

CHAPTER 517

COMMISSIONER FOR TAX AND CUSTOMS ACT

To make provision for the constitution of the office of Commissioner for Tax and Customs.

20th January, 2012*

ACT XXII of 2011, as amended by Acts XXIII of 2014 and XIII of 2015 and VII of 2019, VIII of 2020 and VII of 2021[†] and XXVII of 2023.

PART I

Preliminary provisions

Added by:
XXIII. 2014.2.

1. The short title of this Act is the Commissioner for Tax and Customs Act.

Short title.
Substituted by:
XXVII.2023.3.

2. In this Act, unless the context otherwise requires:
"the Commissioner" means the Commissioner for Tax and Customs appointed under article 3;

Interpretation.
Amended by:
VII. 2021.9;
XXVII.2023.4.

"the Minister" means the Minister responsible for finance;

"revenue acts" means the Income Tax Act, the Income Tax Management Act, the Duty on Documents and Transfers Act, the Monte di Pietà Act, the Immovable Property (Acquisition by Non-Residents) Act, the Value Added Tax Act, the Eco-Contribution Act, the Customs Ordinance, the Import Duties Act, the Excise Duty Act, and any regulations made thereunder;

Cap. 123.
Cap. 372.
Cap. 364.
Cap. 269.
Cap. 246.
Cap. 406.
Cap. 473.
Cap. 37.
Cap. 337.
Cap. 382.

"revenue departments" means the Inland Revenue Department, the Value Added Tax Department and the Department of Customs.

PART II

Establishment of Commissioner for Tax and Customs

Added by:
XXIII. 2014.3.

3. (1) There shall be a Commissioner for Tax and Customs who shall be head of the revenue departments and who shall be appointed by the Prime Minister.

Establishment of
the Commissioner
for Tax and
Customs.

(2) In exercising his functions in relation to the determination of a person's tax affairs under the revenue Acts the Commissioner shall act independently and shall not be subject to the direction or control of any board established under this Act or of any Minister, Government official, agency or authority.

Added by:
XXIII. 2014.4.
Amended by:
XXVII.2023.5.

(3) On the coming into force of this Act and notwithstanding any other law, all functions vested in the Commissioner of Inland Revenue, the Commissioner of Value Added Tax and the Comptroller of Customs under the revenue acts shall be transferred to and shall be exercised by the Commissioner.

(3A) In any law, statutory form and judicial act, all references to the Commissioner of Inland Revenue, the Commissioner of Value

*see article 1(2) of this Act as originally enacted, and Legal Notice 16 of 2012.

†See Legal Notice 270 of 2021.

Added Tax, the Comptroller of Customs and the Commissioner for Revenue shall be read and construed as references to the Commissioner for Tax and Customs and all references to the Office of the Commissioner for Revenue shall be read and construed as references to the Malta Tax and Customs Administration.

- (4) (a) The Commissioner may, with the concurrence in writing of the Minister, delegate any of the functions under this Act or under the revenue acts to any official of the revenue departments.
- (b) Any delegation made under this sub-article shall be published by the Minister by order in the Gazette.
- (c) *Repealed by Act [XXVII.2023.5](#).*
- (d) The Commissioner may, at any time, with the concurrence of the Minister, resume any or all of the functions delegated under this sub-article. A notice of any such resumption of functions shall be published in the Gazette.
- (e) When the Commissioner resumes any functions that were delegated to another person under this sub-article, he shall also assume, in lieu of that person, the legal and judicial representation of the Government on all documents, judicial acts and actions that were drawn, sent, filed, instituted or taken by or in the name of or against that person in virtue of the said delegation.

(5) The Commissioner shall have the legal and judicial representation of the Government on all documents, judicial acts and actions relating to revenue collection and any other matter in which the revenue departments have an interest, unless such representation has been delegated in accordance with sub-article (4).

(6) The Commissioner shall be responsible for the organisational restructuring, supervision and overall administration of the revenue departments.

(7) In addition to the duties assigned to a head of department under article 18(1) of the [Public Administration Act](#) and under any revenue act, the Commissioner shall:

- (a) when any of his functions have been delegated in terms of sub-article (4), provide direction to the person to whom such functions have been delegated;
- (b) issue guidelines aimed at upholding and ensuring compliance with the directions given under paragraph (a);
- (c) take measures to ensure coordination between the revenue departments and execute his functions under sub-article (6);
- (d) assume overall responsibility for the management and restructuring of human resources within the revenue departments;

- (e) advise the Minister on matters relating to the management and administration of the revenue departments;
- (f) recommend amendments to the revenue acts; and
- (g) perform such other functions as may from time to time be assigned to him by the Minister.

(8) *Repealed by Act [XXVII.2023.5](#).*

(9) The provisions of this article shall be without prejudice to the powers of the Commissioner to assign duties and delegate functions to officials within the revenue departments and, where allowed by law, to other persons, as may be necessary for the proper exercise of his functions:

Provided that -

- (a) an assignment or delegation as aforesaid shall not in any way limit the powers, duties, rights and functions of the Commissioner under any revenue act or under this Act;
- (b) the Commissioner may assign or delegate to the same person functions that are related to more than one revenue act or to the revenue acts in general.

(10) Notwithstanding anything contained in any provision of the revenue acts or of any other law, the officials to whom the Commissioner has delegated functions in accordance with sub-article (4) shall furnish to the Commissioner such information, being information obtained for any of the purposes of a revenue act, as may be directed by the Commissioner and the Commissioner may use or authorise the use of such information and of any other information that he may obtain in the course of the performance of his functions for the purposes of any other revenue act.

(11) *Repealed by Act [XXVII.2023.5](#).*

4. The Minister may make regulations for the purpose of making any delegation under this Act and for stipulating the conditions under which such delegation is made and to give better effect to any of the provisions of this Act, and for the better enforcement thereof.

Power to make regulations.

PART IIA Board of Governance

*Added by:
XXVII.2023.6.*

4A. (1) There shall be a board, to be known as the Board of Governance, and in this Part referred to as "the Board", that shall be accountable to the Minister and that shall have the following functions:

Establishment and functions of the Board of Governance.
*Added by:
XXVII.2023.6.*

(a) to develop, review, update and submit for the Minister's approval proposals for:

- (i) the vision of the Malta Tax and Customs Administration;

(ii) the strategic document for the Malta Tax and Customs Administration;

(b) to review and report upon the performance of the key functions of the Commissioner;

(c) to review, and to advise and make recommendations on, reports and proposals that may be forwarded to it.

(2) It shall not be the function of the Board to deal with, consider, review or make any determination on matters that are specific to particular persons or that require access to or an investigation into the tax affairs of particular persons.

(3) The Board shall prepare and submit such annual and other reports on the performance of its functions as the Minister may request.

Constitution of the Board.
Added by:
XXVII.2023.6.

4B. (1) The Board shall consist of not less than five (5) and not more than seven (7) members appointed by the Minister.

(2) The Minister shall appoint the members of the Board from amongst persons with proven experience in areas relevant to the functions of the Board, such as tax management, economic analysis, financial analysis, risk analysis and fiscal law.

(3) The members of the Board shall be appointed for a term of three (3) years against such remuneration as the Minister may determine and may be re-appointed in the manner provided for in this article on the expiration of their term of office.

(4) The members of the Board shall discharge their duties in their own individual judgement and shall not be subject to the direction or control of any other person or authority.

(5) A person shall not be qualified to be appointed, or to hold office, as a member of the Board if he:

(a) is a member of the House of Representatives or of the European Parliament;

(b) is a serving judge or magistrate;

(c) is legally interdicted or incapacitated;

(d) has been declared bankrupt or has made a composition or scheme of arrangement with his creditors;

(e) has been convicted of an offence against a revenue Act, or of an offence affecting public trust, or of theft or fraud, or of knowingly receiving property obtained by theft

or fraud, or of bribery or of money laundering, or has been sentenced to a term of imprisonment for any other reason;

(f) has any conflict of interest.

(6) A member of the Board may be relieved of office by the Minister on the ground of a conflict of interest or inability to perform the functions of his office, whether due to infirmity of mind or of body or to any other cause, or of misbehaviour. For the purposes of this sub-article, repeated unjustified non-attendance of Board meetings may be deemed to amount to misbehaviour.

(7) A member of the Board may resign from office by letter addressed to the Minister.

(8) Where any vacancy occurs in the Board for any reason other than the lapse of the term of office, that vacancy shall, for the remainder of the term of office which has become vacant, be filled by another person appointed by the Minister.

(9) The Minister shall appoint a person to act as secretary of the Board and shall determine his duties and terms of engagement.

(10) A person shall not be eligible for appointment as secretary of the Board if he has a conflict of interest.

4C. A chairperson and deputy chairperson of the Board shall be appointed by the Prime Minister after consultation with the Minister from among the members of the Board. The deputy chairperson shall have all the powers of the chairperson and perform all the functions of the chairperson during the chairperson's absence or inability to act as chairperson or while the chairperson is on vacation or during any vacancy in the office of chairperson.

Chairperson and
deputy chairperson
of the Board.
Added by:
XXVII.2023.6.

4D. (1) For the purpose of sub-articles (5) and (10) of article 4B, but without prejudice to the generality thereof, a person shall be deemed to have a conflict of interest where the impartial and objective exercise of his functions is compromised for reasons involving family, emotional life, political affinity, economic interest or any other direct or indirect personal interest.

Conflict of interest.
Added by:
XXVII.2023.6.

(2) If a member of the Board or the secretary of the Board has a conflict of interest, he shall, as soon as may be after becoming aware of that conflict, declare that interest to the chairperson.

(3) When a conflict of interest of a person is relevant to a particular matter that is not central to the functions of the Board, and is not likely to affect his impartiality and objectivity in relation to the general functions of the Board, that person shall refrain from participating in any discussion or decision on that matter.

(4) When a conflict of interest of a person is central to the

functions of the Board, or is likely to affect his impartiality and objectivity in relation to the general functions of the Board, he shall tender his resignation.

(5) Any question on the existence of a conflict of interest, or on whether a matter is central to the functions of the Board or is likely to affect a person's impartiality and objectivity in relation to the general functions of the Board, shall be decided by the chairperson of the Board or, if the person in question is the chairperson, by the deputy chairperson of the Board.

(6) The provisions of this article are without prejudice to the powers of the Minister under article 4B(6).

Commissioner shall provide information to the Board.
Added by:
XXVII.2023.6.

4E. (1) The Commissioner shall provide to the Board such information that he may possess in virtue of his office as the Board may reasonably request for the proper execution of its functions. Requests for such information shall be made by the chairperson of the Board.

(2) Notwithstanding sub-article (1), the Commissioner shall not furnish the Board with information that is specific to particular persons and any information compiled from records relating to particular persons shall be given in a format that does not reveal, directly or indirectly, the identity of those persons.

Secrecy and confidentiality.
Added by:
XXVII.2023.6.

4F. (1) Except as necessary for the purposes of the revenue Acts, every member of the Board and the secretary of the Board shall regard and deal with all documents and information that may come to his knowledge or in his possession in his capacity, or in the exercise of his duties, as a member of the Board or as the secretary of the Board, as secret and confidential and shall make and subscribe before the Court of Appeal a declaration on oath to that effect in the form set out in the Schedule.

(2) Any person who, except as provided for or allowed under the revenue Acts or for the purposes thereof, communicates or attempts to communicate to any other person any matter or thing coming to his notice or being in his possession in the performance of his duties as a member of the Board or as secretary of the Board shall be guilty of an offence and shall, on conviction, be liable to a fine (multa) of not less than two hundred and thirty-two euro (€232) and not more than two thousand and three hundred and twenty-five euro (€2,325) or to imprisonment for a period not exceeding six (6) months, or to both such fine and imprisonment.

Proceedings of the Board.
Added by:
XXVII.2023.6.

4G. (1) The Board shall meet within one (1) month from its constitution and as often as may be necessary or expedient thereafter:

Provided that it shall meet at least once every two (2) months.

(2) The meetings of the Board shall be called by the chairperson of the Board on his own initiative, or at the request of any two (2) of the other members or at the request of the Commissioner.

(3) The Board shall not act unless a quorum of three (3) members, which shall include the chairperson or the deputy chairperson, is present.

(4) The meetings of the Board shall be chaired by its chairperson, or in his absence, by its deputy chairperson.

(5) The decisions of the Board shall be adopted by a simple majority of the votes of the members present and voting and in the event of an equality of votes, the member presiding at the meeting shall have and shall exercise a second or casting vote.

(6) The Commissioner shall be entitled to attend the meetings of the Board and to take part in the discussions but shall have no vote. The absence of the Commissioner from any meeting shall not invalidate the proceedings of such meeting.

(7) The Board may delegate to its chairman, to a sub-committee of its members or to the Commissioner responsibilities for such specific matters or for such areas of its functions as it may consider necessary. When such a delegation has been made, the chairman, the sub-committee or the Commissioner, as the case may be, shall report their findings and conclusions to the Board and no such findings and conclusions shall be considered as final unless they have been ratified by the Board.

(8) Any vacancy among the members of the Board, and any participation therein by a person not entitled so to do, shall not invalidate the proceedings of the Board.

(9) The Board shall have at its disposal such place or places for its meetings and such equipment for the performance of its functions as the Minister may direct. The Commissioner shall provide the Board with all secretarial support that the Board may reasonably require.

(10) The Commissioner shall keep a record of the proceedings of the Board and of its sub-committees.

(11) Subject to the provisions of this Act, the Board may regulate its own procedure.

(12) All acts done by any person acting in good faith as a member of the Board shall be valid as if he were a member notwithstanding that some defect in his appointment or qualification be afterwards discovered.

Added by:
XXIII. 2014.5.
Amended by:
VII.2019.65.

Revenue
Remissions
Supervisory Board.
Added by:
XXIII. 2014.5.
Amended by:
XIII. 2015.177.

PART III

Remission of Revenue

5. (1) There shall be set up in accordance with the provisions of this Part, a Board to be known as the Revenue Remissions Supervisory Board (hereinafter in this Part referred to as the "Board") for the purpose of providing oversight on the remission of amounts due to revenue departments under the revenue acts.

(2) The Board shall consist of a Chairperson to be appointed by the Minister who shall preside over the Board and of such number of members not being less than two or more than six as the Minister may from time to time appoint.

(3) The Chairperson and the members of the Board shall be appointed by the Minister in the following manner from amongst persons who, in the Minister's opinion, have previous experience and special qualifications in a particular field of expertise falling within the competence of the Board:

- (a) the Chairperson shall be appointed from amongst persons who are not public officers; and
- (b) the members of the Board shall be appointed after being approved by the Minister from a list which may only include public officers and public service employees submitted to the Minister by the Commissioner for Tax and Customs.

(4) The Chairperson and the members of the Board shall be appointed for a term of three years and shall vacate their office at the expiration of the term of their appointment unless the appointment is extended or renewed.

(5) Upon their appointment, the Chairperson and the members of the Board shall take an oath to carry out their functions and duties with impartiality, fairness and according to law and not to disclose any matter that comes to their knowledge in the exercise of their functions except as may be necessary for the purpose of carrying out such functions or in relation to matters connected therewith or for the purpose of complying with an order of a court or of another competent body exercising judicial or investigative functions under any law. The oath shall be taken before the Attorney General.

(6) The Board shall as much as possible seek to adopt its conclusions by unanimous decision but when such a decision is not achievable it shall act by a majority of votes from amongst the Chairperson and the members.

(7) The reports on the conclusions of the Board on individual cases or on exercises of a general nature shall be signed by the Chairperson and shall be sent to the Commissioner for Tax and Customs as soon as possible after being adopted. In the said reports the Board may also make recommendations of a general or of a specific nature.

(8) The Commissioner for Tax and Customs shall, after having examined a recommendation of the Board, report to the

Chairperson of the Board within a period of two months informing him about any final decision taken upon the recommendation.

(9) The Board shall, by the 30th April of every year following the year when it is appointed issue a general report on its activities during the previous year. The report shall include statistical information on the cases examined during the reporting period.

(10) The Chairperson shall receive such remuneration as the Minister may from time to time determine.

(11) The Minister may by order establish sections of the Revenue Remissions Supervisory Board and may designate the categories of particular oversight or exercises to be assigned to each section. The Minister may by subsequent order amend, revoke or substitute such order.

(12) When the Chairperson or a member of the Board has abstained from sitting, or is otherwise unable to act, another Chairperson or member shall be appointed by the Minister to the Board or to a section thereof and shall be surrogated in his or her stead.

5A. (1) The Commissioner may remit in whole or in part any penalties and interest imposed under the revenue acts in such circumstances and subject to such conditions as the Minister may prescribe by means of rules.

Remission of penalties and interest.
Added by:
VII. 2019.66.

(2) The Minister may delegate to the Commissioner the power to prescribe the circumstances in which and the conditions under which penalties and interest may be remitted and may at any time amend or revoke any such delegation. To the extent that they fall within the terms of any such delegation, guidelines published by the Commissioner for the purposes of this article shall have the same effect as rules prescribed in terms of sub-article (1).

(3) In this article "penalties" means additional tax, additional duty and administrative penalties that are imposed under the revenue acts.

PART IV

Miscellaneous

Added by:
XXIII. 2014.6.

6. (1) Without prejudice to the generality of article 4, and subject to sub-article (2), the Minister may direct that provisions relating to the administration of a revenue Act shall apply in such manner and to such extent as may be prescribed for the purpose of the administration of another revenue Act and shall accordingly be read and construed and shall be binding and have effect, *mutatis mutandis*, as if they were provisions contained in that other revenue Act.

Applicability of administrative provisions of a revenue Act to another revenue Act.
Added by:
XXIII. 2014.6.
Amended by:
XIII. 2015.178.

(2) Regulations under sub-article (1) may be made with respect to provisions relating to the keeping, production, collection and inspection of any information, books and records.

(3) The Minister responsible for finance may from time to time make rules generally for carrying out the provisions of the revenue acts.

(4) Any guidelines, explanations or instructions relating to the

revenue acts or of the rules referred to in sub-article (3) contained in a publication published by or under the authority of the Commissioner and distributed or made available to taxpayers in general, shall be read and construed as one with such rules and shall have the same effect as the rules to the extent that such guidelines, explanations or instructions are not in conflict with the revenue acts on the said rules or with guidelines, explanations or instructions published at a later date and to the extent that -

- (a) they give a definition of any term or an interpretation of any provision contained in the revenue acts or the rules;
- (b) they determine the manner in which any provision of the revenue acts or the rules is to be applied;
- (c) they determine any matter which in accordance with the revenue acts or the rules may be determined by or is subject to the approval or the discretion of the Commissioner;
- (d) they provide for the use of electronic communications.

Exchange of
information.
Added by:
XIII. 2015.179.
Cap. 123.

7. Notwithstanding any provision contained in any Act, except for any arrangement under article 76 of the Income Tax Act, any information available to the Commissioner through any one of the revenue departments may be forwarded to and used by any other revenue department."

Signatures.
Added by:
XIII. 2015.180.

8. Any notice, receipt or other document given by the Commissioner under this Act or any of the revenue acts shall be signed by the Commissioner or by a person or persons authorized by the Commissioner and every such notice shall be valid if the signature is printed, stamped or written thereon.

Reproductions of
electronic copies
of documents.
Added by:
VIII. 2020.72.

9. A document that is certified by the Commissioner, or by a person authorised by him for this purpose, as being a true reproduction of an electronic copy, prepared by or under the authority of the Commissioner, of a document that was furnished to or issued by the Commissioner, shall be deemed for all purposes of the law as an authentic copy of the original document and shall constitute and be admissible as evidence in any proceedings to the same extent as the original.

Liability for
damages.
Added by:
XXVII. 2023.7.

10. The Commissioner, the members of the boards established under this Act and the persons having any official duty or being employed in the administration of the revenue acts shall not be held liable in damages for anything done or omitted to be done in the discharge or purported discharge of any function under this Act, unless the act is shown to have been done or omitted to be done, as the case may be, in bad faith.

Reference to
revenue acts in
judicial acts.
Added by:
XXVII. 2023.7.

11. Any judicial act filed by the Commissioner and any judicial act filed by any person to be served upon the Commissioner or in proceedings against the Commissioner in terms or for the purposes of any revenue Act, shall clearly indicate in the heading, below the name of the court or tribunal in which it is filed, the revenue Act in question. A default of compliance with this provision shall not constitute grounds for the nullity of the judicial act or judicial proceedings in

question provided that the defect is rectified by the party filing that act as soon as may be after it has been requested to do so by that court or by that tribunal.

12. Notwithstanding the provisions of articles 1196 to 1204 of the [Civil Code](#), both inclusive, no set-off may be made of any debt due in terms of a revenue Act to or by the Commissioner or any official to whom the Commissioner has delegated functions in accordance with sub-article (4) of article 3 against any debt due in terms of any other revenue Act by or to the Commissioner or such other official as aforesaid:

Set-off of debts due to or by the Commissioner.
Cap. 16.
Added by:
XXVII. 2023.7.

Provided that a set-off as aforesaid may be made and shall have effect to such extent and in such manner as may be approved by the Commissioner or as may be prescribed.

SCHEDULE
(Article 4F)

Added by:
XXVII. 2023.8.

COMMISSIONER FOR TAX AND CUSTOMS ACT

Declaration in terms of article 4F

I,.....

.....
..do solemnly and sincerely declare that I shall deal with and regard all information, data and documents, and copies thereof, that may come to my knowledge or in my possession in my capacity as, or in the exercise of my duties as, a member / the secretary (delete as necessary) of the Board of Governance established in terms of the Commissioner for Tax and Customs Act as secret and confidential and that I shall not at any time communicate such information or data, or the contents of such documents, or copies thereof to any person except as may be necessary for the purpose of duly executing my duties as member / the secretary (delete as necessary) of the said Board of Governance.

.....
Signature

Declared on oath before the Court of Appeal, this
day of

.....
Registrar