DOUBLE TAXATION

74. There shall be four types of reliefs of double taxation, namely: Four reliefs of double taxation. *Added by: XVII. 1994.28.*

(*a*) double taxation relief, as provided in articles 76 to 78, both inclusive;

(*b*) unilateral relief, as provided in articles 79 to 88, both inclusive;

(*c*) relief in respect of Commonwealth income tax, as provided in article 89; and

(*d*) a flat-rate foreign tax credit, as provided in articles 92 to 95, both inclusive,.

75. In respect of any claim for relief of double taxation: Interaction of the reliefs. *Added by: XVII. 1994.28. Amended by: II. 2002.54.*

(*a*) the provisions concerning unilateral relief shall be applied in calculating a person's tax liability in those cases where double taxation relief and relief in respect of Commonwealth income tax are not available to the person making the claim; and

(*b*) the provisions concerning the flat-rate foreign tax credit shall be applied in calculating a person's tax liability only in those cases where double taxation relief, relief in respect of Commonwealth income tax and unilateral relief, as governed by articles 79 to 88, are not available to the person making the claim.

Double taxation arrangements. *Added by: XLI.1961.3. Amended by: L.N. 4 of 1963; VIII.1969.10; XXVI.1977.33; XXXVI.1990.18. Renumbered by: XVII. 1994.2. Amended by: XVII. 1994.29; II. 2002.55; II. 2004.15; IV. 2011.23.*

76. (1) If the Minister responsible for finance by order declares that arrangements specified in the order have been made with the Government of any territory outside Malta with a view to -

(*a*) affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory;

(*b*) preventing fiscal evasion;

(*c*) giving assistance in the collection of tax;

and that it is expedient that those arrangements should have effect, the arrangements shall have effect notwithstanding anything in this or any other enactment.

(2) On the making of an order under this article with respect to arrangements relating to any territory forming part of the Commonwealth, article 89 shall cease to have effect as respects that territory except in so far as the arrangements otherwise provide.

(3) An order made under this article may be revoked by a subsequent order.

(4) The Minister responsible for finance may make rules for carrying out the provisions of any arrangements having effect under this article. In particular, with regard to arrangements for the prevention of fiscal evasion, rules may be made in relation to -

(*a*) the availability of applicable information;

(*b*) the access to applicable information;

(*c*) the mechanism of exchange of information;

(*d*) appropriate rights and safeguards; and enforcement provisions (including applicable penalties).

Tax credits. *Added by: XLI.1961.4. Amended by: V.1964.5; XXVIII.1972.6; XLII.1975.13; XXVIII.1978.28; XXXVI.1990.19. Renumbered by: XVII. 1994.2. Amended by: XVII. 1994.30; XX.1996.18; IX.1999.14.*

77. (1) The provisions of this article shall have effect where, under arrangements having effect under article 76, tax payable in respect of any income in the territory with the Government of which the arrangements are made is to be allowed as a credit against tax payable in respect of that income in Malta; and in this article the expression "foreign tax" means any tax payable in that territory which under the arrangements is to be so allowed and the expression "income tax" means tax charged on the chargeable income at the rates laid down in Part VII of this Act.

(2) The amount of the income tax chargeable in respect of the income shall be reduced by the amount of the credit:

Provided that credit shall not be allowed against income tax for any year of assessment unless the person entitled to the income is resident in Malta for the year immediately preceding the year of assessment.

(3) The credit shall not exceed the amount which would be produced by computing the amount of the income in accordance with the provisions of this Act and then charging it to income tax at a rate ascertained by dividing the income tax chargeable (before allowance or credit under any arrangements having effect under

article 76) on the total income of the person entitled to the income by the amount of his total income.

(4) Without prejudice to the provisions of the preceding sub-article, the total credit to be allowed to a person for any year of assessment for foreign tax under all arrangements having effect under article 76 shall not exceed the total income tax payable by him for that year of assessment, less any tax payable by him under the provisions of articles 40, 69 and 73.

(5) In computing the amount of the income -

(*a*) no deduction shall be allowed in respect of foreign tax (whether in respect of the same or any other income);

(*b*) where the income tax chargeable depends on the amount received in Malta the said amount shall be increased by the appropriate amount of the foreign tax in respect of the income;

(*c*) where the income includes a dividend and under the arrangements foreign tax not chargeable directly or by deduction in respect of the dividend is to be taken into account in considering whether any, and if so what, credit is to be given against income tax in respect of the dividend the amount of the income shall be increased by the amount of the foreign tax not so chargeable which falls to be taken into account in computing the amount of the credit.

(6) Paragraphs (*a*) and (*b*) of the preceding sub-article (but not the remainder thereof) shall apply to the computation of the total income for the purpose of determining the rate mentioned in sub-article (3), and shall apply thereto in relation to all income in the case of which credit falls to be given for foreign tax under arrangements for the time being in force under article 76.

(7) Where -

(*a*) the arrangements provide, in relation to dividends of some classes, but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering whether any, and if so what, credit is to be given against income tax in respect of the dividends, and

(*b*) a dividend is paid which is not of a class in relation to which the arrangements so provide,

then, if the dividend is paid to a company which controls, directly or indirectly, not less than one-half of the voting power in the company paying the dividend, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.

(8) Credit shall not be allowed under the arrangements against income tax chargeable in respect of the income of any person for any year of assessment if he elects that credit shall not be allowed in the case of his income for that year.

(9) Any claim for an allowance by way of credit shall be made not later than two years after the end of the year of assessment to which the claim refers, and in the event of any dispute as to the amount allowable the claim shall be subject to objection and appeal in like manner as an assessment.

(10) Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in Malta or elsewhere, nothing in this Act limiting the time for the making of returns, assessment or claims for relief shall apply to any return, assessment or claim to which the adjustment gives rise, being a return, assessment or claim made not later than two years from the time when all such assessments, adjustments and other determination have been made, whether in Malta or elsewhere, as are material in determining whether any, and if so what, credit falls to be given.

Dividends and tax credits. *Added by: XLI.1961.5. Amended by: XXI.1980.13. Renumbered by: XVII. 1994.2. Amended by: XVII.1994.31.* Cap. 372.

78. (1) Where the tax paid or payable by a company is affected by double taxation relief the amount to be set off under article 60 or to be repaid under article 48 of the Income Tax Management Act, in respect of the tax deductible from any dividend paid by the company, shall be reduced as follows:

(*a*) if no tax is chargeable on the recipient in respect of the dividend, the reduction shall be an amount equal to tax on the gross dividend at the rate of double taxation relief applicable thereto;

(*b*) if the rate of tax chargeable on the recipient in respect of the dividend is less than the rate of double taxation relief applicable to the dividend, the reduction shall be an amount equal to tax on the gross dividend at the difference between those two rates.

(2) For the purpose of this article -

(*a*) if the income of the person chargeable includes one dividend such as is mentioned in the preceding sub-article, that dividend shall be deemed to be the highest part of his total income;

(*b*) if his income includes more than one such dividend a dividend shall be deemed to be a higher part of his total income than another dividend if the net Malta rate applicable to the former dividend is lower than that applicable to the latter dividend;

(*c*) where tax is chargeable at different rates in respect of different parts of any such dividend, or where tax is chargeable in respect of some part of any such dividend and is not chargeable in respect of some other part thereof, each part shall be deemed to be a separate dividend;

(*d*) the expression "double taxation relief" has the same meaning as in article 59 and the expression "the rate of double taxation relief" means the rate which represents the excess of the rate of tax deductible from the

dividend over the net Malta rate applicable thereto.

Unilateral relief. *Added by: XVII. 1994.32.*

79. In this Act the phrase "unilateral relief" means the relief given pursuant to the provisions of articles 80 to 88, and in those articles the phrase "income tax" shall have the meaning attributed to it in article 77(1).

Availability of unilateral relief. *Added by: XVII. 1994.32. Amended by: I. 2010.29.*

80. Unilateral relief may be available in respect of a claim for relief of double taxation where tax under this Act is computed by reference to income which:

(*a*) arises outside Malta; and

(*b*) is subject to any tax of a similar character to that imposed under the Income Tax Acts under the laws of a territory outside Malta, including, in the case of a claim for relief to which article 82(*a*) and (*b*) applies, tax imposed under the Income Tax Acts.

For the purposes of paragraph (*b*), a tax shall not be prevented from being of a similar character by reason only that it is payable under the law of a province, state or other part of a country, or is levied by or on behalf of a municipality or other local body.

Relief by way of credit. *Added by: XVII. 1994.32. Amended by: II. 2007.28; I. 2010.30.*

81. The amount of the tax referred to in article 80(*b*) is to be allowed as a credit against the income tax chargeable in Malta in respect of the income under article 80, and the amount of the income tax so chargeable shall be reduced by the amount of the credit:

Provided always that the credit shall not be allowed against income tax for any year of assessment unless the person entitled to the income is resident in Malta or is a company registered in Malta for the year immediately preceding the year of assessment.

Credit for the underlying tax. *Added by: XVII. 1994.32. Substituted by: IX. 2001.28; II. 2002.56. Amended by: II. 2007.20.*

82. The provision concerning unilateral relief shall, where the income under article 80 includes a dividend distributed by a company not resident in Malta, hereinafter in this article referred to as "the overseas company", have effect so that tax not chargeable directly or by deduction in respect of the dividend shall be deemed to fall under the provision of article 80(*b*) and shall be taken into account in computing the credit to be given against income tax in respect of the dividend.

For the purposes of this article -

(*a*) "tax not chargeable directly or by deduction in respect of the dividend" shall include tax payable in respect of a dividend distributed by a company which is related to the overseas company as specified in paragraph (*b*), hereinafter referred to in this article as "related company", where such dividend forms part of a chain of successive dividends distributed from one related company to another ending in the dividend received by the person making the claim, or on the profits out of which such dividend was distributed;

(*b*) a company is related to the overseas company if the overseas company controls, directly or indirectly, not

less than 10% of the voting power of the related company.

Limitation on the credit. *Added by: XVII. 1994.32.*

83. The credit given under article 81 shall not exceed the amount which would be produced by computing the income of a person in accordance with the provisions of this Act and then charging it to income tax at a rate ascertained by dividing the income tax chargeable (before allowance of credit pursuant to article 81) on the total income of the person entitled to it, by this total income.

Amount of total credit. *Added by: XVII. 1994.32.*

84. Without prejudice to the provisions of article 87, the total credit to be allowed pursuant to article 81 to a person for any year of assessment shall not exceed the total income tax payable by him for that year of assessment, less any tax payable by him for that year of assessment under the provisions of articles 40, 69 and 73.

Computation of income. *Added by: XVII. 1994.32.*

85. In computing the amount of the income for purposes of unilateral relief:

(*a*) no deduction shall be allowed in respect of tax paid and referred to in article 80(*b*) in respect of the income;

(*b*) where the income chargeable depends on the amount received in Malta the said amount shall be increased by the appropriate amount of the tax paid and referred to in article 80(*b*) in respect of the income;

(*c*) where the income includes a dividend and, in determining the amount of credit to be given under article 81, credit is given for tax which is not chargeable directly or by deduction under article 82, the amount of the income shall be increased by the amount of that credit.

Applicability of article 85. *Added by: XVII.1994.32.*

86. The provisions of article 85(*a*) and (*b*) shall apply to the computation of total income for the purposes of determining the rate of tax referred to in article 83.

Dividends and tax credits, etc. *Added by: XVII. 1994.32.*

87. The provisions of article 77(8), (9) and (10) and of article 78 shall apply *mutatis mutandis* in relation to unilateral relief as they apply to double taxation relief.

No relief without proof. *Added by: XVII.1994.32.*

88. Unilateral relief shall not be available to a person unless that person has proved to the satisfaction of the Commissioner that the income referred to in the provisions of article 80(*a*) has borne tax under the provisions of article 80(*b*) and has proved the amount of that tax.

Relief in respect of Commonwealth income tax.
Amended by: XV. 1960.15; V. 1964.6; VIII. 1969.11; XXVIII. 1972.7; XXII. 1976.4; XXVIII. 1978.29; XXXVI. 1990.20. Renumbered by: XVII. 1994.2. Amended by: IX. 1999.14; IV. 2011.24.

89. (1) If any person resident in Malta who has paid, by deduction or otherwise, or is liable to pay, tax under this Act for any year of assessment on any part of his income, proves to the satisfaction of the Commissioner that he has paid, by deduction or otherwise, or is liable to pay, Commonwealth income tax for that year in respect of the same part of his income, he shall be entitled to relief from tax in Malta paid or payable by him on that part of his income at a rate thereon to be determined as follows:

(*a*) if the Commonwealth rate of tax does not exceed one-half of the rate of tax appropriate to his case under this Act in Malta, the rate at which relief is to be given shall be the Commonwealth rate of tax;

(*b*) in any other case the rate at which relief is to be given shall be half the rate of tax appropriate to his case under this Act.

(2) If any person not resident in Malta who has paid, by deduction or otherwise, or is liable to pay, tax under this Act for any year of assessment on any part of his income, proves to the satisfaction of the Commissioner that he has paid, by deduction or otherwise, or is liable to pay, Commonwealth income tax for that year of assessment in respect of the same part of his income, he shall be entitled to relief from tax paid or payable by him under this Act on that part of his income at a rate thereon to be determined as follows:

(*a*) if the Commonwealth rate of tax appropriate to his case does not exceed the rate of tax appropriate to his case under this Act, the rate at which relief is to be given shall be one-half of the Commonwealth rate of tax;

(*b*) if the Commonwealth rate of tax appropriate to his case exceeds the rate of tax appropriate to his case under this Act, the rate at which relief is to be given shall be equal to the amount by which the rate of tax appropriate to his case under this Act exceeds one-half of the Commonwealth rate of tax.

(3) For the purpose of this article, "Commonwealth income tax" means any income tax or tax of a similar nature charged under any law in force in any country of the Commonwealth, other than Malta or the United Kingdom of Great Britain and Northern Ireland, if the legislature of such country has provided for relief in respect of tax charged on income both in that country and in Malta in a manner which appears to the Commissioner to correspond to the relief granted by this article.

(4) For the purposes of this article, the expression "rate of tax" when applied to tax paid or payable under this Act means the rate determined by dividing the amount of tax paid or payable for the year (before the deduction of any relief granted under this article) by the amount of the income in respect of which the tax paid or payable under this Act has been charged for that year, except that where the income which is the subject of a claim to relief under this article is computed by reference to the provisions of this Act on an

amount other than the ascertained amount of the actual profits, the rate of tax shall be determined by the Commissioner.

(5) Where a person is for any year of assessment resident both in Malta and in a part, place or territory in which Commonwealth income tax is charged, he shall for the purposes of this article be deemed to be resident where during that year he resides for the longer period.

(6) Any claim for relief under this article shall be made not later than two years after the end of the year of assessment to which the claim refers.

(7) The provisions of this article shall not apply in the case of gains or profits referred to in article 23.

Relief in respect of Bearer Accounts Levy.
Repealed by: XXV.1960.16.
Added by: XXXV.1972.14.
Amended by: XXI. 1980.14.
Renumbered by: XVII. 1994.2.
Amended by: IX. 1999.14.
Cap. 219.

90. (1) If it be proved to the satisfaction of the Commissioner that any person has paid levy in any year in respect of any bearer account under the Bearer Accounts Levy Act, the tax chargeable under this Act on the interest accruing or derived from such account for that year shall be reduced by the amount of the said levy.

(2) For the purposes of the reduction granted by sub-article (1) hereof, the interest on any bearer account shall be deemed to be the highest part of the total income for the year of assessment for which such interest is brought to charge to tax.

Tax on part-time work.
Added by: I.1994.3.
Substituted by: XX.1996.19.
Amended by: V. 1998.8; XI. 2000.10; II. 2002.57; II. 2005.13; L.N. 409 of 2007; V. 2012.23.

90A. (1) With effect from the 1st day of January 1996, where an individual is receiving full-time instruction at a university, college or other similar educational institution or was serving an apprenticeship with a view to qualifying in a trade or calling, or where an individual has income in his own right falling under article 4(1)(*b*) or (*d*), and has during the year immediately preceding the year of assessment other income from such part-time work as may be prescribed, he shall subject to the other provisions of this article pay tax at the rate of 15 cents (0.15) on every euro of such other income, and he shall not be required to declare any such other income, in any return made pursuant to the Income Tax Acts:

Provided that where the other income derived from part-time work is income as is described in article 4(1)(*a*) and (*b*), the provisions of this article shall apply with respect to that other income only up to such limit as may be prescribed.

(2) Notwithstanding the provisions of sub-article (1), an individual may declare all his income from part-time work together with the rest of his income in his return made in accordance with the Income Tax Acts, and he will be charged tax on all his income in accordance with the provisions of paragraph (*a*) or (*b*) (as the case may be) of article 56(1), and in any such case any tax paid on such other income in accordance with this article shall be available as a credit against the individual's tax liability and where any tax so paid is in excess of such liability, it shall be refunded.

(3) Notwithstanding the provisions of sub-article (1) an individual, whose projected total income for a calendar year, including income derived from part-time work, is not expected to

exceed such sum over which he would become liable to tax, may, if the income from part-time work falls under the description in article 4(1)(*b*), at any time of the year by notice in writing on the prescribed form, direct the employer with whom he is performing part-time work not to deduct tax on his income from part-time work.

(4) For the purposes of sub-article (3) hereof where an individual's annual wages or salary from his full time employment exceed such amount over which he would become liable to tax, or where in the previous year his total income rendered him liable to tax, his projected total income for the relevant year will be expected to exceed such sum over which he would become liable to tax.

(5) Where the total income of an individual who has given notice as is provided in sub-article (3), during the year in which the said notice has been given reaches such sum as would render such individual liable to tax, such individual shall inform the Commissioner accordingly on the prescribed form and if he elects to pay tax on his other income derived from part-time work in accordance with the provisions of sub-article (1) he shall direct his employer to deduct tax at the rate of 15 cents (0.15) in the euro, and furthermore, where he elects to pay tax on his other income derived from part-time work in accordance with the provisions of sub-article (1) he shall either -

(*a*) direct his employer to make such further deductions from his income so that the tax due in accordance with sub-article (1) on all income deriving from part-time work as aforesaid is so deducted by the 31st December of that year; or

(*b*) pay such tax due, to the Commissioner by not later than such date following the relevant year as may be prescribed.

(6) Where an employer who in accordance with this article is to deduct tax at 15 cents (0.15) in the euro fails for any reason to deduct such tax, it shall be the duty of the individual from whose income such deduction is to be made, to inform the Commissioner accordingly and to make payment of the tax due directly to the Commissioner:

Provided that the employer shall still remain liable for any liability under article 23(4) of the Income Tax Management Act. Cap. 372.

(7) (*a*) Where the income from part-time work is income falling under article 4(1)(*b*), the person paying the income shall, at the time of payment, unless otherwise directed in accordance with sub-article (3) and in accordance with the provisions of article 23 of the Income Tax Management Act, deduct tax at the rate of 15 cents (0.15) in the euro, and any tax so deducted shall be remitted to the Commissioner accordingly. Cap. 372.

(*b*) Where the income from part-time work is income falling under article 4(1)(*a*), the individual shall pay to the Commissioner an amount equivalent to 15 cents (0.15) for every euro of the income from part-time work in such manner as may be prescribed in accordance with the provisions of article 42 of the Income Tax Management Act, where applicable.

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(8) Where an individual who is to pay tax on part-time work at the rate of 15 cents (0.15) in the euro as provided in sub-article (1), fails to pay such tax on all his income from part-time work subject to such tax by such date following the relevant year as may be prescribed, all the income from part-time work shall be added with the rest of the individual's income and tax shall be assessable thereon in accordance with the provisions of article 56.

(9) In the case of a married couple the provisions of this article shall apply to either or each of the spouses where at least one of the spouses is receiving full-time instruction or is serving an apprenticeship or has income in his or her own right as described in subarticle (1) and either or each of the spouses has other income from part-time work as therein described.

(10) Where an individual declares that income is derived from part-time work and the Commissioner has reason to believe that such income was derived from an activity which is not on a part-time basis, or is the individual's normal activity or is ancillary thereto, the Commissioner shall consider such income as not qualifying to be subject to tax under sub-article (1) and shall assess it as if the foregoing provisions of this article did not apply thereto, and any tax remitted in respect of such income shall be available as a credit against the individual's tax liability for the relevant year of assessment and where any tax so remitted is in excess of such liability it shall be refunded.

Computation of certain tax reductions. *Amended by: XV.1958.2. Repealed by: XLI.1961.6. Added by: XXI.1980.15. . Renumbered by: XVII. 1994.2.*

91. Where through the operation of the provisions of article 56, 78 and 90 a part of the income subject to tax falls to be deemed the last part of the total income and the total income in respect of any year of assessment includes more than one such part to be so deemed, the provisions of article 78 shall have precedence over the provisions of article 56 and the provisions of either of these two articles shall have precedence over those of article 90, as the case may be.

Flat-rate foreign credit. *Added by: XVII. 1994.33. Amended by: XX. 1996.20; II. 2007.21; IX. 2007.6; XIII. 2015.57.*

92. (1) For the purposes of the Income Tax Acts, the flat-rate foreign tax credit shall be credit given in respect of income or gains which either satisfy all the provisions of sub-article (1) or all the provisions of sub-article (2):

(*a*) income or gains which are received by a company registered in Malta; and

(*b*) which the company is specifically empowered to receive and fall to be allocated to the foreign income account as defined in article 2, but excluding profits resulting from dividends paid out of the foreign income account of another company resident in Malta:

Provided that in the case of a company resident in Malta

prior to the 1 January 2007, the first condition of this paragraph shall apply as from the 1 January 2011, or, where such company informs the Commissioner as contemplated in article 48(4A)(*b*)(1) or (2) of the Income Tax Management Act, as from the date on which such information is effective, whichever is the earlier; and

(*c*) in respect of which documentary evidence is available which indicates to the satisfaction of the Commissioner that such income or gains, as the case may be, fall to be allocated to the foreign income account as provided in paragraph (*b*). For the purposes of this requirement, a certificate issued by a certified public accountant and auditor shall be satisfactory documentary evidence.

(2) Income or gains which are received -

(*a*) by a Rule 9 company registered in Malta;

(*b*) which the Rule 9 company is specifically empowered to receive and would fall to be allocated to the foreign income account as defined in article 2 were it not a Rule 9 company, but excluding profits resulting from dividends paid out of the foreign income account of another company resident in Malta; and

(*c*) in respect of which documentary evidence is available which indicates to the satisfaction of the Commissioner that such income or gains, as the case may be, would fall to be allocated to the foreign income account were it not a Rule 9 company, as provided in paragraph (*b*). For the purposes of this requirement, a certificate issued by a certified public accountant and auditor shall be satisfactory documentary evidence.

For the purpose of this sub-article, "Rule 9 company" shall mean a company which has made an election not to allocate its gains or profits to the foreign income account and the Maltese taxed account in terms of rule 9 of the Tax Accounts (Income Tax) Rules. S.L. 123.101

Amount of flat-rate foreign tax credit. *Added by: XVII.1994.33.*

93. (1) The flat-rate foreign tax credit shall be twenty-five per cent of the income or gains receivable by the company within the provisions of article 92, before any deductions or payments whatsoever are made from the said income or gains.

(2) In the case of income comprising dividends, capital gains, interest, royalties, rents and other income which are receivable by a company resident in Malta and derived, where applicable, from investments situated outside Malta, the flat-rate foreign tax credit shall be computed on the amount receivable, after deducting any foreign tax (charged directly or by way of withholding) but before any other deductions or payments whatsoever are made.

Operation of the flat-rate foreign tax credit.
Added by: XVII. 1994.33.

94. (1) Where the flat-rate foreign tax credit is due in respect of the income or gains referred to in article 92, it shall be added to the said income or gains. The aggregate sum so obtained shall be the amount that is chargeable to tax.

(2) For a year of assessment in respect of the income computed in accordance with the provisions of sub-article (1), the amount of tax payable under this Act shall be reduced by the amount of the flat-rate foreign tax credit due in respect of that income:

Provided that where the amount of the flat-rate foreign tax credit exceeds eighty-five per cent of the tax payable computed by taking the tax payable on those profits which are to be allocated to the foreign income account and deducting therefrom any foreign tax set-off under the double taxation relief, Commonwealth income tax relief and unilateral relief provisions, the amount of such exceeds shall not be available for set-off or refund for any purposes of the Income Tax Acts.

(3) The provisions of article 77(8), (9) and (10) and of article 78 shall apply *mutatis mutandis* in relation to the flat-rate foreign tax credit as they apply to double taxation relief.

Anti-avoidance provisions.
Added by: XVII. 1994.33.

95. Where, in the opinion of the Commissioner, a series of transactions is effected with the sole or main purpose of reducing the amount of tax payable by any person by reason of the operation of the flat-rate foreign tax credit provisions as contained in articles 92 to 94, such a person shall be assessable as if the provisions did not apply.

For the purposes of this article, a series of transactions shall mean any two or more corresponding or circular transactions carried out by the same person, either directly or indirectly, as the case may be.

PART XI

POWER TO MAKE RULES

Power to make rules.
Amended by: XV. 1958.2; XVII.1961.3; XXV.1962.2,4; L.N. 4 of 1963; L.N. 46 of 1965. Renumbered by: XVII. 1994.2. Substituted by: XVII. 1994. 34. Amended by: II. 2003.24; II. 2005.14; II. 2009.15.

96. (1) The Minister responsible for finance may from time to time make rules generally for carrying out the provisions of this Act and for such matters as are authorised by this Act to be prescribed.

(2) Any guidelines, explanations or instructions relating to the Income Tax Acts or of the rules referred to in subarticle (1) contained in a publication or circular published by or under the authority of the Commissioner and distributed or made available to taxpayers in general, shall be read and construed as one with such rules and shall have the same effect as the rules to the extent that such guidelines, explanations or instructions are not in conflict with the Income Tax Acts on the said rules or with guidelines, explanations or instructions published at a later date and to the extent that -

(*a*) they give a definition of any term or an interpretation

of any provision contained in the Income Tax Acts or the rules;

(*b*) they determine the manner in which any provision of the Income Tax Acts or the rules is to be applied;

(*c*) they determine any matter which in accordance with the Income Tax Acts or the rules may be determined by or is subject to the approval or the discretion of the Commissioner.

(3) The Minister responsible for finance may make rules prescribing tax credits and may also by such rules determine the class of persons to whom such tax credits shall apply and the method of calculating or estimating such tax credits and the amounts thereof.

(4) The Minister responsible for finance may by rules amend, repeal or substitute the Schedule to this Act.

SCHEDULE*

Added by: IX. 1999.14. Amended by: XI. 2000.11; II. 2002.58; II. 2003.25; L.N. 409 of 2007. Substituted by: L.N. 98 of 2009. Amended by: L.N. 336 of 2010; XII. 2014.27; XIII. 2015.58.

Article 56(12)(*c*)

Additional tax chargeable under article 56(12)(*c*)

Definitions.

1. In this Schedule:

"additional tax" means the additional tax chargeable in accordance with the provisions of article 56(12)(*c*) in respect of a default or omission;

"endangered tax" means, subject to the provisions of item 12, the difference between the tax declared to be chargeable by the taxpayer after taking into account any exemption, relief, allowance or tax credits to which he may be entitled and the tax actually chargeable after considering the same, but shall not include any additional tax;

"default" means a default in furnishing a return of income required to be submitted for the purposes of the Income Tax Acts;

"omission" means the omission from any return of income submitted for the purpose of the Income Tax Acts of any amount which should have been included therein and includes any act or omission which is deemed to constitute an omission in terms article

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* The provisions of this Schedule, as substituted by Legal Notice 98 of 2009, shall apply with respect to additional tax chargeable in terms of article 56(12)(*c*) for the year of assessment 2009 and subsequent years of assessment: provided that the provisions of this Schedule, as in force immediately before the coming into force of the substituting rules, shall continue to apply with respect to additional tax chargeable in accordance with the said article 56(12)(*c*) for years of assessment preceding the year of assessment 2009.

56(12);

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"tax professional" means an individual being the holder of a warrant issued under the Accountancy Profession Act, or a member of the Malta Institute of Taxation, or a member of the legal profession in Malta who specialises in taxation, or a partnership of such individuals the majority of whom are so qualified: provided that the Commissioner shall be entitled to request such proof as he may deem appropriate to the effect that an individual qualifies as a tax professional as aforesaid.

Additional tax for a default by an individual.

2. Additional tax chargeable under article 56(12)(*c*) for a default by an individual in furnishing a return in respect of the year of assessment 2009 or any subsequent year of assessment shall be at the amounts shown in Table A hereunder:

TABLE A

Number of months from the date on which a return is required to be submitted in accordance with the relevant provisions of the Income Tax Management Act	Additional tax
Within 6 months	€10
Later than 6 but within 12 months	€50
Later than 12 but within 18 months	€100
Later than 18 but within 24 months	€150
Later than 24 but within 36 months	€200
Later than 36 but within 48 months	€300
Later than 48 but within 60 months	€400
Later than 60 months	€500

Additional tax for a default by a person other than an individual.

3. Additional tax chargeable under article 56(12)(*c*) for a default by a person, other than an individual, in furnishing a return in respect of the year of assessment 2009 or any subsequent year of assessment, shall be at the amounts as shown in Table B hereunder:

TABLE B

Number of months from the date on which a return is required to be submitted in accordance with the relevant provisions of the Income Tax Management Act	Additional tax
Within 6 months	€50
Later than 6 but within 12 months	€200
Later than 12 but within 18 months	€400
Later than 18 but within 24 months	€600
Later than 24 but within 36 months	€800
Later than 36 but within 48 months	€1,000
Later than 48 but within 60 months	€1,200
Later than 60 months	€1,500

Remission of additional tax for default.

4. Where a person proves that a default in furnishing a return filed or due to be filed by him was due to a reasonable excuse, the

Commissioner may remit part or all of the additional tax otherwise chargeable in accordance with item 2 or 3 in respect of that default:

Provided that:

(*a*) an insufficiency of funds to pay any tax due, or

(b) when reliance is placed on any other person to perform any task, the fact of that reliance or any dilatoriness or inaccuracies on the part of the person relied upon,

shall not constitute a reasonable excuse for the purpose of this item.

Additional tax for omission.

5. (1) Subject to the provisions of the other items of this Schedule, additional tax chargeable under article 56(12)(*c*) for an omission from a return shall be one point five per cent (1.5%) per month of the endangered tax.

(2) Subject to the provisions of item 7, the rate of additional tax per month as provided in paragraph (1) shall be calculated for every month or part thereof, such period commencing with the month during which the tax on the chargeable income for that year was due and payable and ending with the month during which the omission is rectified by a further return made under article 13 of the Income Tax Management Act or an assessment is made.

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Reduced rate of additional tax on omission.

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6. (1) When an omission from a return is rectified by a person by means of the delivery of a further return made in accordance with article 13 of the Income Tax Management Act before that person is notified in writing by the Commissioner, in terms of subarticle (7) of the said article, that an enquiry will be conducted into that person's tax declarations and liabilities -

(*a*) if that further return is delivered to the Commissioner not later than twelve months after the relative tax return date, the additional tax otherwise chargeable under item 5 for that omission shall be fully remitted;

(*b*) in any other case, the rate of additional tax otherwise chargeable under item 5 for that omission shall be zero point one per cent (0.1%) per month of the endangered tax.

(2) Where an omission from a return is rectified by a person by means of the delivery of a further return made in accordance with article 13 of the Income Tax Management Act after that person has been notified in writing by the Commissioner, in terms of subarticle (7) of the said article, that an enquiry will be conducted into that person's tax declarations and liabilities, but before that person is notified with an assessment in which additional tax is charged for that omission, the rate of additional tax otherwise chargeable under item 5 for that omission shall be zero point seven five 0.75% per month of the endangered tax.

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Maximum additional tax on omission.

7. The maximum additional tax for an omission payable under item 5 or 6 shall in no case be more than sixty times the applicable rate in terms of the respective item.

Remission of additional tax for an omission.

8. (1) Where a return of income delivered by a person contains an omission and -

(*a*) that person has sought and relied upon the written advice of a tax professional, insofar as the matter to which the omission refers is concerned, and submits the original written advice together with the return by not later than the relative tax return date; or

(*b*) that person proves that the omission was not due to any fraud, art, contrivance or gross or wilful neglect,

the Commissioner may remit part or all of the additional tax otherwise due in accordance with this Schedule in respect of that omission.

(2) An advice, referred to in paragraph (1)(*a*), furnished by a tax professional, shall not of itself constitute a binding interpretation of the relative statutory provisions and their proper application.

(3) The Commissioner shall not be required to remit the additional tax in accordance with item (1)(*a*) if he determines the advice in question to be spurious or frivolous: provided that the Commissioner's decision under this paragraph shall be subject to review by the Administrative Review Tribunal in any appeal filed in connection with the relative assessment.

(4) Without prejudice to paragraph (1)(*a*), the fact that an omission was due to the complexity of a particular transaction or to the complexity of any particular provision of the law shall not, of itself, be considered as a valid ground for the remission of additional tax under paragraph (1)(*b*).

Additional tax not subject to interest.

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9. The additional tax chargeable under article 56(12)(*c*) shall be in addition and without prejudice to interest chargeable under article 44(2A) of the Income Tax Management Act, but no such interest shall be charged on the said additional tax.

Omission by persons not eligible for election under article 12 of the Income Tax Management Act. Cap. 372.

10. When a person files a declaration prescribed for the making of an election under article 12 of the Income Tax Management Act, and he is not a person to whom that article applies and subsequently submits a full and correct return, he shall be deemed for the purposes of article 56(12)(*c*) and of this Schedule to have omitted from his return all his income except for that income referred to in article 12(2)(*b*) of that Act and to have rectified that omission when he submits the full and correct return.

Default in connection with an election under article 12 of the Income Tax Management Act. Cap. 372.

11. When a person to whom article 12 of the Income Tax Management Act applies files a declaration prescribed for the making of an election under that article after the date prescribed therefor, he shall for the purposes of article 56(12)(*c*) and of this Schedule be deemed to have made a default in furnishing a return and that default shall continue until a return is furnished.

Additional tax for an omission in addition to additional tax for a default in the case of return filed after notice of enquiry. Cap. 372.

12. (1) When the Commissioner, having determined the amount of tax payable by a person for a year or years of assessment on the basis of an estimate made under article 31(3) of the Income Tax Management Act, gives notice in writing to that person, in terms of article 13(7) of that Act, that an enquiry will be conducted into his tax declarations and liabilities, and that person subsequently furnishes a return of income in respect of the said year or years, that person shall be deemed to be subject to additional tax for an omission in addition to any additional tax to which he may be liable for a default.

(2) For the purposes of calculating the endangered tax for an omission to which the person referred to in paragraph (1) shall be subject, the said endangered tax shall be considered to be equal to the tax calculated on the total income, deducting therefrom any credits, as declared in the said return.

(3) Where an assessment or an additional assessment for a year or years of assessment is made under article 31(5) of the Income Tax Management Act on a person referred to in paragraph (1), for the purposes of calculating the endangered tax, the tax calculated on the total income, deducting therefrom any credits, as declared in the said return, shall be considered to be zero: Cap. 372.

Provided that the additional tax for omission as resulting from paragraph (2) shall be deducted from the amount of the additional tax as resulting from this paragraph.

Certain powers of the Commissioner.

13. (1) The Commissioner may remit such part or all of the additional tax otherwise chargeable in accordance with this Schedule in respect of a default or an omission as he may deem fit.

(2) The Commissioner may impose any condition that he may consider appropriate for any remission under paragraph (1), including the requirement that the person concerned shall not make another default or omission within such period as the Commissioner may establish or that the said person shall make a payment of tax in such amount and within such time as the Commissioner may determine.

(3) Should any condition imposed by the Commissioner in accordance with the provisions of paragraph (2) be infringed by the person concerned, any reduction of additional tax granted by the Commissioner in addition to the reductions contemplated by the other provisions of this Schedule shall be forfeited.

(4) If forfeiture is due under the provisions of paragraph (3), any additional reduction made under the provisions of this item, but not under the provisions of the other items, shall be deemed to have been a suspension of liability to the said additional tax, and not the cancellation of the relevant additional tax.

(5) The Commissioner shall communicate in writing to the person concerned any condition imposed under paragraph (2), the consequences of an infringement of any such condition in accordance with paragraph (3) and, when such is the case, the fact that forfeiture has been incurred.

(6) The use of the Commissioner's discretion under this item shall not be questioned in any appeal.