

I assent.

(L.S.)

ANTON TABONE
Acting President

22nd March, 2011

ACT No. IV of 2011

AN ACT to implement Budget measures for the financial year 2011 and other administrative measures.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

1. The short title of this Act is the Budget Measures Implementation Act, 2011. Short title.

PART I

2. The provisions of this Part shall be deemed to have come into effect on the 1st January, 2011. Coming into force of this Part.

3. For the purpose of this Part, "revenue" has the same meaning as is assigned to it in article 2 of the Financial Administration and Audit Act, but does not include proceeds from loans. Interpretation. Cap. 174.

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Authority to
raise loan.

4. (1) Subject to the provisions of this Act, the Government of Malta may raise in Malta, by way of loan, a sum of money not exceeding five hundred and seventy million euro.

Cap. 161.

(2) For the purpose of raising the aforesaid loan the Minister responsible for Finance is hereby authorised to issue stock in Malta under the provisions of the Local Loans (Registered Stock and Securities) Ordinance on such terms and conditions as the said Minister may approve.

Purpose.

5. Any money borrowed under the authority of this Part shall be appropriated and applied for the purpose of:

(a) meeting excess expenditure over revenue incurred in the Consolidated Fund for year 2011 and, or subsequent years;

(b) redeeming registered stocks which are due for redemption during 2011;

(c) repaying a bank loan originally granted to the Government of Malta to take over loan liabilities held in the name of Malta Drydocks Corporation; and

(d) effecting portfolio changes in relation to amounts raised through Treasury Bills, amounts raised through Government Stocks, and in respect of loans raised outside Malta as and when required in line with Government's debt management policies.

PART II

Amendment of
the Income Tax
Act.
Cap. 123.

6. (1) This Part of this Act amends the Income Tax Act and it shall be read and construed as one with the Income Tax Act, hereinafter in this Part referred as "the principal Act".

(2) The provisions of this Part shall come into force as follows:

(a) articles 7(a), 10(b), 11, 13, 14(b), 16, 17, 18, 20(d), 20(e), 21, 22 and 24 as from year of assessment 2011;

(b) articles 7(b), 8(a), 8(c), 8(d), 10(a), 20(a) and 20(g) on the 1st January 2011;

(c) articles 7(c), 7(d), 8(e), 8(f) and 8(g)(ii) as from year of assessment 2009;

(d) articles 8(b), 9(a) and 19 on 26th November, 2010;

(e) article 8(g)(i) on 16th April, 2010; and

(f) articles 12, 20(b) and 20(c) as from year of assessment 2012.

7. Subarticle (1) of article 2 of the principal Act shall be amended as follows:

Amendment of
article 2 of the
principal Act.

(a) for the definition "petroleum", there shall be substituted the following:

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

(b) immediately after the definition "property company", there shall be added the following new definition:

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

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

(c) in the definition "foreign income account", paragraph (a) thereof shall be substituted by the following new paragraph:

"(a) profits resulting from royalties and similar income arising outside Malta and from dividends, capital

gains, interest, rents, income or gains derived from a participating holding or from the disposal of such holding other than a participating holding in a company resident in Malta, and any other income derived from investments situated outside Malta, which are liable to tax in Malta and are receivable by a company registered in Malta not being a company registered under the Malta Financial Services Authority Act, and"; and

(d) for the definition "property company" there shall be substituted the following:

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

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

Amendment of
article 5 of the
principal Act.

8. Article 5 of the principal Act shall be amended as follows:

(a) subarticle (1) thereof shall be amended as follows:

(i) in subparagraph (iv) of paragraph (a) thereof, for the words "subarticle (13)(b)(ii)." there shall be substituted the words "subarticle (13)(b)(ii);", and immediately thereafter there shall be added the following new subparagraph:

"(v) gains or profits arising from the transfer of the ownership or usufruct of or from the assignment or cession of any rights over any interest

in a partnership. For the purposes of this subparagraph "transfer" shall mean:

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

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

(ii) in paragraph (b) thereof, immediately before the definition "transfer", there shall be inserted the following new definitions:

" "partnership" shall mean a commercial partnership *en nom collectif*, or commercial partnership *en commandite* the capital of which is not divided into shares and, except for the purposes of subparagraph (v)(b), shall include any other partnership having a legal personality distinct from that of its members other than a commercial partnership *en commandite* the capital of which is divided into shares;

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

(iii) in the definition "transfer", immediately after the words "subarticles (9A) and (13)(b)," there shall be added the words "and for the avoidance of doubt includes any transfer of an asset by a company to its shareholders, or by a commercial partnership *en nom collectif* or commercial partnership *en commandite* the capital of which is not divided into shares to its members, in the course of winding up the company or partnership or in the course of a distribution of assets to its shareholders or partners pursuant to a scheme of distribution,";

(b) immediately after the last proviso to paragraph (c) of subarticle (3) thereof, there shall be added the following new proviso:

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

(c) immediately after subarticle (3) thereof, there shall be added the following new subarticle:

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

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

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

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

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

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

Provided that where the said shares consist of shares whose return is limited

to a fixed rate of return the acquisition cost shall be taken to be zero; and

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

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

(d) immediately after subarticle (6) thereof, there shall be added the following new subarticle:

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

(e) in paragraph (iii) of subarticle (9), for the words "For the purpose of this paragraph "property company" shall mean a company which owns immovable property situated in Malta, or any rights over such property, or a company which holds, directly or indirectly, shares or interests in a body of persons which owns immovable property situated in Malta, or any rights over such property:" there shall be substituted the words "For the purpose of this paragraph the proviso to the definition of "property company" in article 2(1) shall not apply:";

(f) for paragraph (h) of subarticle (9A) thereof, there shall be substituted the following new paragraph:

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

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of the said shares or other interests so held is attributable to such immovable property or rights."; and

(g) paragraph (b)(ii) of subarticle (13) thereof shall be amended as follows:

(i) in the first proviso thereto, for the words "or in the proportion in the value" there shall be substituted the words "and in the proportion in the value"; and

(ii) in the last proviso thereto, for the words "For the purpose of this paragraph "property company" shall mean a company which owns immovable property situated in Malta, or any rights over such property, or a company which holds, directly or indirectly, shares or interests in a body of persons which owns immovable property situated in Malta, or any rights over such property." there shall be substituted the words "For the purpose of this paragraph the proviso to the definition of "property company" in article 2(1) shall not apply:".

Amendment of
article 5A of the
principal Act.

9. Article 5A of the principal Act shall be amended as follows:

(a) in paragraph (i) of subarticle (4) thereof, for the words "or any other provision of the Income Tax Acts or any other law." there shall be substituted the words "or any other provision of the Income Tax Acts or any other law;" and immediately thereafter there shall be added the following new paragraph:

"(j) A transfer of property by a company to its shareholder or to an individual related to its shareholder in the course of winding up or in the course of a distribution of assets pursuant to a scheme of distribution, where the said shareholder is an individual or his spouse, who owns or own, all of the share capital (disregarding the holding of one share having no preferential rights) of the said company transferring the property as aforesaid:

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

Provided that this paragraph shall only apply where

all the following conditions have been satisfied:

(i) the said shareholder held all of the share capital (disregarding the holding of one share having no preferential rights) of the company transferring the property for a period exceeding five years immediately preceding the date of the transfer of the property as aforesaid;

(ii) the said property consists of one transferable unit, being either a dwelling house, garage, shop, office, store or warehouse;

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

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

Provided also that where the said property is subsequently transferred by the said shareholder or related individual, as the case may be, to a person referred to in subarticle (4)(a)(i), and such person subsequently transfers the said property within a period of five years from the date of its acquisition the provisions of subarticle (3)(b) shall not apply:

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

(b) in paragraph (a) of subarticle (2) thereof, in the definition of "transfer", the words "any transfer of property by a company to its shareholders in the course of winding up" shall be deleted; and

(c) in paragraph (a) of subarticle (6) thereof, for the words "In a contract of emphyteusis the ground rent" there shall be substituted the words "In a contract of emphyteusis and in any transfer of property where the consideration consists of or

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includes periodical payments to which article 4(1)(d) or (e) applies, the ground rent or any such other periodical payment".

Amendment of
article 12 of the
principal Act.

10. Subarticle (1) of article 12 of the principal Act shall be amended as follows:

(a) in subparagraph (ii) of paragraph (c) thereof, for the words "long term policies of insurance and of any shares or securities in a company" there shall be substituted the words "long term policies of insurance, of any interest in a partnership which is not a property partnership and of any shares or securities in a company"; and

(b) for paragraph (p) thereof, there shall be substituted the following:

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

Amendment of
article 14 of the
principal Act.

11. Subarticle (1) of article 14 of the principal Act shall be amended as follows:

(a) in paragraph (n) thereof, for the words "nine hundred and thirty-five euro (935) per child:" there shall be substituted the words " nine hundred and thirty-five euro (€935) per child."; and

(b) the proviso thereto shall be deleted.

Amendment of
article 14B of
the principal
Act.

12. Subarticle (1) of article 14B of the principal Act shall be amended as follows:

(a) paragraph (b) thereof shall be substituted by the following:

"(b) one thousand and six hundred euro (€1,600) in respect of each child who attended such secondary school or one thousand and two hundred euro (€1,200) in respect of each child who attended such primary school or kindergarten."; and

(b) immediately after paragraph (b) as substituted, there shall be added the following proviso:

"Provided that the deduction shall only be allowed if the payment and the details of the individual making the claim are confirmed by information provided, in such

format and content as determined by the Commissioner, by the head of the relative school or kindergarten."

13. For article 23 of the principal Act there shall be substituted the following:

Substitution of article 23 of the principal Act.

"Profits from production of petroleum.

Cap. 156.
Cap. 194.
S.L. 156.01

23. (1) Where any person engaged in the business of exploration for, and the production of, petroleum (hereinafter referred to as "the Contractor") derives, or aims to derive, gains or profits through a Production Sharing Contract (hereinafter referred to as "the Contract") granted to such person by the Government of Malta by way of licence in accordance with the provisions of the Petroleum Production Act, the Continental Shelf Act and the Petroleum (Production) Regulations, or any provision amending or substituting the said Acts or Regulations, the chargeable income of the said person from such business shall be determined as set out in this article.

(2) (a) The gains or profits derived by the Contractor from the production of petroleum for any basis year, being the year immediately preceding a year of assessment, shall be arrived at by deducting the recoverable costs as defined in the Contract and not yet fully recovered by the Contractor, from the total of the value of the cost recovery petroleum and of the share of profit petroleum, as defined in the Contract, allotted to the Contractor for that year, to which shall be added any ancillary or incidental income for the same year.

(b) Where after such deduction as is referred to in paragraph (a) there remains any balance of unabsorbed recoverable costs, the amount of such unabsorbed costs shall be carried forward to the following year and shall be added to and become part of the recoverable costs for that year.

(c) The procedure referred to in paragraph (b) shall be followed in subsequent years until all recoverable costs shall have been absorbed.

(3) (a) For the purposes of this article, particularly for the purposes of subarticle (2), each Contract shall be deemed to constitute a separate and distinct source of income and any Contractor deriving gains or profits from more than one Contract shall be subject to tax as if he were a separate and unconnected person with respect to each such Contract.

(b) Where more than one petroleum field is in production in an area covered by the same Contract, the gains or profits from each such field shall be determined as if each such field constitutes a separate and distinct source of income arising to a separate person, so however that the Contractor shall have the right to identify the fields in the said area where the cost of exploration and development operations are to be taken into account in determining the relative gains or profits.

(4) The provisions of articles 16 to 22 shall not apply in the case of any company in any year in which the company is operating under a licence referred to in subarticle (1).

(5) (a) Notwithstanding anything contained in the Income Tax Acts, where a non-resident sub-contractor renders services to a Contractor in Malta, such Contractor shall withhold tax at the rate set out in article 56(13)(b) on payments made to the sub-contractor for services rendered in Malta and shall pay to the Commissioner any tax so withheld within thirty days from the making of the deduction.

(b) Where a Contractor fails to deduct and pay tax in accordance with paragraph (a), the provisions of article 73(4) of this Act and of article 40(1) of the Income Tax Management Act shall apply *mutatis mutandis*.

(c) The tax withheld in accordance with paragraph (a) shall be considered as a final withholding tax unless the sub-contractor notifies the Commissioner that this tax is to be considered as a provisional tax payment to be credited against the tax liability of the said sub-contractor's chargeable income for the relevant year of assessment computed in accordance with the provisions of the Act.

(d) The notification referred to in paragraph (c) shall be made by not later than the tax return date for the relevant year of assessment and in such form as the Commissioner may require.

(6) Except for gains or profits derived from the production of petroleum referred to in subarticles (1) and (2), any income or deemed income derived by a Contractor and subject to tax under any of the provisions of this Act shall be so brought to charge in accordance with the said provisions and at the applicable rates, but no deduction shall be granted thereagainst in respect of any loss or outgoing expense incurred in connection with the exploration for or the production of petroleum."

14. Article 26 of the principal Act shall be amended as follows: Amendment of article 26 of the principal Act.

(a) in paragraph (a) thereof, for the words "other than alimony payments as provided for in article 14A and school fees as provided for in article 14B;" there shall be substituted the words "other than those specifically allowed by this Act;"; and

(b) in paragraph (g) thereof, for the words "voluntary nature." there shall be substituted the words "voluntary nature;" and immediately thereafter there shall be added the following new paragraph:

"(h) any interest, discount or premium paid or payable to a person not resident in Malta where -

(i) the person not resident in Malta derives or benefits from the said interest, discount or premium, directly or indirectly, from the granting of loans or from any form of credit to finance the acquisition, development,

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construction, refurbishment, renovation of immovable property situated in Malta or any right thereon including professional fees related thereto (including fees related to the acquisition of finance) and any other matter which increases or enhances the value of such immovable property or any right thereon; and

(ii) the said interest, discount or premium is exempt from tax under the provisions of article 12(1)(c)(i); and

(iii) the payor of the interest, discount or premium is a person related to the person not resident in Malta.

For the purpose of this paragraph a person is deemed to be related to a person not resident in Malta if:

(i) that person and the person not resident in Malta are, directly or indirectly, controlled or beneficially owned to the extent of more than 10% by the same persons; or

(ii) that person owns, directly or indirectly, more than 10% of the ordinary share capital or voting rights of the person not resident in Malta."

Amendment of article 27D of the principal Act.

15. In paragraph (c) of subarticle (8) of article 27D of the principal Act, for the words "by the trustee or the beneficiary himself." there shall be substituted the words "by the trustee or the beneficiary himself:", and immediately thereafter there shall be added the following new proviso to the whole subarticle:

"Provided that the provisions of this subarticle shall apply *mutatis mutandis* where none of the trustees of a trust is a person resident in Malta and the beneficiaries of the such trust include persons that are -

(i) ordinarily resident and domiciled in Malta; or

(ii) ordinarily resident or domiciled in Malta and the relevant income is received in Malta."

Amendment of article 33 of the principal Act.

16. For the proviso to subarticle (1) of article 33 of the principal Act, there shall be substituted the following:

"Provided that where the recipient derives, or is deemed to have derived pursuant to the provisions of article 43(6)(a), (b) or (c), investment income referred to in article 41(a)(viii), tax shall be deducted at the rate specified in article 56(6) or such other rate as may be prescribed and rules may also be prescribed on how the investment income provisions are to be applied in particular circumstances."

17. Article 41 of the principal Act shall be amended as follows: Amendment of article 41 of the principal Act.

(a) for item (4) of subparagraph (viii) of paragraph (a) thereof there shall be substituted the following:

"(4) the dividend referred to in article 43(6)(a) and the income or gains referred to in article 43(6)(c);"

and immediately thereafter the following new item shall be added the following:

"(5) the income referred to in article 43(6)(b);";

(b) for paragraph (b) thereof there shall be substituted the following:

"(b) "payor" shall mean the person who is liable to make, or if different, who makes a payment of investment income and with respect to investment income referred to in paragraph (a)(viii)(4) shall mean the company which earned the profits deemed distributed pursuant to article 43(6)(a) and article 43(6)(c) and with respect to investment income referred to in paragraph (a)(viii)(5) shall mean the Commissioner;"; and

(c) the proviso to paragraph (c) thereof shall be substituted by the following:

"Provided that with respect to the investment income referred to in paragraph (a)(viii)(2) and (3) a recipient shall be an individual who is resident in Malta and with respect to the investment income referred to in paragraph (a)(viii)(4) and (5) a recipient shall be the individual referred to in article 43(6)(a), (b) and (c), as the case may be, and in the circumstances referred to in article 43(6)(e) such individual must be ordinarily resident and domiciled in Malta."

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Amendment of
article 43 of the
principal Act.

18. Subarticle (6) of article 43 of the principal Act shall be amended as follows:

(a) for paragraph (a) thereof there shall be substituted the following:

Cap. 372. "(a) Where an individual resident in Malta is registered for the purpose of article 48(4) or article 48(4A) of the Income Tax Management Act, or is beneficially entitled, directly or indirectly, to the profits of a person or entity which is so registered, such individual shall be deemed to have received a dividend or dividends corresponding to the amount of profits (that is, the profits net of the tax paid or payable by the company in respect of which he or the said person or entity are so registered) that he is beneficially entitled to receive directly or indirectly from such company, on the first day of the accounting period following that in which such profits were earned by the said company or on the date such profits were distributed whichever is the earlier:

Cap. 372. Provided that this paragraph shall not apply where the said profits were distributed to such individual resident in Malta registered for the purpose of article 48(4) or article 48(4A) of the Income Tax Management Act by way of dividends in the accounting period in which such profits were earned by the said company:

Cap. 372. Provided further that when an individual resident in Malta registered for the purpose of article 48(4) or article 48(4A) of the Income Tax Management Act has been deemed to have received a dividend or dividends on the first day of the accounting period following that in which such profits were earned by the said company such dividend or dividends shall for the purpose of article 41(a)(viii)(2) be deemed to have been paid on such day.";

(b) paragraph (b) thereof shall be substituted by the following:

"(b) An individual resident in Malta beneficially entitled, directly or indirectly, to the profits of a person or entity which has received the income referred to in article 41(a)(viii)(3), shall be deemed to have received, at the time that the said person or entity has received the said income, so much of that income as corresponds to his, direct or indirect, entitlement to receive that income by way of dividend or other means through or from any person or entity in any manner whatsoever:";

(c) paragraph (d) thereof shall be substituted by the following:

"(d) (i) Notwithstanding any other provision in the Income Tax Acts, where an individual becomes beneficially entitled, directly or indirectly, to the profits of a person or entity or any such entitlement is increased in any way and such person or entity has received but not yet distributed, or is entitled to receive (at the time such individual became so entitled or had his entitlement so increased), directly or indirectly, the income referred to in article 41(a)(viii)(2) and (3), such individual shall be deemed to have received a dividend chargeable to tax under this Act at the time that he became so entitled or had his entitlement so increased as corresponds to his, direct or indirect, entitlement or increased entitlement to receive that income by way of dividend or other means through or from any person or entity in any manner whatsoever and such individual shall be obliged to declare the said dividend in his return of income:

Provided that the provisions of this paragraph shall not be applicable where the Commissioner is satisfied that the events referred to in this paragraph were not the result of some arrangement or scheme the sole or main purpose of which was the avoidance of or postponement of the payment of tax.

(ii) Notwithstanding any other provision in the Income Tax Acts, where an individual not resident in Malta changes his residence and becomes resident and domiciled in Malta and at the time of the change becomes or is beneficially entitled, directly or indirectly, to the profits of a person or entity and such person or entity has received, directly or indirectly, but not yet distributed the income referred to in article 41(a)(viii)(2) and (3), such individual shall be deemed to have received a dividend chargeable to tax under this Act at the time that he becomes resident and domiciled in Malta as corresponds to his, direct or indirect, entitlement to receive that income by way of dividend or other means through or from any person or entity in any manner whatsoever and such individual shall be obliged to declare the said dividend in his return of income:

Provided that the provisions of this paragraph shall not be applicable where the said individual was not at any time resident in Malta throughout the whole of the period of five years immediately preceding the date such individual changes his residence and becomes ordinarily resident and domiciled in Malta.

Cap. 372.

(iii) Notwithstanding any other provision in the Income Tax Acts, where an individual not resident in Malta, whether or not registered for the purpose of article 48(4) or article 48(4A) of the Income Tax Management Act, receives, directly or indirectly, the income referred to in article 41 (a)(viii)(2) and (3), and such individual was at any time within the five year period preceding the date on which he received, directly or indirectly the said income, resident and domiciled in Malta, such income shall be chargeable to tax under this Act and the said individual shall be obliged to declare the said income in a return of income.

(iv) For the purpose of paragraphs (i) to (iii) above the reference to "recipient" in article 42(a)(viii)(2) shall mean any person or entity."; and

(d) paragraph (e) thereof shall be substituted by the following:

"(e) Where the immediate shareholder of the company, person or entity referred to in paragraphs (a), (b) and (c) is not an individual and is not resident in Malta, the provisions of the said paragraphs shall only be applicable when the said individual is ordinarily resident and domiciled in Malta."

19. Immediately after article 45A of the principal Act there shall be added the following new article:

Addition of new article to the principal Act.

"Conversion of a partnership into a company. Cap. 386.

45B. Notwithstanding anything contained in this Act, where, in accordance with the provisions of the Companies Act, a commercial partnership *en nom collectif* or a commercial partnership *en commandite* the capital of which is not divided into shares is converted into a company, it shall be deemed for all the purposes of the Income Tax Acts that no transfer or acquisition of assets has taken place and for the purpose of determining the chargeable income or gains on a transfer of the said assets by the company, the cost and date of acquisition taken into account shall be the cost and date as applicable to the commercial partnership that has been converted."

20. Article 56 of the principal Act shall be amended as follows:

Amendment of article 56 of the principal Act.

(a) for the proviso to subarticle (8) thereof, there shall be substituted the following:

"Provided that with effect from 1 January 2011 and up to 31 December 2014, as regards dividends paid by a company which was an international trading company as at 31 December 2010:

(i) the provisions of this subarticle shall continue to apply after 31 December 2010 with respect to the distribution of profits earned by such company while it was an international trading company, and

(ii) the conditions set out in paragraphs (a) and (b) above shall not apply in respect of such dividends paid to any recipient shareholder who is registered for the purpose of article 48(4) or article 48(4A) of the Income Tax Management Act.";

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(b) in paragraph (b) of subarticle (10) thereof, for the words "under article 4(1)(a) and (b)" there shall be substituted the words "under articles 4 or 5";

(c) in paragraph (a)(ii) of subarticle (11) thereof, for the words "under article 4(1)(a) and (b)" there shall be substituted the words "under articles 4 or 5";

(d) for subarticle (13) thereof there shall be substituted by the following:

"(13)(a) The tax upon the chargeable income of any person referred to as a Contractor in article 23 shall be levied at the rate of 35 cents (€0.35) on every euro of the chargeable income in so far as such income is to be computed in accordance with the provisions of the said article 23(1) and (2). Other income arising to a Contractor shall be charged at the appropriate rate or rates.

(b) The rate at which tax shall be withheld by a Contractor from payments made to a sub-contractor in accordance with the provisions of article 23(5) shall be at 10 cents (€0.10) of every euro of the payments made as aforesaid.";

(e) subarticles (14), (15) and (16) thereof shall be deleted;

(f) for subarticle (20) thereof, there shall be substituted the following:

"(20) (a) Where a member of a company resident in Malta is a resident of a State or territory with which Malta has made an arrangement under the provisions of this Act for the grant of relief from double taxation, and under that arrangement a dividend, or part thereof, distributed by such a company is subject to income tax in Malta at a rate lower than that chargeable on the income out of which the dividend is distributed, such company shall be entitled to require that the gains or profits, or part thereof, derived by it from its trade or business for the year of assessment 2001 and for subsequent years of assessment and which are distributable by way of dividend subject to tax at a lower rate as aforesaid shall, notwithstanding that the dividend, or part thereof has not been distributed, be taxed at the said reduced rate and not at the rate properly chargeable under this Act on the gains or profits of the company:

Provided that the provisions of this paragraph shall only be applicable with respect to companies which do not sell by retail and a person shall be deemed not to sell by retail if its sales of goods or services are made to:

(i) a person who carries on a trade, business, profession or vocation and the goods or services so sold to such person are either resold by such person or are used by such person for the purpose of his trade, business, profession or vocation; or

(ii) a person, other than an individual, who uses those goods for the purposes of an undertaking carried on by such person:

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Provided further that where a company has opted to be taxed at a reduced rate of income tax as provided by this paragraph, no person in receipt of a dividend paid by such company out of profits which have been subject to tax at such reduced rate of tax shall be entitled to claim a refund under the provisions of the Income Tax Acts in respect of that dividend other than a refund in terms of article 48(4A) of the Income Tax Management Act:

Provided also that where a company has opted to be taxed at a reduced rate of income tax as provided by this paragraph and such company distributes gains or profits derived by it from its trade or business which have been subject to tax at the rate properly chargeable under this Act to the member resident in the said state or territory, such member shall not be entitled to claim a refund under the provisions of the Income Tax Acts in respect of any dividend paid by such company out of the said gains or profits:

Provided also that where a company has opted to be taxed at a reduced rate of income tax as provided by this paragraph and such company distributes gains or profits derived by it from its trade or business which have been subject to tax at such reduced rate of tax to any person not entitled to a reduced rate of tax under any arrangement as aforesaid, such gains or profits shall be taxed at a rate being the difference between the rate referred to in article 56(6) and the rate actually applied and such tax shall be tax payable by the company in the year of assessment in which such profits are distributed.

(b) Where the provisions of paragraph (a) have been applied and subsequently there is a change in the shareholding of the company in consequence of which the new shareholders will not be entitled to a reduced rate of tax under any arrangement as aforesaid or if so entitled the rate applicable in such arrangement is more than the rate applicable to the outgoing shareholder, then any profits which have been subject to tax at such lower rate as aforesaid and which have not been distributed at the end of the last financial year of the company preceding the date of change in shareholding less any of such profits distributed to the outgoing shareholder in the current financial year shall be taxed at a rate being the difference between the rate of tax which would be applicable had the new shareholder held the shares when such profits were earned, and the rate actually applied, and such tax shall be a tax payable by the company in the year of assessment in which such profits are distributed:

Provided that where a member of a company is also a company incorporated under Maltese law, the provisions of this article shall apply to the same extent as if the members of the latter company had owned the shares directly in the company.

(c) The provisions of this subarticle shall apply where a member of a company resident in Malta is a resident of a State or territory with which Malta has made an arrangement under the provisions of this Act for the grant of relief from double taxation, and under that arrangement the said company is entitled to require that the gains or profits, or part thereof, derived by it and which are distributable by way of dividend, be subject to tax at a lower rate as aforesaid, notwithstanding that the dividend, or part thereof has not been distributed."; and

(g) subarticle (21) thereof shall be amended as follows:

(i) in the first paragraph thereof, the words " who for the purposes of this subarticle, is not deemed to be ordinarily resident in Malta" shall be deleted; and

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(ii) in sub-paragraph (i) of paragraph (c) of the proviso thereto, the words "an individual is to be deemed as being not ordinarily resident in Malta and under which" shall be deleted.

Amendment of
article 59 of the
principal Act.

21. In paragraph (a) of subarticle (1) of article 59 of the principal Act, the words "and other than a dividend referred to in article 12(1)(p)" shall be deleted.

Amendment of
article 68 of the
principal Act.

22. Subarticle (5) of article 68 of the principal Act shall be substituted by the following new subarticle:

Cap. 372.

"(5) When any person is registered in terms of article 48(4A) of the Income Tax Management Act for the purposes of claiming a refund of tax chargeable on a company and that company has any profits allocated to its Maltese Taxed Account or its foreign income account the whole or part of which are actually distributed or deemed to be distributed under any provision of the Income Tax Acts, such person who is so registered shall be deemed to have received, whether upon an actual distribution or deemed distribution as aforesaid, so much of such profits from each such account as corresponds to his percentage entitlement to participate in a distribution of profits of the said company. Any provisions in the memorandum and articles of association of the company or in any agreement which provide that a shareholder, who is so registered, shall be entitled to be paid dividends solely or mainly from the Maltese Taxed Account or the foreign income account shall be disregarded for the purpose of the Income Tax Acts:

Cap. 325.

Provided that where profits have been subject to tax at a rate pursuant to article 15 of the Business Promotion Act or article 56(20) of this Act, the provisions of this subarticle shall not apply as regards such profits and unless the shares (including any shares substituting the original shares resulting from any share exchange or reorganisation) which gave rise to the entitlement that such profits be taxed in accordance with the aforementioned articles are no longer in existence, such profits shall be distributable only to the person in respect of whom the aforementioned articles were applicable or to any other person who acquired the shares from such person."

23. Article 76 of the principal Act shall be amended as follows: Amendment of article 76 of the principal Act.

(a) subarticle (1) thereof shall be substituted by the following:

"(1) If the Minister responsible for finance by order declares that arrangements specified in the order have been made with the Government of any territory outside Malta with a view to -

(a) affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory;

(b) preventing fiscal evasion;

(c) giving assistance in the collection of tax;

and that it is expedient that those arrangements should have effect, the arrangements shall have effect notwithstanding anything in this or any other enactment."; and

(b) subarticle (4) thereof shall be substituted by the following:

"(4) The Minister responsible for finance may make rules for carrying out the provisions of any arrangements having effect under this article. In particular,

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with regard to arrangements for the prevention of fiscal evasion, rules may be made in relation to -

(a) the availability of applicable information;

(b) the access to applicable information;

(c) the mechanism of exchange of information;

(d) appropriate rights and safeguards; and enforcement provisions (including applicable penalties).".

Amendment of article 89 of the principal Act.

24. For subarticle (7) of article 89 of the principal Act, there shall be substituted the following:

"(7) The provisions of this article shall not apply in the case of gains or profits referred to in article 23.".

PART III

Amendment of the Financial Administration and Audit Act. Cap. 174.

25. This Part amends the Financial Administration and Audit Act and it shall be read and construed as one with the Financial Administration and Audit Act, hereinafter in this Part referred to as "the principal Act".

Amendment of article 13 of the principal Act.

26. Article 13 of the principal Act shall be renumbered as subarticle (1) thereof, and immediately thereafter there shall be added the following new subarticle:

"(2) The Minister may delegate his authority to authorise an accounting officer to open any public or official account in any bank in accordance with subarticle (1) to any public officer not below the rank of Director General.".

PART IV

Amendment of the Social Security Act. Cap. 318.

27. This Part amends the Social Security Act and it shall be read and construed as one with the Social Security Act, hereinafter in this Part referred to as "the principal Act ".

Amendment of article 2 of the principal Act.

28. In article 2 of the principal Act, the definition "Service Pension" shall be amended as follows:

(a) paragraph (vii) thereof shall be renumbered as paragraph (viii);

(b) in paragraph (vi) thereof, for the words "another €200; and" there shall be substituted the words "another two hundred euro (€200);"; and

(c) immediately after paragraph (vi) thereof, there shall be added the following new paragraph:

"(vii) with effect from the 1st January 2011, for the purposes of calculating the rate of a pension under this Act, a service pension net of another two hundred euro (€200); and "

29. Immediately after subarticle (6) of article 17 of the principal Act, there shall be inserted the following new subarticle:

Amendment of article 17 of the principal Act.

"(7) For the purposes of this article, insofar as contributions are concerned, any Class Two contributions paid by an insured part-time female self-occupied person in any contribution year after the 3rd January 2011 at a rate which is below the maximum rate for category SA established in Part III of the Tenth Schedule, shall be multiplied:

(a) by the proportion of the actual total value of *pro-rata* SA contributions paid by the part-time self-occupied person during a contribution year, in accordance with Part III in the Tenth Schedule to this Act, bears to the full value of contributions that would have been due under the provisions of this Act during the said contribution year, had the self-occupied person concerned not opted to pay a *pro-rata* contribution according to the Tenth Schedule to this Act; and

(b) for the purposes of determining entitlement to any benefit, pension, grant or allowance, by the resulting number of such weighted contributions for that contribution year as calculated in terms of paragraph (a) of this subarticle, and shall be considered as the actual number of contributions paid by and in respect of the self-occupied person during the said contribution year for such benefit, pension, grant or allowance under this Act."

30. Immediately after article 2 of Part VI of the Second Schedule to the principal Act, there shall be added the following new article:

Amendment of the Second Schedule to the principal Act.

"3. In calculating the income or privilege which is, or could be received or enjoyed by any member of the household as aforesaid in this Part no account shall be taken of the income or part thereof of the wife of a head of household from a gainful activity:

Cap. 452. Provided that during the period in respect of which such income is due, the sum to be ignored shall in no case exceed an amount equivalent to the difference between the national minimum wage as is applicable to persons of 18 years of age or over established by a national standard order issued under the Employment and Industrial Relations Act and the scale rate as applicable to a household of two persons, as determined by Part I of the Sixth Schedule to this Act."

PART V

Amendment of the Duty on Documents and Transfers Act. Cap. 364.

31. (1) This Part of this Act amends the Duty on Documents and Transfers Act and it shall be read and construed as one with the Duty on Documents and Transfers Act, hereinafter in this Part referred as "the principal Act".

(2) The provisions of article 40 shall be deemed to have come into force on the 1st January, 2011.

Amendment of article 2 of the principal Act.

32. Article 2 of the principal Act shall be amended as follows:

(a) for the definition "body of persons" there shall be substituted the following:

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

(b) immediately after the definition "Commissioner" there shall be added the following new definition:

Cap. 123. " "company" has the same meaning assigned to it in article 2(1) of the Income Tax Act;

(c) immediately after the definition "Minister" there

shall be added the following new definition:

" "partnership" means:

Cap. 386.

Cap. 168.

(a) any partnership constituted under the Companies Act or under the Commercial Partnerships Ordinance, being either a commercial partnership *en nom collectif* or commercial partnership *en commandite* the capital of which is not divided into shares or any other partnership having a legal personality distinct from that of its members constituted, incorporated or registered under any other law in force in Malta;

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

(d) in the definition "transfer" immediately after the words "in accordance with the provisions of article 42B of this Act," there shall be added the words "and for the avoidance of doubt includes any transfer of an asset by a company to its shareholders, or by a partnership to its members, in the course of winding up the company or partnership or in the course of a distribution of assets to its shareholders or members pursuant to a scheme of distribution,".

33. In subarticle (1) of article 16 of the principal Act, for the words "and the provisions of article 466 of the Code of Organization and Civil Procedure" there shall be substituted the words "and the provisions of article 60A of this Act".

Amendment of article 16 of the principal Act.

34. Immediately after paragraph (b) of subarticle (6) of article 32 of the principal Act, there shall be added the following new paragraph:

Amendment of article 32 of the principal Act.

"(c) Notwithstanding the foregoing provisions of this article, no duty shall be chargeable on a transfer of immovable property by a company to its shareholder in the course of winding up or in the course of a distribution of assets pursuant to a scheme of distribution, where the said shareholder is an individual or his spouse who owns or own all of the share capital (disregarding the holding of one share having no preferential rights) of the said company transferring the property as aforesaid and the Commissioner issues a certificate attesting that he is satisfied that the requirements and conditions

under this paragraph are fulfilled:

Provided that this paragraph shall only apply and the Commissioner shall only issue a certificate, where all the following conditions have been satisfied:

(i) the said shareholder held all of the share capital (disregarding the holding of one share having no preferential rights) of the company transferring the said immovable property for a period exceeding five years immediately preceding the date of the transfer of the property as aforesaid;

(ii) the said immovable property consists of one transferable unit, being either a dwelling house, garage, shop, office, store or warehouse;

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

Amendment of
article 42 of the
principal Act.

35. Article 42 of the principal Act shall be amended as follows:

(a) paragraph (a) of subarticle (1) thereof shall be substituted by the following:

Cap. 123. "(a) on every transfer *inter vivos*, whether executed in Malta or outside Malta, of foreign marketable securities held in a property company as defined in article 2(1) of the Income Tax Act made to, or by any person resident in Malta and on every document whereby any foreign marketable security is transferred *inter vivos* to, or by any person resident in Malta:

Cap. 123. Provided that where the marketable securities in question are not held in a property company as defined in article 2(1) of the Income Tax Act, no duty shall be chargeable where such transfer is effected through a local bank or through a person holding an investment services licence under the Investment Services Act. For the purpose of this proviso, the provisos to the said definition of "property company" in article 2(1) shall not apply;" and

Cap. 370.

(b) for the second proviso to paragraph (b) of subarticle (1) thereof, there shall be substituted the following:

"Provided further that where any company referred to in the immediately preceding proviso is a "property company", the immediately preceding proviso shall only apply where the individual, direct or indirect, beneficial owners of the companies referred to in the said proviso are the same and each such individual holds, directly or indirectly, substantially the same percentage interest in the nominal share capital and voting rights in each of the said companies both before and after the transfer or exchange, as the case may be. The provisions of article 32(6)(b) shall apply *mutatis mutandis* for the purpose of making such determination.

Cap. 123. For the purpose of this proviso "property company" shall have the same meaning assigned to it in article 2(1) of the Income Tax Act but the provisos to the said definition shall not apply."

36. Article 42B of the principal Act shall be amended as follows:

Amendment of article 42B of the principal Act.

(a) in paragraph (i) of the proviso thereto, for the words "or in the proportion in the real value" there shall be substituted the words "and in the proportion in the real value"; and

(b) in paragraph (v) of the proviso thereto, for the words "For the purpose of this paragraph "property company" shall mean a company which owns any immovable property situated in Malta, or any rights over such property, or a company which holds, directly or indirectly, shares or interests in a body of persons which owns any immovable property situated in Malta, or any rights over such property." there shall be substituted the words:

Cap. 123. "For the purpose of this paragraph "property company" shall have the same meaning assigned to it in article 2(1) of the Income Tax Act but the provisos to the said definition shall not apply."

37. Immediately after article 42B of the principal Act there shall be added the following new article:

Addition of new article to the principal Act.

"Duty on transfer of an interest in a partnership.

42C. (1) A duty of two euro for every one hundred euro or part thereof of the amount or value of the consideration or the real value, whichever is the higher, of an interest in a partnership shall be charged:

(a) on every document whereby an interest in a partnership, other than in a foreign partnership, is transferred to or by any person in Malta;

(b) on a deemed transfer of an interest in a partnership referred to in subarticle (3), other than in a foreign partnership;

(c) on every notice of the transfer *causa mortis* of an interest in a partnership made in accordance with article 45.

For the purpose of this article a transfer of an interest in a partnership shall include a transfer of a full or partial interest and any alienation of any such full or partial interest in a partnership and the term "foreign partnership" shall mean a partnership, which satisfies all of the following conditions:

(i) it is not a "property partnership";

(ii) it does not hold marketable securities in a company registered in Malta as defined in article 2 of the Income Tax Act;

(iii) it is not constituted, incorporated or registered under the Companies Act or under the Commercial Partnerships Ordinance or under any other law in force in Malta.

For the purpose of this paragraph "property partnership" shall have the same meaning assigned to it in article 2(1) of the Income Tax Act but the provisos to the said definition shall not apply.

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Cap. 123.

(2) The provisions of article 42(2) shall apply *mutatis mutandis* to this article and references to the term "company", where applicable, shall be deemed to be references to a "partnership" and references to "subarticle (1)" shall be deemed to be references to "subarticle (1) of article 42C".

(3) Where a person acquires or increases a partnership share, there shall be a deemed transfer of an interest in the partnership (to that partner and from the other partners). "Partnership share" means the share to which a person is entitled in the income of the partnership and to the assets available for distribution on the winding up of the partnership:

Provided that this subarticle shall only apply where the partnership in question is a commercial partnership *en nom collectif* or commercial partnership *en commandite* the capital of which is not divided into shares.

(4) Notwithstanding the provisions contained in this Act, the Minister may make rules determining the method of calculation of the amount or value chargeable to duty in relation to a transfer or deemed transfer of an interest in a partnership and to prescribe any matter that may be prescribed in relation to such transfer."

38. Article 43 of the principal Act shall be substituted by the following:

Substitution of article 43 of the principal Act.

"Transfer of marketable securities and of interests in partnerships executed in Malta or abroad.

43. (1) Every transfer *inter vivos* of marketable securities or of an interest in a partnership executed in Malta shall, under pain of nullity, be made in writing.

(2) Where the transfer of any foreign marketable security or of an interest in a partnership is executed outside Malta upon an order given directly in Malta by any person, such person shall give a notice in writing to the Commissioner of such transfer in such manner and in such term as may be prescribed:

Provided that a notice given as aforesaid may stipulate that it will apply also to other transfers of marketable securities and interests in partnerships executed outside Malta that may be made in the future by the same person, in which case that person will not be required to give notice of such further transfers:

Provided further that notice shall not be given where duty is not chargeable under any of the provisions of this Act."

Substitution of
article 45 of the
principal Act.

39. Article 45 of the principal Act shall be substituted by the following:

"45. (1) A person to whom an interest in a partnership registered in Malta or shares in a company registered in Malta, are transmitted *causa mortis* (hereinafter in this article referred to as a "transferee *causa mortis*") shall not later than such term after the happening of the transfer *causa mortis* as may be prescribed, give notice to the Registrar of Companies.

(2) The notice referred to in subarticle (1) shall contain such particulars of the person from whom the transfer *causa mortis* originates and of the transferee *causa mortis*, the details of the shares or interest being the object of the transfer and the manner in which the shares or interest devolved on the transferee *causa mortis*, as may be prescribed.

(3) The Registrar of Companies shall register the notice referred to in subarticle (1) in a register which shall be open to public inspection, and which shall be kept and indexed in such manner as may be prescribed."

Amendment of
article 47 of the
principal Act.

40. Article 47 of the principal Act shall be amended as follows:

(a) in subarticle (9) thereof, for the words "the relevant conditions and provisions are satisfied." there shall be substituted the words "the relevant conditions and provisions are satisfied:" and immediately thereafter there shall be added the following new proviso:

"Provided that any such determination made in relation to a company which falls under subarticle (3)(c), shall, in so far as it is valid as at 31st December, 2010, be considered, as from 1st January, 2011, to be a determination made in relation to a company which falls under subarticle (3)(e)."; and

(b) in paragraph (a) of subarticle (10) thereof for the words "company the assets of which consist wholly or principally of immovable property situated in Malta" there shall be substituted the words " "property company" as defined in article 2(1) of the Income Tax Act".

41. Article 48 of the principal Act shall be substituted by the following:

Substitution of article 48 of the principal Act.

"Penalty for contravening articles 32, 33, 39 to 43, 45 and 46.

48. Save as otherwise provided in this Act any person who fails to comply with any of the provisions of articles 32, 33, 39, 40, 41, 42, 42B, 42C, 43, 45 or 46 shall be liable to a penalty of not less than twenty-three euro (€23) but not exceeding one thousand, one hundred and sixty euro (€1,160) for each omission."

42. In subarticle (5) of article 52 of the principal Act, for the words "within six years" in the proviso thereto, there shall be substituted the words "within four years".

Amendment of article 52 of the principal Act.

43. In subarticle (3) of article 56 of the principal Act, for the words "as desired by such person." there shall be substituted the words "as desired by such person within three years from the date of receipt of the aforementioned notice of objection."

Amendment of article 56 of the principal Act.

44. Immediately after article 60 of the principal Act, there shall be added the following new articles:

Addition of new articles to the principal Act.

"Executive title.

Cap. 12.

60A. (1) An assessment which is final and conclusive in accordance with article 60 of this Act shall be an executive title within the meaning and for the purposes of Title VII of Part I of Book Second of the Code of Organisation and Civil Procedure.

(2) If duty and, or additional duty and, or interest is not paid as prescribed in this Act, the Commissioner shall serve a demand note upon the person liable for the payment, and if payment is not made within fifteen days from the date of the service of such demand note, the Commissioner may enforce payment in virtue of the executive title referred to in subarticle (1), after two days from the service of an intimation for payment made by means of a judicial act.

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Limitation of
action for
payment of
duty.

60B. (1) Save as otherwise expressly provided in this Act, no action for payment of duty and, or additional duty and, or interest may be taken after the lapse of five years from the date on which the relative assessment becomes final and conclusive.

(2) The running period of prescription specified in this article shall be interrupted by any judicial act filed before the expiration of such period by the Commissioner whereby any payment of duty is claimed."

Amendment of
article 61 of the
principal Act.

45. In subarticle (1) of article 61 of the principal Act, for the words "last known business or private address." there shall be substituted the words "last known business or private address:", and immediately thereafter there shall be added the following new proviso:

"Provided that where such notice is not made because the taxpayer could not be found or for other reasons attributable to him and the Commissioner publishes a notice in the Gazette and in one or more daily newspapers stating that a notice has been made and inviting the taxpayer to call for it at the Department, then such notice shall also be deemed to have been duly notified."

PART VI

Amendment of
the Motor
Vehicles
Registration and
Licensing Act.
Cap. 368.

46. (1) This Part of this Act amends the Motor Vehicles Registration and Licensing Act and it shall be read and construed as one with the Motor Vehicles Registration and Licensing Act, hereinafter in this Part referred as "the principal Act".

(2) The provisions of this Part shall be deemed to have come into force on the 1st January, 2011.

Amendment of
article 2 of the
principal Act.

47. Article 2 of the principal Act shall be amended as follows:

(a) for the definition "brought into Malta" there shall be substituted the following:

" "brought into Malta" means the entry into Malta of a motor vehicle coming from -

(a) a Member State,

(b) the Channel Islands (Guernsey and Jersey),

- (c) the Isle of Man,
- (d) Monaco,
- (e) Andorra, or
- (f) San Marino

and which was put into free circulation in such Member State, or in the Channel Islands, or in the Isle of Man, or in Monaco, or in Andorra, or in San Marino, as the case may be, prior to entry into Malta;"

(b) immediately after the definition "circulation licence fee" there shall be added the following new definition:

" "circulation permit" means the permit issued annually by the Authority in terms of the provisions of the provisos to item 6 of the Fourth Schedule;"

(c) immediately after the definition "Council Regulation (EEC) No 684/92" there shall be added the following new definition:

" "depreciation" means, for the purpose of this Act, the reduction in value of a motor vehicle resulting from use and obsolescence. Depreciation is calculated from the vehicle's date of first registration and allows for the original value of the vehicle to be modified for the purposes of tax deduction;"

(d) for the definition "Euro 2", "Euro 3", "Euro 4 and over", "Euro II", "Euro III", and "Euro IV and over" there shall be substituted the following:

" "Euro 2", "Euro 3", "Euro 4", "Euro 5", "Euro 6", "Euro II", "Euro III", "Euro IV", "Euro V" and "Euro VI" mean the emission standards set for all motor vehicles under Directive 70/220/EEC, Directive 88/77/EEC, Directive 1999/96/ EC, Directive 2005/55/EC, Regulation (EC) No 715/2007 and Regulation 595/ 2009;"

(e) immediately after the definition "invoice" there shall be added the following new definition:

" "Latest Euro Standard" means and corresponds to the dates set out in the current EU Directives and Regulations establishing emission limits for the

registration of new motor vehicles;";

(f) immediately after the definition "registration tax" there shall be added the following new definition:

" "Regulation (EC) No 715/2007" means Regulation (EC) No 715/2007 of the European Parliament and of the Council on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information;"; and

(g) in the definition "special purpose vehicle", for the words "and comprising those listed in the First Schedule" there shall be substituted the words "and classified under the First Schedule".

Amendment of article 9 of the principal Act.

48. In the Maltese version of subarticle (2) of article 9 of the principal Act, for the words "Il-valur ta' registrazzjoni ta' vettura bil-mutur fil-kategorija M1 ġdida, *motor cycle, quad bike*," there shall be substituted the words "Il-valur ta' registrazzjoni ta' vettura bil-mutur użata fil-kategorija M1, *motor cycle, quad bike*";".

Amendment of article 19 of the principal Act.

49. Article 19 of the principal Act shall be amended as follows:

(a) immediately after paragraph (c) of subarticle (2) thereof, there shall be added the following new paragraph:

"(d) The Minister responsible for finance may delegate his authority to any person to put into effect the exemption under subarticle (2)(a)."; and

(b) for the proviso to subarticle (3)(i) thereof, there shall be substituted the following:

"Provided that the vehicle has been registered in the name of that person or in the name of his or her spouse for at least twenty-four consecutive months at the time of transfer of residence to Malta and that person has been residing outside Malta for a continuous period of at least twenty-four months at the time of transfer of residence to Malta:

Provided further that where a motor vehicle is brought or imported into Malta not more than six months before the time of transfer of residence by the person transferring his residence, that vehicle shall qualify for the

exemption if both the said vehicle and the person transferring his residence meet the conditions prescribed in regulations made under this Act:

Provided further that that person shall not have been granted an exemption from registration tax in respect of another motor vehicle in the previous eight years;"

50. Article 24 of the principal Act shall be amended as follows: Amendment of article 24 of the principal Act.

(a) in the marginal note thereto for the words "in 2008 and in 2009" there shall be substituted the words "in 2010";

(b) subarticles (1), (2) and (3) thereof shall be deleted; and

(c) subarticle (4) thereof shall be renumbered as the whole article and shall be amended as follows:

(i) in sub-paragraph (ii) of paragraph (a) thereof, for the words "December 2011:" there shall be substituted the words "December, 2011." and the proviso thereto shall be deleted;

(ii) paragraphs (b) to (f) thereof shall be renumbered as paragraphs (c) to (g);

(iii) immediately after paragraph (a) thereof, there shall be inserted the following new paragraph:

"(b) An authorised motor vehicle importer or motor dealer who by the 25th October, 2010, has had in stock or had ordered motor vehicles other than M1 vehicles or motor cycles, and who had delivered a list of the said vehicles to the Authority before the 24th January, 2011 -

(i) shall be deemed to have registered the said vehicles prior to the 1st January, 2011, unless the authorised motor vehicle importer or dealer decides otherwise; and

(ii) shall pay the registration tax thereof by the 31st December, 2011:

Provided that where it results to the

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Authority that a motor vehicle which is on the list notified to it by an authorised motor vehicle importer or motor vehicle dealer, in terms of the provisions of this paragraph and of paragraph (a) of this article, was not so ordered or was not in stock, the Authority shall consider the said motor vehicle not registered in terms of this article.";

(iv) in paragraph (c) thereof, as renumbered, for the words "1st January, 2010" there shall be substituted the words "1st January, 2011";

(v) in paragraph (d) thereof, as renumbered, for the words "9th November" there shall be substituted the words "25th October, 2010", and for the words "31st December, 2009", wherever they appear, there shall be substituted the words "31st December, 2010"; and

(vi) in paragraph (g) thereof, as renumbered, for the words "9th November, 2009" there shall be inserted the words "25th October, 2010", for the words "1st January, 2010", wherever they appear, there shall be substituted the words "1st January, 2011", and for the words "31st October, 2010" there shall be substituted the words "24th January, 2011".

Amendment of
the First
Schedule to the
principal Act.

51. For Category A of the First Schedule to the principal Act, there shall be substituted the following:

"Category A: N1, N2 and N3 vehicles, special purpose vehicles, tractor units and light weight three-wheeled vehicles having the characteristic of a motor vehicle

N1 vehicles, special purpose vehicles, tractor units and light weight three-wheeled vehicles having the characteristic of a motor vehicle

Latest Euro standard	
vehicles with a maximum authorised mass of up to 1,305 kg	$\text{Kg} \times 0.40 + \text{cc} \times 0.45 \times \text{€}1$
vehicles with a maximum authorised mass exceeding 1,305 kg up to 1,760 kg	$\text{Kg} \times 0.45 + \text{cc} \times 0.50 \times \text{€}1$
vehicles with a maximum authorised mass exceeding 1,760 kg up to 3,500 kg	$\text{Kg} \times 0.50 + \text{cc} \times 0.55 \times \text{€}1$
Latest Euro standard -1	

vehicles with a maximum authorised mass of up to 1,305 kg	$\text{Kg} \times 1.00 + \text{cc} \times 1.10 \times \text{€1}$
vehicles with a maximum authorised mass exceeding 1,305 kg up to 1,760 kg	$\text{Kg} \times 1.10 + \text{cc} \times 1.20 \times \text{€1}$
vehicles with a maximum authorised mass exceeding 1,760 kg up to 3,500 kg	$\text{Kg} \times 1.20 + \text{cc} \times 1.30 \times \text{€1}$
Latest Euro standard -2	
vehicles with a maximum authorised mass of up to 1,305 kg	$\text{Kg} \times 6.00 + \text{cc} \times 6.00 \times \text{€1}$
vehicles with a maximum authorised mass exceeding 1,305 kg up to 1,760 kg	$\text{Kg} \times 7.00 + \text{cc} \times 7.00 \times \text{€1}$
vehicles with a maximum authorised mass exceeding 1,760 kg up to 3,500 kg	$\text{Kg} \times 8.00 + \text{cc} \times 8.00 \times \text{€1}$
Latest Euro standard -3 and older	
vehicles with a maximum authorised mass of up to 1,305 kg	$\text{Kg} \times 25.00 + \text{cc} \times 25.00 \times \text{€1}$
vehicles with a maximum authorised mass exceeding 1,305 kg up to 1,760 kg	$\text{Kg} \times 27.00 + \text{cc} \times 27.00 \times \text{€1}$
vehicles with a maximum authorised mass exceeding 1,760 kg up to 3,500 kg	$\text{Kg} \times 30.00 + \text{cc} \times 30.00 \times \text{€1}$

N2 vehicles, special purpose vehicles and tractor units

Latest Euro standard and Latest Euro standard -1	
vehicles with a maximum authorised mass exceeding 3,500 kg up to 12,000 kg	0
Latest Euro standard -2	
vehicles with a maximum authorised mass exceeding 3,500 kg up to 12,000 kg	$\text{Kg} \times 5.00 + \text{cc} \times 7.00 \times \text{€1}$
Latest Euro standard -3 and older	
vehicles with a maximum authorised mass exceeding 3,500 kg up to 12,000 kg	$\text{Kg} \times 12.00 + \text{cc} \times 15.00 \times \text{€1}$

N3 vehicles, special purpose vehicles and tractor units

Latest Euro standard and Latest Euro standard -1	
vehicles with a maximum authorised mass exceeding 12,000	0
Latest Euro standard -2	
vehicles with a maximum authorised mass exceeding 12,000 kg up to 25,000 kg	$\text{Kg} \times 2.10 + \text{cc} \times 2.50 \times \text{€1}$
vehicles with a maximum authorised mass exceeding 25,000 kg	$\text{Kg} \times 2.70 + \text{cc} \times 3.50 \times \text{€1}$

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Latest Euro standard -3 and older	
vehicles with a maximum authorised mass exceeding 12,000 kg up to 25,000 kg	$\text{Kg} \times 9.00 + \text{cc} \times 12.00 \times \text{€}1$
vehicles with a maximum authorised mass exceeding 25,000 kg	$\text{Kg} \times 10.00 + \text{cc} \times 13.00 \times \text{€}1$

Tax rate formula:

Following the application of the relevant tables under the heading, the total amount of the registration tax shall be equal to the sum total of the maximum authorised mass (kg) of a motor vehicle multiplied by the factor indicated plus the cubic capacity (cc) of the engine of a motor vehicle multiplied by the factor indicated multiplied by €1 and, in respect of used vehicles, this sum shall be multiplied by the difference between 100% and the aggregate percentage consisting of the percentage of the total annual depreciation as specified in the table hereunder plus 0.5% for each 10,000 kms showing on a vehicle's odometer:

$$\{[(\text{kg} \times Y) + (\text{cc} \times Y)] \times \text{€}1\} \times \{100\% - [Y\% \text{ of total annual depreciation} + 0.5\% \text{ for each 10,000 kms}]\}$$

Provided that the maximum depreciated value of a motor vehicle in this category shall not exceed 95%, and once this value is reached there shall be no further reductions.

Depreciation according to year of first registration of vehicle

Year	Annual Depreciation	Total Depreciation
0	12%	12%
1	14%	26%
2	19%	45%
3	5%	50%
4 onwards	5%	55%
5	5%	60%
6	5%	65%
7	5%	70%
8	5%	75%
9	5%	80%
10	5%	85%
11	5%	90%
12	5%	95%
13 onward	N/A	95%

For the purpose of registration tax, where a vehicle used for the transport of goods (N1, N2 and N3), or a special purpose vehicle or a tractor unit, whose year of manufacture falls under any of the following years of manufacture, is not accompanied by a certificate showing the emission levels equivalent to Euro standards, the registration tax rates to be paid thereon shall be equivalent to those under the different Euro standards:

Category	Up to and including Euro 2 / II	Euro 3 / III	Euro 4 / IV	Euro 5 / V	Euro 6 / VI
N1	Up to and including year 2000	2001 to 2005	2006 to 2010	2011 to 2014	from 2015
N2	Up to and including year 2000	2001 to 2005	2006 to 2008	2009 to 2013	from 2014
N3	Up to and including year 2000	2001 to 2005	2006 to 2008	2009 to 2013	from 2014

Where an importer or dealer or owner of a motor vehicle provides a certificate as approved by an accredited technical service established within a Member State, that the engine of that particular vehicle meets lower emissions despite the vehicle's year of manufacture, that vehicle shall on registration be taxed the rate pertaining to its equivalent Euro standard."

52. The Second Schedule to the principal Act shall be amended as follows:

Amendment of the Second Schedule to the principal Act.

(a) in the heading thereof, for the words "quadricycles and motor cycles (including electric and hybrid electric motor vehicles)" there shall be substituted the words "quadricycles, motor cycles and quad bikes (including electric and hybrid electric motor vehicles)";

(b) for the words "Category A: M1 motor vehicles (including vehicles to be registered to be used as taxicars, self-drive vehicles and chauffeur driven vehicles), motor cycles, quadricycles and quad bikes, whether new or used:" there shall be substituted the words "Category A: M1 motor vehicles (including vehicles to be registered to be used as taxicars, self-drive vehicles and chauffeur driven vehicles), whether new or used:";

(c) in paragraph (5) under the heading "Tax Rate Formula" thereof, for the words "20%" there shall be substituted the words "30%"; and

(d) for item 2 of Category F thereof, there shall be

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substituted the following:

"2. M2 and M3 motor vehicles, including trackless trains and amphibious motor vehicles

	Latest Euro standard -3 and older	Latest Euro standard -2	Latest Euro standard and Latest Euro standard -1
M2	$\text{Kg} \times 12.00 + \text{cc} \times 15.00 \times \text{€1}$	$\text{Kg} \times 1.50 + \text{cc} \times 2.40 \times \text{€1}$	0
M3	$\text{Kg} \times 10.00 + \text{cc} \times 12.00 \times \text{€1}$	$\text{Kg} \times 2.20 + \text{cc} \times 2.60 \times \text{€1}$	0

In respect of used vehicles, the total amounts of registration tax reached using any of the above formulas shall be multiplied by the difference between 100% and the aggregate percentage consisting of the percentage of the total annual depreciation as specified in the table titled "Depreciation according to age of vehicle" in Category A of the First Schedule hereof, plus 0.5% for each 10,000 kms showing on a vehicle's odometer.

For the purpose of registration tax, where an M2 or M3 vehicle, whose year of manufacture falls under any of the following years of manufacture, is not accompanied by a certificate showing the emission levels equivalent to Euro standards, the registration tax rates to be paid thereon shall be equivalent to those under the following different Euro standards:

	Up to and including Euro II	Euro III	Euro IV and over
M2	Up to and including year 2000	2001 to 2005	2006 onwards
M3	Up to and including year 2000	2001 to 2005	2006 onwards

Where an importer or dealer or owner of a motor vehicle provides a certificate as approved by an accredited technical service established within a Member State, that the engine of that particular vehicle meets lower emissions despite the vehicle's year of manufacture, that vehicle shall on registration be taxed the rate pertaining to its equivalent Euro standard.";

(e) for Category G thereof there shall be substituted the following:

"Category G: other motor vehicles	Rate of Tax Percentage of RV
	0%
1. Ambulances, whether new or used	0%

2. Motor vehicles, go-karts, quad bikes and motor cycles not to be used on the road other than in authorised races only, whether new or used 0%
3. Caravans, and motor homes, whether new or used 50%
4. Motor hearses (new only) 30%"; and

(f) in category H thereof, for the words "M1 vehicles", wherever they appear, there shall be substituted the words "M vehicles".

53. The Fourth Schedule to the principal Act shall be amended as follows:

Amendment of the Fourth Schedule to the principal Act.

(a) in item 6 thereof, for the words "M1 motor vehicles" there shall be substituted the words "category M motor vehicles", for the words "(vi) more than 2000cc 204" there shall be substituted the words "(vi) more than 2000cc 204:" and immediately thereafter there shall be added the following provisos:

"Provided that a person who has more than one such vehicle registered in his name, may opt to have those vehicles covered by one or more circulation permits. The fee for a permit covering a joint number of vehicles shall be equivalent to the highest annual circulation licence payable on each of those vehicles covered by that permit. Each such group of vehicles may additionally be covered by a subsequent permit or permits the fee of which shall be equivalent to the next highest annual circulation licence payable for those vehicles. An administrative fee of €8 shall be payable to the Authority for each of the other vehicles covered by the permit:

Provided further that no person may at any one time use on the road more vehicles than what is permitted by the circulation permit.";

(b) item 7 thereof shall be renumbered as sub-item (a) and immediately thereafter there shall be added the following new sub-item:

"(b) the provisions of the provisos to item 6 shall *mutatis mutandis* apply to motor vehicles classified under this item.";

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(c) item 8 thereof shall be renumbered as sub-item (a) and immediately thereafter there shall be inserted the following new sub-item:

"(b) the provisions of the provisos to item 6 shall *mutatis mutandis* apply to motor vehicles classified under this item."; and

(d) in item 16 thereof, for the figure "€0" there shall be substituted the figure "€10".

PART VII

Amendment of
the Income Tax
Management
Act.
Cap. 372.

54. (1) This Part of this Act amends the Income Tax Management Act and it shall be read and construed as one with the Income Tax Management Act, hereinafter in this Part referred as "the principal Act".

(2) The provisions of article 63 shall be deemed to have come into force on the 1st January, 2011.

Amendment of
article 5 of the
principal Act.

55. In subarticle (3) of article 5 of the principal Act, for the words "Trusts and Trustees Act, or is licensed under" there shall be substituted the words "Trusts and Trustees Act, a central securities depository authorised under article 24 of the Financial Markets Act or is licensed under".

Amendment of
article 10 of the
principal Act.

56. In subarticle (4) of article 10 of the principal Act, for the words "company resident in Malta" there shall be substituted the words "company registered in Malta".

Amendment of
article 14 of the
principal Act.

57. Article 14 of the principal Act shall be amended as follows:

(a) the present provisions thereof shall be renumbered as subarticle (1); and

(b) immediately after subarticle (1) as renumbered, there shall be added the following new subarticles:

"(2) Notwithstanding any provision of the Income Tax Acts or any other law the Commissioner may, for the purpose of obtaining full information in respect of any person's income, give notice in writing to such person requiring him to furnish the Commissioner within the time indicated in such notice, not being less than thirty days from the date of service of such notice, a statement containing particulars of -

(a) all property held in his own name or in the name of his spouse, minor children or dependents, or in any other name, in which he is or has been interested or has or has had a beneficial interest, or in respect of which he has or has had the power to operate or dispose, jointly or solely, in his own economic interest and which property is in existence or which has existed at any time during the period stated in the notice;

(b) all income derived from the property referred to in paragraph (a);

(c) all other property wherever situated not referred to in paragraph (a) and the income derived therefrom;

(d) any property transferred or delivered by him to, or which is currently held by, any person, including a designated person referred to in subarticle (3), during the period or periods specified in such notice; and

(e) all facts bearing upon his liability to income tax which he is, or has been, liable to.

(3) (a) Where, subsequent to a request for information made in accordance with the provisions of subarticles (1) and (2), the Commissioner has reasonable grounds to suspect that tax has been, is, or may be evaded by any person, he may request, by notice in writing to a designated person, that the designated person provide the Commissioner, within the time indicated in such notice not being less than thirty days from the date of service of such notice, with all such information and documentation which the designated person may have relating to property of any kind or description, transferred or delivered to him by that person and owned, possessed, or held by the designated person under any title on behalf of or for the benefit of any such person on the date of the said notice or during the period specified in such notice not commencing earlier than five years from the date of such notice; provided that the designated person shall not be bound to provide information to the Commissioner in respect of any beneficiaries for whose benefit the property may be held or the terms and conditions under which it is so held.

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(b) Any designated person who receives such notice shall provide the Commissioner with the information requested in the notice and this notwithstanding anything to the contrary in the Income Tax Acts, any provision of the Professional Secrecy Act, any obligation of secrecy or confidentiality, or to any other restriction relating to the disclosure of information whether arising from a provision of law or any agreement or other arrangement.

The Commissioner shall keep confidential any information provided to him by the designated person and shall not disclose such information to any other person except where the Commissioner is bound at law to effect such disclosure or where he requires to use such information in the context of proceedings under this Act; provided that the Commissioner may report any act or failure by the designated person to the relevant regulatory authority which issued a licence or authorization to such designated person.

Any information obtained by the Commissioner shall be used by him solely for the purpose of the investigation being carried out by the Commissioner as to whether tax has been, is, or may be evaded by the relevant person being investigated and, or any related proceedings under this Act.

(c) The Commissioner shall specify in a notice issued under this article what information he requires and whether with reference to the property held on the date of the notice and, or at any point during a period of time (not commencing earlier than five years from the date of such notice), and the designated person receiving the notice shall supply the following information:

(i) details of any such property owned, possessed or otherwise held under any title and which had been transferred or delivered (whether directly or indirectly through a transaction or a number of transactions which the designated person is aware of) to the designated person or vested in such designated person by or on the instructions of the person in respect of whom notice has been given by the Commissioner to the designated person in terms of paragraph (a) of this subarticle; and

(ii) details of the person or persons who transferred or delivered or made arrangements for the designated person to receive the property or on whose behalf the property was so transferred delivered or vested in the designated persons:

Provided that this paragraph (c) shall also apply to any property transferred or delivered to the designated person and is no longer held by the designated person or has been converted into a different form of property or has increased or decreased in value or extent or has been transferred to another designated person, but shall not apply where the property has been held temporarily for the purpose of a transaction and has been returned to the person who is being investigated.

(d) If the designated person in receipt of a notice -

(i) has not held any property which was transferred or delivered (whether directly or indirectly through a transaction or a number of transactions which the designated person is aware of) to the designated person or vested in such designated person by the person in respect of whom notice has been given by the Commissioner to the designated person in terms of paragraph (a) of this subarticle; or

(ii) holds or has held the aforesaid property on a temporary basis or as a simple administrator; or

(iii) has returned the aforesaid property to the person in respect of whom notice has been given by the Commissioner to the designated person in terms of paragraph (a) of this subarticle,

he shall inform the Commissioner accordingly and shall have no further obligations in this regard unless the Commissioner seeks further information specifically on such circumstances in which case the provisions of this article shall apply *mutatis mutandis*.

(e) Where a notice has been given by the Commissioner to a designated person in terms of paragraph (a) of this subarticle, the Commissioner shall, within fifteen days of issue of such notice, inform by a further notice in writing the person in respect of whom such notice was given, that he has issued a notice under this article, and any designated person in receipt of any such notice may inform his customer, principal or other person who may have delivered, settled, donated or otherwise transferred property to the designated person of the receipt of such notice and his response thereto.

Such further notice in writing may be served on a person either personally or by being sent by post to his last known business or private address, and shall in the latter case be deemed to have been served within three working days from the date it is sent by post.

(f) For the purposes of this article:

(i) "property" means property of any kind or description, whether movable or immovable, personal or real, and wherever situated, and in relation to rights and interests whether vested, contingent, voidable or future, and including any money, investments, and amounts in savings, loan and other bank accounts (whether fixed, overdraft, current, deposit, or otherwise, and whether business or private accounts);

(ii) a designated person is any person who may be acting as mandatory, nominee, trustee, agent, depository, custodian, under a contract of work or otherwise, and includes without limitation any of the following:

(A) a person who is in possession of a valid licence issued in terms of the Banking Act; or

Cap. 370. (B) a person who is licensed in terms of the Investment Services Act; or

Cap. 403. (C) a person who is authorized in terms of the Insurance Business Act or enrolled in the Brokers List under the Insurance Intermediaries Act; or

Cap. 331. (D) a person who is authorised under the Trusts and Trustees Act to act as a trustee or as an administrator of any private foundation; or

(E) advocates, notaries, legal procurators, accountants, auditors and other persons holding warrants to exercise a profession,

and irrespective of whether such person is in actual possession of authorisations or is exempt from requiring such authorisations under any law or is acting in breach of law when holding such property without authorisation required to do so by applicable law;

(iii) owning, possessing and holding property includes owning, possessing and holding with others or through others and, or enjoying a power to operate or dispose of such property in such manner as renders secret the ownership rights or interests of the person being investigated and does not include circumstances where such person remains registered as the owner of the property in a public register in Malta or where the designated person is owning, holding or possessing the property temporarily for the purposes of a transaction relating to or involving such property or is otherwise a simple administrator of such property;

(iv) reasonable grounds on the part of the Commissioner to suspect that tax has been, is or may be evaded by any person shall include but not be limited to the following:

(A) a refusal by that person to provide the Commissioner with any documentation or information as may have been requested from him by the Commissioner in relation to any property which he owns, possesses, or holds at that time through another person including designated persons, or any property previously owned, possessed or held and subsequently disposed of under any title whatsoever by such person at an earlier date;

(B) where a notice in terms of article 29 is not made as the taxpayer could not be found or for other reasons attributable to the taxpayer, and in accordance with the said article 29, the Commissioner publishes a notice in the Gazette and in one or more daily newspapers stating that a notice has been made and inviting the taxpayer to call for it at the Department;

(C) where, after being requested by the Commissioner by means of a notice in writing, such person fails to produce without any reasonable excuse any books, records, documents, accounts, electronic data and a correct statement referred to in subarticle (2) within thirty days from the date of service of such notice;

(D) such person gives any false answer, whether verbally or in writing, to any question or request for information asked or made in accordance with the provisions of the Income Tax Acts;

(E) such person prepares or maintains any false books of account or other records or falsifies any books of account or records.

(g) Where a designated person gives any false, misleading or incorrect information in relation to a notice issued under this subarticle he shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not less than ten thousand euro (€10,000) and not exceeding twenty-three thousand euro (€23,000).".

Amendment of article 17 of the principal Act.

58. In article 17 of the principal Act, for the words "and subject to article 10A, no request for information shall be made" there shall be substituted the words "and subject to articles 10A and 14(3), no request for information shall be made".

Amendment of article 20 of the principal Act.

59. In subarticle (1) of article 20 of the principal Act, for the words "to inspect any books, documents, accounts and returns" there shall be substituted the words "to inspect any books, documents, accounts, returns and electronic data", and for the words "determining the said value but shall not have any power under this article to seize any item or remove it from the premises:" there shall be substituted the words "determining the said value:".

Amendment of article 23 of the principal Act.

60. In subarticle (5) of article 23 of the principal Act, for the words "four hundred and sixty-five euro (€465) for every such default" there shall be substituted the words "one thousand euro (€1000) for every such default".

Amendment of article 40 of the principal Act.

61. In paragraph (f) of subarticle (1) of article 40 of the principal Act, for the words "article 46(3):" there shall be substituted the words "article 46(3);" and immediately thereafter there shall be added the following new paragraph:

"(g) the notice referred to in article 47A(2):".

Addition of new article to the principal Act.

62. Immediately after article 47 of the principal Act, there

shall be added the following new article:

"Assistance in
the collection
of taxes.

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47A. (1) The Commissioner shall lend assistance to foreign tax authorities in the collection of revenue claims in accordance with the provisions of applicable arrangements referred to in article 76 of the Income Tax Act where these exist.

(2) For the purposes of subarticle (1), a notice by the Commissioner to any person showing the amount of a revenue claim by a foreign tax authority to which he is liable for having failed to pay the said amount shall be sufficient evidence that the amount shown in the said notice is the amount due to be paid to the foreign tax authority by the said person.

(3) For the purposes of this article, the arrangements in relation to the collection of taxes shall determine the meaning of "taxes" and "revenue claims".

63. Article 48 of the principal Act shall be amended as follows:

Amendment of
article 48 of the
principal Act.

(a) in subarticle (2F) thereof, for the words "or the first proviso to subarticle (7)" there shall be substituted the words "or the provisos to subarticle (7)(a)";

(b) subarticle (4) thereof shall be amended as follows:

(i) in paragraph (c) thereof, the words "and subarticle (7)" shall be deleted;

(ii) in the proviso to paragraph (c) thereof, for the words "the expression "Malta tax paid" shall mean" there shall be substituted the words "the expression "Malta tax paid" shall, for the purpose of determining the amount of the refund, mean";

(iii) immediately after the proviso to paragraph (c) thereof, as amended, there shall be added the following new proviso:

"Provided further that, notwithstanding the previous proviso, a tax refund payable in terms of this subarticle shall in no case exceed the amount of tax actually paid by the company to the

Commissioner on the profits distributed out of the foreign income account or on any profits derived and distributed by a company while it was an international trading company, as the case may be.";

(c) in sub-paragraph (ii) of paragraph (a) of subarticle (4A) thereof, for the words "this subarticle." there shall be substituted the words "this subarticle;" and immediately thereafter there shall be added the following new sub-paragraph:

Cap. 123. "(iii) which have been subject to tax at a rate (hereinafter referred to as "the reduced rate") lower than that referred to in article 56(6) of the Income Tax Act the rate of refund shall be determined in accordance with the following formula:

$$Y = (R - 5\%) / R$$

Where -

(a) "Y" represents the rate to be determined; and

(b) "R" represents the reduced rate:";

(d) in paragraph (a) of subarticle (4A) thereof, immediately after the proviso thereto, as amended, there shall be added the following new proviso:

"Provided further that, notwithstanding the provisions of article 42B(2), a tax refund payable in terms of this subarticle shall in no case exceed the amount of tax actually paid by the company to the Commissioner on the profits distributed out of the Maltese taxed account or foreign income account."; and

(e) subarticle (7) thereof shall be substituted by the following:

"(7) (a) Where a claim for refund has been made under the provisions of subarticle (4) or subarticle (4A) in respect of Malta tax paid on distributed profits as properly shown in the relevant dividend certificate, no person shall be entitled to a further refund under those subarticles or to a refund under any other provisions of the Income Tax Acts in relation to the Malta tax paid on such distributed profits:

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

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

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(b) Where a claim for refund has been made under the provisions of subarticle (4) or subarticle (4A) in respect of Malta tax paid on distributed profits as properly shown in the relevant dividend certificate, notwithstanding the provisions of article 60 of the Income Tax Act, such Malta tax paid which a company had deducted or is entitled to deduct under article 59 from such dividend, shall, when such dividend is included in the chargeable income of any person, including a company receiving the said dividend or a person holding directly or indirectly shares in such company which receives a dividend out of such profits, be set off, for the purposes of collection, only against the tax charged on that dividend.

(c) Where a claim for refund of the Malta tax paid has been made under subarticle (1) in respect of Malta tax paid on distributed profits as properly shown in the relevant dividend certificate, no person shall be entitled to a further refund under the provisions of subarticle (4) or subarticle (4A) in relation to the Malta tax paid on such distributed profits."

64. Subarticle (1) of article 52 of the principal Act shall be amended as follows:

Amendment of article 52 of the principal Act.

(a) in paragraph (e) thereof, for the words "art or contrivance," there shall be substituted the words "art or contrivance; or";

(b) immediately after paragraph (e) thereof there shall be added the following new paragraphs:

"(f) has in his possession or under his control any article for use in the course of or in connection with altering, destroying, erasing or concealing any information, records or evidence which he knows or is reasonably expected to know to be relevant for any purpose of this Act; or

(g) makes, adapts, supplies or offers to supply any article knowing that it is designed or adapted for use in the course of or in connection with altering, destroying, erasing or concealing any information, records or evidence which he knows or is reasonably expected to know to be relevant for any purpose of this Act, or intending it to be used to commit, or assist in the commission of fraud; or

(h) alters, destroys, conceals, covers up, falsifies, or makes a false entry in any record, document, electronic data or tangible object,"; and

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

"shall be guilty of an offence, and shall be liable on conviction before a Court of Magistrates sitting as a court of criminal judicature -

(i) to a fine (*multa*) not less than seven hundred euro (€700) and not exceeding three thousand five hundred euro (€3,500) in the case of any offence committed under paragraphs (a) to (d); and

(ii) to a fine (*multa*) of not less than six thousand euro (€6,000) and not exceeding ten thousand euro

(€10,000) for an offence committed under paragraphs (e) to (h),

and, in addition, for each offence as above referred to in paragraphs (a) to (h), to treble the amount of tax to which the person whose tax liability it was intended to evade, or to assist in evading, is liable under the Income Tax Acts for the year of assessment in respect of or during which the offence was committed, or to imprisonment for any term not exceeding six months, or to both such fine and imprisonment.

For the purposes of paragraphs (f) and (g) the term "article" includes any program or data held in electronic form."

65. Article 58 of the principal Act shall be amended as follows:

Amendment of article 58 of the principal Act.

(a) paragraph (c) thereof shall be renumbered as paragraph (d); and

(b) in paragraph (b) thereof, for the words "the said Acts and regulations; and" there shall be substituted the words "the said Acts and regulations;", and immediately thereafter there shall be added the following new paragraph:

Cap. 123. "(c) for fees to be levied in relation to the issue of certificates, the processing of registrations and applications for rulings in terms of article 52 of the Income Tax Act; and".

PART VIII

66. (1) This Part of this Act amends the Excise Duty Act and it shall be read and construed as one with the Excise Duty Act, hereinafter in this Part referred as "the principal Act".

Amendment of the Excise Duty Act.
Cap. 382.

(2) The provisions of this Part shall be deemed to have come into force on the 26th October, 2010, except for article 70(e), which shall be deemed to have come into force on 1st January, 2011.

67. The First Schedule to the principal Act shall be amended as follows:

Amendment of the First Schedule to the principal Act.

(a) immediately beneath the item "Mobile Telephony Services" in the "First Column - List of Excise Goods" Column there shall be added the item "Cement"; and

(b) immediately beneath the item "Fifth Schedule" in

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the "Second Column - Relevant Schedule" column there shall be added the item "Schedule Five A".

Amendment of
the Second
Schedule to the
principal Act.

68. The Second Schedule to the principal Act shall be amended as follows:

(a) for the words in the "Rates of Excise Duty" column thereof in respect of the item "Beer", there shall be substituted the following:

"€1.50 per hectolitre per degree Plato";

(b) for the words in the "Rates of Excise Duty" column thereof in respect of the item "Beer if produced by small and independent breweries with an annual production not exceeding 200,000 litres", there shall be substituted the following:

"€0.75 per hectolitre per degree Plato"; and

(c) for the words in the "Rates of Excise Duty" column thereof in respect of the item "Products containing a mixture of beer with non-alcoholic drinks", there shall be substituted the following:

"€0.25 per hectolitre per degree Plato".

Amendment of
the Third
Schedule of the
principal Act.

69. The Third Schedule to the principal Act shall be amended as follows:

(a) for the words in the "Rates of Excise Duty" column thereof in respect of the item "Cigarettes", there shall be substituted the following:

"47.0% of the retail price plus €28.00 per 1000 cigarettes but not less than €120.50 per 1000 cigarettes";

(b) for the words in paragraph 1.b. in the "Description of Excise Goods" Column under the heading "Cigarettes", there shall be substituted the following:

"A roll of tobacco referred to in paragraph 1.a.i. shall, for excise duty purposes, be considered as two cigarettes where, excluding filter or mouthpiece, it is longer than 8 cm but not longer than 11 cm, as three cigarettes where, excluding filter or mouthpiece, it is longer than 11 cm but not longer than 14 cm, and so on.

Products consisting in whole or in part of substances other than tobacco but otherwise conforming to

the criteria set out in sub-paragraph a.i. to iii. above shall be treated as cigarettes and the provisions of this sub-paragraph shall apply thereto.";

(c) for the words in the "Rates of Excise Duty" column thereof in respect of the item "Cigars and Cigarillos", there shall be substituted the following:

"€16.90 per 1000 units";

(d) for the words from "The following shall be deemed to be cigars or cigarillos" to the words "- a wrapper of reconstituted tobacco." under the heading "Cigars and Cigarillos" in the "Description of Excise Goods" Column there shall be substituted the following:

"The following shall be deemed to be cigars or cigarillos if they can be and, given their properties and normal consumer expectations, are exclusively intended to be smoked as they are:

i. rolls of tobacco with an outer wrapper of natural tobacco;

ii. rolls of tobacco with a threshed blend filler and with an outer wrapper of the normal colour of a cigar, of reconstituted tobacco, covering the product in full, including, where appropriate, the filter but not, in the case of tipped cigars, the tip, where the unit weight, not including filter or mouthpiece, is not less than 2,3 g and not more than 10 g, and the circumference over at least one third of the length is not less than 34 mm.

Products which consist in part of substances other than tobacco but otherwise fulfil the criteria set out above shall be treated as cigars and cigarillos.";

(e) for the words in the "Rates of Excise Duty" column thereof in respect of the item "Hand-Rolling Tobacco", there shall be substituted the following:

"€75.40 per kg.";

(f) for the words in the "Rates of Excise Duty" column thereof in respect of the item "Other Smoking Tobacco", there shall be substituted the following:

"€75.40 per kg.";

(g) for the words from "The following shall be deemed to be smoking tobacco" to the words "set out in indents (i) and (ii) above shall be treated as smoking tobacco." under the heading "Other Smoking Tobacco" in the "Description of Excise Goods" Column there shall be substituted the following:

"The following shall be deemed to be smoking tobacco:

i. tobacco which has been cut or otherwise split, twisted or pressed into blocks and is capable of being smoked without further industrial processing;

ii. tobacco refuse put up for retail sale which does not fall under the definition of cigars and cigarillos or cigarettes and which can be smoked. For the purpose of this paragraph, "tobacco refuse" shall be deemed to be remnants of tobacco leaves and by-products obtained from tobacco processing or the manufacture of tobacco products.

Smoking tobacco as defined above in which more than 25% by weight of the tobacco particles have a cut width of less than 1.5 mm shall be deemed to be fine-cut tobacco for the rolling of cigarettes.

Smoking tobacco in which more than 25% by weight of the tobacco particles have a cut width of 1.5 mm or more and which was sold or intended to be sold for the rolling of cigarettes may also be deemed to be fine-cut tobacco for the rolling of cigarettes.

Products consisting in whole or in part of substances other than tobacco but otherwise conforming to the criteria set out in sub-paragraphs i. and ii. above shall be treated as smoking tobacco.";

(h) for the words in the "Rates of Excise Duty" column thereof in respect of the item "Pipe Tobacco", there shall be substituted the following:

"€23.96 per kg."; and

(i) for the words in the "Rates of Excise Duty" column thereof in respect of the item "Chewing Tobacco and Snuff", there shall be substituted the following:

"€32.82 per kg.".

70. The Fourth Schedule to the principal Act shall be amended as follows:

Amendment of
the Fourth
Schedule to the
principal Act.

(a) for the words in the "Rates of Excise Duty" column thereof in respect of the item "Leaded Petrol", there shall be substituted the following:

"€588.18 per 1,000 litres";

(b) for the words in the "Rates of Excise Duty" column thereof in respect of the item "Unleaded Petrol", there shall be substituted the following:

"€469.38 per 1,000 litres";

(c) for the words in the "Description of Excise Goods" column "Gas Oil falling within CN Codes 2710.19.41 to 2710.19.49 excluding Gas Oil falling within 2710.19.49 if used for heating purposes" there shall be substituted the words "Gas Oil falling within CN Codes 2710.19.41 to 2710.19.49 and blends of the foregoing with Biodiesel, excluding Gas Oil or Gas Oil blended with Biodiesel, with a sulphur content not exceeding 0.1% sulphur by weight if used for heating purposes"; and for the words "€352.40 per 1000 litres" in the relative "Rate of Excise Duty" column thereof there shall be substituted the words "€382.40 per 1000 litres";

(d) for the words in the "Description of Excise Goods" column "Gas Oil falling within CN 2710.19.49 if used for heating purposes" there shall be substituted the words "Gas Oil or Gas Oil blended with Biodiesel, with a sulphur content not exceeding 0.1% sulphur by weight if used for heating purposes"; and for the words "€96.79 per 1000 litres" in the relative "Rate of Excise Duty" column thereof there shall be substituted the words "€142.09 per 1000 litres";

(e) for the words in the "Description of Excise Goods" column "Biodiesel (a mixture of biomass and gas oil)" there shall be substituted the words "Biodiesel, a diesel quality liquid fuel produced from biomass or waste cooking oil, with an ester content of not less than 96.5% by weight and a sulphur content not exceeding 0.005%, whether in blend or not"; and for the words "€352.40 per 1000 litres" in the relative "Rate of Excise Duty" column thereof there shall be substituted the words "€382.40 per 1000 litres";

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(f) for the words in the "Rates of Excise Duty" column thereof in respect of the item "Heavy Fuel Oil", there shall be substituted the following:

"€30.00 per 1000 Kgs.";

(g) for the words in the "Rates of Excise Duty" column thereof in respect of the item "Kerosene", there shall be substituted the following:

"€382.40 per 1000 litres";

(h) for the words in the "Rates of Excise Duty" column thereof in respect of the item "Electricity", there shall be substituted the following:

"€1.50 per MWh"; and

(i) the following words in the "Description of Excise Goods" column under the title "EXEMPTIONS" shall be deleted:

"The biomass content (i.e. the percentage element) in Biodiesel is exempted from the payment of excise duty under fiscal control where such energy products are made up of, or contain, one or more of the following products:

- products falling within CN Codes 1507 to 1518;
- products falling within CN Codes 3824.90.55 and 3824.90.80 to 3824.90.99 for their components produced from biomass;
- products falling within CN Codes 2207.20.00 and 29 05 11 00 which are not of synthetic origin;
- products produced from biomass, including products falling within CN Codes 4401 and 4402;
- products which contain water (CN Codes 2201 and 2851.00.10).

"Biomass" shall mean the biodegradable fraction of products, waste and residues from agriculture (including vegetal and animal substances), forestry and related industries, as well as the biodegradable fraction of

industrial and municipal waste."

71. Immediately after the Fifth Schedule of the principal Act there shall be added the following new Schedule:

Addition of new Schedule to the principal Act.

"SCHEDULE FIVE A

Description of excise goods	Rate of Excise Duty
Portland Cement excluding white cement	€9.00 per 1000 Kgs".

PART IX

72. (1) This Part of this Act amends the Value Added Tax Act and it shall be read and construed as one with the Value Added Tax Act, hereinafter in this Part referred as "the principal Act".

Amendment of the Value Added Tax Act. Cap. 406.

(2) The provisions of this Part shall come into force as follows:

(a) article 73 shall be deemed to have come into force on the 1st January, 2011; and

(b) the remaining provisions of this Part shall come into force on such a date as the Minister of Finance may by notice in the Gazette establish, and different dates may be so established for different provisions or different purposes of this Part.

73. In paragraph (a) of article 4 of the principal Act, for the words "by a person registered under article 11", there shall be substituted the words "by a person registered under article 11 or by a person who is exempted from registration under article 11, as the Minister may by regulations prescribe".

Amendment of article 4 of the principal Act.

74. Immediately after subarticle (4) of article 32 of the principal Act, there shall be inserted the following new subarticle:

Amendment of article 32 of the principal Act.

"(5) The Commissioner may, for the purposes of this Act, cancel any provisional assessment raised by him, and issue a fresh provisional assessment, and such cancellation shall be without prejudice to the raising of a fresh provisional assessment required to be raised under this Act in replacement of the provisional assessment so cancelled which shall be deemed not to have been raised.

Such fresh provisional assessment has to be raised within the time limit specified in subarticle (1)."

75. In subarticle (1) of article 50 of the principal Act, for the words "within thirty-one days from the earlier of:", there shall be substituted the words "within thirty days from the earlier of:".

Amendment of article 50 of the principal Act.

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Amendment of
article 77 of the
principal Act.

76. Article 77 of the principal Act shall be amended as follows:

(a) in paragraph (d) thereof, for the words "documents or accounts;", there shall be substituted the words "documents or accounts, or is in possession of or supplies to another person any software application that would erase, destroy, damage or conceal any stored information or any such records, documents or accounts;"

(b) in paragraph (e) thereof, for the words "which is incorrect or misleading in any material respect", there shall be substituted the words "which is incorrect or misleading in any material respect or fails to provide to the Commissioner, without any valid reason, all copies of any used or unused manual fiscal receipts where required by the Commissioner" and

(c) for the words "shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not less than seven hundred euro (€700) and not exceeding three thousand five hundred euro (€3,500) and, except for paragraph (p), 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" there shall be substituted the words:

"shall be guilty of an offence and shall, on conviction, be liable -

(i) to a fine (*multa*) of not less than six thousand euro (€6,000) and not exceeding ten thousand euro (€10,000) for an offence committed under paragraphs (c) and (d); and

(ii) to a fine (*multa*) of not less than seven hundred euro (€700) and not exceeding three thousand five hundred euro (€3,500) for an offence under the other paragraphs,

and, in addition, for any offence as above referred to in all paragraphs, except for paragraph (p), 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."

Amendment of
article 86 of the
principal Act.

77. Article 86 of the principal Act shall be amended as follows:

(a) subarticle (2) thereof shall be substituted by the

following new subarticle:

"(2) Where in the execution of a contract made before the date of coming into force of any change made in the rate of tax in terms of article 19, any goods or services are supplied on or after the date of coming into force of such change, and the supply is a taxable supply, that contract shall, for all the purposes of any law, be interpreted as if the parties to that contract had agreed to a change in the consideration stipulated therein to reflect the difference between the rate of tax applicable before the change and the rate of tax applicable after the change."; and

(b) in paragraph (b) of subarticle (4) thereof, for the words "or the 1st January 2004," there shall be substituted the words "or the date of coming into force of any change referred to in subarticle (2),".

PART X

78. (1) This Part amends the Eco-Contribution Act and it shall be read and construed as one with the Eco-Contribution Act, hereinafter in this Part referred to as "the principal Act".

Amendment of
the Eco-
Contribution
Act.
Cap. 473.

(2) The provisions of this Part shall be deemed to have come into force on 1 January 2011.

79. In subarticle (1) of article 23 of the principal Act, for the words "from the date of the decision of the Appeals Board.", there shall be substituted the words "from the date when the decision of the Appeals Board is notified to that party".

Amendment of
article 23 of the
principal Act.

Passed by the House of Representatives at Sitting No. 328 of the 16th March, 2011.

MICHAEL FRENDON

Speaker

PAULINE ABELA
Clerk to the House of Representatives