I assent.

(L.S.)

UGO MIFSUD BONNICI
President
28th July, 1995

ACT No. XXII of 1995

AN ACT to amend the Income Tax Act, Cap. 123.

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:–

Short title and commencement.

Cap. 123.

1. (1) This Act may be cited as the Income Tax (Amendment) Act, 1995, and shall be read and construed as one with the Income Tax Act, hereinafter referred to as "the principal Act".

(2) Sections 4 and 6 of this Act shall come into force upon the publication of this Act in the Gazette in respect of year of assessment commencing on 1st January 1996 and subsequent years of assessment.

Amendment of section 5 of the principal Act.

2. For paragraph (b) of subsection (6) of section 5 of the principal Act, there shall be substituted the following:

"(b) transfer of securities listed on the Malta Stock Exchange; and".

Addition of new section 9A to the principal Act.

3. Immediately after section 9 of the principal Act there shall be added the following new section:

"Spontaneous Declaration of Undeclared Income.

9A. (1) Notwithstanding any other provision of the Income Tax Acts, a person, apart from the return for the year of assessment 1995, may present a Spontaneous

Declaration on the prescribed form and the income of that person falling under sections 4 and 5 of this Act for the years of assessment prior to the said year of assessment shall be deemed to be the income as arrived at under the following provisions of this section.

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

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

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

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

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

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

(3) The Spontaneous Declaration shall also make a statement of any undeclared capital gains falling under section 5 of this Act in respect of each year of assessment where such gains were so undeclared.

(4) Where a Spontaneous Declaration has been made in accordance with the provisions of this section:

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

Provided that:

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

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

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

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

(i) If the return is in respect of any of the years of assessment 1991 to 1994, the income for the relative year of assessment shall subject to the provisions of subparagraph (ii) of paragraph (a) hereof be considered to be that declared by such person in the relative return or the income determined in accordance with subsection (2) of this section, whichever is the higher;

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

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

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

(6) The income declared in a Spontaneous Declaration in accordance with this section shall be deemed to be separate chargeable income for the year of assessment 1995, and shall, subject only to the deductions as provided in subsection (7) of this section be subject to tax at the rate of 25 cents in the lira.

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

Provided that:

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

(b) where in respect of a year of assessment the

income declared in accordance with subsection (4) of this section falling under subsection (1) of section 4 of this Act (excluding investment income as defined in section 41 of this Act or capital gains falling under section 5 of this Act) is greater than the income declared under subsection (2) of this section in respect of the same year of assessment, the income declared in accordance with subsection (4) of this section shall be deemed to be equal to that declared under subsection (2) in respect of the same year of assessment.

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

(a) 50 per cent by not later than the 31st October 1995 together with the submission of the Spontaneous Declaration to the Commissioner;

(b) 20 per cent by not later than the 29th March, 1996, and

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

(9) The Commissioner shall send by registered post to each person who makes a valid Spontaneous Declaration in accordance with this section, a notice stating the amount of his separate chargeable income for the year of assessment 1995 and the amount of tax payable thereon by him, and the provisions of Part VII and of section 32 of the Income Tax Management Act, 1994, shall apply to such notice.

(10) The Spontaneous Declaration referred to in the previous subsections to this section shall be deemed not to have been filed with the Commissioner unless:

(a) the prescribed form is fully and accurately completed and is submitted in duplicate to the Commissioner not later than the 31st October, 1995;

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

(c) payment of the first instalment of tax is made as laid down in subsection (8) of this section.

(11) Where it results to the Commissioner that a person who filed a valid Spontaneous Declaration under this section has underdeclared his income for the year of assessment 1995 or has underdeclared any income which ought to be declared under subsection (3) hereof or has under the proviso to subsection (2) hereof declared that he has received no income for any year of assessment in which he was liable to tax, the Commissioner shall recompute the separate chargeable income on the basis of the reassessed income for the year of assessment 1995, and, or as ought to have been declared under subsection (3) of this section, and, or disregarding the provisions of the proviso to subsection (2) hereof as the case may be, and raise a tax thereon at the rate of 65 cents in the lira. The Commissioner shall thereupon issue a fresh notice of assessment and any previous notice issued under this section shall be cancelled and any tax already paid in respect of the previous notice or together with the filing of the Spontaneous Declaration shall be set off from any tax due in accordance with this subsection.

(12) The relevant provisions of Part VII of the Income Tax Management Act, 1994, shall apply to the tax due under subsection (11) of this section:

Provided that a person shall have a right of objection and appeal as laid down in sections 33, 35 and 37 of the Income Tax Management Act, 1994, against a notice of assessment issued in accordance with subsection (11) of this section.

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

(b) Nothing contained in this section shall affect the provisions of sections 43, 44 and 45 of this Act.

(14) Where a person makes a Spontaneous Declaration in accordance with the provisions of this section, the Commissioner shall disregard the provisions

of paragraph (g) of subsection (1) of section 14 of this Act regarding the carrying forward of losses incurred during any year preceding the year of assessment 1995 with respect to the year of assessment 1995 and subsequent years of assessment.

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

Addition of new section 48A to the principal Act.

4. Immediately after section 48 of the principal Act there shall be added the following new section:

"Special provisions regarding certain income derived by outworkers on a part-time basis.

48A. (1) Where a VAT registered person engages any individual for the carrying out of hand knitting, lace making, crochet and embroidery activities at home against a net remuneration in any one year preceding a year of assessment not exceeding Lm200 the tax due in respect of the income paid to any such outworker and the deductions that may be made in respect thereof by the person engaging them shall be regulated in accordance with such rules as may be made under this section:

Provided that the work carried out by such outworkers shall in all cases be handmade and not machine-made.

(2) The Minister may by order extend the provisions of subsection (1) of this section to the remuneration of such workers as may be prescribed in the Order under such conditions as may be set out in the said Order.".

Amendment of section 56 of the principal Act.

5. In subsection (13) of section 56 of the principal Act, there shall be added the following proviso at the end thereof:

"Provided that in the case of a Production Sharing Contract signed after 1 January, 1996, the tax shall be charged at the rate stipulated in subsection (6) hereof.".

Amendment of section 58 of the principal Act.

6. In section 58 of the principal Act for the words "one hundred and twenty-nine liri" and "one hundred and three liri" there shall be substituted the words "one hundred and sixty-four liri" and "one hundred and thirty-eight liri" respectively.

Passed by the House of Representatives at Sitting No. 446 of the 24th July, 1995.

LAWRENCE GONZI
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives

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