

I assent,

(L.S.)

UGO MIFSUD BONNICI
President

13th September, 1994

ACT No. XVII of 1994

AN ACT further 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:-

1. (1) This Act may be cited as the Income Tax (Amendment) (No.2) Act, 1994, and shall be read and construed as one with the Income Tax Act, hereinafter referred to as "the principal Act".

Short title and
commencement.

Cap. 123

(2) This Act shall come into force on such date as the Minister responsible for finance, may, by notice in the Gazette appoint.

2. (1) The Parts, sections, subsections, paragraphs and subparagraphs of the principal Act as in force prior to the commencement of this Act, shall be renumbered as appears in the First Schedule to this Act.

Renumbering of
provisions.

(2) Any reference in the principal Act as in force prior to the commencement of this Act, shall be deemed and construed to be a reference to the Part, section or part thereof as renumbered by the Act, and the principal Act is hereby amended accordingly.

(3) Subject to the provisions of subsection (4) of this section, references in this Act to a Part, section, subsection, paragraph or sub-paragraph of the principal Act are references to the relative Part, section, subsection, paragraph or sub-paragraph thereof as renumbered in virtue of subsection (1) of this section.

(4) Notwithstanding the provisions of subsection (3) of this section, the Parts and sections of the principal Act which are deleted in virtue of section 3 of this Act shall be construed as references to those Parts and sections of the principal Act as in force prior to the commencement of this Act.

Deletion of
certain provisions
of the principal
Act.

3. The following Parts and sections of the principal Act shall be deleted, that is to say:

- (a) Part II, sections 3 and 4;
- (b) Sections 35, 36, 37, 38 and 39;
- (c) Part X, sections 43 to 61, both inclusive;
- (d) Part XI, sections 62, 63, 64 and 65;
- (e) Part XII, sections 66, 67, 68, 69, 70 and 71;
- (f) Part XIII, sections 72, 73, 74, 74A, 75, 76, 77 and 78;
- (g) Section 79;
- (h) Part XV, sections 86 to 93, both inclusive; and
- (i) Part XVI, sections 94 and 95.

Amendment
of section 2
of the principal
Act.

4. In subsection (1) of section 2 of the principal Act:

(a) the following new definition shall be inserted immediately after the definition of "chargeable income":

" "collective investment scheme" means any scheme or arrangement which is licensed under the Investment Services Act, 1994;"

(b) in paragraph (b) of the definition of "company", the words "which proves to the satisfaction of the Commissioner that not more than ten per cent of its capital or of its voting power is owned or controlled, directly or indirectly, by any person or persons resident in Malta" shall be deleted;

(c) the following new definition shall be inserted immediately after the definition of "debenture interest":

" "distributable profits" shall mean the total profits which are available for distribution by a company resident in Malta under the laws for the time being in force in Malta, and the distributable profits shall, for the purposes of this Act, be allocated to the following accounts, that is to say, foreign income account, Maltese taxed account, and untaxed account, and for the purposes of this definition these accounts shall comprise the distributable profits as set out in the respective definitions;"

(d) the following new definitions shall be inserted immediately after the definition of "dividend":

"equity holding" shall mean a holding of the nominal share capital in a company when the shareholding entitles the shareholder to a right to votes, to profits available for distribution to shareholders and to assets available for distribution on a winding up of that company, and "equity shares", "equity shareholder" and "equity shareholding" shall be construed accordingly;

"foreign income account" shall, with effect from the year immediately preceding the year of assessment 1996, mean any of the following categories of distributable profits arising in that year and in subsequent years to the extent that they result from taxable income:

(a) profits resulting from royalties and similar income arising outside Malta and from dividends, capital gains, interest, rents and any other income derived from investments situated outside Malta, which are liable to tax in Malta and are receivable by a company resident in Malta not being a company registered under the Malta Financial Services Centre Act, 1994; Cap. 330. and

(b) profits resulting to a company licensed as a bank in Malta not being a company registered under the Malta Financial Services Centre Act, 1994 from investments, assets or liabilities situated outside Malta; and

(c) all profits or gains of a company resident in Malta, which are liable to tax in Malta and attributable to a permanent establishment (including a branch) situated outside Malta, and for these purposes "profits or gains" shall be calculated as if the permanent establishment is an independent enterprise operating in similar conditions and at arm's length; and

(d) profits resulting from dividends paid out of the foreign income account of another company resident in Malta:

Provided that in the case of a company carrying on the business of insurance, or any other company which is owned and controlled, directly or indirectly, by such an insurance company, the profits which would, in accordance with the above provisions, stand to be allocated to the foreign income account will, for any financial year, not be so allocated:

Provided further that in the case of a company which is licensed as a bank in Malta or which forms part of a banking group as defined below, any profits which would, in accordance with the above provisions, stand to be allocated to the foreign income account will, for any financial year, not be so allocated unless:

(a) more than ninety-five per cent (95%) of its average daily deposits throughout the financial year are taken from persons who are not resident in Malta; and

(b) where the company forms part of a banking group, such group meets, on a consolidated basis, the requirement specified in paragraph (a) above.

For the purposes of this proviso:

(a) "banking group" shall comprise only Maltese registered companies, at least one of which must be a bank licensed in Malta, and which companies are members of a banking group of companies. Two companies shall be deemed to be members of a banking group of companies if one is the ten per cent affiliate of the other or both are ten per cent affiliates of a third company. For this purpose, a company shall be deemed to be a ten per cent affiliate of another company (parent company):

(i) if and so long as more than ten per cent of its ordinary share capital and more than ten per cent of its voting rights are owned directly or indirectly by the parent company; or

(ii) the parent company is beneficially entitled either directly or indirectly to more than ten per cent of any profits available for distribution to the ordinary shareholders of the affiliate company; or

(iii) the parent company would be beneficially entitled either directly or indirectly to more than ten per cent of any assets of the affiliate company available for distribution to its ordinary shareholders on winding up:

Provided that notwithstanding the above provisions, a company which has been acquired by a bank in satisfaction of a debt and which does not otherwise form part of the bank's business shall be deemed not to form part of a banking group;

(b) "average daily deposits" shall be computed by taking the total deposits at the end of each day for the financial year and dividing such amounts by the number of days in that financial year and average daily deposits taken from persons who are not resident in Malta shall be computed in like manner. The word "deposits" shall have the meaning assigned to it in the Banking Act, 1994;

(c) the amount of the consolidated average daily deposits of a banking group shall include only deposits accepted by companies forming part of the banking group placed by persons other than such companies:

Provided finally, that in the case of an "International Trading Company", the profits which would, in accordance with the above provisions, stand to be allocated to the foreign income account will, for any financial year, not be so allocated;"

(e) the following new definition shall be inserted immediately after the definition of "incapacitated person":

" "International Trading Company" means a company registered in Malta which is engaged solely in carrying on trading activities, from Malta but not in Malta, with persons outside Malta who are not resident in Malta and which has its objects expressly limited to such trading activities as well as to such acts and activities as are necessary for the conduct of its operations from Malta. The following activities shall in so far as they are complementary to the carrying on of the said trading activities be allowable activities of an International Trading Company:

(a) purchases for export of goods manufactured, assembled or processed in Malta provided that such purchases are not made from a person who owns directly or indirectly more than 15% of the ordinary share capital of the said International Trading Company;

(b) trading with companies registered in Malta under the Malta Financial Services Centre Act, 1994; and

(c) trading with other International Trading Companies;"

(f) the following new definitions shall be inserted immediately after the definition of "Malta":

" "Maltese taxed account" means any of those profits of a company that are not included in the foreign income account and:

(a) which have suffered tax; or

(b) which have been exempt from tax under the provisions of any Maltese law and where the distribution of such profits by the company is also exempt from tax in the hands of the shareholders;

"participating holding" shall mean a holding which arises where:

(a) a company holds directly at least ten per cent of the equity shares of a company not resident in Malta whose capital is wholly or partly divided into shares:

Provided that where the shares held confer different percentages of entitlement with respect to votes, to profits available for distribution and to assets available for distribution on a winding up, the lowest percentage figure shall be deemed to be the per centage of equity shares held; or

(b) a company is an equity shareholder in a company not resident in Malta and the equity shareholder company is entitled at its option to call for and acquire the entire balance of the equity shares not held by that equity shareholder company to the extent permitted by the law of the country in which the equity shares are held; or

(c) a company is an equity shareholder in a company not resident in Malta and the equity shareholder company is entitled to first refusal in the event of the proposed disposal, redemption or cancellation of all of the equity shares of that company not held by that equity shareholder company; or

(d) a company is an equity shareholder in a company not resident in Malta and is entitled to either sit on the Board or appoint a person to sit on the Board of that company as a director; or

(e) a company is an equity shareholder which invests a minimum sum of five hundred thousand Maltese liri (or the equivalent sum in a foreign currency) in a company not resident in Malta; or

(f) a company is an equity shareholder in a company not resident in Malta and where the holding of such shares is for the furtherance of its own business:

Provided that a holding of shares whether equity shares or not, in a company not resident in Malta, held as trading stock for the purpose of a trade shall not constitute a "participating holding";

(g) in the definition of "resident in Malta", for the words "when applied to a body of persons, means any body of persons the control and management of whose business are exercised in Malta", there shall be substituted the words "when applied to a body of persons, means any body of persons the control and management of whose business are

exercised in Malta, provided that a company incorporated in Malta on or after 1st July 1994 shall be resident in Malta and any other company incorporated in Malta shall be resident in Malta from 1st January 1995 where the management and control of the business of the company is exercised outside Malta";

(h) in the definition of "the Special Commissioners", for the words "under section 66 of this Act" there shall be substituted the words "under section 34 of the Income Tax Management Act, 1994";

(i) in the definition of "tax", for the words "imposed by this Act" there shall be substituted the words "imposed by the Income Tax Acts";

(j) immediately after the definition of "tax", there shall be inserted the following new definition:

"the Income Tax Acts" shall collectively mean this Act and the Income Tax Management Act, 1994";

(k) the definition of "total income" shall be amended as follows:

(i) for the words "of Part VI;", there shall be substituted the words "of Part VI:"; and

(ii) immediately at the end thereof, there shall be added the following proviso:

"Provided that any income which is not required to be disclosed and is not disclosed in accordance with the provisions of the Income Tax Acts shall not form part of total income"; and

(l) the following new definition shall be inserted immediately after the definition of "total income":

"untaxed account" shall consist of those profits (or losses as the case may be), which represent the total distributable profits (a positive amount) or the total accumulated losses (a negative amount) as the case may be, and deducting therefrom the total sum of the amounts allocated to the foreign income account and the Maltese taxed account";

5. Immediately after section 2 of the principal Act, there shall be added the following section:

Addition of new section 3 to the principal Act.

"Adminis-
tration
of Act.

3. The administration of this Act shall be vested in the Commissioner, and the provisions of sections 3 and 4 of the Income Tax Management Act, 1994, shall apply to the Commissioner in the exercise of his powers and functions under this Act."

Amendment
of section 4
of the principal
Act.

6. In paragraph (c) of subsection (1) of section 4 of the principal Act for the words "interest or discounts" there shall be substituted the words "premiums, interest or discounts".

Amendment
of section 5
of the principal
Act.

7. (a) In the definition of "securities" in paragraph (b) of subsection (1) of section 5 of the principal Act for the words "fixed rate of return." there shall be substituted the words "fixed rate of return, and units in a collective investment scheme as defined in section 2 of the Investment Services Act, 1994."

(b) Subsection (9) of section 5 of the principal Act shall be deleted and shall be substituted by the following new subsection:

"(9) Where an asset is transferred from one company to another company and such companies are:

(a) deemed to be a group of companies for the purposes of section 16 of this Act, or

(b) controlled and beneficially owned directly or indirectly to the extent of more than fifty per cent by the same shareholders,

it shall be deemed that no loss or gain has arisen from the transfer. In ascertaining the capital gain where such an asset is subsequently transferred by a company to another company which does not fall within the provisions of paragraphs (a) or (b) of this subsection, as the case may be, the base cost of the asset that would be considered shall be the original cost existing before the first transfer took place."

Addition of new
section 6 to the
principal Act.

8. Immediately after section 5 of the principal Act, there shall be added the following new section:

"Investment
Services
Expatriate.

6. (1) For the purposes of this section, an "investment services expatriate" shall mean any individual who is an employee of, or provides services to, an investment services company, as defined in section 15 of this Act, and either:

(a) is not ordinarily resident and not domiciled in Malta; or

(b) was not resident in Malta for a minimum period of three years immediately preceding the year in which he commences such employment with or provides services to any investment services company as aforesaid and provided that during the said three years such individual has been engaged on a full time basis in a similar position outside Malta.

(2) An investment services expatriate, for the period from the year preceding the first year of assessment in which he is first liable to tax under the provisions of this Act up to and including the year preceding the tenth year of assessment, shall not be liable to tax on income relating to the following expenditure incurred for the benefit of the investment services expatriate or his immediate family by the investment services company of which he is an employee or to which he provides investment services:

(a) removal costs in respect of relocation to or from Malta;

(b) accommodation expenses incurred in Malta;

(c) travel costs in respect of visits by the investment services expatriate and his immediate family to or from Malta;

(d) provision of a car for the use of the investment services expatriate in Malta;

(e) a subvention of not more than two hundred and fifty liri per calendar month;

(f) medical expenses and medical insurance; and

(g) school fees in respect of the children of the investment services expatriate.

(3) An investment services expatriate shall be treated as not resident in Malta for the purposes of paragraph (c) of subsection (1) of section 12 of this Act."

Amendment
of section 7
of the principal
Act.

9. Subsection (9) of section 7 of the principal Act shall be deleted and shall be substituted by the following new subsection:

"(9) Any excess remaining after tax has been set off as provided in subsection (8) of this section shall be refunded in accordance with the provisions of section 48 of the Income Tax Management Act, 1994."

Amendment
of section 8
of the principal
Act.

10. In subsection (5) of section 8 of the principal Act, for the words starting from "Notwithstanding any other provision of this Act" to "the Commissioner may", there shall be substituted the words "Notwithstanding any other provision of the Income Tax Acts, other than section 31 of the Income Tax Management Act, 1994, the Commissioner may".

Amendment
of section 9
of the principal
Act.

11. Subsection (4) of section 9 of the principal Act shall be deleted and shall be substituted by the following new subsection:

"(4) If a person does not elect as provided in subsection (3) of this section, the requirements of section 10 of the Income Tax Management Act, 1994 shall not be enforced in his regard in respect of any year of assessment on account of which the provisions of subsection (1) of this section apply."

Amendment
of section 12
of the principal
Act.

12. In section 12 of the principal Act:

(a) paragraph (c), including the provisos thereof, of subsection (1) thereof shall be deleted and shall be substituted by the following new paragraph:

"(c) (i) any interest or royalties accruing to or derived by any person not resident in Malta:

Provided that the exemption under this subparagraph shall not apply in respect of any year in which the said person is engaged in trade or business in Malta through a permanent establishment situated therein and where the royalties or the debt claim in respect of which the interest is paid are effectively connected with such permanent establishment;

(ii) any gains or profits accruing to or derived by any person not resident in Malta on a disposal of any units in a collective investment scheme as defined in section 2 of the Investment Services Act, 1994 and of any shares or securities in a company (which for the avoidance of doubt includes redemption, liquidation or cancellation) which is not a company the assets of which consist wholly or principally of immovable property situated in Malta:

Provided that such non-resident person is the beneficial owner of the interest, royalty, gain or profit as the case may be, and that such person is not owned and controlled by, directly or indirectly, nor acts on behalf of a person who is ordinarily resident and domiciled in Malta;"

(b) immediately after paragraph (r) of subsection (1) thereof, there shall be added the following new paragraph:

"(s) the income of a collective investment scheme:"; and

(c) immediately after subsection (4) thereof, there shall be added the following new subsection:

"(5) A collective investment scheme (which is not constituted as a unit trust) may waive its right to exemption from tax. Such waiver shall not be applicable in respect of any gains or profits realised on a disposal (which for the avoidance of doubt includes redemption, liquidation or cancellation) of any investments, assets or liabilities held by the aforesaid scheme. Such waiver shall be exercised by advance notice in writing to the Commissioner. The said notice shall set out the year of assessment in respect of which the waiver shall become applicable, and shall be notified to the Commissioner not later than the first day of the said year of assessment."

13. Immediately after section 14 of the principal Act, there shall be added the following new sections:

Addition of new sections 15, 16, 17, 18, 19, 20, 21 and 22 to the principal Act.

"Investment services companies.

15. (1) For the purposes of this section investment services company shall mean a company which holds an investment services licence issued under section 6 of the Investment Services Act, 1994 and whose activities solely comprise the provision of management, administration, safekeeping, or investment advice to collective investment schemes as defined in the aforesaid Act;

(2) For the purposes of ascertaining the total income of an investment services company, the amounts specified in paragraphs (a) to (e) of this subsection shall, at the company's option, be allowed as deductions in addition to or as a replacement for, as the case may be, the amounts allowed under subsection (1) of section 14 of this Act and shall be subject to the conditions stipulated in that section. For this purpose:

(a) rental, energy costs, building maintenance, building insurance and other building occupancy costs incurred in the period from the year preceding the first year of assessment in which the investment services company first becomes liable to tax under this Act up to and including the year preceding the tenth year of assessment shall be allowed as an additional one hundred per cent of such expenditure;

(b) a one hundred per cent deduction shall replace the deductions provided for under paragraphs (f) and (j) of subsection (1) of section 14 of this Act in respect of expenditure which is incurred in the period commencing from the year preceding the first year of assessment in which the investment services company first becomes liable to tax under the provisions of this Act up to and including the year preceding the fifth year of assessment and, in addition, expenditure in respect of office premises shall be eligible for such deduction as if the said premises were industrial buildings;

(c) the amounts invested by an investment services company for its own account in a collective investment scheme managed by that company shall be allowed as a deduction if such investment is made during the period commencing from the year preceding the first year of assessment in which the investment services company first becomes liable to tax under the provisions of this Act up to and including the year preceding the fifth year of assessment:

Provided that such funds so invested are not disinvested from such collective investment scheme within two years of the making of the said investment:

Provided further that this additional deduction shall not affect the amount which is to be taken as the cost of acquisition of such investment for the purposes of any other provision of this Act, and also provided that such deductions shall not be carried forward as part of a loss to be set off against the company's liability in respect of a

capital gain arising on the disposal of its investments in the collective investment scheme;

(d) remuneration paid by an investment services company to its employees who are resident in Malta shall be allowed as an additional one hundred per cent of that remuneration if such expenditure is incurred during the period commencing from the year preceding the year of assessment in which the investment services company first becomes liable to tax under the provisions of this Act up to and including the year preceding the tenth year of assessment;

(e) there shall be allowed as a deduction any other expenses and outgoings incurred by the investment services company wholly and exclusively for the purposes of carrying on its business and which would otherwise not have been allowed as a deduction under the provisions of subsection (1) of section 14 of this Act.

(3) Where an investment services company incurs expenditure before it begins to carry on its business, and the expenditure -

(a) is incurred not more than five years before that time; and

(b) is not deductible in ascertaining the total income of the investment services company, but would have been so deductible under subsection (1) of section 14 or under paragraph (e) of subsection (2) of this section had it been incurred after that time,

such expenditure shall be treated as incurred on the day on which the business is first carried on by the investment services company, and paragraphs (a) to (d) of subsection (2) of this section shall apply in respect of such expenditure.

(4) The additional deductions specified in subsection (2) of this section represent the maximum deductions allowed for the purposes of that subsection, and an investment services company need not claim the full amount of such maximum deductions in respect of any year of assessment.

(5) The additional deductions provided for in this section shall not be taken into account in determining the amount of loss, if any, available for surrender under the provisions of sections 16 to 22 (group relief provisions) of this Act.

Definition of group.

16. For the purposes of this section and of sections 17 to 22 of this Act, hereinafter collectively referred to (including this section) as the "group relief provisions", two companies resident in Malta but neither of which is resident for tax purposes in any other country shall be deemed to be members of a group of companies if one is the fifty-one per cent subsidiary of the other or both are fifty-one per cent subsidiaries of a third company resident in Malta.

For the purposes of the group relief provisions, a company shall be deemed to be a fifty-one per cent subsidiary of another company, hereinafter referred to as the "parent company":

(a) if and so long as more than fifty per cent of its ordinary share capital and more than fifty per cent of its voting rights are owned directly or indirectly by the parent company; and

(b) the parent company is beneficially entitled either directly or indirectly to more than fifty per cent of any profits available for distribution to the ordinary shareholders of the subsidiary company; and

(c) the parent company would be beneficially entitled either directly or indirectly to more than fifty per cent of any assets of the subsidiary company available for distribution to its ordinary shareholders on a winding up.

Surrender of relief between members of groups.

17. (1) Subject to, and in accordance with, the provisions of this section and of sections 18 to 22 of this Act, allowable losses may, in the case set out in subsection (2) of this section, be surrendered by a company, hereinafter referred to as "the surrendering company", and, on the making of a claim by another company, hereinafter referred to as "the claimant company", be allowed to the claimant company as a deduction called "group relief". A claim made by

virtue of this subsection is hereinafter referred to as a "group claim".

(2) Group relief shall be available where the surrendering company and the claimant company are both members of the same group throughout the year preceding the year of assessment for which the relief is claimed.

(3) For any year of assessment, two or more claimant companies may make group claims relating to the same surrendering company.

(4) A payment for group relief -

(a) shall not be taken into account in computing profits or losses of either company for the purposes of tax imposed by this Act; and

(b) shall not, for any of the purposes of this Act, be regarded as a distribution.

For the purposes of this subsection "payment for group relief" means a payment made by the claimant company to the surrendering company in pursuance of an agreement between them in respect of an amount surrendered by way of group relief, being a payment not exceeding that amount.

Losses which may be surrendered by way of group relief.

18. (1) (a) If in the year preceding a year of assessment the surrendering company has incurred an allowable loss, the amount of the loss may be set off for the purposes of tax against the total income of the claimant company for the corresponding year of assessment and, where applicable, for subsequent years of assessment provided that in the year in which the surrendering company incurs the loss both companies have accounting periods which begin and end on the same dates:

Provided that where the surrendering company makes up accounts and pays tax in a currency other than that of the claimant company any loss surrendered shall be set off against the total income of the claimant company as aforesaid, after such amount is converted to the currency in which the claimant company makes up accounts and pays tax. Such conversion shall be carried out by reference to

the mean rate or rates of exchange between such currency or currencies and the Maltese Lira ruling on the last day of the accounting period to which such loss refers as issued by the Central Bank of Malta.

(b) A surrendering company may surrender allowable losses by way of group relief in excess of the total income of the claimant company in the year preceding a year of assessment, in which case the claimant company may carry forward and set off those losses in accordance with the provisions of paragraph (g) of subsection (1) of section 14 of this Act as if they were losses of its own trade.

(c) Where the allowable loss, had it been a profit, would have been allocated to the Maltese taxed account of the surrendering company, the claimant company may only deduct such loss from its total income as would stand to be allocated to its Maltese taxed account and such loss may only be carried forward against the claimant company's total income arising in subsequent years as would stand to be allocated to its Maltese taxed account.

(d) Where the allowable loss, had it been a profit, would have been allocated to the foreign income account of the surrendering company, the claimant company may only deduct such loss from its total income as would stand to be allocated to its foreign income account and such loss may only be carried forward against the claimant company's total income arising in subsequent years as would stand to be allocated to its foreign income account.

(2) Notwithstanding the provisions of subsection (1) of this section, a company which is either -

(a) newly incorporated and at all times after its incorporation satisfies the conditions to be deemed a member of the same group of companies as another company in the year preceding a year of assessment and has the same accounting period end date as that other company in that year preceding the year of assessment, or

(b) wound up part way through its accounting period and until it is so wound up

satisfies the conditions to be deemed a member of the same group as another company in the year preceding a year of assessment and has the same accounting period start date as that other company in that year preceding the year of assessment,

will be deemed for the purposes of paragraph (a) of subsection (1) of this section to have an accounting period which begins and ends on the same date as that of that other company and group relief shall be available in full for that year.

Group relief -
anti-
avoidance.

19. If, apart from this section, a company is a member of a group of companies, and arrangements are in existence the sole or main purpose of which is to reduce any company's tax liability, and by virtue of the said arrangements that company would cease to be a member of that group of companies, then that company shall be treated as not being a member of that group of companies for any year preceding a year of assessment in which the said arrangements are in existence.

Exclusion of
double reliefs.

20. (1) Relief shall not be given more than once, whether by giving group relief and by giving some other relief (in respect of any year of assessment) to the surrendering company, or by giving group relief more than once, in respect of the same amount.

(2) In accordance with the provisions of subsection (1) of this section, two or more claimant companies cannot, in respect of any one loss, obtain in total more relief than could be obtained by a single claimant company.

Claims and
adjustments.

21. A claim for group relief:

(a) need not be for the full amount available,

(b) shall include the consent of the surrendering company set out in such form as the Commissioner may require, and

(c) must be made not later than twelve months following the end of the company's accounting period which date falls within the year immediately preceding the year of assessment for which the claim is made.

Definitions.

22. For the purpose of the group relief provisions:

(a) a reference to "allowable loss" or "allowable losses" shall be construed as a reference to the loss or losses referred to in paragraph (g) of subsection (1) of section 14 of this Act, to the extent that they are incurred in the year preceding the year of assessment and are not unrelieved losses carried forward from previous years; and

(b) references to "total income" shall have the meaning assigned to it by section 2 of this Act but shall be computed before any deduction is made in respect of group relief."

Amendment
of section 24
of the principal
Act.

14. In section 24 of the principal Act:

(a) in subsection (1) thereof, for the words starting from "render to the Commissioner" to the words "a statement" which occur in the paragraph immediately after paragraph (c) of the said subsection, there shall be substituted the words "render to the Commissioner, at the same time as he renders his return of income under section 10 of the Income Tax Management Act, 1994, a statement"; and

(b) subsection (6) thereof shall be deleted and shall be substituted by the following new subsection:

"(6) Nothing in subsections (4) and (5) of this section contained shall prevent the decision of the Commissioner in the exercise of the power conferred upon him by those subsections from being questioned in an appeal in accordance with the provisions of sections 35 and 37 of the Income Tax Management Act, 1994."

Addition
of section 25
to the principal
Act.

15. Immediately after section 24 of the principal Act there shall be added the following new section:

"Applicability
of sections 14
to 24.

25. For the purposes of sections 14 to 24, both inclusive, of this Act, expenses incurred in the production of, and allowable deductions given in respect of, profits which are allocated to the foreign income account must first be deducted against the income from which such profits are derived."

Addition of new
sections 32, 33, 34,
35, 36, 37, 38, 39,
40, 41 and 42 to
the principal Act.

16. Immediately after section 31 of the principal Act, there shall be inserted the following new sections:

"Taxation of certain investment income by deduction.

32. Notwithstanding anything to the contrary contained in this Act, sections 33 to 42, both inclusive, and which together with this section are referred to as "the investment income provisions", shall apply wherever the context so requires.

Obligation of payor to deduct tax from investment income.

33. (1) A payor shall deduct tax from every payment to a recipient of investment income, howsoever made, at a rate of fifteen cents on every lira of such payment.

(2) A payor shall render an account to the Commissioner of all amounts so deducted, but shall not specify the identity of the recipient and, subject to the provisions of subsection (3) of this section, every amount deducted shall be a debt due from such payor to the Commissioner payable not later than the fourteenth day following the end of the month in which the payment was made and shall be recoverable as such.

(3) The payor shall upon making a payment of investment income furnish each recipient with a certificate in a form acceptable to the Commissioner setting forth the gross amount paid by the payor, and the tax deducted.

(4) Where a payor makes a payment of investment income to a person not resident in Malta (and therefore not a recipient within the definition contained in paragraph (c) of section 41 of this Act), the payor shall be obliged to obtain a certificate of non-residence from the person receiving such payment in such form as the Commissioner shall require.

Payor not to deduct tax where recipient elects to be paid gross.

34. (1) A payor shall not deduct tax under section 33 of this Act where a recipient elects under the provisions of section 35 of this Act, to be paid investment income without such deduction being made.

(2) A payor shall, at the request of the Commissioner, render an account to the Commissioner of all payments of investment income made during any year in respect of which an election has been made. The account shall be submitted to the Commissioner by the 31st January following the year for which the election has been made, or within thirty days of the request, whichever date is later. Such

account shall include details of the recipient's name, address and the income tax registration number as well as the amount of investment income paid gross by the payor to the recipient during that year:

Provided that the Commissioner may only request such an account for a complete year which has passed in respect of which an election has been made under the provisions of section 35 of this Act:

Provided further that a payor shall not be required to render an account to the Commissioner once nine years have elapsed following the end of the year in which the investment income becomes payable.

Election by recipient to be paid without deduction of tax.

35. (1) A recipient may elect to be paid investment income, which does not constitute capital gains within the meaning of section 41(a)(v) of this Act, without deduction of tax being made and such an election shall be made in writing and sent to the payor.

(2) Subject to the provisions of subsection (3) of this section, an election will be effective as from 14 days following the receipt of such notice of election by the payor. Such an election may be revoked at the option of the recipient by notice in writing and such revocation shall be effective as from 14 days following the receipt by the payor of such notice.

(3) An election made on the opening of a bank account in respect of which investment income is payable, or on the purchase of bonds, loanstock, debentures, or any other instrument in respect of which the investment income is payable, shall have immediate effect.

Obligation on recipient to declare where an election is made.

36. Where an election under the provisions of section 35 of this Act has been made, a recipient shall declare the investment income to which the election relates on his tax return for the relevant year of assessment and where a declaration is made as aforesaid any tax due shall be determined as if the investment income provisions had not been enacted.

Option for recipients to declare where no election has been made.

37. (1) Where no election under section 35 of this Act has been made, a recipient who is an individual may declare investment income on his tax return and, where a declaration is made as aforesaid, any tax due shall be determined as if the investment income provisions had not been enacted.

(2) Where a recipient has declared investment income on his tax return any tax withheld in respect of such income under the investment income provisions shall be available as a credit against the recipient's tax liability, or for a refund as the case may be, for the relevant year of assessment.

Presumption of deduction.

38. Except in respect of a year of assessment for which an election under section 35 of this Act applies, it shall be presumed, so far as the tax liability of the recipient is concerned, that a deduction and payment which ought to have been made pursuant to the provisions of section 33 of this Act have been made.

Where presumption applies, no need to declare.

39. Where the presumption referred to in section 38 of this Act applies:

(a) a recipient who is an individual shall not be obliged to disclose the existence of the investment income in any return made pursuant to the provisions of this Act, and

(b) subject to the provisions of subsection (1) of section 37 of this Act, no person shall be charged to further tax in respect of the investment income under this Act.

Extent of payor's liability.

40. Where a payor fails to deduct and pay tax in accordance with the investment income provisions, the provisions of subsection (4) of section 73 of this Act and subsection (1) of section 40 of the Income Tax Management Act, 1994, shall apply *mutatis mutandis*.

Interpretation of the investment income provisions.

41. For the purposes of the investment income provisions, the following phrases shall have the meanings given below:

(a) "investment income" shall mean only the following categories of income:

(i) interest payable by a person carrying on the business of banking under the Banking Act, 1994, in respect of a sum of money in whatever currency deposited with it in any account whatever (except interest payable in respect of any bearer account);

(ii) interest, discounts or premiums payable by the Government of Malta or by any agency thereof;

(iii) interest, discounts or premiums payable by a corporation or authority established by law;

(iv) interest, discounts or premiums payable in respect of a public issue by a company resident in Malta; and

(v) capital gains arising on the disposal of shares or units in a collective investment scheme licensed under the Investment Services Act, 1994, where the collective investment scheme redeems, liquidates or cancels such shares or units as the case may be - such capital gains to be calculated by reference to the price at which the shares or units were allotted or issued by the collective investment scheme;

(b) "payor" shall mean the person who is liable to make or, if different, who makes a payment of investment income;

(c) "recipient" shall mean:

(i) a person who is resident in Malta during the year in which investment income is payable to him or which is payable to a person under sub-paragraphs (ii) or (iii) of this paragraph (other than a person who during that year carried on banking business under the Banking Act, 1994, or a person carrying on the business of insurance or any other company which is owned and controlled, directly or indirectly, by such persons or a company which is registered

under section 24 of the Malta Financial Services Centre Act), or

(ii) a receiver, guardian, tutor, curator, judicial sequestrator or committee acting on behalf of a person referred to in sub-paragraph (i) of this paragraph, or

(iii) a trustee or foundation pursuant to or by virtue of which any money or other property whatsoever shall for the time being be paid or applied to or for the benefit of a person referred to in sub-paragraph (i) of this paragraph.

Anti-avoidance provisions.

42. Where, in the opinion of the Commissioner, a series of transactions is effected with the sole or main purpose of reducing the amount of tax payable by a person by reason of the operation of the investment income provisions, such a person shall be assessable as if the aforesaid provisions did not apply, and any tax withheld in respect of income received under one or more of the aforesaid transactions shall be available as a credit against the tax liability of the person receiving such income, or for a refund as the case may be, for the relevant year of assessment.

For the purposes of this section, a "series of transactions" shall mean any two or more corresponding or circular transactions, carried out by the same person, either directly or indirectly, as the case may be."

17. Subsection (5) of section 43 of the principal Act shall be deleted and shall be substituted by the following new subsection:

Amendment of section 43 of the principal Act.

"(5) Nothing contained in this section shall prevent the decision of the Commissioner in the exercise of the power conferred upon him by subsection (1) of this section from being questioned in an appeal in accordance with the provisions of sections 35 and 37 of the Income Tax Management Act, 1994."

18. Subsection (3) of section 48 of the principal Act shall be deleted and shall be substituted by the following new subsection:

Amendment of section 48 of the principal Act.

"(3) Nothing contained in this section shall be deemed to impair the right of an assessee to appeal against an assessment of tax under

the provisions of sections 35 and 37 of the Income Tax Management Act, 1994."

Amendment
of section 50
of the principal
Act.

19. In subsection (1) of section 50 of the principal Act, immediately after the words "of section 4 of this Act" there shall be added the words "or of paragraph (d) of the said subsection in so far as it refers to a pension which is received in view of past employment".

Addition of new
section 52 to the
principal Act.

20. Immediately after section 51 of the principal Act there shall be added the following new section:

"Advance
Revenue
Rulings.

52. (1) The Commissioner shall, on the application of a company which is a party to any transaction, notify his ruling that the provisions of section 51 of this Act shall not apply to that transaction provided that the Commissioner is satisfied that the transaction is to be effected for *bona fide* commercial reasons.

(2) The Commissioner shall, on the application of any person, notify his ruling that the provisions of paragraph (f) of the definition of "participating holding" as defined in section 2 of this Act in respect of a participating holding will apply to a particular shareholding or to a shareholding which is to be acquired by the applicant.

(3) The Commissioner shall, on the application of any person which is a company, notify his ruling on the tax treatment of any transaction which concerns any financial instrument or other security.

(4) The Commissioner shall, on the application of any person, notify his ruling on the tax treatment of any transaction which involves international business, provided that the determination of what constitutes international business for the purposes of this subsection shall be at the discretion of the Commissioner.

(5) The Commissioner shall, on the application of any person, notify his ruling as to whether a company qualifies as an international trading company.

(6) The notification of a ruling specified in this section may be given in advance of any

transaction in respect of which an application for a ruling is made.

(7) (a) All applications under this section shall be made in writing and shall contain all material particulars of the transactions to be effected.

(b) Where the Commissioner requires further particulars for the purposes of enabling him to make a decision on an application under this section, the Commissioner shall, within thirty days of the receipt of the application, or of the receipt of any further particulars previously required under this paragraph, by written notice, require the applicant to furnish such further particulars, and if any such notice is not complied with within thirty days, or such longer period as the Commissioner may allow, the Commissioner need not proceed further with the application.

(c) The Commissioner shall notify his ruling to the applicant within thirty days of receiving the application or, if he gives a notice under paragraph (b) of this subsection, within thirty days after the notice has been complied with.

(d) If any particulars furnished under this section do not fully and accurately disclose all facts and considerations material for the ruling of the Commissioner, any resulting ruling shall be void.

(8) (a) Subject to the provisions of paragraph (d) of subsection (7) of this section, a ruling by the Commissioner will be and shall remain binding on the Commissioner for a period of two years from the time of any relevant change in statutory provisions subsequent to such ruling, or for a period of five years from the time of such ruling, whichever is the lesser.

(b) A ruling by the Commissioner may, at the option of the applicant, be renewed for a further period of five years. An application for renewal shall be submitted in writing to the Commissioner, stating whether or not there have been any material changes to the facts and considerations contained in the original application and the nature of any such

changes. Such renewal shall not be unreasonably withheld by the Commissioner."

Amendment
of section 53
of the principal
Act.

21. In subsection (5) of section 53 of the principal Act, for the words "In subsection (6) of this section" there shall be substituted the words "In subsection (4) of this section".

Amendment
of section 55
of the principal
Act.

22. Paragraph (b) of subsection (2) of section 55 of the principal Act shall be deleted and shall be substituted by the following new paragraph:

"(b) the form referred to in subsection (1) of this section, together with any supporting documents that are required to be produced, is received by the Commissioner before he determines the tax for that year of assessment by order in writing under the provisions of subsection (5) of section 33 of the Income Tax Management Act, 1994."

Amendment
of section 56
of the principal
Act.

23. In section 56 of the principal Act:

(a) the following new subsections shall be inserted immediately after subsection (6) thereof:

"(7) The tax shall be charged at the rate of 25c on every lira of the chargeable income of a collective investment scheme which, under the provisions of subsection (5) of section 12 of this Act, has waived its right to exemption from tax.

(8) Notwithstanding any other provisions of this section, a person in receipt of a dividend from an international trading company shall be charged to tax in respect of such dividend at a rate of twenty-seven and a half per cent (27.5%) of such amount as if such dividend constitutes separate chargeable income, where such person is either :

(a) not resident in Malta and who is, where applicable, not owned and controlled, directly or indirectly by, nor acts on behalf of, a person or persons ordinarily resident and domiciled in Malta; or

(b) a company resident in Malta which is wholly owned by a person or persons not resident in Malta, provided that such person or persons are not owned and controlled by, directly or indirectly, nor acts on behalf of, a person or persons ordinarily resident and domiciled in Malta."; and

(b) the third proviso of subsection (12) thereof and paragraphs (i) to (iv) immediately following the said proviso shall be substituted by the following:

"Provided also that where the Commissioner has sent to any person a notice referred to in subsection (3) of section 12 of the Income Tax Management Act, 1994, such person shall be required to pay, in respect of each such notice, an additional tax as may be specified in such notice for the year of assessment in respect of which the default has occurred but which shall in no case exceed ten liri. The Commissioner may only remit this additional tax where he is satisfied that owing to absence from Malta, sickness or other reasonable cause such person was prevented from submitting a return in accordance with the provisions of section 10 or 11 of the Income Tax Management Act, 1994:

Provided further that:

(i) the powers conferred upon the Commissioner by this subsection shall be in addition to any right conferred upon him to commence proceedings in respect of an offence under Part IX of the Income Tax Management Act, 1994;

(ii) any person who in determining his total income, as disclosed by his return, deducts or sets off any amount, the deduction or set-off whereof is not allowed under the provisions of the Income Tax Acts, or shows as an expenditure or loss any amount which he has not in fact expended or lost, shall be deemed for the purposes of this subsection to have omitted such amount from his return;

(iii) any tax charged under the provisions of this subsection shall be deemed not to be part of any tax paid or payable for the purposes of the preceding subsections of this section, or of sections 59, 76 and 89 of this Act, or of sections 51 and 52 of the Income Tax Management Act, 1994;

(iv) where the default or omission has been made in connection with a return required by the provisions of the Income Tax Acts to be furnished by another person on behalf of a company, such company shall be liable for the additional tax chargeable under the provisions of this subsection."

24. Section 59 of the principal Act shall be amended as follows:

(a) subsection (1) thereof shall be deleted and shall be substituted by the following new subsection:

"(1) Every company resident in Malta shall be entitled to deduct from the amount of any dividend, other than a dividend paid out of distributable profits allocated to the untaxed account and other than a dividend referred to in paragraph (p) of subsection (1) of section 12 of this Act, paid to any shareholder, a tax at the rate paid or payable by the company, relief of double taxation being left out of account, on the income out of which such dividend is paid:

Provided that where tax is not paid or payable by the company on the whole income out of which the dividend is paid, the deduction shall be restricted to that portion of the dividend which is paid out of income on which tax is paid or payable by the company.";

(b) subsection (5) thereof shall be deleted and shall be substituted by the following new subsection:

"(5)(a) Every company shall upon payment of a dividend, whether tax is deducted therefrom or not, furnish the shareholder with a dividend certificate.

(b) The dividend certificate shall be in such form as the Commissioner shall require and shall show, in respect of the dividend distributed to the particular shareholder, the following information:

(i) the gross amount of the distributed profits, in respect of each account, before deduction of any tax chargeable on the company in respect of such distributed profits;

(ii) the total tax chargeable on the company in respect of the distributed profits, showing separately:

(1) the Malta tax payable after all reliefs of double taxation have been given; and

(2) the foreign tax in respect of which relief of double taxation has been given under the double taxation relief, relief in respect of Commonwealth income tax, and unilateral relief provisions; and

(3) the amount which has been set off against Malta tax pursuant to a claim for relief of double taxation under the flat-rate foreign tax credit provisions;

(iii) the amount of the distributed profits from each account, after deducting the tax referred to in sub-paragraph (ii) of this paragraph;

(iv) the tax payable on distribution pursuant to sections 62, 67 and 67A which shall be shown separately from the tax referred to in sub-paragraph (ii) of this paragraph;

(v) the net amount of the dividend paid to the shareholder;

(vi) where the tax paid or payable by the company on the profits so being distributed is affected by relief of double taxation, the rate, hereinafter in this Act referred to as "the net Malta rate", of the tax paid or payable by the company after taking relief of double taxation into account;

(vii) where the profits being distributed have been exempt from tax and the distribution of such profits by the company is exempt from tax in the hands of the shareholder, a note quoting the relevant law giving such exemption;

(viii) where the profits being distributed by a company (the first company) include a dividend received from another company (the second company), in respect of which the first company is entitled to make a claim for a refund under subsection (4) of section 48 of the Income Tax Management Act, 1994, in respect of the tax paid thereon by the second company, a statement declaring that the first company is entitled to make such a claim in respect of those distributed profits;

(ix) such other information as the Commissioner shall require."; and

(c) subsection (9) thereof shall be deleted and shall be substituted by the following new subsection:

"(9) In this section the expression "relief of double taxation" means any credit or other relief for foreign tax allowable by virtue of the reliefs stipulated in section 74 of this Act."

25. In section 60 of the principal Act:

(a) for the words "Any tax which a company has deducted or is entitled to deduct under the last preceding section", there shall be substituted the words "Any tax which a company has deducted or is entitled to deduct under section 59 of this Act"; and

Amendment
of section 60
of the principal
Act.

(b) paragraph (b) of the last proviso thereof shall be deleted and shall be substituted by the following new paragraph:

"(b) any tax charged on any body of persons under subsection (4) of section 56 of this Act, or under subsections (3) and (4) of section 27 of the Income Tax Management Act, 1994."

Addition of new sections 61, 62, 63, 64, 65, 66, 67, 67A, 68 and 69 to the principal Act.

26. Immediately after section 60 of the principal Act there shall be inserted the following new sections:

"Definitions.

61. For the purposes of sections 62 to 69 of the Act:

(i) a "recipient" shall mean:

(a) a person, other than a company, resident in Malta in the year in which a dividend is received by him or by any person on his behalf; or

(b) a non-resident person (including a non-resident company) who is owned and controlled by, directly or indirectly, or who acts on behalf of, a person who is ordinarily resident and domiciled in Malta;

(ii) an "untaxed dividend" shall mean a dividend paid by a company resident in Malta to the extent that it is paid out of distributable profits allocated to its untaxed account.

Tax on dividend from untaxed account.

62. (1) Every company shall, on payment of untaxed dividend to a recipient, deduct therefrom tax at a rate of fifteen per cent.

(2) Every amount deducted under subsection (1) of this section shall be a debt due from such company to the Commissioner payable not later than the fourteenth day following the end of the month in which such dividend was paid and shall be recoverable as such:

Provided that the provisions of this section shall not apply in respect of untaxed dividend payments to persons who are exempt from tax.

Presumption
of deduction.

63. It shall be presumed, so far as the tax liability of the recipient of a dividend is concerned, that a deduction and payment which ought to have been made pursuant to the provisions of section 62 of this Act have been made.

Where
presumption
applies.

64. Where the presumption referred to in section 63 of this Act applies:

(a) a recipient of a dividend shall not be obliged to disclose the dividend in any return made pursuant to the provisions of this Act; and

(b) subject to the provisions of section 65 of this Act, no person shall be charged to further tax under this Act in respect of the dividend.

Option for
recipients to
declare.

65. A recipient of an untaxed dividend may declare such dividend on his tax return and where a declaration is made as aforesaid any tax (or repayment) due shall be determined as if section 64 of this Act did not apply, and any tax withheld pursuant to section 62 of this Act shall be credited against the recipient's income tax liability and, where applicable, shall be available for any refund which may be due in respect of that tax for the relevant year of assessment.

Untaxed
dividend paid
to non-
recipient.

66. Where an untaxed dividend is paid to a person, who is not a recipient as defined under section 61 of this Act, such dividend shall not be charged to tax under this Act in the hands of such person and where such person is not resident in Malta such person shall not be obliged to disclose the existence of the dividend in any return made pursuant to the provisions of the Income Tax Acts.

Payment of
dividend out
of taxed
account or
foreign
income
account.

67. (1) Where a company pays a dividend to a person resident in Malta out of profits allocated to the Maltese taxed account or the foreign income account and which profits have suffered tax at a rate of tax which is less than the rate of tax chargeable applicable at the time of the distribution, under subsection (6) of section 56 of this Act, only by reason of the fact that a different rate of tax was applicable at the time the profits being distributed were chargeable to tax, the company shall deduct tax at a rate equivalent to the difference between the current rate and that actually suffered as aforesaid on

the amount of the dividend before deducting any tax which it has suffered on the profits so being distributed:

Provided that the provisions of this subsection shall not apply in respect of such dividend payments to persons who are exempt from tax.

(2) Every amount deducted under subsection (1) of this section shall be a debt due from such company to the Commissioner payable not later than the fourteenth day following the end of the month in which such dividend was paid and shall be recoverable as such.

(3) The provisions of sections 63 to 65 of this Act shall apply *mutatis mutandis* as they apply to distributions from the untaxed account and references in those sections to section 62 shall be construed as references to subsection (1) of this section.

(4) For the purposes of this section a person resident in Malta shall include a non-resident person (including a non-resident company) who is owned and controlled by, directly or indirectly or who acts on behalf of a person who is ordinarily resident and domiciled in Malta.

Profits
distributed by
a Collective
Investment
Scheme.

67A.(1) Where a collective investment scheme, which is constituted as a company pays a dividend to a person resident in Malta out of profits allocated to the foreign income account it shall deduct tax at the rate of fifteen per cent on the net amount of the dividend, that is after deducting any tax it is entitled to deduct under subsection (1) of section 59 of this Act:

Provided that the provisions of this subsection do not apply in respect of such dividend payments to persons who are exempt from tax.

(2) Where a collective investment scheme, which is not constituted as a company, distributes profits to persons resident in Malta, there shall be deducted tax as if, for the purposes of this section, such a collective investment scheme is constituted as a company. In this respect tax shall be deducted from every distribution of profits which, had the collective

investment scheme been constituted as a company, would have been allocated to either the foreign income account or the untaxed account:

Provided that the provisions of this subsection do not apply in respect of such payments to persons who are exempt from tax.

(3) Every amount deducted under subsections (1) and (2) of this section shall be a debt due from such collective investment scheme to the Commissioner payable not later than the fourteenth day following the end of the month in which the distribution was made and shall be recoverable as such.

(4) Sections 63 to 65 of this Act shall apply *mutatis mutandis* in the circumstances set out in subsections (1) and (2) of this section as they apply to distributions from the untaxed account. References in those sections to section 62 shall be construed as references to subsection (1) or (2) of this section, as the case may be, and references to dividend or untaxed dividend shall be construed as a reference to profits distributed by a collective investment scheme where the context so requires.

(5) For the purposes of section 61 and of subsections (1) and (2) of this section, in the case of a collective investment scheme which is exempt from tax under paragraph (s) of subsection (1) of section 12 of this Act, the profits which would be allocated to the Maltese taxed account had such a collective investment scheme not been so exempt, shall, notwithstanding any other provision contained in this Act, be so allocated:

Provided that if such profits would have been allocated to the foreign income account had the collective investment scheme not been exempt from tax and not been excluded from allocating profits to its foreign income account, such profits shall, for the purposes of this subsection, not be allocated to the Maltese taxed account but shall be allocated to the untaxed account.

(6) For the purposes of this section a person resident in Malta shall include a non-resident person

(including a non-resident company) who is owned and controlled by, directly or indirectly, or who acts on behalf of a person who is ordinarily resident and domiciled in Malta.

No obligation to disclose.

68. (1) (a) Any person who is not resident in Malta or any individual who is resident in Malta and who is in receipt of a dividend paid out of the distributable profits allocated to the foreign income account or to the Maltese taxed account shall not be obliged to disclose the existence of such dividend in any return made pursuant to the provisions of the Income Tax Acts.

(b) No person shall be charged to further tax under this Act in respect of the income referred to in paragraph (a) of this subsection.

(2) (a) Any person, not being a company resident in Malta, shall not be obliged to disclose in any return made pursuant to the provisions of the Income Tax Acts those profits distributed by a collective investment scheme not constituted as a company, where such profits would have been allocated to the foreign income account or to the Maltese taxed account, had the collective investment scheme been constituted as a company.

(b) No person shall be charged to further tax under this Act in respect of the profits referred to in paragraph (a) of this subsection.

Extent of liability.

69. Where any person fails to deduct and pay tax in accordance with the provisions of sections 62, 67 and 67A of this Act, the provisions of subsection (4) of section 73 of this Act and the provisions of subsection (1) of section 40 of the Income Tax Management Act, 1994, shall *mutatis mutandis* apply."

Amendment of section 73 of the principal Act.

27. In section 73 of the principal Act:

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

"(1) Where any person pays to a person not resident in Malta, or to a person resident in Malta on behalf of a non-resident person, any income chargeable to tax under the provisions of this Act, he shall

upon paying such income, unless he is himself liable to pay tax thereon under the provisions of section 5 of the Income Tax Management Act, 1994, deduct tax therefrom:

(a) at the rate of twenty-five cents in the lira where payment is made to or on behalf of any non-resident person other than a company; and

(b) at the rate chargeable under subsection (6) of section 56 of this Act where payment is made to or on behalf of a non-resident company:

Provided that the Commissioner may, by notice in writing given to any person who is required to effect a deduction of tax in accordance with the foregoing provisions of this section, authorise such person to deduct tax at a rate lower than that hereinbefore mentioned, or to pay such income without any deduction of tax:

Provided further that the provisions of this subsection shall not apply to income from which tax has been deducted under the provisions of section 59 of this Act or under the provisions of section 23 of the Income Tax Management Act, 1994.";

(b) subsection (3) thereof shall be deleted and shall be substituted by the following new subsection:

"(3) Deductions of tax made under the provisions of subsection (1) of this section shall, when paid to the Commissioner as provided in subsection (2) of this section, be set off for the purposes of collection, against the tax charged on the non-resident person in respect of the relative income. Any excess shall be refunded in accordance with the provisions of section 48 of the Income Tax Management Act, 1994."; and

(c) paragraph (f) of subsection (4) thereof shall be deleted and shall be substituted by the following new paragraph:

"(f) additional tax charged under the provisions of this subsection shall not be deemed to be part of any tax paid or payable for the purposes of sections 59, 76 and 89 of this Act and sections 42, 51 and 52 of the Income Tax Management Act, 1994.".

28. In Part X (Refunds) of the principal Act the title "Refunds" shall be substituted by the following words: "Relief of Double Taxation", and immediately before section 76, there shall be inserted the following two new sections:

Addition of new Sections 74 and 75 to the principal Act.

"Four reliefs
of double
taxation.

74. There shall be four types of reliefs of double taxation, namely:

(a) double taxation relief, as provided in sections 76 to 78, both inclusive, of this Act;

(b) unilateral relief, as provided in sections 79 to 88, both inclusive, of this Act;

(c) relief in respect of Commonwealth income tax, as provided in section 89 of this Act; and

(d) a flat-rate foreign tax credit, as provided in sections 92 to 95, both inclusive, of this Act.

Interaction of
the reliefs.

75. In respect of any claim for relief of double taxation:

(a) the provisions concerning unilateral relief shall be applied in calculating a person's tax liability in those cases where, subject to the provisions of subsection (2) of section 82 of this Act, double taxation relief and relief in respect of Commonwealth income tax are not available to the person making the claim; and

(b) the provisions concerning the flat-rate foreign tax credit shall be applied in calculating a person's tax liability only in those cases where double taxation relief, relief in respect of Commonwealth income tax and unilateral relief, as governed by sections 79 to 88 of this Act, are not available to the person making the claim."

Amendment
of section 76
of the principal
Act.

29. Subsection (1) of section 76 of the principal Act shall be amended by the addition of the following further proviso at the end of the proviso thereto:

"Provided further that no arrangement shall have effect insofar as it applies to a collective investment scheme which is exempt from tax under the provisions of paragraph (s) of subsection (1) of section 12 of this Act and which collective investment scheme has not exercised its right of waiver of exemption under the provisions of subsection (5) of section 12 of this Act."

30. Section 77 of the principal Act shall be amended as follows:

Amendment
of section 77
of the principal
Act.

(a) in the proviso to subsection (2) thereof, for the words "in Malta for that year" there shall be substituted the words "in Malta for the year immediately preceding the year of assessment"; and

(b) in subsection (4) thereof, for the words starting from "less any tax payable" to the words "of this Act", there shall be substituted the words "less any tax payable by him under the provisions of sections 40, 69 and 73 of this Act".

31. In subsection (1) of section 78 of the principal Act, for the words "or to be repaid under section 79 of this Act, in respect of the tax deductible from any dividend paid by the company" there shall be substituted the words "or to be repaid under section 48 of the Income Tax Management Act, 1994, in respect of the tax deductible from any dividend paid by the company".

Amendment
of section 78
of the principal
Act.

32. Immediately after section 78 of the principal Act there shall be added the following new sections:

Addition of new
sections 79, 80,
81, 82, 83, 84, 85,
86, 87 and 88 to the
principal Act.

"Unilateral
relief.

79. In this Act the phrase "unilateral relief" means the relief given pursuant to the provisions of sections 80 to 88 of this Act, and in those sections the phrase "income tax" shall have the meaning attributed to it in subsection (1) of section 77 of this Act.

Availability of
unilateral
relief.

80. Unilateral relief may be available in respect of a claim for relief of double taxation where tax under this Act is computed by reference to income which:

(a) arises outside Malta; and

(b) is subject to any tax of a similar character to that imposed under the Income Tax Acts under the laws of a territory outside Malta.

For the purposes of paragraph (b) of this section, a tax shall not be prevented from being of a similar character by reason only that it is payable under the law of a province, state or other part of a country, or is levied by or on behalf of a municipality or other local body.

Relief by way
of credit.

81. The amount of the tax referred to in paragraph (b) of section 80 of this Act which is payable in a territory other than Malta is to be

allowed as a credit against the income tax chargeable in Malta in respect of the income under section 80 of this Act, and the amount of the income tax so chargeable shall be reduced by the amount of the credit:

Provided always that the credit shall not be allowed against income tax for any year of assessment unless the person entitled to the income is resident in Malta for the year immediately preceding the year of assessment.

Credit for the
underlying
tax.

82. (1) The provisions concerning unilateral relief shall, when applied in respect of a company as described in subsection (2) of this section and where the income under section 80 of this Act includes a dividend, have effect so that tax not chargeable directly or by deduction in respect of the dividend shall be deemed to fall under the provisions of paragraph (b) of section 80 of this Act and shall be taken into account in computing the credit to be given against income tax in respect of the dividend.

(2) The provisions of this section shall apply to a company if it controls, directly or indirectly, not less than ten per cent of the voting power in the company paying the dividend and where credit for underlying tax is not otherwise available under the provisions of section 77 of this Act.

Limitation on
the credit.

83. The credit given under section 81 of this Act shall not exceed the amount which would be produced by computing the income of a person in accordance with the provisions of this Act and then charging it to income tax at a rate ascertained by dividing the income tax chargeable (before allowance of credit pursuant to section 81 of this Act) on the total income of the person entitled to it, by his total income.

Amount of
total credit.

84. Without prejudice to the provisions of section 87 of this Act, the total credit to be allowed pursuant to section 81 of this Act to a person for any year of assessment shall not exceed the total income tax payable by him for that year of assessment, less any tax payable by him for that year of assessment under the provisions of sections 40, 69 and 73 of this Act.

Computation
of income.

85. In computing the amount of the income for purposes of unilateral relief:

(a) no deduction shall be allowed in respect of tax paid and referred to in paragraph (b) of section 80 of this Act, whether in respect of the same or any other income;

(b) where the income chargeable depends on the amount received in Malta the said amount shall be increased by the appropriate amount of the tax paid and referred to in paragraph (b) of section 80 of this Act in respect of the income;

(c) where the income includes a dividend and, in determining the amount of credit to be given under section 81 of this Act, credit is given for tax which is not chargeable directly or by deduction under section 82 of this Act, the amount of the income shall be increased by the amount of that credit.

Applicability
of
section 85.

86. The provisions of paragraphs (a) and (b) of section 85 shall apply to the computation of total income for the purposes of determining the rate of tax referred to in section 83 of this Act.

Dividends and
tax credits,
etc.

87. The provisions of subsections (8), (9) and (10) of section 77 and of section 78 of this Act shall apply *mutatis mutandis* in relation to unilateral relief as they apply to double taxation relief.

No relief
without proof.

88. Unilateral relief shall not be available to a person unless that person has proved to the satisfaction of the Commissioner that the income referred to in the provisions of paragraph (a) of section 80 of this Act has borne tax under the provisions of paragraph (b) of section 80 of this Act and has proved the amount of that tax."

33. Immediately after section 91 of the principal Act there shall be added the following new sections:

"Flat-rate
foreign tax
credit.

92. For the purposes of the Income Tax Acts, the flat-rate foreign tax credit shall be a credit given in respect of income or gains:

Addition of new
sections 92, 93, 94
and 95 to the
principal Act.

(a) which are receivable by a company resident in Malta; and

(b) which fall to be allocated to the foreign income account as defined in section 2 of this Act, but excluding profits resulting from dividends paid out of the foreign income account of another company resident in Malta; and

(c) in respect of which documentary evidence is available which indicates to the satisfaction of the Commissioner that such income or gains, as the case may be, fall to be allocated to the foreign income account. For the purposes of this requirement, a certificate issued by a certified public accountant and auditor shall be satisfactory documentary evidence.

Amount of
flat-rate
foreign tax
credit.

93. (1) The flat-rate foreign tax credit shall be twenty-five per cent of the income or gains receivable by the company within the provisions of section 92 of this Act, before any deductions or payments whatsoever are made from the said income or gains.

(2) In the case of income comprising dividends, capital gains, interest, royalties, rents and other income which are receivable by a company resident in Malta and derived, where applicable, from investments situated outside Malta, the flat-rate foreign tax credit shall be computed on the amount receivable, after deducting any foreign tax (charged directly or by way of withholding) but before any other deductions or payments whatsoever are made.

Operation of
the
flat-rate
foreign
tax credit.

94. (1) Where the flat-rate foreign tax credit is due in respect of the income or gains referred to in section 92 of this Act, it shall be added to the said income or gains. The aggregate sum so obtained shall be the amount that is chargeable to tax.

(2) For a year of assessment in respect of the income computed in accordance with the provisions of subsection (1) of this section, the amount of tax payable under this Act shall be reduced by the amount of the flat-rate foreign tax credit due in respect of that income:

Provided that where the amount of the flat-rate foreign tax credit exceeds eighty-five per cent of the tax payable computed by taking the tax payable on those profits which are to be allocated to the foreign income account and deducting therefrom any foreign tax set-off under the double taxation relief, Commonwealth income tax relief and unilateral relief provisions, the amount of such excess shall not be available for set-off or refund for any purposes of the Income Tax Acts.

(3) The provisions of subsections (8), (9) and (10) of section 77 and of section 78 of this Act shall apply *mutatis mutandis* in relation to the flat-rate foreign tax credit as they apply to double taxation relief.

Anti-avoidance provisions.

95. Where, in the opinion of the Commissioner, a series of transactions is effected with the sole or main purpose of reducing the amount of tax payable by any person by reason of the operation of the flat-rate foreign tax credit provisions as contained in sections 92 to 94 of this Act, such a person shall be assessable as if the provisions did not apply.

For the purposes of this section, a series of transactions shall mean any two or more corresponding or circular transactions carried out by the same person, either directly or indirectly, as the case may be."

34. In Part XI (Power to make rules) of the principal Act, there shall be inserted the following new section:

Addition of new section 96 to the principal Act.

"Power to make rules.

96. The Minister responsible for finance may from time to time make rules generally for carrying out the provisions of this Act and for such matters as are authorised by this Act to be prescribed."

35. In the title of the principal Act, there shall be deleted the words "and to Regulate the Collection thereof".

Change in title.

36. The Industrial Development Act, shall have effect subject to the amendment set out in the Second Schedule to this Act.

Amendment of Industrial Development Act, Cap. 325.

FIRST SCHEDULE**SCHEDULE IN TERMS OF SUBSECTION (1) OF SECTION 2
OF THIS ACT**

Number of parts, sections, subsections, paragraphs and sub-paragraphs thereof.

(Note: where the subsections, paragraphs or sub-paragraphs have not been renumbered, they do not appear in this Schedule.)

Prior to renumbering by this Act	As renumbered by this Act
Part I	Part I
s. 1	s. 1
2	2
Part II	-
s. 3	-
4	-
-	3
Part III	Part II
s. 5	s. 4
5(1)(d)	4(1)(c)
5(1)(e)	4(1)(d)
5(1)(f)	4(1)(e)
5(1)(g)	4(1)(f)
5(1)(h)	4(1)(g)
5A	5
-	6
6	7
7	8
8	9
9	10
10	11
Part IV	Part III
s. 11	s. 12
11(1)(ee)	12(1)(f)
11(1)(f)	12(1)(g)
11(1)(g)	12(1)(h)
11(1)(h)	12(1)(i)

Prior to renumbering
by this Act

As renumbered
by this Act

- s. 11(1)(i)
- 11(1)(j)
- 11(1)(k)
- 11(1)(l)
- 11(1)(m)
- 11(1)(mm)
- 11(1)(n)
- 11(1)(o)
- 11(1)(p)
-
-
- 12

- s. 12(1)(j)
- 12(1)(k)
- 12(1)(l)
- 12(1)(m)
- 12(1)(n)
- 12(1)(o)
- 12(1)(p)
- 12(1)(q)
- 12(1)(r)
- 12(1)(s)
- 12(5)
- 13

Part V

Part IV

- s. 13
-
-
-
-
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-
-
-
- 14
- 15
-
- 16

- s. 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

Part VI

Part V

- s. 17
- 18
- 19
- 20
- 21
-
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-
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-
-

- s. 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35
- 36
- 37
- 38
- 39
- 40
- 41
- 42

Prior to renumbering by this Act	As renumbered by this Act
s. 22	s. 43
22A	44
22B	45
23	46
24	47
25	48
26	49
26A	50
27	51
-	52
Part VII	Part VI
s. 28	s. 53
29	54
30	55
Part VIII	Part VII
s. 31	s. 56
-	56(7)
-	56(8)
31(7)	56(9)
31(8)	56(10)
31(9)	56(11)
31(10)	56(12)
31(11)	56(13)
31(12)	56(14)
31(13)	56(15)
31(14)	56(16)
31(15)	56(17)
31(16)	56(18)
31(17)	56(19)
Part VIIIA	Part VIII
s. 31A	s. 57
31B	58
Part IX	Part IX
s. 32	s. 59
33	60
-	61
-	62
-	63
-	64
-	65
-	66

Prior to renumbering by this Act	As renumbered by this Act
-	s. 67
-	67A
-	68
-	69
s. 34	70
35	-
36	-
37	-
38	-
39	-
40	71
41	72
42	73
Part X	-
s. 43	-
44	-
45	-
46	-
47	-
48	-
49	-
50	-
51	-
52	-
53	-
54	-
55	-
56	-
57	-
58	-
59	-
60	-
61	-
Part XI	-
s. 62	-
63	-
64	-
65	-
Part XII	-
s. 66	-
67	-
68	-

Prior to renumbering by this Act	As renumbered by this Act
s. 69	-
70	-
71	-
Part XIII	-
s. 72	-
73	-
74	-
74A	-
75	-
76	-
77	-
78	-
Part XIV	Part X
s. 79	-
-	s. 74
-	75
80	76
81	77
82	78
-	79
-	80
-	81
-	82
-	83
-	84
-	85
-	86
-	87
-	88
83	89
84	90
84A	90A
85	91
-	92
-	93
-	94
-	95
Part XV	-
s. 86	-
87	-
88	-
89	-

Prior to renumbering by this Act	As renumbered by this Act
s. 90	-
91	-
92	-
93	-
Part XVI	Part XI
s. 94	-
95	-
-	s. 96

SECOND SCHEDULE

(Section 36)

Amendment of Industrial Development Act, Cap. 325

Section 15 of the Industrial Development Act, Cap.325, shall be amended by the addition of the following proviso at the end thereof:

"Provided that if there is a change in the shareholding of the company such that the new shareholders would not have been 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 not been distributed at the end of the last financial year of the company preceding the date of change in shareholding less any profit distributions made 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."

Passed by the House of Representatives at Sitting No. 303 of the 20th July, 1994.

LAWRENCE GONZI
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives