

I assent.

(L.S.)

CENSU TABONE
President

16th July, 1993

ACT No. XVIII of 1993

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:—

1. (1) This Act may be cited as the Income Tax (Amendment) Act, 1993, 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) The provisions of this Act shall come into force as follows:

(a) the provisions of this section and of sections 6, 7 and 8 of this Act shall come into force upon the publication of this Act in the Gazette, in respect of the year of assessment commencing on the 1st January, 1994 and of subsequent years of assessment;

(b) the provisions of section 10 of this Act shall come into force on the date of the publication of this Act in the Gazette; and

(c) the provisions of the other sections of this Act shall be deemed to have come into force on the 25th November, 1992.

2. Immediately after the definition of “incapacitated person” in subsection (1) of section 2 of the principal Act there shall be inserted the following new definition:

Amendment of
section 2
of the
principal Act.

““income” except for the purposes of subsection (1) of section 5 and Part V of this Act shall include capital gains as defined in section 5A of this Act;”.

Amendment of
section 5
of the
principal Act.

3. Section 5 of the principal Act shall be amended as follows:

(a) in subsection (1) thereof, immediately after the words "specified hereafter" there shall be added the words "for the year of assessment commencing on 1st January, 1993 but only with respect to any capital gains made on or after the 25th November, 1992 and for each subsequent year of assessment upon the capital gains as defined in section 5A of this Act accruing or derived from Malta or elsewhere, and whether received in Malta or not, and"; and

(b) the existing two provisos to subsection (1) shall be substituted by the following new proviso:

"Provided that:

(i) in the case of income arising outside Malta to a person who is not ordinarily resident in Malta or not domiciled in Malta, the tax shall be payable on the amount received in Malta;

(ii) no tax shall be payable on capital gains arising outside Malta to a person who is not ordinarily resident in Malta or not domiciled in Malta or to a person who is charged to tax at the rate of 15 cents in the Lm as laid down in subsection (9) of section 31 of this Act;

(iii) in the case of any person who is charged to tax at the rate of 15 cents in the Lm as laid down in subsection (9) of section 31 of this Act, the tax shall be payable only on any income or capital gains arising in Malta and on any amount of income arising outside Malta and received in Malta."

Addition of
new section 5A
to the
principal Act.

4. Immediately after section 5 of the principal Act, there shall be introduced the following section:

"Capital
gains.

5A. (1) (a) Capital gains derived by a person from the transfer of a capital asset shall be charged under subsection (1) of section 5 of this Act. Notwithstanding anything contained in any other part of this Act, such gains shall be ascertained as laid down in this section and in such manner as may be prescribed. The capital gains to which the provisions of this section shall apply are:

(i) gains or profits arising from any transfer of the ownership or usufruct of any immovable property or the assignment or cession of any rights over such property; and

(ii) gains or profits arising from the transfer of the ownership or usufruct of or from the assignment or cession of any rights over any securities, business goodwill, copyright, patents, trademarks and tradenames; and

(b) In this section —

“transfer” includes any assignment, sale, emphyteusis or sub-emphyteusis, partition, donation, sale by instalments, and any alienation under any title, but does not include a transfer *causa mortis*; and

“securities” shall mean shares and stocks and such like instrument that participate in any way in the profits of the company and whose return is not limited to a fixed rate of return.

(2) For the purpose of ascertaining the gains or profits arising from any transfer of immovable property in terms of sub-paragraph (i) of paragraph (a) of subsection (1) of this section —

(a) there shall be deducted in such manner and amount as may be prescribed, the cost of acquisition, the inflation element, any ground rent paid on the property and for which a deduction is not due to the taxpayer under any other provision of this Act, maintenance, improvements, other expenses that have increased the value of the immovable property since it was acquired and other expenses directly related to the transfer;

(b) any transfer of immovable property by means of a Deed of Exchange shall be considered as if separate deeds of transfer were taking place between the parties to the deed;

(c) where immovable property is granted on emphyteusis or sub-emphyteusis for a period exceeding fifty years, or extendable to such periods, the following rules shall apply:

(i) where the premium exceeds the cost of acquisition in accordance with paragraph (a) hereof, such excess shall be deemed to be gains or profits;

(ii) where the cost of acquisition in accordance with paragraph (a) hereof exceeds the premium such excess shall be deductible from the gains or profits arrived at in accordance with sub-paragraph (iii) hereof;

(iii) no account shall be taken on any ground rent or increase in ground rent involved in the transfer unless and until such ground rent or increase in ground rent is redeemed, or the *directum dominium* or *sub directum dominium*, as the case may be, is transferred and in such case the gains or profits shall be deemed to be the price of redemption or sale less any deduction in accordance with sub-paragraph (ii) hereof;

(d) (i) a transfer shall not include a contract of partition where no owelty is due to any of the co-partitioners, and upon a transfer of any property by a co-partitioner the cost of acquisition shall be deemed to be the cost of acquisition of the property in question at the time of acquisition by the co-partitioner;

(ii) for the purposes of this paragraph only the immovable property held in common and partitioned shall be taken into account, and where money or other movables held in common is assigned to a co-partitioner in consideration for the reduction in the share of immovables assigned to him the partition shall be deemed to be one where an owelty has been paid;

(iii) where a person receives an owelty on a contract of partition he shall be deemed to have made capital gains as is equivalent to as much of the increase in the value of the property between the time of the acquisition by the co-partitioners and the time of partition, so however that tax on capital gains shall only be payable at the time of partition on such part of the capital gains made as is not included in the increase in the value of the property assigned to that co-partitioner between the time of acquisition by the co-partitioners and the partition, and where such co-partitioner transfers the property assigned to him the cost of acquisition shall be deemed to be the cost of acquisition of the immovables when acquired by the co-partitioners before the partition;

(iv) where a co-partitioner pays an owelty at the time of the partition, he shall be deemed to have made no capital gain at the time of the partition, and where such co-partitioner transfers any immovable property assigned to him in the partition, the cost of acquisition shall be deemed to be such portion of the sum of the cost of acquisition of the co-partitioner's share of all the immovables partitioned together with the owelty paid on the contract of partition, as is equivalent to the portion of the value of the immovable transferred to the total value of immovables assigned to the co-partitioner in the deed of acquisition;

(e) a donation shall be considered as a deemed sale made at the market value of the property at the time of transfer. Provided that no tax shall be payable where the donation is made by a person to:

(i) his spouse, descendants and ascendants in the direct line and their relative spouses, or in the absence of descendants to his brothers or sisters and their descendants, or

(ii) philanthropic institutions approved for the purposes of paragraph (e) of subsection (1) of section 11 of this Act;

(f) without prejudice to the provision of paragraph (e) of subsection (1) of section 11, where the property referred to in paragraph (e) of this subsection is disposed of by the donee within five years of the donation, the donee shall be charged on the gain ascertained in accordance with the provisions of this section by taking into account the cost of acquisition of the property at the time it was acquired by the donor; where the property is sold by the donee after the lapse of five years the cost of acquisition shall be deemed to be the value of the property as declared in the deed of donation;

(g) gains and profits relating to a transfer by donation shall mean the difference in the market value of the property at the time of the donation and the cost of acquisition of the property at the time of acquisition by the donor.

(3) For the purpose of ascertaining the gains or profits arising from any transfer of property in terms of subparagraph (ii) of paragraph (a) of subsection (1) of this section:

(a) the acquisition cost of shares acquired before the 25th November, 1992 shall be valued either on the Equity method of share valuation (net asset value) based on the last accounts submitted to the Commissioner by the 18th December, 1992 by taking into account the value of immovable property existing in the said accounts and adjusted in terms of paragraph (a) of subsection (2) of this section or on the actual purchase price, whichever is the higher;

(b) listed shares quoted on a Stock Exchange on the 25th November, 1992 shall be valued at the price existing on that date; and in the case of shares quoted in foreign currency, the rate of exchange (*middle rate* of the Central Bank) on that date shall be used;

(c) shares acquired after the 25th November, 1992, shall be valued on the cost of acquisition;

(d) where on a share transfer the rights pertaining to those shares are changed in any way, the transfer value of the shares shall be taken as if no such change has been made:

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

(f) the provisions of paragraphs (d), (e), (f) and (g) of subsection (2) of this section shall apply *mutatis mutandis* to this subsection.

(4) The provisions of paragraph (d) of subsection (2) shall apply *mutatis mutandis* where the assets partitioned include both assets under sub-paragraphs (i) and (ii) of paragraph (a) of subsection (1).

(5) The provisions of sub-paragraph (i) of paragraph (a) of subsection (1) of this section shall not apply to gains or profits relating to transfer of immovable property:

(a) where a copy of the relevant deed of transfer dated prior to the 25th November, 1992 or of the relevant promise to transfer or acquire also dated prior to the 25th November, 1992, made in favour of the transferee, has been duly registered with the Inland Revenue Department by the 1st December, 1992 and a certificate to that effect has been issued by the Commissioner or, in the case of a deed of transfer, the deed has been duly enrolled in the Public Registry by the 1st December, 1992;

(b) where the Commissioner is satisfied that the property or undivided part of the property has been owned and occupied for a period of at least three years as the transferor's own residence immediately preceding the date of transfer and provided that the property is disposed of within twelve months of vacating the premises;

(c) for the purposes of paragraph (b) of this subsection "own residence" means the principal residence owned by the taxpayer or his spouse being a dwelling house which has been the owner's only or main residence. A garage attached to or underlying a house or a block of flats, or a garage of not more than 30 square metres situated within five hundred metres of the dwelling house, and transferred through the same deed with the principal residence shall be deemed to be included as part of the residence. The period of residence includes the physical occupation of the premises and any absences from Malta such as on account of foreign employment, illness, holiday or study. Any part of the house which is used exclusively for commercial purposes for any time within two years of the transfer shall not be considered as "own residence" and this part shall be apportioned on the basis of the area occupied for this purpose as a proportion of the whole area of the relative dwelling house;

Cap. 88. (d) where the property was taken over by Government and in respect of which a declaration by the President of Malta has been issued in terms of the Land Acquisition (Public Purposes) Ordinance before the 25th November, 1992;

(e) where the property is assigned between spouses consequent to a judicial or consensual separation;

(f) where the property formed part of the community of acquests between the spouses or was otherwise owned in common between them and is assigned to one of the spouses on the dissolution of the community or is partitioned between the spouses, or the surviving spouse and the heirs of the deceased spouse; and

(g) where the property is assigned on emphyteusis for fifty years or less.

(6) The provisions of sub-paragraph (ii) of paragraph (a) of subsection (1) of this section shall not apply to gains or profits relating to:

(a) transfer of Malta Government Bonds and Stocks;

(b) transfer of listed securities of quoted companies on the Malta Stock Exchange; and

(c) property transferred in the circumstances listed in paragraphs (e) and (f) of subsection 5 of this section.

(7) Where a person is entitled to capital allowances under paragraphs (f) and (j) of subsection (1) of section 13 of this Act in respect of a capital asset which is sold at a price exceeding its cost of acquisition and any improvements made thereto, the cost of acquisition shall be computed on the cost of acquisition and the cost of any improvement made thereto.

(8) Where an asset referred to in paragraph (a) of subsection (1) of this section used in a business for a period of at least 3 years is transferred and replaced within one year by an asset used solely for a similar purpose in the business, any capital gains realised on the transfer shall not be taxed but the cost of acquisition of the new asset shall be reduced by the said gain. When the asset is disposed of without replacement, the overall gain shall take into account the transfer price and the cost of acquisition reduced as aforesaid.

(9) Where an asset is transferred from one company to another within a group of companies, 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 outside the group of companies, the base cost of the asset that would be considered is the original cost existing before the first transfer took place.

In this subsection, "a group of companies" means:

(a) a holding company and its subsidiaries: a company shall be deemed to be a subsidiary if more than fifty per cent of its voting shares are beneficially owned by its holding company: and

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

(10) (a) A capital loss shall be computed in the same manner as a capital gain.

(b) Any loss resulting from the transactions falling under subsection (1) of this section shall not be set off against other income for the year of assessment but shall be carried forward and set off against capital gains in respect of subsequent years of assessment until the full loss is absorbed.

(c) Bad debts incurred in relation to the said transactions proved to the satisfaction of the Commissioner to have become bad during the year immediately preceding the year of assessment, notwithstanding that such bad debts were due and payable prior to the commencement of the said year, shall be allowed as a deduction against the capital gains in the year in which they were incurred and if there are no gains for that year shall be carried forward and set off against future gains:

Provided that all sums recovered in respect of amounts previously allowed as bad debts shall be treated as gains for the purposes of this section and charged accordingly for the year in which they are recovered.

(11) The gains or profits from any transaction chargeable under paragraph (a) of subsection (1) of section 5 of this Act shall not be chargeable again as capital gains in relation to the same transaction under this section.

(12) (a) The market value of an asset shall be the price which that asset would fetch if sold on the open market at the time of transfer;

(b) where the market value of an asset is required to be determined by the Commissioner he may seek the opinion or assistance of any appraiser, architect or other valuer; and

(c) the person making the appraisal or valuation on behalf of the Commissioner shall for the purpose of carrying out the task so entrusted to him be deemed to be a person serving in the Department of the Commissioner and as having an official duty under this Act.

(13) (a) Where a person transfers an asset which, at the time of acquisition, formed an undivided part of a larger asset (hereinafter in this paragraph referred to as "the whole asset"), the deductions allowable in ascertaining the gain arising from that transfer shall be equivalent to such proportion of the cost of acquisition of the whole asset and of the other deductions that would be due in terms of this section had that person transferred the whole asset, as the consideration for the transfer bears at the time of the transfer to the market value of the whole asset.

(b) A reduction of the share capital of a company shall be deemed to be a transfer of such proportion of the holding of the owner as is equal to the proportion of the reduction of the capital of the company and shall constitute a gain or loss for the purpose of this section in the year in which such reduction is effected.

(c) On any subsequent transfer of the shares in question, the cost of acquisition shall be deemed to be the residual part of the cost of acquisition not taken into account on the reduction of capital.

(14) Where a transfer involving the exchange of shares on restructuring of holding upon mergers, demergers, amalgamation and reorganisations takes place it shall be deemed that no loss or gain has arisen from such transfer and the cost of acquisition upon a subsequent transfer shall be deemed to be the cost of acquisition of the original shares.

(15) Where a business or a partnership *en nom collectif*, as a going concern is incorporated into a limited liability company, which is beneficially owned to the extent of not less than 75% by the same persons who owned the business or the partnership *en nom collectif* and there is a transfer of assets it shall be deemed that no loss or gain has arisen from the transfer. Provided that where such assets are subsequently transferred by the company, the base cost of the assets that would be considered is the original cost existing before the first transfer took place.

(16) For the purposes of this section the value of the usufruct and of the *nuda proprietas* shall be computed in accordance with the provisions set out in the Duty on Documents and Transfers Act, 1993.

Amendment
of section 13
of the
principal Act.

5. In paragraph (g) of subsection (1) of section 13 of the principal Act, immediately after the words "cannot be set off against" and "wholly set-off against", there shall be added the words "capital gains or".

Amendment
of section 28
of the
principal Act.

6. Section 28 of the principal Act shall be amended as follows:

(a) subsections (3) and (4) thereof shall be deleted;

(b) subsection (5) shall be renumbered (3) and amended by deleting the words "subsections (2), (3) and (4) of this section" and substituting therefor the words "subsection (2) of this section"; and

(c) subsections (6), (7), (8) shall be renumbered (4), (5) and (6).

Amendment
of section 31A
of the principal
Act.

7. Section 31A of the principal Act shall be amended as follows:

(a) subsections (12), (13), (14) and (15) thereof shall be renumbered (15), (16), (17) and (18); and

(b) immediately after subsection (11) thereof, there shall be added the following new subsections:

"(12) In the case of an individual resident in Malta in the year immediately preceding the year of assessment, who proves to the satisfaction of the Commissioner that in the year immediately preceding the year of assessment a member of his household was suffering from one or more prescribed chronic illnesses, there shall be granted a tax rebate of twenty five liri in respect of each such member:

Provided that where two or more individuals are entitled to a deduction under paragraph (a) of subsection (1) of section 28 of this Act or to a tax rebate under paragraph (b) of subsection (2) of this section in respect of the same dependant or child, any rebate under this subsection in respect of the dependant or child shall be apportioned between the individuals in proportion to the deductions or rebates due to each under the said paragraphs.

(13) In subsection (12) of this section "member of his household" means the individual benefitting from the rebate herein contemplated, his wife, if living with or wholly maintained by him, and any other individual in respect of whom he is entitled to a personal deduction under paragraph (a) of subsection (1) of section 28 of this Act or to a tax rebate under paragraph (b) of subsection (2) of this section.

(14) For the purposes of subsections (12) and (13) hereof, any references to paragraph (b) of subsection (2) of this section shall be construed as being references to the said paragraph without having regard to the provisions of paragraph (i) of the proviso thereto."

8. In section 31B of the principal Act, there shall be substituted the words "seventy seven liri" for the words "fifty two liri".

Amendment of section 31B of the principal Act.

9. Subsection (1) of section 42 of the principal Act shall be amended by adding the words "or of section 74A" immediately after the words "of section 32".

Amendment of section 42 of the principal Act.

10. Immediately after the proviso in subsection (9) of section 55, of the principal Act there shall be added the following further proviso:

Amendment of section 55 of the principal Act.

"Provided further that the offence under this subsection shall continue to subsist until the offender shall have conformed and complied with the provisions of this section or of any rules made thereunder."

11. Immediately after section 74 of the principal Act, there shall be introduced the following section:

Amendment of section 74 of the principal Act.

"Addition of new section 74A of the principal Act.

74A. (1) Where any person derives gains or profits from the transfer of property referred to in subparagraphs (i) and (ii) of paragraph (a) of subsection (1) of section 5A of this Act, irrespective of whether such gains or profits are chargeable under the provisions of that section or under any other provision of this Act, he shall remit to the Commissioner within fifteen days of the relative transfer in such manner as may be prescribed, a provisional tax payment equivalent to 7% of the consideration relating to the transfer of the property or of the value of the donation:

Provided that in deeds of emphyteusis or sub-emphyteusis no account shall be taken of any yearly ground rent or sub-ground rent payable according to the deed.

(2) Provisional tax under this section shall not be payable in respect of:

(a) any transfers of assets not subject to tax on capital gains, or to tax under section 5 of the Act;

(b) transfer of property on deeds of partition;

(c) transfer of shares in public companies.

(3) The Commissioner may authorise any person chargeable under paragraph (a) of subsection (1) of section 5A of this Act to pay provisional tax under this section at a rate lower than that referred to in subsection (1) of this section, if it can be proved that the gain is less than 20% of the consideration or of the value of the donation as the case may be.

(4) Any provisional tax paid for the purposes of this section during or in respect of the year preceding any year

of assessment shall be set off for the purpose of collection against the tax charged in respect of the said year of assessment and if there is an excess after the aforesaid set off has been made, such excess shall be refunded in accordance with the provisions of section 79 of this Act. Such provisional tax shall be separate and distinct from that paid or payable under the provisions of section 74 of this Act except for persons who have gains or profits from immovable property falling under paragraph (a) of subsection (1) of section 5 of this Act.

(5) If any person fails to pay any provisional tax as provided under this section he shall be chargeable with the tax which should have been so paid and, in addition, with further tax as provided for in paragraph (a) of subsection (1) of section 75, and such tax and additional tax shall be recovered from such person in the same manner as other tax assessed and charged upon him.

(6) For the purposes of subsection (5) of this section a notice by the Commissioner to any person showing the tax which should have been paid and any additional tax to which he is liable for having failed to pay the tax shall, unless the contrary is proved, be sufficient evidence that the amount shown in the said notice is the amount due to be paid to the Commissioner by the said person.

(7) The powers conferred upon the Commissioner by subsections (5) and (6) of this section shall be in addition to any right conferred upon him to commence proceedings in respect of an offence under subsection (8) of this section.

(8) Any person who contravenes or fails to comply with the provisions of this section shall be liable on conviction to a fine (*multa*) of not less than Lm50 and not exceeding Lm500 or to imprisonment for any term not exceeding six months or to both such fine and imprisonment, and to a further fine (*multa*) of not less than Lm2 but not exceeding Lm10 for every day during which the offence continues after conviction. Provided that the Commissioner may compound any offence under this section and may before judgement stay or compound any proceedings thereunder.

(9) (a) The provisional tax payable under this section shall be made in such manner as may be prescribed.

(b) Notwithstanding anything that may be provided for in the rules where immovable property or any rights annexed thereto are transferred by means of a public deed the Notary publishing such deed shall have the same duties and liability in connection with the collection and payment of the provisional tax payable on such deed in accordance with this section as are by the Duty on Documents and Transfers Act, 1993, imposed on Notaries publishing such deeds, in connection with the duty chargeable and collected on transfers in accordance with that Act. Any failure by a Notary in connection with the collection and payment of

provisional tax under this section shall for all purposes of the Duty on Documents and Transfers Act 1993, be deemed to be a failure of his duties under that Act.

(c) Where any assets the transfer of which is subject to tax on capital gains under section 5A of this Act is sold in a judicial auction, the Registrar of Courts shall have the same duties with regard to the withholding and payment of the provisional tax under this section as are under section 66 of the Duty on Documents and Transfers Act, 1993 imposed on him in relation to the duty leviable on transfers *causa mortis* under the said Act.”.

12. In paragraph (c) of subsection (1) of section 75 of the principal Act, for the words “of sections 32, 42, 55,” there shall be substituted the words “of sections 32, 42, 55, 74A,”.

Amendment
of section 75
of the
principal Act.

13. (1) The provisions of section 10 of this Act shall apply in the case of any person who on the date of the coming into force of this Act had not conformed or had failed to comply with the provisions of section 55 of the principal Act or of any rules made thereunder, and who shall not have so conformed or complied within a month of the coming into force of this Act.

Transitory
provisions.

(2) No action shall be competent to any person against any Notary who before the publication of this Act has acted in conformity with any instructions or directive given by the Minister responsible for finance or the Commissioner, in respect of the collection and payment of provisional tax payable under section 74A of this Act, and has collected from such person any such provisional tax in excess of that which is payable in accordance with this Act. In any such case the Notary shall remit to the Commissioner any provisional tax so collected but not yet paid to the Commissioner on the date of publication of this Act within such time as may have been established in such instructions or directives.

(3) The Commissioner shall have an action against any Notary for the payment of any such provisional tax collected by him in excess of that due in accordance with this Act but which is in accordance with any instructions or directives as aforesaid.

Passed by the House of Representatives at Sitting No. 159 of the 7th July, 1993.

LAWRENCE GONZI
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives

