CHAPTER 395

CUSTOMS AND EXCISE TAX ACT*

To make provision for the imposition of an excise tax on imports, products and services in place of the value added tax system.

17th June, 1997
1st July, 1997

ACT XII of 1997, as amended by: Act XVI of 1997; Legal Notices 90, 91, 99, 124 and 203 of 1997, 1 and 248 of 1998, and 37 of 2000; Act XIII of 2005; and Legal Notice 425 of 2007.

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*Repealed by Act XXIII of 1998 (Cap. 406); but reproduced in view of its applicability for a transitory period - *see* articles 85 *et seq* of Chapter 406.

PART I

PRELIMINARY

Short title.

1. The short title of this Act is Customs and Excise Tax Act.

Interpretation.

2. In this Act, unless the context otherwise requires -

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

"business activity" means any activity carried on as part of a trade, profession, vocation or other business, other than the activity of an employee acting as such, but including the exploitation of any asset on a regular basis, and the provision by any entity of facilities or advantages for payment to members of that entity;

"business sale" means a sale by a person as part of the business activities of that person;

"certificate of exemption" in relation to ETP means a certificate issued under article 16;

"Director" means the Director of Customs and Excise Tax appointed under article 3;

"employee" means any individual bound to an employer by a contract of employment or by other legal ties creating the relationship of employer and employee as regards working conditions, remuneration and the employee's liability and shall also include the directors of a company;

"ETI" means the excise tax on imports levied under article 10;

"ETP" means the excise tax on products levied under article 12;

"ETS" means the excise tax on services levied under article 17;

"excise goods" means goods subject to excise duty under the Excise Duty Act;

Cap. 382.

"goods" means any tangible movable property;

Cap. 409.

"hotel" has the meaning assigned to it by the Malta Travel and Tourism Services Act;

"Malta" has the meaning assigned to it by the Constitution and includes the continental shelf;

"Minister" means the Minister responsible for finance;

"person" includes a body of persons, a public authority, a trust, and any entity capable of, or carrying on, a business activity;

"prescribed" means prescribed by regulation, order or notice under this Act;

"price" includes any consideration;

"product" includes goods and intangible movable property;

"public authority" means the Government, a local council set up in accordance with the Local Government Act, an authority vested with distinct personality established by an Act of Parliament or a corporation constituted by an Act of Parliament;

Cap. 363.

"records" includes machine readable information;

"registered person" means a person who has been registered in accordance with article 24 and whose registration has not been cancelled in accordance with article 25;

"registration certificate" means a certificate required to be issued by the Director in terms of article 24;

"related service", in relation to the sale of a product to which the service is related, means any of the following services for which no separate agreement is made:

(*a*) services of whatever nature ancillary or incidental to the sale of any product to the person to whom the product is sold;

(*b*) packaging, delivery, carriage, postage or insurance of that product incurred or provided before the product is delivered;

(*c*) adjustments, assembling, modifications, repairs, alterations or improvements made to that product or related to the interaction of that product with another product as part of, or associated with, the sale;

"resident in Malta", when applied to an individual, means an individual who resides in Malta except for such temporary absences as to the Director 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 incorporated in Malta, or when the control and management of the business of a body of persons incorporated outside Malta are exercised in Malta;

"retailer" means a person whose business consists wholly or mainly in the sale of products by retail;

"sale" includes the transfer of any goods or products under any title;

"stocks" includes trading stocks and capital assets;

"supply" includes a sale;

"tax" includes additional tax;

"tax invoice" means an invoice required to be provided in terms of article 39;

"tax period" has the meaning assigned to it by article 30;

"tax return" means the return required to be furnished in terms of article 31;

"taxable importation" has the meaning assigned to it by article 10;

"taxable product" has the meaning assigned to it by article 13;

"taxable service" has the meaning assigned to it by article 18;

"taxable value", in respect of a taxable importation, taxable product or taxable service, means the value thereof established in accordance with the provisions of this Act;

"Tribunal" means the Excise Tax Tribunal established by article 47;

"trustee" includes an executor or administrator.

PART II

ADMINISTRATION

Administration of the Act.

3. (1) The administration of this Act is vested in the Director of Customs and Excise Tax, who shall be a public officer appointed as such by the Prime Minister.

(2) Save as otherwise specifically provided for under any other provision of this Act, the Director may delegate to any public officer any of the rights, duties, powers and other functions vested in him, conferred on him or imposed upon him by this Act.

Official secrecy. *Amended by; XVI. 1997.8.*

4. (1) Except as may be necessary for the purposes of this Act, or where the Prime Minister otherwise directs, every person having any official duty or being employed in the administration of this Act shall regard and deal with all records, returns, assessments or other documents and information relating to this Act as secret and confidential.

(2) No person appointed under or employed in carrying out the provisions of this Act shall be required to produce in any court, tribunal, board or committee of inquiry any document or to divulge any matter coming under his notice in the performance of his duties under this Act except as may be necessary for the purpose of carrying into effect the provisions of this Act, or for the purpose or in the course of any appeal made in accordance with this Act or a prosecution for any offence against any of the provisions of this Act.

(3) Notwithstanding the other provisions of this article, the Director shall permit the Auditor General or any officer authorised by the Auditor General to have access to any records or documents as may be necessary for the performance of his official duties and for this purpose the Auditor General and any such authorised officer shall be deemed to be a person employed in the administration of this Act.

Disclosure of information.

5. (1) No obligation as to secrecy or other restriction upon the disclosure of information imposed by article 4 or by any other enactment or otherwise shall prevent the Director or any officer authorised by him in that behalf to furnish to the Commissioner of Inland Revenue and the Comptroller of Customs such information obtained for revenue gathering purposes and which is required to be disclosed by the Director or any officer as aforesaid to give effect to any of the provisions of this Act.

(2) Information obtained pursuant to subarticle (1) shall not be disclosed except:

(*a*) to the officers mentioned in that subarticle; or

(*b*) for the purposes of any proceedings connected with a matter in relation to which those officers so authorised

perform their duties.

Obligation on Director to carry out examinations and right to demand additional information.

6. (1) Without prejudice to the provisions of this Act, the Director shall carry out each year a separate professional audit including as necessary a physical audit, of the returns submitted by a sample of registered persons chosen during the month of April of each year by a scientific randomisation programme, ensuring that the sample is of a reasonable size and is representative of all classes of registered persons.

(2) If for any purpose under this Act, the Director requires any information or additional information or the submission of a return from any person who has not made a return or a complete return, he may, by registered letter or by personal service of a notice in writing, demand from such person such information, additional information or return as may be indicated in the notice.

(3) Such person shall deliver to the Director such information, additional information or return within the period of time, being not less than two working days, stipulated by the Director in such notice.

(4) For the purpose of any proceedings taken under this Act, the facts necessary to establish compliance on the part of the Director with the provisions of subarticle (2) as well as default under subarticle (3) shall in the absence of proof to the contrary be sufficiently proved in any court of law by the affidavit of the Director or any other responsible officer of the Customs and Excise Tax Department. Such affidavit shall have attached thereto as an exhibit a copy or duplicate of the said letter or notice.

(5) Subject to the provisions of article 9, the Director may require and demand the production by any person or his agent or officer of any letter, accounts, invoice, statement, book or other document or record held by such person, agent, or officer and to request the attendance of any such person at the office of the Director for the purpose of confirming on oath the authenticity of the document and of determining the tax payable by such person and the same shall be produced within the time, being not less than two working days from the date of the receipt of the notice as may be determined in such demand.

Right of access and inspection.

7. (1) The Director or any person authorised by him in writing in that behalf shall, upon the production of his written authority and at all reasonable times, have the right to enter upon any land, building or place for the purposes of inspecting any stocks, books, records or documents, whether in the custody or under control of a public officer or any other person whatsoever, if the Director or the officer considers that such inspection will enable the ascertainment of the tax payable under this Act by any person or the collection or recovery of tax and may inspect any such stocks, books, records or documents and may without fee or reward make extracts or copies of any such books, records or documents.

(2) If access is required in virtue of subarticle (1) to any premises occupied in whole or in part for the purpose of habitation,

such access shall require the prior warrant issued by a magistrate sitting in the Court of Magistrates in its civil jurisdiction and shall not take place between seven o'clock in the evening and seven o'clock in the morning.

(3) The Director or any person authorised by him may, for the purpose of any inspection under this subarticle, require the production of any book, records or document by any person in whose custody or control such book, records or document may be and may require any such person to give reasonable assistance in the inspection and to answer all questions relating thereto.

Power to take samples.

8. (1) The Director or any person authorised by him in writing upon the production of his written authority, if it appears necessary for the protection of the revenue against mistake or fraud, may at any time take, from the possession of any person who supplies goods or products, such samples as the Director or the said person may require so as to establish how the goods or products or the materials of which the goods or products are made ought to be or to have been treated for the purposes of tax.

(2) Any sample taken under this article from the goods in a person's possession shall be returned to him within a reasonable time and in good condition.

Information held by certain licensed persons.

9. (1) Without prejudice to the provisions relating to the duty of professional secrecy, no information shall be requested by the Director by virtue of this Act from any person to whom subarticle (2) refers except solely for the purpose of determining the tax payable by and the deductions allowable to such person under this Act or of ensuring compliance by such person with the provisions of this Act.

(2) This subarticle refers to:

Cap. 371.

(*a*) a bank licensed under the Banking Act;

Cap. 290.

(*b*) an insurance company in respect of life assurance business which is carried on pursuant to a licence granted under the Insurance Business Act*;

Cap. 370.

(*c*) any person licensed to carry on investment business under the Investment Services Act;

Cap. 370.

(*d*) a collective investment scheme licensed under the Investment Services Act;

Cap. 345.

(*e*) a stockbroker licensed under the Financial Markets Act.

PART III

EXCISE TAX ON IMPORTS

Imposition of excise tax on imports.

10. (1) Subject to the provisions of this Act, an excise tax on goods imported into Malta shall be levied and collected in accordance with the provisions of this Act at the rate of fifteen

*Repealed by Act XVII of 1998 (Cap. 403).

percent on the taxable value of the goods so imported and shall be payable to the Comptroller of Customs on behalf of the Director before the goods are released for use or consumption in Malta.

(2) For the purposes of subarticle (1), the taxable value of any imported goods shall be the value of the said goods at the time when the tax on the said importation is payable in terms of subarticle (1). Such value shall be established in the same manner provided in the Import Duties Act for the determination of the value on which duty *ad valorem* is chargeable under that Act, and all the relevant provisions of that Act shall apply *mutatis mutandis*; and for the purposes of this subarticle the references in the said provisions to the Comptroller of Customs shall be construed as references to the Comptroller of Customs acting on behalf of the Director. Cap. 337.

(3) Where the said goods are sold in Malta before the date on which the tax on their importation becomes payable in terms of subarticle (1) the taxable value thereof shall be the value of the consideration paid or payable for the said transfer or the value established in virtue of the other provisions of this Act, whichever is the higher.

(4) No goods imported into Malta shall be released by the Comptroller of Customs unless -

(*a*) the excise tax on imports has been paid in accordance with this Act; or

(*b*) the importation thereof is an exempt importation; or

(*c*) such release is authorised by the Director.

(5) An authorisation for the purpose of subarticle (4)(*c*) may be given under such conditions and against the granting of such security as the Director may establish.

Exemptions on imports.

11. (1) Subject to the provisions of subarticle (2), the importation of goods to which the First Schedule to this Act applies shall be exempt importations.

(2) The exemptions referred to in subarticle (1) shall be subject to the provisions contained in the Schedule referred to in that subarticle and to such conditions which the Minister may prescribe for the purpose of ensuring the correct and straight-forward application of the said exemptions and of preventing any possible evasion, avoidance, abuse of tax or distortion of competition.

(3) Any exemption from import duties under the Import Duties Act or under any other law, shall be deemed to be also an exemption from the payment of excise tax under this Act on imported goods and the provisions of the Import Duties Act or any other such law relating to any such exemption shall also apply to the exemption from tax granted under this subarticle. Cap. 337.

PART IV

EXCISE TAX ON PRODUCTS

Imposition of excise tax on products. *Amended by: L.N. 425 of 2007.*

12. (1) Subject to the provisions of this Act, an excise tax on products shall be levied and collected by the Director on any business sale in Malta of a taxable product made to a retailer or to any other person unless such other person holds a valid certificate of exemption applicable to that product or is a person to whom the sale is made by a retailer.

(2) ETP shall be charged by the seller at the rate of five per cent of the taxable value of the product.

(3) Where any person, other than a retailer who has paid ETP, makes a business sale of a taxable product direct to the general public, ETP shall be charged on eighty-two per cent of the taxable value.

(4) In case of a business sale of a taxable product on which ETP has already been paid by the seller, ETP shall be charged on the taxable value of the product exclusive of the amount of ETP already paid on the product.

(5) Any amount of tax excluded under subarticle (4) shall be refundable by the Director if it is shown to his satisfaction that ETP has been paid and subarticle (4) has been complied with:

Provided that the Director may determine the said amount by such percentage or percentages of the taxable value of the product as may be prescribed.

(6) ETP shall not be chargeable if the business sale is made by a person whose total business sales have not, in the twelve months ending with the last day of the immediately preceding taxable period, exceeded twenty-seven thousand and nine hundred and fifty-two euro and forty-eight cents (27,952.48) or such higher amount as may be prescribed:

Provided that in respect of the first twelve months after the coming into force of this Act, this subarticle shall apply in such manner and under such conditions as the Director may deem appropriate.

Taxable product.

13. Any product shall be deemed to be a taxable product for the purposes of this Act unless such product falls within a category of non-taxable products listed in the Second Schedule to this Act.

Tax value and price.

14. (1) The taxable value of a product, including any related service, shall be the price of the product, and of any related service, exclusive of the amount of ETP, and any other deductible amount as may be prescribed.

(2) Where a product is an excise good, ETP shall be charged on the total resulting from the addition of the value of the excise good established in accordance with the provisions of the Excise Duty Act, the amount of excise duty payable thereon and the value of any related service.

Cap. 382.

Place of business sales.

15. A business sale takes place in Malta if the product sold is in Malta at the time when the sale takes place.

Certificate of exemption from ETP.

16. (1) A certificate of exemption from ETP may be issued by the Director to any registered person who shows to the satisfaction of the Director that for the due and proper functioning of this Act, or otherwise as may be prescribed, such person is not to be charged with ETP on products sold to such person.

(2) The person to whom a certificate of exemption is issued is to inform the Director forthwith of any material change in his circumstances.

(3) The Director may in any case of change in the circumstances of a person to whom a certificate is given, at any time withdraw such exemption.

(4) A certificate of exemption may be issued subject to such limitations and conditions as may be prescribed or as may be established by the Director in the absence of applicable regulations and the certificate shall be valid only if the limitations and conditions to which it is subject are observed and complied with.

(5) The Minister shall not later than the second week of each month publish in the Gazette a list of the persons who were granted an exemption in accordance with this article in the preceding month.

PART V

EXCISE TAX ON SERVICES

Charge to excise tax on services. *Amended by: L.N. 425 of 2007.*

17. Subject to the provisions of this Act, an excise tax on services shall be levied and collected by the Director on all taxable services provided in Malta by a service provider at the rate of five per cent of the total taxable value of the taxable services provided during a tax period:

Provided that where the total value of the services of a service provider has not, in the twelve months ending with the last day of the immediately preceding tax period, exceeded thirteen thousand and nine hundred and seventy-six euro and twenty-four cents (13,976.24) or such other higher amount as may be prescribed, ETS shall not be chargeable on such person in respect of that period:

Provided further that in respect of the first twelve months after the coming into force of this Act, the immediately preceding proviso shall apply in such manner and under such conditions as the Director may deem appropriate.

Taxable service.

18. (1) A service is a taxable service if it is provided for a consideration and it is not an exempt service.

(2) Services are provided for a consideration if the person providing the services receives payment therefor in cash or in kind.

Provision of a service.

19. (1) For the purposes of this Act, the provision of a service means the provision of any service and without prejudice to the generality of the foregoing includes -

(*a*) the provision of any kind of advice or assistance;

(*b*) the provision of any data, knowledge or information of any kind or the provision of use or access to data, knowledge or information;

(*c*) the provision of human resources;

(*d*) the provision of the use of any taxable product;

(*e*) the provision of food listed in the Fourth Schedule to this Act;

(*f*) the provision of a document entitling a person to a service;

(*g*) such other provision as may be prescribed.

(2) For the purpose of this article and of the Fourth Schedule to this Act, food includes beverages.

Exempt services.

20. A service is an exempt service if it is -

(*a*) a related service; or

(*b*) a service listed in the Third Schedule to this Act.

Taxable value.

21. (1) The taxable value of a taxable service shall be the consideration paid for the provision of that service.

(2) To the extent that the consideration for the provision of a service is not paid in money, the open market value of that consideration shall be that as may be prescribed or as may be established by the Director in the absence of applicable regulations.

Place of provision of services.

22. (1) The provision of a service takes place in Malta if:

(*a*) the service provider is resident in Malta at the time the service is provided; or

(*b*) the service is physically performed in Malta by a person who is present in Malta at the time the service is provided; or

(*c*) the service is provided to a person who is resident in Malta.

(2) Where the service is provided to a person who is resident in Malta and the service provider is not resident in Malta and is not registered for the purpose of this Act, the said person who is resident in Malta shall be deemed to have himself provided those services in the course or furtherance of his business activity and the provisions of this Act, including the obligation to apply for registration and to account for and to pay the tax, shall apply accordingly.

Fees regulated by law.

23. Where a fee or other consideration payable in respect of a service is regulated by law and ETS is payable by the person providing that service, it shall be lawful to increase such fee or consideration by five per cent.

PART VI

REGISTRATION

Persons carrying on business activities to be registered.

24. (1) Subject to the provisions of this Act, every person who carries on any other business activity in Malta and is not registered becomes liable to be registered.

(2) Every person who on the thirtieth June, 1997, is registered under the Value Added Tax Act, 1994* shall be registered by the Director under this Act on the commencement thereof.

(3) Every person who, by virtue of subarticle (1), becomes liable to be registered after the coming into force of this Act shall apply to the Director on the prescribed registration form, or on a form approved by the Director, within thirty one days of becoming so liable.

(4) Any person who is not a registered person and who intends to carry on a business activity may apply to be registered under this Act.

(5) Where any person -

(*a*) applies to be registered pursuant to subarticle (3) or (4), and the Director is satisfied that that person is liable to be registered under this Act, that person shall be a registered person for the purposes of this Act with effect from such date as the Director may determine;

(*b*) has not made application for registration pursuant to subarticle (3), and the Director is satisfied that that person is liable to be registered under this Act, that person shall be a registered person for the purposes of this Act with effect from the date on which that person first became liable to be registered under this Act:

Provided that the Director may, having regard to the circumstances of the case, determine that such person shall be a registered person from such later date as the Director considers equitable.

(6) The Director shall allocate a registration number and shall determine the first tax period for every person registered under this Act and shall deliver to that person a registration certificate.

(7) An application for registration under this Act purporting to be made by or on behalf of any person shall for all purposes be deemed to have been made by that person or by that person's authority, as the case may be, unless the contrary is proved.

Cancellation of registration.

25. (1) Subject to the provisions of this Act, every registered person who carries on any business activity shall cease to be liable to be registered if that person has ceased to carry on any business activity.

(2) Every person who, by virtue of subarticle (1), ceases to be liable to be registered may request the Director in writing to cancel

*Repealed by this Act.

that registration, and if the Director is at any time satisfied, whether upon such request or otherwise, that that person does not carry on or has ceased to carry on a business activity, the Director shall cancel that person's registration with effect from the last day of the tax period during which such person ceased to be liable to be registered, or from such other date as may be determined by the Director, and shall notify that person of the date on which the cancellation of registration takes effect.

(3) Every registered person who ceases to carry on all business activities shall notify the Director of that fact within fifteen days of the date of cessation and the Director shall cancel the registration of any such person with effect from the last day of the tax period during which all such business activities ceased, or such other date as may be determined by the Director:

Provided that the Director shall not cancel the registration of any such registered person if there are reasonable grounds for believing that the registered person will carry on any business activity at any time within twelve months from that date of cessation.

(4) Any notification by a registered person pursuant to subarticle (3) shall be made in writing to the Director and shall state the date upon which that person ceased to carry on all such business activities and whether or not that person intends to carry on any such business activity within twelve months from that date.

(5) Any date determined by the Director for the cancellation of registration under subarticle (3) may be retrospective to a date not earlier than -

(*a*) the last day of the tax period during which all such business activities carried on by that person ceased; or

(*b*) the date on which the person was registered under this Act, if the Director is satisfied that the person did not, from that date, carry on any business activity.

Registered person to notify Director of change of status.

26. Subject to the provisions of this Act, every registered person shall within thirty one days of the occurrence notify the Director in writing of -

(*a*) any changes in the name, address, constitution or nature of the principal business activity or activities of that registered person;

(*b*) any change of address from which, or of the name in which, any business activity is carried on by that registered person.

Liabilities not affected by ceasing to be registered person.

27. The obligations and liabilities under this Act of any person in respect of anything done, or omitted to be done, by that person while that person is a registered person shall not be affected by the fact that that person ceases to be a registered person.

PART VII

RETURNS AND PAYMENT OF TAX

Applicability of this Part.

28. The provisions of this Part of this Act shall apply only to business activities consisting in the sale of products and the provision of services.

Time of business activity.

29. (1) Subject to the other provisions in this article -

(*a*) the sale of a product shall be deemed to take place at the time when the product is delivered or otherwise made available to the person buying the product;

(*b*) the provision of a service shall be deemed to take place on the date when the service is performed.

(2) Subject to the provisions of subarticle (3) when payment is received by the person carrying on a business activity before the time determined in accordance with subarticle (1), the sale or provision aforesaid shall, to the extent of the payment so made, be deemed to take place at such earlier time.

(3) When a tax invoice is issued before the time determined in accordance with the provisions of subarticle (1) or before the expiration of thirty-one days following the time determined as aforesaid, the sale or provision aforesaid shall, in respect of the value of that invoice, be deemed to take place at the time when the invoice is issued.

(4) When services are performed over a period for a consideration the whole or part of which is determined or payable periodically or from time to time, they shall be treated as separately and successively performed at the earlier of the following times:

(*a*) to the extent that a payment for such provision of services is received, the period covered by that payment;

(*b*) to the extent that a tax invoice is issued in respect of such provision of services, the period covered by that invoice,

or as may be prescribed.

Tax period.
Amended by: L.N. 425 of 2007.

30. (1) Each registered person shall be placed by the Director in one of the following categories for the purposes of determining that person's tax periods for the purposes of this Act:

(*a*) category A, with tax periods of three months ending on the last day of any month in any year as may be determined by the Director;

(*b*) category B, with tax periods of twelve months ending on the last day of any month in any year as may be determined by the Director.

(2) Every registered person who is not placed in category B pursuant to subarticle (3), shall be placed by the Director in category A.

(3) The Director may, whether on his own initiative or on written application by a registered person, place that person in

category B if the total value of that person's business activities -

(*a*) has not in the twelve months ending with the last day of the immediately preceding tax period, exceeded twenty-seven thousand and nine hundred and fifty-two euro and forty-eight cents (27,952.48) in respect of the sale of products or thirteen thousand and nine hundred and seventy-six euro and twenty-four cents (13,976.24) in respect of the provision of services or such other amounts as may, from time to time, be prescribed; or

(*b*) is not likely to exceed those amounts in the period of twelve months beginning on the first day of any tax period; or

(*c*) such person is a retailer.

(4) For the purposes of subarticle (3), the total value of a registered person's business activities shall be deemed not to have exceeded any amount specified in or under that subarticle where the total value exceeds any such amount solely as a consequence of any cessation of, or any substantial and permanent reduction in the size or scale of any business activity carried on by the registered person.

(5) The Director may from time to time direct that a registered person change from category A to category B or, as the case may be, from category B to category A -

(*a*) on written application by the registered person; or

(*b*) following the notification by the registered person under article 26 of a change in status; or

(*c*) where the Director is otherwise satisfied, that the registered person has ceased to satisfy the conditions of subarticle (3):

Provided that a registered person may only make a written application to the Director to change the category that determines the registered person's tax periods after the expiry of twelve months from the date on which the last written application was made.

(6) Where the Director directs that a registered person changes from one category to the other, such person shall be deemed to have been placed in the new category with effect from the day following the end of the tax period during which the direction was made by the Director.

(7) The first tax period for any registered person shall commence on such dates as may be determined by the Director in accordance with article 24(5).

(8) The last tax period for a person whose registration has been cancelled shall be the tax period during which the date of the said cancellation falls and shall end on the said date.

(9) The Director may by means of a notice served on a registered person in any particular case vary any tax period for that

period in such manner as may be specified in that notice.

Tax returns.

31. (1) Every registered person shall, on or before the fifteenth day of the second month following the last day of every tax period of that person, without notice or demand, furnish to the Director a tax return, in such form as may be prescribed or as may be approved by the Director.

(2) Any registered person who ceases to be registered shall, not later than one month after so ceasing, furnish to the Director a final tax return, in such form as may be approved by the Director, in respect of that part of the last tax period during which that registered person was registered.

(3) The Director may require any person, whether a registered person or not, to furnish, whether on that person's own behalf or as an agent or trustee, such further or other returns to the Director in the prescribed form as and when the Director requires for the purposes of this Act.

Exemption from obligation to furnish return.

32. (1) The Director may, by notice in writing, exempt any person from the provisions of article 31(1) for such time and subject to such conditions and limitations as may be specified in the said notice and may, by notice in writing, vary or revoke any exemption so granted.

(2) Notwithstanding an exemption granted in terms of subarticle (1), a registered person shall furnish the Director with a tax return in respect of any tax period during which he carries on any business activity.

Accounting basis.

33. (1) Subject to the provisions of this Act, every registered person shall account for tax payable on an invoice basis.

(2) The Director may, on application in writing by a registered person or on the Director's own initiative, direct that the registered person account for the tax payable on a payment basis.

(3) Where the Director has, pursuant to subarticle (2), directed that a registered person shall account for tax payable on a payment basis -

(*a*) if that registered person has ceased to satisfy the conditions under which any such direction has been given, and -

(i) that registered person has notified the Director under article 26 of a change in status; or

(ii) the Director is otherwise satisfied that the registered person has ceased to satisfy the conditions aforesaid; or

(*b*) if that registered person has made an application in writing to the Director to account for tax payable on an invoice basis,

the Director may direct that that registered person shall account for the tax payable on an invoice basis.

(4) Where the Director gives a direction in respect of a registered person's accounting basis under subarticle (2) or subarticle (3), the registered person shall account for the tax payable on the accounting basis directed by the Director with effect from -

(*a*) the commencement of the tax period immediately following the tax period during which the direction is given by the Director, in any case to which paragraph (*b*) of this subarticle does not apply; or

(*b*) the person's registration under this Act, where the direction is given by the Director before the end of the first tax period of the person that follows that registration.

Particulars to be furnished and prepared where change in accounting basis takes place.

34. (1) Where the Director directs a change in a registered person's accounting basis in accordance with article 33, the registered person shall furnish to the Director in the prescribed form, particulars to enable the calculation of tax payable in consequence of the change in the basis of accounting.

(2) The particulars required to be furnished under subarticle (1) shall be furnished to the Director not later than the last day for furnishing a return pursuant to article 31(1) of the Act for the tax period preceding that in which the direction of the Director takes effect.

(3) Where the Director directs a change in a registered person's accounting basis under article 33, the registered person shall prepare -

(*a*) a list of his creditors in relation to that person's business activity, showing the amounts due by him as at the last day of the tax period preceding that in which the direction takes effect; and

(*b*) a list of his debtors in relation to that person's business activity, showing the amount due to him as at the last day of the business activity in which the direction takes effect.

Tax payable where accounting basis takes place.

35. Every registered person whose accounting basis is changed pursuant to article 33 shall, not later than the last day allowed under article 34(2) for furnishing particulars in respect of the change, pay to the Director the tax payable, if any, as determined pursuant to article 36.

Calculation of tax payable.

36. (1) In respect of each tax period every registered person shall calculate the amount of tax payable by him in accordance with the provisions of this Act.

(2) Subject to the following provisions, in calculating the amount of tax payable in respect of each tax period, there shall be deducted from the amount of tax so payable and attributable to the tax period -

(*a*) any amount calculated in accordance with article 41; and

(*b*) where a credit note has been issued in that tax period pursuant to article 40(2) and that registered person is the supplier in relation to that credit note, the amount of the tax credit.

(3) For the purposes of subarticle (2), the amount of tax payable in relation to a business activity carried on by a registered person attributable to a tax period is, -

(*a*) the total tax calculated on the tax value of all business activities carried on or deemed to be carried on during that period; and

(*b*) where a debit note has been issued in that period pursuant to article 40(2) and that registered person is the supplier in relation to that debit note, the amount of the tax debit.

(4) If, in relation to any tax period, the total amount that may be deducted by a registered person under subarticle (2) exceeds the amount of tax due by him to the Director and attributable to that tax period, the amount of excess shall, subject to the provisions of this Act, be refunded to that registered person by the Director.

Payment of tax.

37. (1) Subject to the provisions of this Act, every registered person shall for each tax period, and not later than the last day allowed under this Act for furnishing a return for that tax period, pay to the Director the tax payable for that period:

Provided that, where a later due date has been fixed pursuant to article 32, the tax payable shall be paid to the Director on or before that later date.

(2) Subject to the provisions of Part VIII and Part IX of this Act, the amount shown as tax payable on any tax return furnished by a registered person shall conclusively be deemed and taken to be correct for the purposes of this Act.

(3) A return purporting to be made by or on behalf of any person shall for all purposes be deemed to have been made by that person or by that person's authority, as the case may be, unless the contrary is proved.

Refund may be set off against tax due.

38. (1) Where a registered person who furnishes a tax return in respect of a tax period, is entitled to a refund in terms of the provisions of this Act, such refund may be set off against the tax due for that period.

(2) Any refund, or part thereof, due to a registered person for a tax period which is not set off against the tax due for that same period in accordance with the provisions of subarticle (1) hereof, shall be paid within the time-limit specified in article 57.

Tax invoice.

39. (1) Every registered person, other than a retailer, who sells any product or provides any service to another person shall provide to that other person a tax invoice, or a receipt, containing such particulars as may be prescribed within thirty-one days from the date referred to in article 29(1).

(2) A registered person who is a retailer and who sells any product to the general public shall provide the purchaser, at the time of the sale, with a receipt containing such particulars and issued in such form and manner as may be prescribed:

Provided that where a sale is made on credit, the receipt shall be issued when the price is paid.

(3) A registered person who is a retailer and who sells a product to any other registered person shall, at the request of that other person, provide him with a tax invoice within thirty-one days from the date on which the activity is deemed to have taken place in accordance with the provisions of article 29.

(4) Where a registered person provides a document to himself which purports to be a tax invoice in respect of a business activity carried on in his regard by another person, that document may, with the approval of the Director, be treated as the tax invoice required to be provided by the other person in terms of this article.

Credit and debit notes.

40. (1) This article shall apply where a registered person has issued a tax invoice in respect of a business activity and -

(*a*) that activity has been cancelled; or

(*b*) the previously agreed consideration for the activity has been altered whether due to an offer of discount, not being a discount for prompt payment which is clearly stated on the face of the tax invoice, or otherwise; or

(*c*) the products and services or part of the products and services supplied have been returned to the person carrying out the business activity.

(2) Where this article applies, the registered person carrying on the business activity shall issue to the other person paying for that business activity a credit note or, as the case may be, a debit note containing such particulars as may be prescribed, to adjust the amount shown on the tax invoice to the amount that would have been so shown if -

(*a*) the cancellation or alteration referred to in subarticle (1)(*a*) and (*b*) had taken place before the tax invoice was issued;

(*b*) the goods and services returned had not been supplied or provided, as the case may be.

Bad debts.

41. (1) Where -

(*a*) a registered person has carried on a business activity for consideration in money; and

(*b*) that registered person has furnished a return in relation to the tax period during which the business activity was carried on and has properly accounted for tax on that business activity under this Act; and

(*c*) the registered person has written off as a bad debt the whole or part of the consideration not paid to him; and

(*d*) the registered person has taken all reasonable steps to

recover the bad debt; and

(*e*) the registered person satisfies the Director that there is no reasonable or probable expectation that the bad debt will ever be recovered,

then the Director may allow the registered person to make a deduction under article 36(2) of that portion of the amount of tax chargeable in relation to that business activity as the amount written off as a bad debt bears to the total consideration for the activity. The deduction shall be made from the tax due at the time it is allowed and may be carried forward.

(2) Where any amount in respect of which a deduction has been made in accordance with subarticle (1) is at any time wholly or partly recovered by the registered person, that portion of the amount of the deduction allowable under subarticle (1) as the amount of the bad debt recovered bears to the bad debt written off shall be deemed to be the tax charged in relation to a business activity carried on during the tax period in which the bad debt is wholly or partly recovered.

PART VIII

ASSESSMENT OF TAX

Assessment of tax.

42. (1) Where **-**

(*a*) any person, whether registered or not, who is liable to pay tax fails to furnish a tax return as required by this Act; or

(*b*) the Director is not satisfied with the return made by any registered person,

the Director shall make an assessment of the amount which, in his opinion, is the tax payable pursuant to this Act and that person shall, subject to the provisions of this Act, be liable to pay the tax so assessed.

(2) The Director may, at any time, make all such adjustments in or additions to an assessment or an amended assessment made under this article as he thinks necessary to ensure the correctness thereof, notwithstanding that tax or further tax may have been paid.

(3) The Director shall cause notice of the assessment or amended assessment to be sent to the person liable to pay the tax or further tax and the amount so due shall be payable within thirty one days from the service thereof.

Assessment deemed correct except in proceedings on appeal.

43. Except in proceedings on appeal from an assessment under article 46, no assessment made by the Director shall be disputed in any proceedings on any ground; and except as aforesaid and subject to the provisions of article 45, every such assessment and all the particulars thereof shall conclusively be deemed and taken to be correct and the liability of the person so assessed shall be determined accordingly.

Evidence of returns and assessments.

44. The production of any document by or on behalf of the Director purporting to be a copy or an extract of an original

document shall in the Tribunal and in all other proceedings be sufficient evidence of the original and the production of the original shall not be required.

Limitation of time for issue of an assessment or an amendment of assessment. *Amended by: XIII. 2005.60.*

45. (1) Where any registered person has made, or is to make, a return in respect of any tax period, it shall not be lawful for the Director to issue an assessment after the expiration of six years from the end of the tax period or six years from the date when the return is furnished for that tax period, whichever date is the later.

(2) Where an assessment is made by the Director under article 42(1)(*a*), it shall not be lawful for him to reopen that assessment after the lapse of six years from the date it was made.

PART IX

APPEALS

Appeals against an assessment.

46. (1) Any person dissatisfied with a decision of the Director consisting in an assessment of tax or relating to the registration of a person under this Act or to the liability to ETI, may, either personally or by his agent, lodge an appeal from such decision to the Tribunal within thirty days of the date upon which the notice of assessment has been served upon him or the date upon which he has been served by the Director with a notice of the said decision or from the determination by the Comptroller of Customs, acting on behalf of the Director, of the ETI due.

(2) The appeal under this article may be made on the ground of any relevant point of fact or of law other than on the classification of any goods under the Customs Tariff set out in the First Schedule to the Import Duties Act which shall be determined in accordance with the provisions of the said Act as if the question related to duty chargeable under that Act:

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Provided that any appeal under this article shall be made in such form and manner as may prescribed.

(3) Any of the parties to an appeal to the Tribunal who feels aggrieved by a decision of that Tribunal on a point of law may appeal against that decision to the Court of Appeal by means of an application to be filed within thirty days from the date on which the decision appealed from is notified to him.

(4) Where it results from a decision given on an appeal made in accordance with this Act that any amount of tax paid by a person was not due, the Director shall refund such amount to that person within thirty days from the date such decision becomes *res judicata*.

Establishment of the Excise Tax Tribunal.

47. (1) There is hereby established a Tribunal to be called the Excise Tax Tribunal for the purpose of hearing and determining appeals made under article 46.

(2) The Tribunal shall be composed of a chairman and two members who shall be appointed by the Minister for a period of three years and may not be removed from office except in the circumstances and manner in which a judge may be removed:

Provided that the Minister may appoint several chairmen and members to sit on the Tribunal, but only one chairman and two members shall sit on any one case.

(3) The chairman shall be a person qualified to be appointed as a magistrate and at least one of the other members shall be a certified public accountant and auditor.

(4) There shall be a Registrar of the Tribunal who shall be responsible to ensure the efficient functioning of the Tribunal.

(5) The Registrar shall be appointed by the Minister.

(6) The Minister shall have the power to make rules of the Tribunal generally for regulating the Tribunal's power and authority as well as to regulate any matter relating to the practice and procedure of the said Tribunal and the fees to be charged and the costs of proceedings to be paid. On any matter in respect of which no rule has been made under this subarticle this Tribunal may establish its own practice or procedure.

PART X

ADDITIONAL TAX AND ENFORCEMENT

Additional tax and interest.
Amended by: L.N. 425 of 2007.

48. (1) Any person who, being required to apply for registration under this Act, makes such an application after the expiration of the time laid down in article 24, shall be liable to additional tax in an amount equivalent to the higher of -

(*a*) two per cent of the tax due, if any, for the first tax period following registration; and

(*b*) forty-six euro and fifty-nine cents (46.59)

for every month or part thereof that elapses from the date on which the application should have been made in terms of the said article and the earlier of the date on which the registration is furnished to the Director and the date when that person is registered by the Director.

(2) Any person who, being required to furnish a tax return for a tax period, furnishes that return after the expiration of the time laid down in article 31, shall be liable to additional tax in an amount equivalent to the higher of -

(*a*) two per cent of the tax due, if any;

(*b*) forty-six euro and fifty-nine cents (46.59)

for every month or part thereof that elapses from the date on which the tax return should have been furnished in accordance with this Act and the date when it is furnished to the Director.

(3) Where an assessment is made for a tax period in the circumstances referred to in article 42, additional tax shall be due for that period in an amount equivalent to twenty per cent of the under-declared tax.

(4) Where a tax return furnished to the Director by a registered person for a tax period contains an understatement of the tax due and that person makes a disclosure of such an understatement

before he is served with an assessment for that period, he shall be liable to additional tax in an amount equivalent to ten per cent of the underdeclared tax.

(5) Interest shall be due on any tax (but excluding additional tax) which is not paid by the date on which it becomes payable in accordance with this Act, at the rate of one per cent for each month or part thereof during which the said tax remains unpaid or at such other rate as may be prescribed.

Suit by the Director.

49. (1) Tax and additional tax due under this Act may be recovered by the Director as a civil debt due to the Government.

(2) Subject to the provisions of subarticle (3), action for the payment of tax, additional tax and interest may be taken by the Director at any time within six years from the date on which such tax, additional tax and interest becomes payable.

(3) The running of the period referred to in subarticle (2) shall be interrupted by any judicial act filed before the expiration of such period by the Director demanding the payment of the tax and additional tax due.

Executive title.
Amended by: XIII. 2005.61.

50. (1) Any notice issued by the Director showing any amount of tax and additional tax due by a person shall, unless the contrary is proved, be sufficient evidence that that amount is due to the Director by that person and shall constitute an executive title within the meaning and for the purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure.

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(2) The Director may request the payment of any tax, additional tax and interest payable by any person under this Act by means of a demand note and if the payment is not made within thirty days from the date when the said demand note is served on that person, the Director may proceed to enforce payment in virtue of the executive title referred to in subarticle (1) after two days from the service on that person of an intimation for payment made by means of a judicial act. Upon the lapse of the period of two days mentioned in this subarticle the Director shall be entitled to register in the public registry or land registry, as the case may be, a note of privilege for the amount demanded in the judicial act which note of privilege shall be registered by any advocate or notary.

(3) No opposition shall stay the issue or execution of any executive act issued on the strength of an executive title mentioned in this article or the sale by auction in pursuance thereof or the paying out of the proceeds of such sale and no opposition or reservation in the schedule of deposit shall stay the paying of any sum deposited in court following any such executive act as aforesaid.

Powers relating to imported goods.

51. (1) For the purposes of ascertaining, collecting and protecting on behalf of the Director the tax chargeable under this Act on taxable importations, the Comptroller of Customs shall have the same powers and shall follow the same procedures as are in accordance with any other law exercisable and followed by him for the purpose of ascertaining, collecting and protecting import duties.

(2) Any provisions in the Customs Ordinance or in the Import Duties Act or in any regulations made thereunder relating to the application of the proceeds from a sale of imported goods towards the payment of import duties due on those goods shall be construed as providing for the application of the said proceeds towards the payment of import duties and of any tax due under this Act on the importation of those goods.

Cap. 37. Cap. 337.

Special privilege.

52. The Director shall have a special privilege over the assets forming part of the taxable activity of a person in respect of any tax due by that person under this Act and the said tax shall, notwithstanding anything contained in any other law, be paid in preference to a debt having any other privilege, excepting a debt having a general privilege and a debt mentioned in article 2009(*a*) or (*b*) of the Civil Code.

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Security for tax due.

53. (1) If, in any particular case, the Director has reason to believe that tax collected by a registered person might not be recoverable by the Director at the time when that tax becomes payable to him in terms of this Act, he may by a notice served on that person, demand the payment of the tax within such time as may be specified in that notice and the tax shall thereupon become payable within that time notwithstanding any other provision of this Act.

(2) When a payment has been demanded from a person in accordance with subarticle (1) that person may, instead of making the said payment, furnish such security for the tax payable as may be acceptable to the Director.

Shorter period for the delivery of a return.

54. If, in any particular case, the Director has reason to believe that the tax due by a registered person could otherwise be prejudiced, he may, by means of a notice in writing, require that person to furnish a tax return for a taxable period before the time allowed in terms of article 31, and in respect of that tax return any reference in this Act to the time allowed in terms of the said article shall thereupon be construed as a reference to the period specified in the said notice.

Appropriation of payment.

55. (1) Where any interest is due by a person in terms of this Act any payment made by that person to the Director shall, notwithstanding any declaration made by that person, be appropriated to that interest before it is appropriated to any tax.

(2) Subject to the provisions of subarticle (1), where any additional tax is due by a person in terms of this Act, any payment made by that person to the Director shall, notwithstanding any declaration of that person to the contrary, be appropriated to such additional tax before it is appropriated to any other tax.

PART XI

REFUNDS AND RELIEF FROM TAX

Refund of tax.

56. (1) Subject to the provisions of this Act, in any case where the Director is satisfied that the tax paid by a registered person is in excess of the amount payable for any taxable period, he shall

refund the amount paid in excess:

Provided that no refund shall be made under this subarticle after the expiration of the period of six years immediately after the end of the taxable period, unless written application for the refund is made by or on behalf of the registered person before the expiration of the said period.

(2) When a registered person buys a product on which ETI and ETP has been paid, and such a product would have been exempt from ETI had it been imported by the said registered person for the purposes set out in the First Schedule to this Act, other than an exemption listed under item 26 of the First Schedule, such person shall be entitled to a refund at the rate of sixteen per cent of the price of the product purchased or such other percentage as may be prescribed:

Provided that in respect of hotels, the refund aforesaid shall be at the rate of twelve per cent or such other percentage as may be prescribed.

Refund to be made within a time-limit.

57. (1) Subject to the provisions of this Act, where the Director is required to refund any amount to any registered person pursuant to any of the provisions of this Act, the Director shall refund to that registered person the amount required to be refunded not later than the end of the fourth month following the date on which the return of that registered person was due to be made or was received by the Director, whichever is later.

(2) Where any registered person has in respect of a tax period, failed to pay to the Director, in whole or in part, any tax payable on the due date, the Director may set off, against the said tax, any amount or any part of any amount otherwise refundable to that registered person under the provisions of this Act and where any tax as aforesaid is in dispute, the Director may delay any refund due up to the amount of the disputed tax.

(3) Where, in respect of a taxable period, any registered person has failed to submit a return for any taxable period as required by this Act, the Director may withhold payment of any amount refundable in accordance with subarticle (1), until the registered person has complied with that requirement and paid the amount of tax payable.

(4) Where, in relation to the return furnished or to be furnished by any registered person, subarticle (2) or subarticle (3) applies, the Director shall give notice in writing to the registered person accordingly within the period specified in subarticle (1).

(5) A refund due in accordance with any provision of this Act shall be payable without any further appropriation other than this Act by warrant under the hand of the Minister.

Interest on late refunds.

58. Where the Director is required by this Act to refund any amount to a registered person and the Director does not refund that amount within the specified period, there shall, subject to the provisions of article 55, be paid by the Director to the registered person interest at the rate of one percent for each month or part

thereof for the period running from the last day when the refund is due and ending on the date when the refund is paid by the Director, on so much of the amount as is required to be refunded by the Director.

Relief from tax.

59. The Director may in his discretion mitigate or remit any additional tax, other than additional tax imposed under article 48(1), which may be assessed or imposed under this Act.

International arrangements.

60. (1) If the Minister by order published in the Gazette declares that arrangements have been made with the Government of any territory outside Malta with a view to affording relief from double taxation in relation to tax payable under this Act and a similar tax payable under the laws of that territory, and that it is expedient that those arrangements should have effect, those arrangements shall have effect notwithstanding anything in this Act.

(2) If the Minister by order published in the Gazette declares that arrangements have been made with the Government of any territory outside Malta with a view to granting a refund, on a reciprocal basis, of any tax paid under this Act to persons established outside Malta and that it is expedient that those arrangements should have effect, those arrangements shall have effect notwithstanding anything in this Act.

(3) The Minister may make regulations for the carrying out of the provisions of any arrangements having effect under this article.

(4) Where it results that any tax has been paid on the importation of goods which are exempt from the tax so paid by virtue of any enactment, the Director shall, upon a request made within such time and in such manner as may be prescribed, and on the production of such evidence as he may deem necessary, refund the tax so paid.

PART XII

OFFENCES AND PENALTIES

Failure to apply for registration or to keep or deliver records and returns.
Amended by: L.N. 425 of 2007.

61. Any person who -

(*a*) fails to apply for registration at the time and in the manner required by this Act; or

(*b*) fails to keep or to store records, documents and accounts for the time and in the manner required by this Act or any regulations made under this Act; or

(*c*) fails to furnish a tax return or any additional return, statement or information or to produce any books, records, documents and accounts when required to do so in virtue of this Act or of any regulation made thereunder;

shall be guilty of an offence, and shall, on conviction, be liable to a fine (*multa*) of not less than two hundred and thirty-two euro and ninety-four cents (232.94) and not exceeding six hundred and ninety-eight euro and eighty-one cents (698.81), and the court shall order the offender to comply with the law within a time sufficient

for the purpose, but in any case not exceeding three months, and in default the offender shall be liable to the payment of a further fine (*multa*) of not less than four euro and sixty-six cents (4.66) and not exceeding twenty-three euro and twenty-nine cents (23.29) for every day that the default continues after the lapse of the time fixed by the court.

Irregularities in records, returns, invoices and transactions. *Amended by: L.N. 425 of 2007.*

62. Any person who -

(*a*) knowingly fails to account for any taxable activity carried on by him in the records, documents and accounts required by this Act and any regulations made thereunder; or

(*b*) gives any return, statement or information required for any of the purposes of this Act which he knows to be incorrect or misleading in any material respect; or

(*c*) falsifies any records, documents, or accounts required to be kept under this Act or prepares or draws up or helps in the preparation or drawing up, or makes use of, any false records, documents or accounts; or

(*d*) with the intent of concealing any evidence which he knows or is reasonably expected to know to be relevant for any purpose of this Act, destroys, erases, damages or conceals any stored information or any records, documents or accounts; or

(*e*) fails to provide or produce a tax or other invoice or document or fiscal receipt as and when required by this Act, or provides any such tax or other invoice or document or fiscal receipt which he knows to be or is reasonably expected to know to be incorrect or misleading in any material respect; or

(*f*) provides an invoice or other document or fiscal receipt in respect of a taxable activity showing tax to be chargeable on that taxable activity in a case where no tax is chargeable or where the tax is less than that shown, or otherwise adds to or includes in a price for a taxable activity any amount purporting to represent tax which is not due or which is higher than the tax due; or

(*g*) having added to or included in a price for products sold or services provided by him to another person any amount purporting to represent tax chargeable under this Act, fails to account for that amount in his records or to pay that amount to the Director; or

(*h*) acquires possession of or deals in products, or accepts the provision of any services having reason to believe that the tax on the sale of the said goods or provision of services has been or will be evaded; or

(*i*) enters into a taxable activity or offers to enter into a taxable activity with another person in respect of products or services the acquisition or dealing with which or the acceptance of which would render that other person guilty of an offence in virtue of paragraph (*h*),

shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not less than three hundred and forty-nine euro and forty-one cents (349.41) and not exceeding two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) and to a further fine (*multa*) equal to ten times the endangered tax, or to imprisonment of not more than six months or to both such fines and imprisonment.

Regular convictions. *Amended by: L.N. 425 of 2007.*

63. (1) Where a person has been convicted of an offence under either article 61 or article 62 and is again convicted of an offence under either of the said articles committed within six months from the commission of the previous offence, the fine (*multa*) shall in no case be less than six hundred and ninety-eight euro and eighty-one cents (698.81).

(2) Where a person is convicted of four offences committed under either of the articles aforesaid in a period of twenty-four months, the Court shall order the suspension for a determinate time of not less than one week and not more than one month of any licence, permit, warrant or other authorisation granted by the Police or any other authority to trade or carry on the business to which the offence is related.

Obstruction of officials. *Amended by: L.N. 425 of 2007.*

64. Any person who -

(*a*) obstructs, hinders, impedes or does anything which is calculated to obstruct, hinder or impede, or molests or assaults the Director or any person duly engaged in the exercise of any power or duty conferred or imposed on him by or under this Act; or

(*b*) being a person in charge of any premises which the Director or an officer authorised by the Director is empowered to enter in terms of this Act, fails to allow access to the said premises to the Director or authorised officer or fails to take such measures as may be reasonably required of him for the purpose of any such access or of any inspection of those premises or of any goods, assets, books, records or documents kept therein,

shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not less than four hundred and sixty-five euro and eighty-seven cents (465.87) and not more than two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) or to imprisonment of not more than six months or to both such fine and imprisonment.

General offence. *Amended by: L.N. 425 of 2007.*

65. Any person who contravenes or fails to comply with any of the provisions of this Act or of any regulations made thereunder, shall be guilty of an offence and shall, on conviction, unless the offence is subject to a greater punishment under any other provision of this Act or any other law, be liable to a fine (*multa*) of

not less than two hundred and thirty-two euro and ninety-four cents (232.94) but not exceeding one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69) or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

Offences by officers of bodies of persons and by employers and directors.

66. (1) Where anything is done or omitted to be done by a body of persons, the provisions of this Part shall apply as if such thing were done or omitted to be done by every director, manager or other officer of that body of persons: provided that a director, manager or other officer of a body of persons shall not be guilty of an offence in virtue of this subarticle if he proves that he was unaware and could not with reasonable diligence be aware of such an act or omission or that he did everything within his power to prevent that act or omission.

(2) Where anything is done or omitted to be done by an employee in the course of his employment, or by any other person acting on behalf of the registered person, whether such other person is an employee or not, the provisions of this Part shall apply as if such thing was done or omitted to be done both by the said employee or other person and by the employer or registered person; provided that such an employer or registered person shall not be guilty of an offence in virtue of this subarticle if he proves that he was unaware and could not with reasonable diligence be aware of such an act or omission or that he did everything within his powers to prevent that act or omission.

Prosecution.

67. (1) No proceedings under this Part shall be taken except at the instance or with the sanction of the Director.

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(2) Notwithstanding the provisions of the Criminal Code the Attorney General shall have a right of appeal to the Court of Criminal Appeal from any judgment given by the Court of Magistrates in respect of criminal proceedings under this Part.

(3) The institution of proceedings or the imposition of a penalty for any offence under this Part shall not relieve any person from prosecution under any other law or from liability under this Act, and the institution of proceedings or the imposition of a penalty for any offence under any other law or the payment of any tax under this Act shall not relieve any person from any prosecution or penalty under this Part.

(4) Where a pecuniary punishment may be imposed in respect of an offence under this Part such pecuniary punishment shall always be imposed and the provisions of article 21 of the Criminal Code and of the Probation Act shall not apply.

Cap. 9.
Cap. 446.

(5) In any criminal proceedings under this Part or under any regulations made under this Act, the Director personally or any other officer designated by him may, notwithstanding the provisions of any other law, produce the evidence, plead and otherwise conduct the prosecution instead of or jointly with the Police.

(6) Should the evidence of the Director or of the officer designated under subarticle (5) be required as part of the case for

the prosecution, he shall be heard before assuming the duties of prosecuting officer, unless the necessity of his giving evidence arises at a later stage:

Provided that the Director or other officer as aforesaid may state the facts constituting the offence before giving evidence.

Compromise penalty.

68. (1) Notwithstanding any other provisions of this Act, the Director may, in the case of any offence under this Act, enter into an agreement in writing with the offender whereby the said offender pays a sum equivalent to the fine (*multa*) that may be imposed by way of penalty in accordance with this Act on the conviction of that person for the said offence, so however that where a minimum and a maximum amount is provided for in respect of the fine (*multa*) that may be so imposed, the sum payable pursuant to the said agreement shall be a sum equivalent to the said minimum amount increased by one half of the difference between the said minimum and maximum amounts and upon the signing of any such agreement by the Director and the offender, all criminal liability of the offender under this Act with regard to the offences in relation to which the agreement has been entered shall be extinguished.

(2) The provisions of subarticle (1) shall apply also in any case where the offender has been charged before a court in relation to the offence but before final judgment has been given in the case:

Provided that where proceedings before a court have not been commenced, the sum payable in accordance with any agreement as contemplated in subarticle (1) shall be reduced by ten per cent.

(3) Any sum due in virtue of an agreement entered into in terms of subarticle (1) shall be due to the Government as a civil debt. The Director shall not enter into an agreement as is referred to in subarticle (1) unless such agreement is accompanied by the payment of the sum due or a sufficient security for its payment.

(4) The provisions of this article shall be without prejudice to any proceedings or forfeiture instituted or having effect in virtue of any other law.

Offences relating to taxable importations. *Amended by: L.N. 425 of 2007.* Cap. 37.

69. (1) The provisions of articles 18 and 62 of the Customs Ordinance shall apply to this Act as if all references to duties contained in those articles were references to tax due under this Act, and any person who is in contravention of the provisions of the said articles construed as aforesaid in relation to any goods whose importation is subject to tax under this Act shall, without prejudice to any liability incurred under the said Ordinance, be guilty of an offence under this Act and shall for each such offence be liable to a fine (*multa*) equivalent to the aggregate of tax payable on the goods and double the value of the goods, or to a fine (*multa*) of fifty-eight euro and twenty-three cents (58.23), whichever shall be the greater, or to imprisonment for a term not exceeding two years or to both such fine and imprisonment and the offender may be either detained or proceeded against by summons, in the same manner and form, and subject to all other provisions laid down in the Criminal Cap. 9.

Code.

Cap. 37.

(2) The provisions of article 77 of the Customs Ordinance shall apply in relation to goods whose importation is subject to tax under this Act as if any reference contained therein to the duty therein mentioned were also a reference to the tax chargeable under this Act.

(3) The importation of goods subject to tax under this Act shall, for all purposes of any law, be deemed as a prohibited importation unless the said tax is duly paid, or, where the payment of the tax has been postponed in accordance with any provisions of this Act, the conditions imposed in connection with such a postponement are duly observed.

PART XIII

MISCELLANEOUS

Keeping of records.

70. (1) Every registered person shall keep proper and sufficient records of all transactions of his business activities to enable the date, the value and the nature of such transactions, the tax, if any, chargeable thereon and the deductions allowable in respect thereof, and any such other information as may be prescribed, to be readily ascertained.

(2) The records referred to in subarticle (1) shall be kept and stored in such manner, contain such details and be supported by such documents and accounts as may be prescribed and shall be retained for a period of at least three years from the end of the calendar year to which they relate.

Anti-avoidance provision.

71. For the purposes of article 12(6) and the proviso to article 17, the Director may treat as one person two or more persons carrying on a business activity if he is satisfied that the separation of such business activities has for its main purpose the avoidance of tax.

Delivery and service of notices, etc.

72. (1) Any notice, warrant or other proceeding purporting to be made in accordance with the provisions of this Act shall not be deemed to be void or voidable for want of form or be affected by the reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Act.

(2) In the case of a body of persons it shall be sufficient if only the name of the body of persons appears on any notice, warrant or proceeding, including any proceeding in the Court of Appeal, issued or made under or for purposes of this Act.

(3) Every notice to be given by the Director under this Act shall be signed by the Director or by some person or persons authorised by the Director and every such notice shall be valid if the signature is printed, stamped or written thereon.

(4) Any notice may be served on a person either personally or by being sent by post and shall in the latter case be deemed to have been served, unless the contrary is proved, in the case of an address in Malta not later than the third day following the day when it was

posted, and in the case of an address outside Malta the day succeeding that on which the notice would have been received in the ordinary course by post and it shall be sufficient to prove that the notice was properly addressed and posted.

(5) For the purposes of subarticle (4) a notice shall be deemed to have been properly addressed if it has been addressed to a person's business or private address, and an address furnished by a person to the Director shall be deemed to be an address of that person unless and until a notice of a change of address is given by that person to the Director.

(6) When the date on which any return, notice or other document is to be furnished, delivered or served or deemed to be served or on which a payment is to be made in terms of any provision of this Act falls, were it not for the provisions of this subarticle, on a Saturday or a Sunday, or on a national day or a public holiday as established in the National Day and Other Public Holidays Act, that date shall be deemed to fall on the first working day, other than a Saturday, following the said Saturday, Sunday, national day or public holiday. Cap. 252.

Representatives.

73. (1) Any secretary, manager, director, liquidator or other principal officer of an entity or of a body of persons, any heir and any testamentary executor and any curator of a vacant inheritance of a deceased person, and any person who is a tutor, curator, administrator or trustee of any other person or of any trust, fund or other entity shall, for the purposes of this Act, be a representative of that body of persons, deceased person, other person, trust, fund or other entity, as the case may be.

(2) Where a taxable activity is carried on in Malta by a person who is not established in Malta, any person resident in Malta to whom the said activity is directed or any person resident in Malta who is an agent of the said person shall, if so designated by the Director by means of a notice in writing, be a representative of the said person in respect of any obligation of the person under this Act relating to that taxable activity.

(3) (*a*) Subject to the provisions of subarticle (5) a representative of a person shall be liable in the same manner and to the same extent as the person of whom he is representative for all the obligations imposed by or under this Act.

(*b*) Anything done or omitted to be done by a representative acting as such shall for the purposes of this Act be deemed to have been done or omitted to be done by the person of whom he is a representative.

(*c*) Any notice served on or any refund paid to a representative in his capacity as such under any of the provisions of this Act shall be deemed to have been served upon or to have been made to the person of whom he is a representative.

(*d*) The existence of or the designation of a person as a representative of another person shall not relieve the

latter person from any obligation or liability under this Act.

(4) A representative who has under his management or control any funds or property belonging to or due to the person of whom he is a representative shall not dispose of such funds or property unless he has made adequate provision for any tax due under this Act.

(5) A representative shall be jointly and severally liable with the person of whom he is a representative for the tax due by that person:

Provided that where the representative has acted in good faith and is not knowingly in breach of subarticle (4) or of any other obligation under this Act, his liability under this subarticle shall be limited to the funds or to the value of any property under his management or control which belongs or is due to the person of whom he is a representative.

Interest. Cap. 123. Cap. 372.

74. For the purposes of the Income Tax Act and the Income Tax Management Act -

(*a*) interest paid or payable under this Act by the Director to any person shall not be treated as income of that person;

(*b*) interest and additional tax paid or payable under this Act by any person to the Director shall not be treated as expenses incurred in the production of the income of that person.

Power to exempt and make regulations.

75. (1) The Minister may by regulations -

(*a*) amend, cancel or substitute any of the Schedules to this Act;

(*b*) prescribe any matter which may in any particular case be deemed necessary for the purpose of avoiding significant distortions in competition which might otherwise result from the application of any of the provisions of this Act;

(*c*) make provision for the rounding up or down of any amount in any computation made for any of the purposes of this Act, or for disregarding any small amounts in any such computation;

(*d*) prescribe any conditions and determination that may, in accordance with this Act, be imposed or made by the Director;

(*e*) prescribe any other matter for securing the payment of the tax and generally for giving effect to the provisions of this Act;

(*f*) make provisions for the registration of a number of persons as one person or for a person to be registered separately in respect of different branches or departments of his business activity in such circumstances and in respect of such provisions as may be

specified in the said regulations;

(*g*) prescribe any matter that may or is to be prescribed under any of the provisions of this Act:

Provided that any such matter as aforesaid may, in the discretion of the Minister, be prescribed by Order or Notice in the Gazette.

(2) Without prejudice to the provisions of subarticle (1) the Minister may by regulations also make special provisions with respect to activities to which subarticle (3) refers, and may, by such regulations, make provision:

(*a*) for a taxable activity to be treated as two or more separate taxable activities or for a number of taxable activities to be treated as a single taxable activity;

(*b*) for determining the time and place at which taxable activities shall be treated to take place;

(*c*) for the calculation of tax payable to be determined by such method or one of such methods as may be established by the Director;

(*d*) for the determination of the deductions and refunds applicable;

(*e*) for additional records and documents that must be kept and produced in respect of the said business activities;

(*f*) requiring the means and the machines whereby registered persons are to store, process and produce documents and other information.

(3) The Minister may by Notice in the Gazette exempt any person or class of persons with or without retrospective effect from all or any of the provisions of this Act or make different provisions on any ground which to him may seem sufficient. Any such exemption or different provision may be made subject to such conditions or the payment of such other rate or rates of tax, not being a rate or rates higher than those stipulated by this Act, or to both such conditions and payment, as the Minister may deem appropriate.

SCHEDULES

First Schedule

Amended by: L.N. 90 of 1997; L.N. 425 of 2007.

(Article 11)

EXEMPT IMPORTATIONS

1. The re-importation of -

(*a*) goods which are re-imported unaltered;

(*b*) samples which had been temporarily exported.

2. The importation of articles which are shown to the satisfaction of the Comptroller of Customs to have been awarded

abroad to any person for distinction in art, literature, science or sport, or for public service, or otherwise as a record of meritorious achievement or conduct, and imported by or on behalf of that person.

3. The importation of articles and materials by Malta Drydocks for the equipping and the maintenance of the Dockyard, or which are required in connection with the services rendered by that corporation, other than articles and materials used in -

(*a*) goods produced by that corporation and intended to be disposed of in Malta, or

(*b*) locally registered ships other than ships used in international transport.

4. (1) The importation of artificial limbs and other surgical appliances of a similar nature, including spare parts and accessories for the relief of permanent bodily disablement, provided that, in the case of spare parts and accessories, the Comptroller of Customs is satisfied that they are imported for the purpose of making locally artificial limbs or such other appliances, and invalid chairs which the Comptroller of Customs is satisfied are for the exclusive use of a person suffering from some permanent physical defect or disability.

(2) The importation of goods which are specifically designed for the education, employment or social advancement of a person suffering from some permanent physical or mental disability, provided that the Comptroller of Customs is satisfied that the said goods are imported for the exclusive use of such person.

5. The importation of bird rings for use by qualified bird ringers for the study of the migratory habits of birds.

6. The importation of *bona fide* gifts of a non-commercial nature received occasionally by a person from another person residing abroad and being intended for the personal use of the consignee and his family, provided the gift is neither alcohol nor alcoholic beverage nor tobacco or tobacco products and the total CIF value of the gifts on every single occasion does not exceed one hundred and sixteen euro and forty-seven cents (116.47).

7. The importation of braille and any other article for the use of the blind imported through a recognised institute, if the Comptroller of Customs is satisfied that such articles are imported for the exclusive use of a blind person.

8. The importation of chalices, ciboriums, pyxes, monstrances, thuribles, incense boats, crosses, candlesticks, crucifixes, holy statues (*vari*), holy oil vessels, sanctuary lamps, Stations of the Cross, altar cards, cruets, reliquaries, processional lanterns, tabernacles and doors of tabernacles, exposition thrones and organs, intended for divine worship and imported to be used exclusively in connection with such divine worship in churches, chapels or other localities intended solely for such worship, and of church canopies used in procession and church bells.

9. The importation of hearing-aid apparatus designed for the

use of the deaf and identifiable parts thereof.

10. The importation of household and personal effects, furniture and other domestic articles (excluding firearms and weapons of all kinds) which in the opinion of the Comptroller of Customs have been in use within that household by the importing person or his family, and which are imported by such person on removing his household from another country to Malta provided that such articles are imported within six months from the date of arrival in Malta of the person importing them to take up residence in Malta, or within such other period which the Comptroller of Customs may allow.

11. The importation of one private motor vehicle imported by a Maltese migrant (husband and wife counting as one person for the purposes hereof) who return to reside in Malta, subject to such migrant satisfying the Comptroller of Customs that -

(i) he has been residing outside Malta for an aggregate of ten years during the period of fifteen years immediately preceding his arrival to take up residence in Malta; and

(ii) the motor vehicle has been in his ownership for a continuous period of at least six months immediately before his arrival to take up residence in Malta, provided that customs charges and/or fiscal charges to which such vehicle is normally liable have been paid either in the country of origin or in the country of departure and subject to the motor vehicle being imported within six months of such migrant's arrival to take up residence in Malta:

Provided that, where any such motor vehicle which is imported tax free and it is sold or disposed of by such person for use in Malta, such motor vehicle shall be deemed to be taken out of bond at the time of such sale or disposal and excise tax on imports and products shall be payable thereon by the person who becomes the owner thereof.

12. The importation of one private motor vehicle imported by a person (husband and wife counting as one person for the purposes hereof) who transfers his residence to Malta, subject to such person satisfying the Comptroller of Customs that -

(i) he is in possession of a permit of residence issued to him by the Government in terms of article 7(1) of the Immigration Act; and Cap. 217.

(ii) the motor vehicle has been in his ownership for a continuous period of at least six months immediately before the issue of the said permit, provided that customs charges and/or fiscal charges to which such vehicle is normally liable have been paid either in the country of origin or in the country of departure and subject to the motor vehicle being imported within six months of the date of the said permit or of such person's

arrival in Malta to take up residence, whichever date is the later:

Provided that, where any such motor vehicle is imported as tax free and it is sold or disposed of by such person for use in Malta, such motor vehicle shall be deemed to be taken out of bond at the time of such sale or disposal and excise tax on imports and products shall be payable thereon by the person who becomes the owner thereof.

13. The importation of -

(*a*) passengers' baggage, including wearing apparel and personal effects, used, which the Comptroller of Customs is satisfied are intended for the passengers' personal use, but excluding firearms and weapons of all kinds;

(*b*) such tobacco products, wines, spirits, toilet waters and perfumes as may be allowed in accordance with the Convention concerning Customs Facilities for Touring made at New York on the 4th June, 1954;

(*c*) such goods bought for the passenger's own use or as *bona fide* gifts, other than the goods mentioned in sub-paragraphs (i) and (ii) hereof up to a value of one hundred and sixteen euro and forty-seven cents (116.47), so however that where the total value of such goods exceeds one hundred and sixteen euro and forty-seven cents (116.47), this provision shall not apply and the tax chargeable on such goods shall be deducted by seventeen euro and forty-seven cents (17.47).

14. The importation of samples of no commercial value.

15. The importation of scientific instruments or apparatus, intended exclusively for educational purposes of pure scientific research, provided -

(*a*) that such scientific instruments or apparatus are consigned to a public or private scientific or educational institution approved by the Minister responsible for education for the purpose of this provision and are used under the control and responsibility of such institution; and

(*b*) that instruments or apparatus of equivalent scientific value are not being manufactured in Malta.

16. The importation of sound and video recording -

(*a*) of an educational, scientific or cultural character produced by the United Nations or any of its specialised agencies;

(*b*) of an educational nature imported by a government school or institution, by the University of Malta or by a school or institution registered under the Education Act provided that the Director of Education certifies that the materials are solely of an educational character and are to be used solely and entirely for

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educational purposes by such school;

(*c*) of language courses.

17. Statues and artistic decorations cast abroad from originals made by local artists, provided permission is obtained from the Comptroller of Customs before the original is forwarded abroad for casting.

18. The importation of goods the supply of which by any person would, in all cases, be exempt in terms of the Second Schedule to this Act.

19. The importation of food as defined in the Second Schedule to this Act.

20. The importation of gold by the Central Bank of Malta.

21. The importation of goods where the Director is satisfied that the said goods were imported for temporary use only, and subject to such conditions and to the provision of such security as the Director may impose or require.

22. The importation of goods which are re-exported without being released or immediately upon being released from a customs bond.

23. The importation of goods which are destroyed by the owner before they are released or immediately upon being released from a customs bond under such supervision and subject to such conditions as the Director may impose or require.

24. The importation of goods into a freeport as defined in the Malta Freeports Act: provided that this exemption shall apply only to the extent that the said importation is exempt from customs duty pursuant to the said Act, and shall be subject to all the conditions and limitations as are applicable under that Act to the said exemption from customs duty. Cap. 334.

25. The importation of goods which is exempt from tax in virtue of an exemption granted under article 1(3)1 of this Act.

26. The importation of goods which are subject to a levy under the Local Manufactures (Promotion) Act. Cap. 336.

27. The importation of industrial capital equipment and material as defined in Part Two of the Second Schedule to this Act.

28. The importation of goods solely for agricultural or fishing use as defined in Part Two of the Second Schedule to this Act or when certified and approved as such by the Minister responsible for agriculture or the Minister responsible for fisheries, as the case may be.

29. The importation of goods by a non-profit making institution or a non-profit making organisation as defined in Part Two of the Second Schedule to this Act.

Amended by:
L.N. 91 of 1997.

Second Schedule

(Article 13)

NON-TAXABLE PRODUCTS

PART ONE

1. Exports

(1) Products which are exported.

(2) Products supplied to a taxable person established in Malta who carries on the business of arranging or financing the export of products, for the purpose of the export of those products by that person without the actual delivery of those products to that person, provided the products are actually exported without any processing or alterations, and subject to such conditions, evidence or security as may be imposed or required by the Director.

2. Products in bond, supplies by duty free shops and Freeport activities

(1) Products sold whilst they are in a customs bond and which sale is entered by the Comptroller of Customs pursuant to article 36 of the Customs Ordinance or any provision amending or replacing the said article.

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(2) Products supplied to an operator of a duty free shop pursuant to and in accordance with a licence issued under the Duty Free Shop Regulations, 1991 or any other provisions amending or replacing the said regulations.

(3) Products supplied by or to a company within a freeport zone as defined in the Malta Freeports Act where the said supply constitutes an activity which the said company is licensed to carry on in terms of the said Act.

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3. Provisioning and fuelling of ships and aircraft

(1) Products supplied for the fuelling and provisioning of vessels used for navigation on the high seas for the purpose of commercial, industrial or fishing activities, of vessels used for rescue or assistance at sea, and of aircraft used by airlines operating for reward in international traffic.

(2) Fuel supplied to vessels for the purpose of inshore fishing.

4. Food

Any food as defined in Part Two of this Schedule, but without prejudice to ETS chargeable in respect of the provision of food listed in the Second Schedule to the Import Duties Act.

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5. Pharmaceutical products

Pharmaceutical products as defined in Part Two of this Schedule.

6. Health and Welfare

(1) Human organs, human blood and human milk.

(2) Products supplied in connection with and essential for the provision of services referred to in paragraphs (2) and (3) of item 7 (Health and Welfare) of the Third Schedule by the hospital, institution or home, as the case may be, providing the said services.

7. Gold

Gold supplied to or by the Central Bank of Malta.

8. Printed matter and other articles

(1) Books, newspapers, other printed matter and other articles falling within the definition of "Printed matter and other articles" contained in Part Two of this Schedule.

(2) Electronic, magnetic, optic or any other machine readable media and any information which, in printed form, would have the characteristics of books, newspapers and any other printed matter falling within the definition of "Printed matter and other articles" contained in Part Two of this Schedule.

9. Essential products

Water, fuel and electricity supplied by a public authority.

10. Products mentioned in items 4, 8, 25, 27, 28 and 29 of the First Schedule.

11. Repossessed products

(i) under the term of a finance agreement, or

(ii) by an insurer in the settlement of a claim under an insurance policy, or

(iii) by the mortgagee in terms of his right under a mortgage over a ship or aircraft,

when sold by the person who repossessed them in the same condition as they were in at the time they were repossessed.

PART TWO

DEFINITIONS

For the purposes of this Act, the terms described in this Part of the Schedule shall have the meaning assigned to them in this Part.

(*a*) "Food" means the goods specified in the Customs Tariff contained in the First Schedule of the Import Duties Act under paragraphs (i) to (xii) of this item: but shall not include milkshake, tea, coffee and Cap. 337.

chocolate supplied in liquid form.

(i) Chapter 1, but excluding items falling under subheadings 0101.11.00.00; 0101.19.90.10; 0105.11.11.10; 0105.11.19.10; 0105.11.91.10; 0105.11.99.10; 0105.12.00.10; 0105.19.20.10; 0105.19.90.10; 0105.92.00.10; 0105.93.00.10; 0105.99.10.10; 0105.99.20.10; 0105.99.30.10; 0105.99.50.10; 0106.00.20.90; 0106.00.90.00.

(ii) Chapters 2 to 4 inclusive, but excluding items falling under subheadings 0301.10.10.00 and 0301.10.90.00 in Chapter 3.

(iii) Items falling under subheadings 0504.00.00.00; 0505.90.00.10; 0506.90.00.10; 0508.00.00.10; 0510.00.10.00; 0511.10.00.00; 0511.91.10.00; 0511.91.90.10; 0511.99.50.00; 0511.99.80.00 in Chapter 5.

(iv) Items falling under subheadings 0601.20.10.00; 0602.10.10.00; 0602.20.10.00; 0602.20.90.00; 0602.90.10.00; 0602.90.20.00; 0602.90.30.00 in Chapter 6.

(v) Chapters 7 to 12 inclusive, but excluding items falling under subheadings 1209.30.00.00; 1209.99.91.00; 1209.99.99.00 in Chapter 12.

(vi) Chapter 13, but excluding items falling under subheading 1301.10.00.00.

(vii) Chapters 15 to 20 inclusive, but excluding items falling under subheadings 1501.00.11.00; 1502.00.10.00; 1503.00.11.00; 1503.00.30.00; 1505.10.00.00; 1505.90.00.00; 1507.10.10.00; 1507.90.10.00; 1508.10.10.00; 1508.90.10.00; 1511.10.10.00; 1511.90.91.00; 1512.11.10.00; 1512.19.10.00; 1512.21.10.00; 1512.29.10.00; 1513.11.10.00; 1513.19.30.00; 1513.21.11.00; 1513.21.19.00; 1513.29.30.00; 1514.10.10.00; 1514.90.10.00; 1515.11.00.00; 1515.19.10.00; 1515.21.10.00; 1515.29.10.00; 1515.30.10.00; 1515.30.90.00; 1515.40.00.00; 1515.50.11.00; 1515.50.91.00; 1515.60.10.00; 1515.60.90.00; 1515.90.10.00; 1515.90.21.00; 1515.90.31.00; 1515.90.40.00; 1515.90.60.00; 1516.20.10.00; 1518.00.10.00; 1518.00.31.00; 1518.00.39.00; 1518.00.91.00; 1518.00.95.00; 1518.00.99.00; 1521.10.10.00; 1521.10.90.00; 1521.90.10.00; 1522.00.31.00; 1522.00.39.00; 1522.00.91.00; 1522.00.99.00 in Chapter 15.

(viii) Chapter 21, but excluding items falling under subheadings 2106.90.20.42; 2106.90.20.44; 2106.90.20.46; 2106.90.20.48; 2106.90.20.49; 2106.90.20.92; 2106.90.20.95; 2106.90.20.98; 2106.90.98.42; 2106.90.98.46; 2106.90.98.49.

(ix) Subheadings 2202.90.10.11; 2202.90.10.31; 2202.90.10.39; 2202.90.91.11; 2202.90.95.11; 2202.90.99.11; 2202.90.99.40; 2209.00.11.00; 2209.00.19.00; 2209.00.91.00; 2209.00.99.00 in Chapter 22.

(x) Chapter 23

(xi) Subheadings 2501.00.10.00 and 2501.00.91.00 in Chapter 25.

(xii) Subheadings 3301.90.21.00; 3301.90.29.00; 3301.90.39.00; 3302.10.21.00; 3302.10.29.91; 3302.10.29.93; 3302.10.40.00; 3302.10.90.00 in Chapter 33.

(*b*) "Pharmaceutical products" means the goods specified in the Tariff referred to in item (*a*) of this Part of this Schedule under -

(i) Subheading 2905.45.00.00 in Chapter 29.

(ii) Chapter 30.

(iii) Subheadings 3301.90.31.00; 3306.10.00.00; 3306.20.00.00; 3306.90.00.00; 3307.90.00.10 in Chapter 33.

(iv) Subheading 3407.00.00.10 in Chapter 34.

(v) Subheading 3507.10.00.00 in Chapter 35.

(vi) Subheadings 3822.00.00.10 and 3824.90.60.00 in Chapter 38.

(vii) Subheadings 4818.40.91.00 and 4818.40.99.00 in Chapter 48.

(viii) Subheadings 5601.10.10.90 and 5601.10.90.90 in Chapter 56.

(ix) Subheading 7015.10.00.00 in Chapter 70.

(x) Subheadings 9001.30.00.00; 9001.40.41.00; 9001.40.49.00; 9001.40.80.00; 9001.50.41.00; 9001.50.49.00; 9001.50.80.00; 9004.90.10.10 and 9004.90.90.10; headings 9018, 9019, 9020, 9021, 9022 and 9023; and subheading 9025.11.91.00, in Chapter 90.

(xi) Subheading 9402.10.00.10 in Chapter 94.

(*c*) "Printed matter and other articles" means the goods specified in the Tariff referred to in item (*a*) of this Part of this Schedule under -

(i) Subheading 4820.20.00.00 in Chapter 48.

(ii) Chapter 49 but excluding items falling under subheadings 4906.00.00.00; 4907.00.91.00; 4907.00.99.00; 4908.10.00.00; 4908.90.00.00; 4909.00.10.00; 4909.00.90.00; 4910.00.00.90; and 4911.99.00.10.

(iii) Subheading 7118.90.00.00 in Chapter 71.

(iv) Chapter 98 but excluding items falling under subheading 9803.00.00.00.

(*d*) "Industrial capital equipment and materials" means the goods specified in the Customs Tariff contained in the First Schedule of the Import Duties Act falling under the following headings:

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1401.20.00.00 in Chapter 14;

1501.00.11.00; 1502.00.10.00; 1503.00.11.00; 1503.00.30.00; 1507.10.10.00; 1507.90.10.00; 1508.10.10.00; 1508.90.10.00; 1511.10.10.00; 1511.90.91.00; 1512.11.10.00; 1512.19.10.00; 1512.21.10.00; 1512.29.10.00; 1513.11.10.00; 1513.19.30.00; 1513.21.11.00; 1513.21.19.00; 1513.29.30.00; 1514.10.10.00; 1514.90.10.00; 1515.19.10.00; 1515.21.10.00; 1515.29.10.00; 1515.50.11.00; 1515.50.91.00; 1515.90.21.00; 1515.90.31.00; 1515.90.40.00; 1515.90.60.00; 1518.00.31.00; 1518.00.39.00 in Chapter 15;

2106.90.20.42 in Chapter 21;

2207.20.00.20 in Chapter 22;

2501.00.31.00; 2515.11.00.00; 2515.12.20.00; 2515.12.50.00; 2515.12.90.00; 2516.12.10.00; 2516.12.90.00; 2517.41.00.00; in Chapter 25;

2708.10.00.00 in Chapter 27;

2801.10.00.00; 2807.00.10.00; 2809.20.10.00; 2811.21.00.00; 2811.22.00.00; 2815.11.00.00; 2817.00.00.00; 2819.90.00.00; 2827.20.00.00; 2823.00.00.00; 2827.33.00.00; 2828.90.00.10; 2828.90.00.90; 2832.10.00.00; 2833.11.00.00; 2833.19.00.00; 2835.22.00.00; 2835.31.00.00; 2836.20.00.00; 2836.40.00.00; 2836.50.00.00; 2839.11.00.00; 2839.19.00.00 in Chapter 28;

2903.12.00.00; 2904.10.00.00; 2905.12.00.00; 2909.11.00.00; 2912.11.00.00; 2914.11.00.00; 2914.12.00.00; 2915.21.00.00; 2915.31.00.00; 2915.33.00.00; 2915.34.00.00; 2915.39.90.00; 2915.50.00.00; 2915.60.10.00; 2915.70.25.00; 2916.19.90.00; 2917.11.00.00; 2918.12.00.00; 2918.13.00.00; 2918.14.00.00; 2918.15.00.00; 2923.90.00.00; 2934.90.40.00 in Chapter 29;

3207.40.90.00; 3212.90.39.00; 3215.11.00.00; 3215.19.00.00 in Chapter 32;

3302.10.10.10; 3302.90.10.00 in Chapter 33;

3401.20.10.10 in Chapter 34;

3701.30.00.00; 3702.43.00.00; 3702.44.00.00; in Chapter 37;

38.23 in Chapter 38;

39.01 to 39.15 in Chapter 39;

4005.20.00.00 in Chapter 40;

Chapter 41;

44.01 to 44.06; 4407.10.71.00; 4407.10.79.00; 4407.10.91.00; 4407.10.93.00; 4407.10.99.00; 4407.24.90.00; 4407.25.60.00; 4407.25.80.00; 4407.26.70.00; 4407.26.80.00; 4407.29.61.00; 4407.29.69.00; 4407.29.99.00; 4407.91.90.00; 4407.92.90.00; 4407.99.91.00; 4407.99.93.00; 4407.99.98.00 in Chapter 44;

Chapter 47;

48.01 to 48.05 and 4809.20.10.00;

Heading 48.01 but excluding items falling under subheading 4810.99.90.10;

4811.21.00.00; 4811.29.00.00; 4811.31.00.00; 4811.39.00.00; 4811.90.90.00 in Chapter 48;

50.01 to 50.05 in Chapter 50;

51.01 to 51.08 in Chapter 51;

52.01; 52.02; 52.03; 5204.11.00.00; 5204.19.00.00; 52.05 and 52.06 in Chapter 52;

5401.10.11.00; 5401.10.19.00; 5401.20.10.00; 54.02 and 54.04 in Chapter 54;

55.01 to 55.07; 5508.10.11.00; 5508.10.19.00; 5508.20.10.00; 55.09; 55.10 in Chapter 55;

5605.00.00.00 in Chapter 56;

6406.20.10.00; 6406.20.90.00; 6406.99.60.00 in Chapter 64;

7019.31.00.00 in Chapter 70;

7205.10.00.00; 7210; 72.13 to 7216 in Chapter 72 but excluding items falling under subheadings 7216.32.11.00; 7296.32.19.00; 7216.32.91.00; 7216.32.99.00; 7216.33.10.00; 7216.33.90.00;

7408.19.10.00; 7408.19.90.00; 7413.00.91.00 in Chapter 74;

76.01; 7604.10.90.00; 7604.21.00.00; 7604.29.90.00 in Chapter 76;

8401; 8402; 8405; 8406; 8410; 8411; 8416; 8417; 8419.20.00.00; 8420; 8421.11.00.00; 8422.20.00.00; 8423.20.00.00; 8423.30.00.00; 8423.82.10.00; 8423.82.90.00; 8423.89.10.00; 8423.89.90.00; 8425.20.00.00; 8425.31.10.00; 8425.31.90.00; 8425.39.10.00; 8425.39.91.00; 8425.39.99.00; 8426; 8427; 8428.20.10.00; 8428.20.30.00; 8428.20.91.00; 8428.20.99.00; 8429; 8430; 8432; 8433; 8434; 8435; 8436; 8437; 8438; 8439; 8440; 8441; 8442; 8443.11.00.00; 8443.12.00.00; 8443.19.10.00; 8443.19.31.00; 8443.19.35.00; 8443.19.39.00; 8443.19.90.00; 8443.21.00.00; 8443.29.00.00; 8443.30.00.00; 8443.40.00.00; 8443.59.20.00; 8443.59.80.00; 8443.60.00.00; 8443.90.10.00; 8443.90.90.00; 8444; 8445; 8446; 8447; 8449;

8452.21.00.00; 8452.29.00.00; 8453; 8454; 8455; 8456; 8457; 8462; 8463; 8464; 8474; 8475; 8477; 8478; 8479.10.00.00; 8479.20.00.00; 8479.30.10.00; 8479.30.90.00; 8479.40.00.00; 8479.50.00.00; 8479.89.30.00; 8479.89.65.00; 8479.89.70.00; 8479.89.75,00; 8480 in Chapter 84;

90.03 in Chapter 90.

(*e*) "Goods solely for agricultural or fishing use" means the goods specified in the Customs Tariff contained in the First Schedule of the Import Duties Act falling under the following headings:

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2703 in Chapter 27; Chapter 31; 3808.20.10.00; 3808.20.15.00; 3808.20.30.00; 3808.20.40.00; 3808.20.50.00; 3808.20.60.00; 3808.20.80.00; 3808.30.11.00; 3808.30.13.00; 3808.30.15.00; 3808.30.17.00; 3808.30.21.00; 3808.30.23.00; 3808.30.27.00; 3808.30.30.00; 3808.30.90.00 in Chapter 38; 3917.10.10.00; 3917.10.90.00; 3917.32.91.00 in Chapter 39; 5608.11.11.00; 5608.11.19.00; 5608.11.91.00; 5608.11.99.00 in Chapter 56; 8208.40.00.00 in Chapter 82; 8424.81.10.00; 8424.81.31.00; 8424.81.39.00; 8424.81.91.00; 8424.81.99.00; 8432; 8433; 8434; 8436; 8437.10.00.00 in Chapter 84; 8701.90.11.00; 8701.90.15.00; 8701.90.21.00; 8701.90.25.00; 8701.90.31.00; 8701.90.35.00; 8701.90.39.00; 8701.90.50.00 in Chapter 87; 8902 in Chapter 89.

(*f*) "Non-profit making institution" or "non-profit making organisation" means an institution or organisation:

(i) whose objects are clearly defined in its statute;

(ii) whose objects expressly exclude profit making;

(iii) whose statute provides that no part of its income or property is available directly or indirectly to any member, proprietor or shareholder;

(iv) which, in the opinion of the Director, is managed and administered in accordance with the provisions of its statute and for the purpose of its stated objects;

(v) which does not systematically aim to make a profit.

Third Schedule

(Article 20)

EXEMPT SERVICES

Amended by: L.N. 99 of 1997; L.N. 124 of 1997; L.N. 203 of 1997; L.N. 1 of 1998; L.N. 248 of 1998; L.N. 37 of 2000.

1. Services connected with exports and importations

(1) The provision of services which in the opinion of the Director form an integral part of the process of the production of food or pharmaceuticals or of a product or service intended for export or the sale of products or provisions of services outside Malta.

(2) The provision of services to a person established outside Malta consisting of work on tangible movable property imported for the purpose of undergoing such work in Malta and exported out of Malta by the person who provided those services or by his customer.

(3) The provision of services to a person established outside Malta in procuring the importation of goods into Malta.

2. Services to customers abroad

The provision of any of the services listed in this paragraph when the person to whom they are provided is not resident in Malta:

(*a*) advertising services;

(*b*) services of consultants, engineers, consultancy bureaux, advocates, legal procurators, notaries public, accountants, auditors, financial advisors, data processing and the provision of information;

(*c*) obligations to refrain from pursuing or exercising in whole or in part any business activity;

(*d*) banking, financial, insurance and re-insurance transactions, excluding the letting of a place for the safe deposit of any goods or documents;

(*e*) the provision of human resources;

(*f*) the services of an agent who acts in the name and for the account of another, when he procures for his principal any of the services referred to in this item.

3. Port and Freeport services

(1) The provision of any services by the Authority for Transport in Malta, including the granting of licences and certificates, in connection with all matters relating to ports and yachting centres in terms of the Ports and Shipping Act, and of any regulations made under that Act, or in terms of any special agreement entered into by the said Authority in respect of any matter referred to in the said regulations and providing for charges in place of any rates leviable under the said regulations.

Cap. 352.

(2) The provision of any services by the Authority for Transport in Malta, including the granting of licences and certificates, in connection with all matters relating to port work in terms of the Port Workers Ordinance and of any regulations made under that Ordinance or in terms of any special agreement entered into by the said Authority in respect of any matter referred to in the said regulations and providing for charges in place of any rates leviable under the said regulations.

Cap. 171.

(3) The supply of any service by the Authority for Transport in Malta, including the granting of certificates and registration, in connection with the registration of ship in terms of the Merchant Shipping Act and of any regulations made under that Act.

Cap. 234.

(4) Services provided by or to a company within a freeport zone as defined in the Malta Freeports Act where the said provision constitutes an activity which the said company is licensed to carry on in terms of the said Act.

Cap. 334.

(5) Services provided by any contractor within a Freeport zone as established by the Malta Freeports Act, to the Corporation established under that Act, or to any of its subsidiaries in connection with the construction of Terminal II.

Cap. 334.

4. International transport

The provision of services consisting in international transport of goods and passengers.

5. Supplies, repairs, etc., of ships and aircraft

(1) The provisioning, repair, modification, chartering and hiring of vessels or aircraft referred to in paragraph (1) of item 3 of the Second Schedule to this Act, and the provisioning, hiring, repair and maintenance of equipment, including fishing equipment, incorporated or used therein.

(2) The provision of services, other than those referred to in paragraph (1) of this item, to meet the direct needs of the vessels and aircraft referred to in the said paragraph or of their cargoes.

6. Food

The provision of any food, as defined in Part Two of the Second Schedule to this Act excluding any provision of food which is subject to tax in terms of article 18.

7. Health and Welfare

(1) The provisions of services by a person in the exercise of any profession regulated by the Medical and Kindred Professions Ordinance.

Cap. 31.

(2) The provision of care or medical or surgical treatment in any Government hospital or institution or in any other hospital or institution approved by the Minister for the purposes of this paragraph.

(3) The provision of welfare services, including services provided by homes for the elderly and homes for persons suffering from some permanent physical or mental disability, and services for the protection and care of children, young people and persons suffering from some permanent physical or mental disability, provided by any government institution or by any institution or organisation recognised by the Director as a non-profit making institution or approved by the Minister for the purpose of this paragraph as an institution whose activities fall within the social and welfare policy of the government.

(4) The provision of transport services for sick, injured or disabled persons in vehicles specially equipped for that purpose.

8. Education

(1) The provision of education or educational research, including distance learning, by a government school or institution, by the University of Malta, by a school or institution registered under the Education Act or by any educational establishment recognised as such by the Director. Cap. 327.

(2) The provision of education or educational research, including distance learning, of a kind provided by a school or university, or of religious instruction, by a non-profit making institution recognised as such by the Director.

(3) Tuition given privately by teachers acting in an independent capacity in subjects which are normally taught in the course of education provided by a school or university but excluding tuition in recreational, physical or sporting activities or disciplines.

9. Transport

The provision of -

(*a*) transport provided by the scheduled bus service consisting of scheduled trips on scheduled routes;

(*b*) scheduled inter-island sea trips supplied by authorised carriers, and other scheduled sea transport services recognised as such by the Director;

(*c*) school transport provided by an educational establishment recognised as such by the Director or supplied to any such establishment for the purpose of being provided by it as school transport;

(*d*) transport supplied or organised by an employer or by a central office to transport the employees to and from their place of work and recognised as such by the Director;

(*e*) transport provided for the carriage of goods between factory and port or airport in such cases or in respect of such goods or classes of goods as the Director may deem appropriate and to certify for the purpose of encouraging exports or the substitution of imports;

(*f*) for the purpose of these provisions, "central office" shall have the meaning assigned to it by Legal Notice No. 144 of 1991.

10. Investments Services

(1) The provision of any of the services specified in the First Schedule to the Investment Services Act.

Cap. 370.

(2) The provision of any services by the persons referred to in article 47(3) and (4) of the Duty on Documents and Transfers Act as evidenced by appropriate documentation as the Director may require and companies and trusts registered in virtue of the Malta Financial Services Authority Act, and the Trusts and Trustees Act, respectively.

Cap. 364.
Cap. 330.
Cap. 331.

11. Immovable property

(1) The letting of immovable property excluding -

(*a*) the letting of or the provision of accommodation in any premises which for the purpose of the said letting or accommodation is required to be licensed in virtue of the Malta Travel and Tourism Services Act or in a holiday camp or camping site, but excluding the provision of accommodation to foreigners enjoying diplomatic privileges in Malta;

Cap. 409.

(*b*) the letting of premises and sites for parking vehicles where such premises or sites have been designated by the Director as parking areas or which fall to be treated as such in terms of such regulations as may be prescribed;

(*c*) the letting of permanently installed equipment and machinery.

(2) The transfer of immovable property, including any right referred to in article 310(*a*), (*b*) and (*c*) of the Civil Code and any emphyteutical grant, but excluding an emphyteutical grant for less than fifty years in respect of any property referred to in sub-paragraphs (*a*), (*b*) and (*c*) of paragraph (1) of this item.

Cap. 16.

(3) Financial leasing by a commercial bank of equipment, plant and machinery used in the production of goods or in the provision of services.

12. Insurance services

The provision of insurance and reinsurance services, including related services performed by insurance brokers and insurance agents.

13. Credit, banking and other services

The provision of credit, banking and other services specifically in relation to:

(1) interest charged on the making of any advance or the granting of credit;

(2) interest charged on the granting of, or any dealing in, credit guarantees or other security for money;

(3) transactions, including negotiation, concerning currency, bank notes and coins normally used as legal tender:

Provided that nothing in this item shall be construed as affecting the provisions of item 10 of this Schedule.

14. Postal services

The provision of services by the public postal services and of goods incidental thereto.

15. Cultural and religious services

(i) Religious services

(ii) The provision of such cultural services as may be approved by the Minister.

16. Services by band clubs

The supply of services consisting in public performances by a philharmonic society which the Director is satisfied constitutes a *bona fide* band club.

17. Sports

Supplies of services by non-profit making organisations as may be approved by the Minister.

18. Provisions related to certain exempt services

(1) The provision of human resources by a non-profit making institution which is recognised as such by the Director for the purpose of providing services referred to in paragraph (2) or (3) of item 7 or in paragraph (1) or (2) of item 8 of this Schedule.

(2) The provision of services by a non-profit making organisation in the course of an activity designed to raise funds to be used for the provision of services which are exempt in terms of paragraph (2) or (3) of item 7 or of paragraph (1) or (2) of item 8 provided the activity is recognised by the Director as being exclusively designed for the said purpose.

19. Services by non-profit making organisations to their members

The provision of services for the benefit of their members in return for a subscription fixed in accordance with their rules by non-profit making organisations with aims of a political, trade union, patriotic, philosophical, philanthropic or civic nature or whose main purpose is to represent and promote the common business or professionals interests of their members: provided that in any case where, in the opinion of the Minister, this exemption is likely to cause distortion of competition, this exemption shall be subject to such exceptions or limitations as the Minister may by order in writing determine.

20. Services by government departments and any other public

authority

(1) The provision of any service by any government department and any other public authority but excluding the provision of any service where the exemption is likely to cause significant distortions of competition.

(2) The provision of agency services related to lotto and lotteries, and such other provisions related to gambling as may be approved by the Minister.

21. Inter Group Services

The provision of any service by one company to another when both companies are members of the same group of companies unless the Director is satisfied that the creation of a company or companies within the group has for its main purpose the avoidance of tax; and for this purpose "a group of companies" shall have the same meaning assigned to the phrase by article 42 of the Duty on Documents and Transfers Act.

Cap. 364.

22. Foreign related services

Any services referred to in article 22(2) of the Act which is a service -

(*a*) physically performed outside Malta; or

(*b*) which consists in the provision of the use of a taxable product.

23. Services by Government controlled organisations

The provision of services by Government controlled organisations which carry out telecommunication activities, but excluding the provision of any services where the exemption is likely to cause significant distortions in competition.

Fourth Schedule

(Article 19 (*e*))

Provision of Food Subject to Excise Tax on Services

1. (1) The provision of food which is suitable for immediate consumption, whether such food is consumed at the place where it is provided or not, consisting of:

(*a*) meals or snacks;

(*b*) ice-cream or products containing ice-cream except in family packs, and ice lollies;

but excluding:

(i) the provision of food in a club exclusively provided to members and their guests;

(ii) the provision of food by a canteen situated in a work or study area exclusively provided to workers or students therein.

(2) For the purposes of paragraph (1) of this item -

(*a*) "meals or snacks" means and includes:

(i) hot and cold dishes including antipasto and dessert;

(ii) sandwiches, toast, potato chips, sausage rolls, pizza, *pastizzi*, *qassatat* and similar snacks;

(iii) biscuits, cakes, confectionery and similar items, but excluding those sealed in a package by the manufacturer and supplied in that original sealed package and those items which individually weigh 500 grammes or more;

(*b*) "family packs" means ice-creams of not less than 500 millilitres in volume;

(*c*) "members" means persons who are members of a club and who have paid their subscription in advance for a period of not less than one year and whose names appear on the club's books or registers;

(*d*) "guests" means persons who are accompanied by a member while inside the club.

2. The provision of catering services including outside catering but excluding the provision of catering services at a wedding reception.