CHAPTER 159

AIDS TO INDUSTRIES ORDINANCE

To encourage the establishment or development of industrial undertakings and to make provision for various aids thereto.

(1st January, 1959)

Enacted by ORDINANCE XXIA of 1959, as amended by Legal Notice 58 of 1959; Ordinances: XIV of 1959, XVI of 1960, XIX of 1962; Legal Notice 4 of 1963; Acts: XXIV and XXIX of 1965; Legal Notice 46 of 1965; Acts: XXVII of 1967, XI of 1969, XII of 1974; Legal Notice 85 of 1974; Act LVIII of 1974; Legal Notice 148 of 1975; Acts: XI of 1977, IX of 1979, VIII of 1982, XIII of 1983, XI of 1987, VIII of 1990, XXVIII of 1995 and IV of 2001; and Legal Notice 410 of 2007.

ARRANGEMENT OF ORDINANCE

		Articles
Part I.	Short Title and Interpretation	1-2
Part II.	Relief from Income Tax	3-7A
Part III.	Relief from Customs Duty	8-11
Part IV.	Anti-Dumping and Countervailing Duties	12-20
Part V.	General Provisions, Penalties and Safeguards	21-35

SCHEDULES

First Schedule.	Articles in respect of the Importation of which Exemption from Customs Duty may be granted under subarticle (1) of article 8 of this Ordinance.
Second Schedule.	Procedure regarding Applications.
Third Schedule.	Investment Allowance and Deductions for Wear and Tear.
Fourth Schedule.	Reduction of Company Tax.

PART I

SHORT TITLE AND INTERPRETATION

Short title.
Amended by:
XXIX.1965.2.

1. The short title of this Ordinance is the Aids to Industries Ordinance.

Interpretation.
Amended by:
XVI.1960.3;
XXIV.1965.2;
XXIX.1965.2;
XXVII.1967.20;
XI.1969.2;
XII.1974.2;
LVIII.1974.68;
IX.1979.2;
XI. 1987.2;
XXVIII.1995.2.

2. (1) In this Ordinance, unless the context otherwise requires -

"aids" means the reliefs referred to in Part II and Part III of this Ordinance;

"Comptroller" means the Comptroller of Customs;

"Commissioner" means the Commissioner of Inland Revenue;

"construction day" means a day, after the coming into operation of this Ordinance, specified in any application made under this Ordinance as being the day on or before which it is intended to commence the construction (including structural alteration, extension or improvement) of the industrial building to which the application relates;

Cap. 202.

"the Corporation" means the Malta Development Corporation established by article 3 of the Malta Development Corporation Act;

"defined parcel of land" means any plot of land so located and of such extension and description as the Minister responsible for tourism shall approve in writing to be suitable for development as a centre for tourism;

"fishing, horticultural or agricultural undertaking" means an undertaking carrying on or intending to carry on, by way of trade, any fishing, horticultural or agricultural enterprise which, in the opinion of the Minister responsible for agriculture makes a substantial contribution to the food supply of Malta or has a good export potential;

"guest" means any person who comes to Malta as a tourist and any person who comes to Malta and establishes himself therein for any length of time but is not in Malta by reason of his office, business or employment;

"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 to accommodate and for the use of guests against payment, and including guest houses;

"industrial building" means any kind of building or structure whatsoever occupied or to be occupied in Malta by an industrial undertaking for the purposes of the trade carried on by such undertaking and, in particular, includes any building or structure provided by the industrialist for the welfare of workers employed in that trade and in use for that purpose, but does not include any building or structure in use as, or as part of, a dwelling-house (other than a hotel), retail shop or showroom or for any purpose

ancillary to the purposes of a dwelling-house (other than a hotel), retail shop or showroom;

"industrialist" means a person carrying on or intending to carry on an industrial undertaking;

"industrial undertaking" and "undertaking" mean an undertaking carrying on or intended to carry on in Malta a trade which consists in the production, manufacture or improvement of an article or commodity or in the provision or improvement of any service and include an undertaking relating to shipping and an undertaking relating to a hotel;

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

"person" includes an association of persons and in particular includes a company or partnership;

"production day" means a day, after the coming into operation of this Ordinance, specified in any application made under this Ordinance as being the day on or before which it is anticipated that the industrial undertaking to which the application relates will commence to produce in marketable quantities the articles or commodities produced, manufactured or improved by it or to run on commercial scale the service provided or improved by such undertaking.

(2) For the avoidance of doubt it is hereby declared that notwithstanding any exemption or relief from the payment of any tax or duty granted under this Ordinance in respect of any industrial undertaking, the President of Malta may, after such consultation as may be required by this Ordinance, make a further order or further orders under articles 3 and 8 in respect of any expansion of the undertaking aforesaid, and, in respect of any such expansion or of any further expansion thereof, any such exemption or relief may be allowed for such period as is provided in the said articles 3 and 8, respectively, and subject to such conditions and the giving of such security as the President of Malta thinks fit.

PART II

RELIEF FROM INCOME TAX

Income Tax Holiday.
Amended by: L.N. 46 of 1965; XXIV.1965.3; XXVII.1967.20; LVIII. 1974.68; XI.1987.3; IV. 2001.35.

3. (1) Where it appears to the President of Malta, after consultation with the Corporation, that the income derived by an industrialist in respect of gains or profits from the trade or part of the trade of an industrial undertaking should be exempted in whole or in part from the payment of income tax, the President of Malta may by order allow such exemption during a period, hereinafter referred to as "the tax holiday period", of not more than ten years from the production day or from such other days as may be determined by the President of Malta and subject to such conditions and the giving of such security as the President of Malta thinks fit:

Provided further that for the purpose of achieving the aims of this article, the President of Malta may by order provide that during the said ten years the profits of an industrial undertaking be taxed at such reduced rate of income tax and subject to such conditions which to him may seem reasonable after consultation with the Corporation.

Provided that if the end of the tax holiday period does not coincide with the end of an accounting period of an industrial undertaking, the income for the accounting period in which the last day of the tax holiday period falls shall be apportioned between the parts of the said accounting period which respectively precede and follow the end of the tax holiday period, and the income thus attributed to the part which precedes the end of the tax holiday period shall be exempt from income tax.

(2) In computing the income for the tax holiday period and for the whole of the accounting period in which the last day of the tax holiday period falls the wear and tear of plant, machinery and premises being a mill, factory or other similar premises shall be computed in accordance with the provisions of, and at the rates prescribed under, the Income Tax Act.

Cap. 123.

Cap. 123.

(3) The provisions of the Income Tax Act, relating to the deduction of any expenditure on scientific research and on patents or patent rights, where applicable to an industrialist to whom subarticle (1) of this article applies, shall commence to apply in the first year of assessment following the year of assessment during the basis period of which the tax holiday period ends:

Provided that such deduction shall be computed by the Commissioner as if the expenditure incurred at any time up to the end of the accounting period in which the last day of the tax holiday period falls were incurred on the first day following the end of the said accounting period.

(4) Any loss incurred during the tax holiday period by an industrialist to whom subarticle (1) applies in the trade referred to in that subarticle shall be set off without any limitation against the income derived from that trade during the period or periods immediately following the tax holiday period:

Provided that in determining any such loss no account shall be taken of any capital allowances referred to in the Income Tax Act.

Cap. 123.

(5) An industrialist to whom subarticle (1) applies, being a limited liability company within the meaning of the Commercial Partnerships Ordinance*, shall be entitled during the tax holiday period and within two years thereafter to distribute to the members of the company a sum equal to the income derived during the tax holiday period from the trade referred to in the aforesaid subarticle and every such sum shall be exempt from the payment of income tax in the hands of such members:

Cap. 168.

Provided that such period of two years may be extended for further periods, each not exceeding two years, as the President after consultation with the Corporation may, for the expansion of the

*Repealed by Act XXV of 1995 (Chapter 386).

industry, determine.

(6) Every industrialist aforesaid shall upon payment of a dividend to which subarticle (5) applies furnish to each shareholder a certificate setting forth the amount of the dividend paid, the period of profits out of which it is paid, and declaring that it is exempt from income tax as provided for by subarticle (1).

(7) Every industrialist to whom subarticle (1) applies shall keep separate accounts relating to the income derived from the trade referred to in that subarticle, and in all accounts and statements submitted to the Commissioner such income shall be separately set out; and notwithstanding the exemption from income tax in the tax holiday period the provisions of Part IX of the Income Tax Act, shall, *mutatis mutandis*, apply to every such industrialist. Cap. 123.

Investment and depreciation allowance. *Added by: XII.1974.3. Amended by: LVIII. 1974.68; IX. 1979.3; XI. 1987.4.* Cap. 123.

4. (1) Where it appears to the President of Malta after consultation with the Corporation that from the income derived by an industrialist in respect of gains or profits from the trade or part of the trade of an industrial undertaking there should be allowed, for the purposes of the Income Tax Act, an investment allowance and a deduction for wear and tear in respect of any plant and machinery, owned by the industrialist, and used or employed in the trade or part of the trade of the industrial undertaking, the President of Malta may by order allow such investment allowance and such deduction for wear and tear as set out in the Third Schedule:

Provided that such investment allowance and such deduction for wear and tear shall be allowed in respect only of plant and machinery first acquired, used and employed on the construction day or within five years thereafter:

Provided further that no such allowance or deduction shall be allowed when the income derives from gains or profits referred to in article 23 of the Income Tax Act. Cap. 123.

(2) Notwithstanding anything contained in article 14(1) of the Income Tax Act, no initial allowance shall be granted in respect of any plant and machinery which has been the subject of an order under subarticle (1) and no deduction from income shall be allowed for exhaustion or wear and tear of any such plant and machinery other than that provided for in subarticle (1). Cap. 123.

(3) For all purposes of the Income Tax Act, an allowance or deduction made under subarticle (1) shall be deemed to be a deduction made under paragraph (*f*) or under paragraph (*j*) as the case may be of article 14(1) of the Income Tax Act and all the relevant provisions of the Income Tax Act shall apply to such allowance and such deduction: Cap. 123.

Provided that paragraph (iii) of the proviso to article 14(1)(*f*) of the Income Tax Act shall not operate so as to prevent the investment allowance and deduction for wear and tear made under subarticle (1) when taken together from exceeding the original cost of the plant and machinery by the amount of the investment allowance: Cap. 123.

Provided further that the provisions of article 24 of the Cap. 123.

Income Tax Act shall not apply to any investment allowance made under subarticle (1) of this article.

Reduced rates of income tax. *Added by: XII.1974.3. Amended by: LVIII. 1974.68. Su6stituted by: IX. 1979.4. Amended by: XI. 1987.5.* Cap. 123.

5. (1) Where it appears to the President of Malta, after consultation with the Corporation, that the income or part of the income derived by an industrialist being a company as defined in the Income Tax Act, in respect of gains or profits from the trade or part of the trade of an industrial undertaking in any year has been set aside for the exclusive purpose of financing any project of the company as shall have been approved by the Corporation, and notice of such intention was given to the Commissioner at the time the income or part of the income was set aside as aforesaid, the President of Malta may by order direct that, subject to such conditions as he may consider proper to impose and to the condition that the income or part of the income aforesaid has in fact been used for the purposes for which it was set aside and in compliance with all the conditions of the order, the rate of income tax chargeable under the said Act on the income or part of the income so used shall be reduced as set out in the Fourth Schedule; and in any such case the tax chargeable accordingly under the said Act shall be assessed, or reassessed and where necessary refunded, as the case may require.

(2) No order shall be made under subarticle (1) -

(*a*) later than twenty-four months after the end of the year immediately preceding the year in which the income in respect of which the order is applied for falls to be charged to tax; or

(*b*) in respect of any expansion requiring for its realization a period of more than five years from the date of issue of the first order made in respect of that expansion.

(3) For the purposes of this article, where the Commissioner has permitted the gains or profits of an industrialist to be computed, for the purposes of the Income Tax Act, upon the income of the year terminating on a date in the year immediately preceding the year of assessment other than the 31st December, such year shall be deemed to be the year immediately preceding the year of assessment.

Cap. 123.

Special allowance for Maltese companies. *Added by: XII.1974.3. Amended by: LVIII. 1974.68.* Cap. 123.

6. Where the President of Malta, after consultation with the Corporation, is satisfied that the industrial undertaking, being a company as defined in the Income Tax Act, in respect of which an order has been or is to be made under article 4 or 5, is controlled by citizens of Malta, or by other companies controlled by citizens of Malta, he may increase by ten *per centum* the allowances and deductions that may be allowed under articles 4 and 5:

Provided that such increase shall operate only in respect of such years of assessment during the whole of which the industrial undertaking is controlled as aforesaid.

Tax holiday for specified Maltese undertakings. *Added by: XII. 1974.3. Amended by: LVIII. 1974.68.*

7. (1) Where it appears to the President of Malta, after consultation with the Corporation, that the income derived by an industrialist from the trade or part of the trade of a fishing, horticultural or agricultural undertaking wholly owned by Maltese citizens should be exempted from the payment of income tax in whole or in part, the President of Malta may by order allow such exemption during a period, hereinafter referred to as "the tax holiday period", of not more than seven years from the production day or from such other day as may be determined by the President of Malta and subject to such conditions and the giving of such security as the President of Malta may think fit:

Provided that if the end of the tax holiday period does not coincide with the end of an accounting period of an industrial undertaking, the income for the accounting period in which the last day of the tax holiday period falls shall be apportioned between the parts of the said accounting period which respectively precede and follow the end of the tax holiday period, and the income thus attributed to the part which precedes the end of the tax holiday period shall be exempted from income tax.

(2) The provisions of subarticles (2) to (7) both inclusive of article 3 shall *mutatis mutandis* apply in the case of an order made under subarticle (1) as they apply in the case of an order under the said article 3(1).

Exemption from article 43 of Income Tax Act. *Added by: XI. 1987.6.* Cap. 123.

7A. (1) Where it appears to the President after consultation with the Corporation, that the accumulated reserves of profits or part thereof of particular years, which an industrialist being a company as defined in the Income Tax Act, has utilised for the exclusive purpose of financing any project of the company as shall have been approved by the Corporation, and notice of such investment was given to the Commissioner, the President may by order direct that, subject to such conditions as he may consider proper to impose and to the condition that such reserves of profits or part thereof have in fact been utilised for the purposes for which they were invested and in compliance with all the conditions of the order, such reserves of profits or part thereof of particular years be exempted from the provisions of article 43 of the Income Tax Act.

(2) No order shall be made under subarticle (1) in respect of any profits chargeable in the company's hands in respect of any year of assessment prior to that beginning on the lst January, 1984.

(3) For the purposes of this article where the Commissioner has permitted the gains or profits of an industrialist to be computed for the purposes of the Income Tax Act, upon the income of the year terminating on a date in the year immediately preceding the year of assessment other than the 31st December, such year shall be deemed to be the year immediately preceding the year of assessment.

PART III

RELIEF FROM CUSTOMS DUTY

Relief from customs duty. *Amended by: XIV.1959.2; XVI.1960.3; L.N. 46 of 1965; XXVII.1967.20; LVIII.1974.68; XI. 1987.7.*

8. (1) The President of Malta may, after consultation with the Corporation, by order allow an industrialist to import into Malta, during a period to be determined by the President of Malta commencing from the construction day or from such other day as may be determined by the President of Malta and subject to such conditions and the giving of such security as the President of Malta thinks fit, any of the articles specified in the First Schedule hereto free of customs duty if the industrialist satisfies the Comptroller that such articles are imported exclusively for the construction, alteration, reconstruction or extension of an industrial building or for equipping an industrial building or any extension thereof, in either case for the purposes of the trade carried on or intended to be carried on by his undertaking, as also articles shall be imported free of customs duty under this article if the Comptroller is of opinion that such articles are intended for the purpose of effecting repairs to an industrial building or extension thereof, or to any apparatus, machinery, appliances or equipment contained in any such industrial building or extension thereof, or for replacing any apparatus, machinery, appliances or equipment in any industrial building or extension thereof.

(2) The President of Malta may, in his absolute discretion, by order allow an industrialist to import into Malta free of customs duty or at a reduced rate of customs duty during such period as may be determined by the President of Malta and subject to such conditions and the giving of such security as the President of Malta thinks fit, any materials or components which are necessary for and used in the production, manufacture or improvement by the industrialist's undertaking of any article or commodity and any materials which are necessary for and used in the provision or improvement by the industrialist's undertaking of any service.

Control provisions. *Amended by: XVI.1960.3; XXIX. 1965.2.*

9. Every industrialist who imports into Malta any article free of customs duty or at a reduced rate of customs duty under the provisions of article 8 of this Ordinance shall -

(*a*) keep such record in such form and containing such particulars as may be required by the Comptroller of the articles so imported by him;

(*b*) cause such articles to be marked with such mark and in such manner as may be required by the Comptroller;

(*c*) permit the Comptroller or any person authorized by him at all reasonable times to inspect such record and to have access to any industrial building under his control for the purpose of examining any such articles which the Comptroller may believe to be therein and of satisfying himself of the accuracy of the particulars in relation to such articles contained in such record.

Restrictions on disposal.
Amended by. XVI. 1960.3; L.N. 4 of 1963; XXIX. 1965.2; XI. 1977.2; VIII. 1982.2.

10. (1) No article imported into Malta by any industrialist free of customs duty under the provisions of article 8(1) shall be sold, given away or otherwise disposed of by such industrialist except -

(*a*) in the case of a transfer of the industrial building for the construction, alteration, reconstruction, extension or equipment of which such article was imported into Malta, to the transferee of such industrial building; or

(*b*) after payment to the Comptroller of the amount of customs duty which would have been payable upon the importation of such article but for article 8(1); or

(*c*) with the written authority of the Minister responsible for industry, after the expiration of five years from the importation into Malta of such article, in case such article has been actually used for the purpose for which it was imported into Malta.

(2) No materials or components imported into Malta by any industrialist free of customs duty or at a reduced rate of customs duty under the provisions of article 8(2) shall be sold, given away or otherwise disposed of by such industrialist except -

(*a*) if incorporated in the articles or commodities for the production, manufacture or improvement of which they were imported into Malta; or

(*b*) after payment to the Comptroller of the amount of customs duty, or the balance thereof, which would have been payable upon the importation of such materials or components but for article 8(2).

Relief from customs duty in respect of certain articles deemed to be taken out of bond.
Added by: XIX.1962.2. Amended by: XXIV.l965.4: XXIX. 1965.2; XI. 1977.2.
Cap. 337.

11. Where any article is sold or disposed of to an industrialist entitled to relief from customs duty in pursuance of an order made under any of the provisions of article 8, and the sale or disposal of such article to the industrialist takes place under circumstances which, but for the operation of this article, would cause such article to be deemed to be taken out of bond and duty to become payable thereon by the industrialist in accordance with any of the provisions of article 6 of the Import Duties Act, such article shall (to the extent only that the industrialist would have been entitled to relief from customs duty in respect thereof, under such order as aforesaid, if he had imported that article at the time of its sale or disposal to him in Malta) be deemed for the purposes of that order to be imported by the industrialist at the time at which such article is sold or disposed of to him.

PART IV

ANTI-DUMPING AND COUNTERVAILING DUTIES

Other interpretative provisions. *Amended by: XXIX. 1965.2.*

12. (1) In this Part of this Ordinance -

"country" includes any territory;

"importer" in relation to any goods at any time between their importation and the time when they are delivered out of customs charge, includes any owner or other person for the time being possessed of or beneficially interested in the goods,

and references to producing goods include references to growing or manufacturing goods and to the application of any process in the course of producing goods.

(2) In this Part of this Ordinance references to the country from which goods are exported to Malta are references to the country from which they were consigned to Malta and goods which in the course of consignment from any country to Malta pass through or are transhipped in any third country shall not on that account be regarded for the purposes of this Part of this Ordinance as having been exported from that third country.

Cases where customs duties may be imposed. *Amended by: L.N. 46 of 1965; XXIX.1965.2; XXVII.1967.20; LVIII.1974.68; L.N. 148 of 1975.*

13. (1) Where it appears to the President of Malta, after consultation with the Corporation -

(*a*) that goods of any description are being or have been imported into Malta in circumstances in which they are under the provisions of this Part of this Ordinance to be regarded as having been dumped, or

(*b*) that some Government or other authority outside Malta has been giving a subsidy affecting goods of any description which are being or have been imported into Malta,

and that, having regard to all the circumstances, it would be in the national interest, the President of Malta may, after consultation with the Corporation, exercise the power conferred on him by this Part of this Ordinance to impose and vary duties of customs in such manner as he thinks necessary to meet the dumping or the giving of the subsidy:

Provided that, where the President of Malta is not satisfied that the effect of the dumping or of the giving of the subsidy is such as to cause or threaten material injury to an established industry in Malta or is such as to retard materially the establishment of an industry in Malta, the President of Malta shall not exercise that power if it appears to him that to do so would conflict with the obligations of the Government of Malta under the provisions for the time being in force of the General Agreement on Tariffs and Trade concluded at Geneva in 1947.

(2) For the purposes of this Part of this Ordinance imported goods shall be regarded as having been dumped -

(*a*) if the export price from the country in which the goods originated is less than the fair market price of the

goods in that country, or

(*b*) in a case where the country from which the goods were exported to Malta is different from the country in which they originated -

(i) if the export price from the country in which the goods originated is less than the fair market price of those goods in that country, or

(ii) if the export price from the country from which the goods were so exported is less than the fair market price of those goods in that country.

(3) References in this Part of this Ordinance to giving a subsidy are references to giving, directly or indirectly, a bounty or subsidy on the production or export of goods (whether by grant, loan, tax relief or in any other way and whether related directly to the goods themselves, to materials of the goods or to something else), and include -

(*a*) the giving of any special subsidy on the transport of a particular product; and

(*b*) the giving of favourable treatment to producers or exporters in the course of administering any governmental control over the exchange of currencies where such treatment has the effect of assisting a reduction of the prices of goods offered for export,

but do not include the application of restrictions or charges on the export of materials from any country so as to favour producers in that country who use those materials in goods produced by them.

Orders imposing duties.
Amended by: L.N. 46 of 1965; XXIX. 1965.2: LVIII. 1974.68.

14. (1) The power which the President of Malta may exercise under this Part of this Ordinance is a power by order to impose on goods of a description specified in the order a duty of customs chargeable on the import of the goods into Malta at a rate specified in the order.

(2) The matters by reference to which the description of goods in an order is framed shall include either the country in which the goods originated or the country from which the goods were exported to Malta.

(3) Subject to the provisions of the last foregoing subarticle, an order under this article may include such provisions with respect to the description of the goods chargeable with duty and with respect to the cases in which duty is chargeable as may appear to the President of Malta to be required for the purposes of this Part of this Ordinance, and in particular -

(*a*) provisions limiting the description of the goods by reference to the particular persons or organizations by whom the goods were produced or who were concerned with the production of the goods in some specified manner;

(*b*) provisions defining the rate of duty by reference to value or weight or other measure of quantity;

(*c*) provisions directing that duty be charged for any period, or periods, whether continuous or not, or without any limit of period, or at different rates for different periods or parts of periods; and

(*d*) in connection with the commencement, variation or termination of a duty, provisions authorizing repayments in respect of duty where it is shown that the prescribed conditions are fulfilled.

(4) Any duty chargeable under this Part of this Ordinance on any goods shall be chargeable in addition to any other duty of customs for the time being chargeable thereon.

Relief in respect of duties.
Amended by: XVI. 1960.3; L.N. 46 of 1965; XXIX. 1965.2; XXVII. 1967.20; LVIII. 1974.68.

15. (1) Where it appears to the President of Malta, after consultation with the Corporation, that relief under this article should be available as respects a duty imposed by an order under this Part of this Ordinance (being an order made to afford protection against dumping), the President of Malta may, if he thinks fit, in that or a subsequent order under this Part of this Ordinance, apply the provisions of this article in relation to the duty.

(2) Where this article applies in relation to any duty, the importer of any goods chargeable with the duty as being goods originating in or, as the case may be, exported from a specified country may apply to the President of Malta for relief from the duty on those goods.

(3) If on an application so made the President of Malta, after consultation with the Corporation, is satisfied that the export price of the goods from that country with the amount of the duty added to it exceeds the fair market price of the goods in that country, the President of Malta shall notify the Comptroller of the amount of the excess, and the Comptroller shall remit or repay the duty up to that amount.

(4) An application under this article as respects any goods shall not be made more than six months after the duty has been paid on the goods, and in connection with any such application the applicant shall furnish such information and evidence as the President of Malta or the Corporation may require from him for ascertaining the said export price or fair market price.

(5) The foregoing provisions of this article shall have effect in relation to a duty imposed by an order under this Part of this Ordinance (being an order made to afford protection against the giving of a subsidy) as if references to the fair market price in a country were references to the export price from that country increased by such amount, if any, as may be necessary to offset the effect of the giving of the subsidy.

Drawback, etc., of duties.
Amended by: L.N. 46 of 1965; XXIX. 1965.2; XXVII. 1967.20; LVIII. 1974.68.

16. (1) The President of Malta may, after consultation with the Corporation, by order provide for the allowance of drawback in respect of all or any duties under this Part of this Ordinance on the export of goods in such circumstances and subject to such conditions as he may specify.

(2) The drawback may be in respect of duty paid on the goods or in respect of duty paid on materials used in the manufacture of the goods and the rate of the drawback may be determined in such manner and by reference to such matters as the President of Malta, after consultation with the Corporation, may specify.

Power to require information from importers.
Amended by: XVI. 1960.3: L.N. 4 of 1963; XXIX.1965.2; XXVII.1967.20; XI. 1977.2; VIII. 1982.2.

17. (1) The Comptroller may require the importer of any goods to state such facts concerning the goods and their history as he may think necessary to determine whether the goods are goods originating in a country specified in an order under this Part of this Ordinance or are goods exported from any country, and to furnish him in such form as he may require with proof of any statements so made; and if such proof is not furnished to his satisfaction or the required facts are not stated, the goods shall be deemed for the purpose of this Part of this Ordinance to have originated in, or, as the case may be, to have been exported from, such country as he may determine:

Provided that the Comptroller shall require proof of the country in which goods originated in relation to any duty under this Part of this Ordinance in the case only of goods exported from such countries as the Minister responsible for industry, after consulting the Corporation, may direct in relation to that duty.

(2) Where an order under this Part of this Ordinance limits the description of goods in respect of which duty is chargeable under this Part of this Ordinance or the cases in which duty is so chargeable so that the question whether any and if so what duty is chargeable on the goods depends on other matters besides the country in which the goods originated or from which they were exported, the Comptroller may also require the importer to state such facts as he may deem necessary to determine that question so far as regards those other matters and to furnish him in such form as he may require with proofs of any statements so made; and if such proof is not furnished to his satisfaction or the required facts are not stated, those facts shall be deemed for the purposes of duty under this Part of this Ordinance to be such as he may determine.

Ascertainment of export price.
Amended by: L.N. 4 of 1963; XXVII. 1967.20; XI. 1977.2; VIII. 1982.2.

18. (1) In relation to goods imported into Malta the export price from the country in which the goods originated or from which they were exported shall be determined as provided in the following provisions of this article.

(2) If the goods are imported under a contract of sale which is a sale in the open market between buyer and seller independent of each other, and the Minister responsible for industry, after consultation with the Corporation, is satisfied as to that fact, as to the price on that sale and as to such other facts as are material for this purpose, the export price shall be the price on that sale subject to a deduction for the cost of insurance and freight from the port or place of export in the said country to the port or place of import, and for any other costs, charges or expenses incurred in respect of the goods after they left the port or place of export, except so far as any such costs, charges or expenses have to be met separately by the purchaser.

(3) If subarticle (2) does not apply, the Minister responsible for industry, after consultation with the Corporation, shall determine the export price by reference to such sale of the goods (or of any goods in which the first mentioned goods were incorporated) as he may select with such adjustments as may appear to him to be proper.

(4) In this article the reference to a sale in the open market between buyer and seller independent of each other presupposes -

(*a*) that the price is the sole consideration; and

(*b*) that the price made is not influenced by any commercial, financial or other relationship, whether by contract or otherwise, between the seller or any person associated in business with him and the buyer or any person associated in business with him (other than the relationship created by the sale of the goods in question); and

(*c*) that no part of the proceeds of the subsequent re-sale, use or disposal of the goods will accrue either directly or indirectly to the seller or any person associated in business with him.

Ascertainment of fair market price. *Amended by: L.N. 4 of 1963; XXIX. 1965.2; XXVII.1967.20; XI.1977.2; VIII.1982.2.*

19. (1) The fair market price of any goods in a country shall for the purpose of this Part of this Ordinance be determined as provided in the following provisions of this article.

(2) Subject to the next following subarticle, the fair market price shall be taken to be the price at which goods of the description in question (that is to say, any identical or comparable goods) are being sold in the ordinary course of trade in the said country for consumption or use there, but subject to any necessary adjustments, whether for differences in conditions and terms of sale, for differences in taxation or otherwise, which may be required for the purpose of ensuring that the comparison between the fair market price and the export price is effectively a comparison between the prices on two similar sales.

(3) If it appears to the Minister responsible for industry, after consultation with the Corporation, that goods of that description are not being sold in the said country, or not in such circumstances that the fair market price can be determined in accordance with subarticle (2), the fair market price shall be determined by the Minister responsible for industry, after consultation with the Corporation, by reference to any price obtained for goods of that description when exported from the said country, with adjustments made for the purpose mentioned in subarticle (2), or, if the Minister responsible for industry thinks fit, by reference to the cost or estimated cost of production of the goods the dumping of which is in question, with such additions in respect of selling cost and profit as may appear to the Minister responsible for industry to be proper.

(4) No account shall be taken under this article of any application of restrictions or charges on the export of materials from any country so as to favour producers in that country who use those materials in goods produced by them.

Construction of references to country of origin, etc.
Amended by: L.N. 4 of 1963; L.N. 46 of 1965; XXIX.1965.2; XXVII. 1967.20: LVIII. 1974.68; XI.1977.2; VIII.1982.2.

20. (1) Goods shall be regarded for the purposes of this Part of this Ordinance as having originated in a country -

(*a*) if those goods were wholly produced in that country; or

(*b*) if some stage in the production of the goods was carried out in that country and the cost of carrying out such stages, if any, in the production of the goods as were carried out after those goods last left that country (but before the import of the goods into Malta) was less than twenty-five per cent of the cost of production of the goods as so imported; or

(*c*) if some stage in the production of any components or materials incorporated in the goods was carried out in that country and the cost of carrying out such stages in production as were carried out after those components or materials last left that country to convert those components or materials into the goods as imported into Malta was less than twenty-five per cent of the cost of production of the goods as so imported.

(2) Where the export price of any goods from the country in which they originated is in question and some stage in the production of the goods, or of any components or materials incorporated in the goods, was carried out after they last left that country, the deductions to be made by the Minister responsible for industry in the price by reference to which the export price is to be ascertained shall include a deduction for the cost of carrying out any such stage in the production of the goods and in the production of any components or materials incorporated in the goods; and the fair market price shall be the fair market price of those goods or, as the case may be, of those components or materials, in the state in which they left that country.

(3) Any reference in this Part of this Ordinance to the country in which goods originated shall be taken, in a case where there are two or more countries which answer to that description, as a reference to any of those countries.

(4) The President of Malta may, after consultation with the Corporation, make rules prescribing for the purposes of this Part of this Ordinance -

(*a*) the costs, charges and expenses to be taken into account in ascertaining costs of production or the cost of any stage in production;

(*b*) the manner in which cost of production is to be ascertained in cases where different stages are carried out by different persons;

(*c*) the manner in which the cost of different stages of production is to be ascertained.

PART V

GENERAL PROVISIONS, PENALTIES AND SAFEGUARDS

Conditions required for aids. *Amended by: L.N. 4 of 1963; XXIX.1965.2; XXVII.1967.20; XI.1977.2; VIII. 1982.2.*

21. Subject to the provisions of article 8(2), no aid under this Ordinance shall be granted unless the Minister responsible for industry, after consultation with the Corporation, is satisfied that -

(*a*) the industrial undertaking in respect of which such aid is applied for is likely to create employment in Malta or to increase the national product;

(*b*) such aid is advisable in order to secure the establishment and initial operation, expansion or development of that undertaking; and

(*c*) there are good prospects of such undertaking ultimately being carried on without further aid.

Date from which aid may be granted. *Added by: XIX.1962.3. Amended by: XXIX.1965.2.*

22. Any aid granted under this Ordinance may be granted as from a date which is earlier than the date of the order granting the aid but not earlier than the date of commencement of this Ordinance.

Procedure for applications. *Amended by: L.N. 46 of 1965; XXIX. 1965.2; LVIII.1974.68.*

23. Unless otherwise provided in this Ordinance, applications under this Ordinance shall be made and be dealt with in accordance with the provisions contained in the Second Schedule, which may be varied or revoked by rules made by the President of Malta under article 24.

Rules. *Amended by: L.N. 46 of 1965; XXIX.1965.2; XXVII.1967.20; LVIII.1974.68.*

24. The President of Malta may, after consultation with the Corporation, make rules -

(*a*) requiring any industrialist who has obtained any aid under this Ordinance to furnish to such officer or officers as may be specified such returns as may be required by such officer or officers, and, in particular, returns of the number of persons employed by him in each category of work, distinguishing between those ordinarily resident in Malta and those not so resident;

(*b*) requiring any industrialist who has obtained any aid under this Ordinance to permit such officer or officers as may be specified to have access to the premises of his industrial undertaking for the purposes of ensuring that any conditions attached to such aid are being complied with and that the provisions of this Ordinance or of any orders or rules made thereunder are being observed;

(*c*) regulating the procedure of the Corporation and matters incidental thereto;

(*d*) regulating the making of applications under this Ordinance and the proceedings of the Corporation on such applications;

(*e*) generally for carrying any of the purposes or provisions of this Ordinance into effect.

Rules may prescribe penalties. *Amended by: XXIX. 1965.2: XIII. 1983.5; L.N. 410 of 2007.*

25. Any rules made under this Ordinance may prescribe the penalties, not exceeding in any case a fine (*multa*) of one hundred and sixteen euro and forty-seven cents (116.47), which shall be incurred by any person contravening or failing to comply with the provisions thereof which shall be awardable, in the case of continuing offences, for each day during which the offence continues.

Provisions as to orders and rules. *Amended by: L.N. 46 of 1965; XXIX. 1965.2; XXVII. 1967.20; LVIII. 1974.68.*

26. Any power of making orders or rules under this Ordinance shall include a power to vary or revoke any orders or rules so made by subsequent orders or rules, as the case may be, and shall be exercisable by the President of Malta after consultation with the Corporation.

Notice of non-compliance. *Amended by: L.N. 46 of 1965; XXIX. 1965.2; XXVII. 1967.20; LVIII. 1974.68.*

27. Where any industrialist fails to comply or cause compliance with any of the provisions of this Ordinance or of any rules made thereunder or with any of the conditions attached to the grant of an aid made to him under this Ordinance, the President of Malta, after consultation with the Corporation, may, having regard to the circumstances of the case, and without prejudice to any criminal proceedings to which the industrialist may be liable, either by order revoke the grant of any aid made to such industrialist under this Ordinance or by notice in writing require such industrialist within thirty days of such notice either -

(*a*) to comply or cause compliance with such provision or condition, as the case may be; or

(*b*) to establish to the President of Malta's satisfaction that his failure to comply or cause compliance with such provision or condition, as the case may be, was due to some cause beyond his control and that there is a reasonable prospect of complying or causing compliance with such provision or condition, as the case may be, within such time as the President of Malta may consider reasonable.

Extension for compliance. *Amended by: L.N. 46 of 1965; XXVII. 1967.20; LVIII. 1974.68.*

28. Where any industrialist, on being required so to do by notice under article 27, satisfies the President of Malta -

(*a*) that his failure to comply or cause compliance with any provision or condition as aforesaid, as the case may be, was due to some cause beyond his control; and

(*b*) that there is a reasonable prospect of his complying or causing compliance with such provision or condition, as the case may be, within such time as the President of Malta may consider reasonable,

the President of Malta may, after consultation with the Corporation, authorize such reasonable postponement for the purposes of compliance with such provision or condition, as the case may be, as he thinks fit.

Revocation of grant. *Amended by: L.N. 46 of 1965;*

29. Where any industrialist -

(*a*) having been required under article 27 so to do, fails to satisfy the President of Malta -

XXIX.1965.2; XXVII.1967.20; LVIII. 1974.68.

(i) that his failure to comply or cause compliance with such provision or condition, as the case may be, was due to some cause beyond his control; and

(ii) that there is a reasonable prospect of his complying or causing compliance with such provision or condition, as the case may be, within such time as the President of Malta may consider reasonable; or

(*b*) having been allowed a postponement under article 28 fails within the period of such postponement to comply or cause compliance with such provision or condition, as the case may be,

the President of Malta may, after consultation with the Corporation, by order revoke the grant of any aid made under this Ordinance to such industrialist.

Repayment on revocation. *Amended by: XXIX. 1965.2.*

30. Where the grant of any aid made to an industrialist under this Ordinance is revoked under the provisions of this Ordinance, such industrialist shall be liable to repay to the Government any sums which would have been payable by him to the Government but for the provisions of this Ordinance relating to such grant and any sums which such industrialist is so liable to pay may be set off against any sums which may be due from the Government to such industrialist for whatsoever reason, saving the right of action of the Government for the recovery of any balance remaining due.

Penalties. *Amended by: L.N. 46 of 1965; XXIX. 1965.2; XXVII. 1967.20; LVIII. 1974.68; XIII. 1983.5; VIII.1990.3; L.N. 410 of 2007.*

31. (1) Any industrialist who contravenes or fails to comply with any of the conditions of the grant of any aid made to him under this Ordinance shall be guilty of an offence and shall, without prejudice to any other liability under the provisions of this Ordinance, be liable on conviction to a fine (*multa*) not exceeding -

(*a*) in respect of a first offence, two hundred and thirty-two euro and ninety-four cents (232.94); or

(*b*) in respect of a second or subsequent offence, one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69).

(2) Where an industrialist has been convicted of an offence under subarticle (1), then at any time after such conviction, if the grant of the aid to which the offence relates has been revoked in accordance with the provisions of this Ordinance, the President of Malta may, after consultation with the Corporation, direct the Chairman of the Corporation to apply to the court before which the industrialist has been convicted for a decree ordering the industrialist to repay to the Government, within such period as the court shall fix, the full amount of any sums which would have been payable by him to the Government but for the provisions of this Ordinance relating to such grant, or, if a part thereof has already been paid under article 30, any unpaid balance thereof or such lesser proportion thereof as the President of Malta may fix having regard to all the circumstances and, on such decree being made, such amount shall be deemed to be a fine (*multa*) and articles 14 and 29 of the Criminal Code shall *mutatis mutandis* apply to such

Cap. 9.

fine:

Provided that where the provision of this subarticle has been applied, the industrialist shall not thereafter be required to repay to the Government under article 30 any further amount of the aid in relation to which the decree has been made.

(3) A decree made by the Court of Magistrates under subarticle (2) of this article may, in all cases, be appealed against by the Attorney General and the industrialist against whom the decree has been made and, subject to this, all the provisions of the Criminal Code relating to appeals shall, *mutatis mutandis*, apply to any such decree. Cap. 9.

(4) Any industrialist who contravenes or fails to comply with any of the provisions of article 3(6) and (7) shall be guilty of an offence and shall, without prejudice to any other liability under this Ordinance, be liable on conviction to a fine (*ammenda*) not exceeding one hundred and sixteen euro and forty-seven cents (116.47).

(5) Any industrialist who contravenes or fails to comply with any of the provisions of article 9 of this Ordinance shall be guilty of an offence and shall, without prejudice to any other liability under this Ordinance, be liable on conviction to a fine (*multa*) not exceeding five hundred and eighty-two euro and thirty-four cents (582.34).

(6) Any industrialist who contravenes or fails to comply with the provisions of article 10 shall be guilty of an offence and shall, without prejudice to any other liability under this Ordinance, be liable on conviction to a fine (*multa*) of three times the value of the article in respect of the disposal of which he contravenes or fails to comply with such provision.

False statements. *Amended by: L.N. 46 of 1965; XXIX. 1965.2; LVIII. 1974.68; XIII. 1983.5; VIII. 1990.3; L.N. 410 of 2007.*

32. (1) If for the purpose of obtaining the grant of any aid under this Ordinance, either for himself or for any other person, any person knowingly or recklessly makes any false or fraudulent statement or representation, the person making such statement or representation, and any person who was granted any aid under this Ordinance knowing that such statement or representation had been made shall be guilty of an offence and shall be liable, on conviction by the Court of Magistrates sitting as a court of criminal judicature, to a fine (*multa*) not exceeding five hundred and eighty-two euro and thirty-four cents (582.34) or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

(2) Where any industrialist who has obtained the grant of any aid under this Ordinance has been convicted of the offence under subarticle (1), the President of Malta may, after consultation with the Corporation, by order revoke the grant of the aid to which the offence relates and the provisions of article 30 and article 31(2) shall thereupon apply to such industrialist.

(3) If for the purposes of an application under article 15 any person knowingly or recklessly makes any false or fraudulent statement or representation, he shall be guilty of an offence and shall be liable, on conviction by the Court of Magistrates sitting as

a court of criminal judicature, to a fine (*multa*) not exceeding two hundred and thirty-two euro and ninety-four cents (232.94) or to imprisonment for a term not exceeding four months or to both such fine and such imprisonment and any duty remitted or repaid under that article on the application shall be recoverable by the Government as a civil debt.

Saving.
Amended by: XXIX. 1965.2.
Cap. 9.

33. The punishments provided in articles 31 and 32 shall apply unless the fact constitutes a more serious offence under the Criminal Code or some other law, in which case such Code or such other law shall apply, so however that no person shall be punished twice for the same offence.

Provisions as to proceedings.
Amended by: L.N. 46 of 1965; XXIX. 1965.2; LVIII. 1974.68.

34. (1) No proceedings for an offence under this Ordinance shall be instituted, except by or with the consent of the Attorney General.

(2) Proceedings for an offence under this Ordinance may be commenced at any time within five years from the date of the commission of the offence or within three months from the date on which evidence, sufficient in the opinion of the President of Malta to justify a prosecution for the offence, comes to the knowledge of the President of Malta, whichever is the later date:

Provided that where the offender was outside Malta at the date on which evidence, sufficient in the opinion of the President of Malta to justify a prosecution for the offence, comes to the knowledge of the President of Malta, such proceedings may be commenced at any time within twelve months from the date on which he first arrives in Malta.

For the purposes of this article a certificate of the President of Malta as to the date on which such evidence as aforesaid comes to the knowledge of the President of Malta shall be conclusive evidence thereof.

Offences by associations of persons.
Amended by: XXIX.1965.2.

35. Where any offence against any of the provisions of this Ordinance or of any rules made thereunder has been committed by an association of persons, every person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of that association or was purporting to act in any such capacity, shall be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

SCHEDULES

FIRST SCHEDULE

Amended by:
XIV. 1959.3;
XXIX.1965.2.

[Article 8]

ARTICLES IN RESPECT OF THE IMPORTATION OF WHICH EXEMPTION FROM CUSTOMS DUTY MAY BE GRANTED UNDER ARTICLE 8(1)

All building materials, tools, plant, machinery, pipes, pumps, conveyor belts, or other appliances and materials of any description necessary for and used in the construction, alteration, reconstruction or extension of the industrial building or necessary for and used in equipping the industrial building or any extension thereof for the production, manufacture or improvement of any article or commodity or for the provision or improvement of any service.

SECOND SCHEDULE

Amended by:
L.N. 58 of 1959;
XIX.1962.4;
L.N. 4 of 1963;
XXIX.1965.2;
XXVII.1967.20;
L.N. 85 of 1974;
XI.1977.2;
VIII.1982.2.

[Article 23]

PROCEDURE REGARDING APPLICATIONS

(1) Application for aid under this Ordinance shall be made to the Corporation and shall be in such form and contain such particulars as the Corporation shall determine from time to time by notice in the Government Gazette.

(2) When the Corporation has considered an application it shall as soon as may be advise the Minister responsible for industry thereon in the form of a written report.

Added by:
XII. 1974.4.
Amended by:
XI. 1987.8.

THIRD SCHEDULE

[Article 4]

INVESTMENT ALLOWANCE AND DEDUCTIONS FOR WEAR AND TEAR

(i) Investment allowance:

Twenty *per centum* of the original cost of plant and machinery invested in during the first five years of the project.

(ii) Wear and tear deductions.

Year of deduction	*Percentage of deduction*
First year	30 *per centum* of the original cost
Second year	20 *per centum* of the original cost
Third year	20 *per centum* of the original cost
Fourth year	10 *per centum* of the original cost
Fifth year	10 *per centum* of the original cost
Sixth year	10 *per centum* of the original cost

Added by:
XII. 1974.4.
Substituted by:
IX. 1979.5;
XI. 1987.9;
L.N. 410 of 2007.

FOURTH SCHEDULE

[Article 5]

REDUCTION OF COMPANY TAX

Proportion of Company income set aside	Reduction in tax rate otherwise chargeable
any amount	by €0.175