A 630

I assent.

(L.S.) **GEORGE VELLA**
President

18th July, 2023

ACT No. XXVII of 2023

AN ACT to amend the Commissioner for Revenue Act, Cap. 517.

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

Short title.

Cap. 517.

1. The short title of this Act is the Commissioner for Revenue (Amendment) Act, 2023, and this Act shall be read and construed as one with the Commissioner for Revenue Act, hereinafter referred to as "the principal Act".

General amendment of the principal Act.

2. In the principal Act, the words "Commissioner for Revenue" shall be substituted by the words "Commissioner for Tax and Customs" wherever they occur.

Substitution of article 1 of the principal Act.

3. Article 1 of the principal Act shall be substituted by the following new article:

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

Amendment of article 2 of the principal Act.

4. Article 2 of the principal Act shall be amended by the following:

(a) in the Maltese version, in the definition "il-Ministru" the words "għal finanzi;" shall be substituted by the words "għal

finanzi." and immediately thereafter the definition "is-Segretarju Permanenti" shall be deleted; and

(b) the definition "the Permanent Secretary" shall be deleted.

5. Article 3 of the principal Act shall be amended by the following: Amendment of article 3 of the principal Act.

(a) sub-article (2) thereof shall be substituted by the following new sub-article:

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

(b) in sub-article (3) thereof the words "and all references to the Commissioner of Inland Revenue, the Commissioner of Value Added Tax and the Comptroller of Customs in any law shall be read and construed as references to the Commissioner for Revenue" shall be deleted;

(c) immediately after sub-article (3) thereof there shall be added the following new sub-article:

"(3A) In any law, statutory form and judicial act, all references to the Commissioner of Inland Revenue, the Commissioner of Value Added Tax, the Comptroller of Customs and the Commissioner for Revenue shall be read and construed as references to the Commissioner for Tax and Customs and all references to the Office of the Commissioner for Revenue shall be read and construed as references to the Malta Tax and Customs Administration.";

(d) paragraph (c) of sub-article (4) thereof shall be deleted; and

(e) sub-articles (8) and (11) thereof shall be deleted.

6. Immediately after article 4 of the principal Act there shall be added the following new Part IIA and new articles 4A to 4G: Addition of new Part IIA and new articles 4A to 4G to the principal Act.

"PART IIA

Board of Governance

Establishment and functions of the Board of Governance.

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

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

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

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

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

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

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

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

Constitution of the Board.

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

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

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

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

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

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

(b) is a serving judge or magistrate;

(c) is legally interdicted or incapacitated;

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

(e) has been convicted of an offence against a revenue Act, or of an offence affecting public trust, or of theft or fraud, or of knowingly receiving property obtained by theft or fraud, or of bribery or of money laundering, or has been sentenced to a term of imprisonment for any other reason;

(f) has any conflict of interest.

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

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

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

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

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

Chairperson and deputy chairperson of the Board.

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

Conflict of interest.

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

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

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

(4) When a conflict of interest of a person is central to the functions of the Board, or is likely to affect his impartiality and objectivity in relation to the general functions of the Board, he shall tender his resignation.

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

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

Commissioner shall provide information to the Board.

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

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

Secrecy and confidentiality.

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

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

Proceedings of the Board.

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

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

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

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

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

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

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

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

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

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

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

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

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

Addition of new articles 10 to 12 to the principal Act.

7. Immediately after article 9 of the principal Act there shall be added the following new articles:

"Liability for damages.

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

Reference to revenue acts in judicial acts.

11. Any judicial act filed by the Commissioner and any judicial act filed by any person to be served upon the Commissioner or in proceedings against the Commissioner in terms or for the purposes of any revenue Act, shall clearly indicate in the heading, below the name of the court or tribunal in which it is filed, the revenue Act in question. A default of compliance with this provision shall not constitute grounds for the nullity of the judicial act or judicial proceedings in question provided that the defect is rectified by the party filing that act as soon as may be after it has been requested to do so by that court or by that tribunal.

Set-off of debts due to or by the Commissioner. Cap. 16.

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

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

Addition of new Schedule to the principal Act.

8. Immediately after the new article 12 of the principal Act, as added, there shall be added the following new Schedule:

"**SCHEDULE**
(Article 4F)

COMMISSIONER FOR TAX AND CUSTOMS ACT

Declaration in terms of article 4F

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

necessary for the purpose of duly executing my duties as member / the secretary (delete as necessary) of the said Board of Governance.

.....
Signature

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

.....
Registrar".

CONSEQUENTIAL AMENDMENTS

9. The Customs Ordinance shall be amended by the following: Amendment to the Customs Ordinance. Cap. 37.

(a) the words "Commissioner for Revenue" thereof shall be substituted by the words "Commissioner for Tax and Customs" wherever they occur; and

(b) in the Maltese version, in sub-article (1) of article 5 thereof the words "tal-Kummissarju" shall be substituted by the words "tal-Kummissarju tat-Taxxa u d-Dwana".

10. In the Income Tax Act the words "Commissioner for Revenue" shall be substituted by the words "Commissioner for Tax and Customs". Amendment to the Income Tax Act. Cap. 123.

11. In the Import Duties Act the words "Commissioner for Revenue" shall be substituted by the words "Commissioner for Tax and Customs" wherever they occur. Amendment to the Import Duties Act. Cap. 337.

12. In the Duty on Documents and Transfers Act the words "Commissioner for Revenue" shall be substituted by the words "Commissioner for Tax and Customs" wherever they occur. Amendment to the Duty on Documents and Transfers Act. Cap. 364.

13. In the Value Added Tax Act the words "Commissioner for Revenue" shall be substituted by the words "Commissioner for Tax and Customs" wherever they occur. Amendment to the Value Added Tax Act. Cap. 406.

A 640

Passed by the House of Representatives at Sitting No. 148 of the 12th July, 2023.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — ***Published by the Department of Information (doi.gov.mt) — Valletta***
Mitbugħ fl-Istamperija tal-Gvern fuq karta FSC — ***Printed at the Government Printing Press on FSC certified paper***

Prezz/*Price*
€1.08