



MALTA TAX LAW UPDATE

Update 14

EDITOR'S NOTE

An Act of Parliament, 3 Legal Notices, a Budget Speech, an important Bill and 15 judgements; we are being kept quite busy. Nonetheless the important changes we are expecting both at a legislative and judicial level have not yet 'happened'. We need to wait for the Budget Act to see how the proposed changes will be fully implemented. Changes relating to the tax treatment of immovable property situated in Malta will be a major departure from the current system. Our Courts delivered many judgments but none of the judgements delivered this quarter are expected to leave a profound impact.

Robert Attard
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▶ LEGISLATIVE DEVELOPMENTS	1
▶ ACTS OF PARLIAMENT.....	1.1
▶ LEGAL NOTICES.....	1.2
▶ BILLS.....	1.3
▶ JUDICIAL DECISIONS	2
▶ DECISIONS OF THE ART (INCOME TAX).....	2.1
▶ DECISIONS OF THE COURT OF APPEAL.....	2.2
▶ DECISIONS OF THE COURT OF MAGISTRATES AND THE FIRST HALL CIVIL COURT.....	2.3
▶ DECISIONS OF THE FIRST HALL CIVIL COURT (CONSTITUTIONAL JURISDICTION) AND THE CONSTITUTIONAL COURT.....	2.4
▶ DECISIONS OF COURT OF MAGISTRATES (CRIMINAL JUDICATURE) AND THE COURT OF CRIMINAL APPEAL	2.5

1. LEGISLATIVE DEVELOPMENTS

1.1 Acts of Parliament

Amendments to the ITA

ACT No. XXXVII of 2014

This Act introduces a new tax exemption on certain interest income. The relevant article [12 (1) (x) ITA] is being reproduced hereunder:

"(x) interest payable to an individual in his own name by:

(i) a person carrying on the business of banking in accordance with the laws of any European Union Member State in respect of a sum of money deposited into a special individual saving account recognised as such by the Commissioner, and

(ii) interest payable to an individual in his own name by the Government of a European Union Member State or by any agency thereof, by a corporation or authority established by law, or in respect of a public issue by a company, entity or other legal person howsoever constituted and whether resident in Malta or otherwise, where the relevant interest-bearing securities are credited for the benefit of the individual to a special individual saving account recognised as such by the Commissioner:

Provided that the aggregate amount of the deposits into such account and the value of the interest-bearing securities credited for the benefit of the individual into such account do not together exceed one thousand euro (€1,000) in any year or such other amount as may be prescribed by the Minister from time to time."

The Act also introduced new rules relating to the treatment of undeclared rental income. The Act introduced Article 31D (6) ITA providing that 'where an individual has failed to declare rental income derived from a tenement leased as a residence or garage during the relevant period in any return and such individual opts to declare such rental income in the relevant form which is required to be submitted by not later than the 30th June 2015, and pays tax at the applicable rate it shall be deemed that such rental income was received during basis year 2014.' When an individual exercises the said option and declares rental income for more than one year, the total amount subject to the tax referred shall not exceed an amount determined as follows:

$$Y = (a / b) \times 2$$

Where –

(a) "Y" represents the amount to be determined;

1. LEGISLATIVE DEVELOPMENTS

(b) (b) "a" is the total rental income declared in the said relevant form;

(c) "b" is the number of years comprised in the relevant period in respect of which rental income is declared:

Where, following an enquiry there is evidence that an individual who exercises the option has overstated the amount of rental income declared in the relevant form for the purpose of obtaining a tax advantage, the total amount of rental income declared in the said form shall be subject to tax at the rate of 15%.

The Act introduces a beneficial tax treatment of retirement schemes too by introducing Article 57 ITA providing for a tax credit equal to the lower of:

(a) fifteen per centum (15%) of the aggregate of any contributions made or premiums paid by a person during the year immediately preceding a year of assessment in respect of membership in any personal retirement schemes as defined in the Special Funds (Regulation) Act or any Act substituting the said Act, or a policy of insurance held with a company authorised to carry on long term business under the Insurance Business Act; and

(b) one hundred and fifty euro (€150) or such other amount as may be prescribed by the Minister from time to time.

The tax credit applies to any person who is a member of, and makes contributions to, any one or more personal retirement schemes or pays a premium in relation to a policy of insurance in the year immediately preceding the year of assessment,

The credit shall only be allowed in respect of qualifying schemes or policies of insurance as may be prescribed by the Commissioner and if the details of such person and amounts contributed by him to the personal retirement scheme/s or the premiums paid by him in relation to the policy of insurance in the relevant year are confirmed by a certificate issued by a licence holder in such format and content as determined by the Commissioner.

In the case of a married couple resident in Malta, and irrespective of whether or not the responsible spouse has opted for a separate computation each of the spouses may claim the credit. The credit shall only be available in respect of the income tax chargeable for the year during which the contribution was made by a person to personal retirement scheme/s or the premiums paid by him in relation to the policy of insurance, and such credit may not be carried forward to subsequent years if it is not so utilised.

The income in respect of which a credit is granted shall be deemed to constitute the first part of that person's total income for the relative year of assessment. No refund of tax may be claimed by a person for an amount which is equal to the credit allowed under this article where such refund would have been otherwise due as a result of the person having availed himself of the credit in terms of this article.

1. LEGISLATIVE DEVELOPMENTS

1.2 Legal Notices

L.N. 332 of 2014 INCOME TAX ACT(Cap. 123) Double Taxation Relief (Taxes on Income) (The United Mexican States) Order, 2014(L.N. 239 of 2013)

This LN brings the treaty with Mexico into force.

L.N. 393 of 2014 INCOME TAX MANAGEMENT ACT (CAP. 372) Letting of Residential Tenement (Forms) Rules, 2014

This LN creates the tax return wherein rental income is to be declared.

L.N. 410 of 2014 INCOME TAX ACT (CAP. 123) DUTY ON DOCUMENTS AND TRANSFERS ACT(CAP. 364) Rulings (Income Tax and Duty Treatment of Mergersand Divisions) (Amendment) Rules, 2014

This Legal Notice extends the remit of the Legal Notice to reorganisations, demergers, amalgamations and reorganisa-

1.3 Bills

1.3.1 Bill 74 of 2014 - Budget Measures Implementation Act, 2015

The Budget Bill proposes some important changes to the Income Tax Act. The main proposals contained in the Bill refer to the following matters:

Changes in definitions;

Changes relating to the tax treatment of transfers of immovable property situated in Malta;

A 25% tax rate will apply instead of the 29% tax rate.

1.3.1.1 Changes in Definitions

The Bill proposes a new definition of the term 'company'. It would appear that partnerships en nom collectif, partnership en commandite and partnerships regulated by the Civil Code, EEIGs will be granted the right to elect to be treated like companies.

The Bill proposes changes in the definition of 'married couple', 'married' and 'spouse'. The proposed changes will seek to align the tax treatment of married persons with that of partners to a civil union.

1.3.1.2 Changes relating to the tax treatment of transfers of immovable property situated in Malta

These proposals suggest that there will be an overhaul of the current system. The main proposals refer to the introduction of new withholding tax rates on the disposal of property situated in Malta.

An 8% withholding tax rate will apply to transfers of property of property outside a designated area;

A 7% rate will apply to certain transitory cases;

A 5% rate applies to transfers not made in the course of a trade done by individuals.

A 10% rate will apply to certain transfers of property acquired before January 2004.

Special rules will apply to projects.

2. JUDICIAL DECISIONS

2 Judicial Decisions

2.1 Decisions of the Administrative Review Tribunal

Rikors Numru. 47/2009 Alpine Rent-a-Car Limited Vs Kummissarju tat-Taxxi

This appeal was an appeal against an assessment to duty on documents. The Tribunal found that the value declared in the deed of transfer was inferior to its fair commercial value but the Tribunal observed that the value declared was not less than 85% of fair market value. Therefore, the Tribunal upheld the appeal cancelling the assessment.

Rikors Numru. 169/2012 Dominic Bonnici Vs Id-Direttur Generali (Taxxa fuq il-Valur Mizjud)

This was an appeal against an assessment to VAT. In the course of the proceedings, the parties filed a joint note wherein the Department revised its assessment and the taxpayer revoked certain claims to input VAT. The Tribunal's judgement followed the contents of the joint note.

Rikors Numru. 68/2009 Malcolm Ellul Vs Kummissarju tat-Taxxi

This was an appeal from an assessment to duty. The Tribunal decided to rely on a series of invoices that had not been presented under oath. Citing old judgements it concluded that when the veracity of a document was not being questioned, such document did not have to be confirmed under oath. The Tribunal held that the invoices were credible, cancelling the assessment.

2.2 Decisions of the Court of Appeal

Appell Civili Numru. 201/2012/1 Patrick Cellars Limited (C 15930) u Vincent Cachia (ID 580676M) Vs Il-Kummissarju tat-Taxxi

Taxpayer had made some incorrect declarations in a customs document and the authorities charged him an administrative penalty. Taxpayer requested the Courts to cancel the penalty because he said that the error had been due to a genuine oversight. The authorities argued that taxpayer had been reckless. The First Court held that it was convinced that taxpayer was not acting in bad faith. Furthermore, it referred to the concept of due diligence contained in the Civil Code concluding that taxpayer had not been negligent. The tax authorities appealed the judgment on the merits and on the grounds that, in determining due diligence, the first court's reference to the Civil Code was out of place. The Court rejected the appeal on the grounds that the guiding principles on negligence contained in the Civil Code applied to tax cases too.

2. JUDICIAL DECISIONS

Appel Civili Numru 6/2012 EURO BEVERAGES LIMITED Vs DIRETTUR GENERALI TAT-TAXXI FUQ IL-VALUR MIZJUD gia KUMMISSARJU TAT-TAXXA FUR IL-VALUR MIZJUD

This case involved an appeal from a decision of the Eco Appeals Tribunal. The Court of Appeal rejected the appeal application because the appeal was on a point of facts and appeals to the Court are limited to points of law.

2.3 Decisions of the Court of Magistrates and the First Hall Civil Court

Rikors Numru. 790/2013 Direttur Generali (Taxxi Interni) Vs Rene' Holmgren

This case involved executive proceedings filed in terms of the Mutual Assistance Directive by the Director General (Income Tax) on behalf of Sweden.

Rikors Numru. 979/2012 Direttur Generali tat-Taxxa fuq il-Valur Mizjud VS Raymond Cauchi (170258M), Wong Xuan (20710A) u Wong Xhen Yong (20708A) f'isimhom personali kif ukoll bhala Diretturi ghan-nom u in rapprezentanza tal-kumpanija Xiang Long Company Limited (C24687)

This case involved a challenge to an executive title obtained by the VAT Department. The Company's Chinese director contested the executive title on the basis that he had been defrauded by the Maltese director (the Maltese director had been charged with fraud but had been acquitted). The Chinese director claimed that he should not have been held liable for VAT because he was unaware of the demand notes sent by the VAT Department. The Court noted that the Chinese director had not been served with a demand note. In addition, the director could barely speak Maltese. In the Court's opinion, the Maltese director was solely responsible for unpaid VAT because he had taken advantage of the Chinese director. The Court cancelled the executive title. Interestingly, the Court referred to the Caruana Turner Case citing it as a major precedent but recently the Caruana Turner judgement had been overturned in appeal (an application for a re-trial had been filed).

Appell Civili Numru. 327/2011/1 Kummissarju tat-Taxxi Interni Vs Dr Pierre Lofaro

This case involved a challenge to an executive title obtained by the Inland Revenue Department. Taxpayer's case was rejected because his original application was found to be null and void.

Rikors Numru 220/2011 Nazzareno Vassallo ghan-nom u in rapprezentanza tas-socjeta Vassallo Builders Group Limited vs Il-Kummissarju tat-Taxxi Interni

This case involved an assessment to duty. The Tribunal's architect did not agree with the valuation of the property issued by the Department's Architect. The Tribunal's valuation was closer to that of the taxpayer than it was to that of the tax authorities. Given the 15% margin of tolerance, the appeal was upheld and the assessment was cancelled.

Rikors Numru. 135/2012 Old Palace Investments Limited Vs Kummissarju tat-Taxxa fuq il-Valur Mizjud

This is an important VAT appeal which the VAT Department is interpreting as a judgment restricting the right of appeal. The Department is interpreting this judgement as implying that appeals against fines and penalties incorporated in an assessment are not allowed. This point has been raised in an appeal that is presently pending in front of the Administrative Review Tribunal. In the Old Palace case the Tribunal held that a reference appeal may only be filed after correspondence with the department is entertained. On the merits, the Tribunal held that, in any case, taxpayer had failed to bring evidence that non-compliance with the law was due to a good and sufficient cause.

2. JUDICIAL DECISIONS

Citazzjoni Numru. 506/2012 Edwards, Lowell Company Limited (C - 373) vs Direttur Generali VAT

This case involved a challenge to an executive title. The judgment has been appealed from.

2.4 Decisions of the First Hall Civil Court (Constitutional Jurisdiction) and the Constitutional Courts

Rikors Numru. 23/2012 Castle Hill Limited (C14270) Vs L-Onorevoli Prim'Ministru

The time-limit within which this judgement may be appealed from is still running. A Gozitan taxpayer alleged discriminatory tax treatment on the grounds that the VAT Department had allowed his Maltese competitor to apply a reduced rate of VAT. The Court rejected the case on the merits. According to the Court, taxpayer had not brought evidence of discrimination.

Rikors Numru. 44/2013 Emanuel sive Noel u Graziella, konjugi Formosa (bil- Karta tal-Identita' Numru 340071M u 131078M rispettivament) Vs (1) Ministru tal-Finanzi; (2) Direttur-Generali (Taxxi Interni)

This case involved a taxpayer who filed a constitutional application whilst his appeal from a notice of assessment was still pending in front of the Tribunal. Taxpayer's case involved an assessment to duty. Taxpayer was, qua seller, being assessed to duty on a contract of transfer. Taxpayer's main argument was that the tax was not due by him but by buyer who had since left the island. Taxpayer filed a case based on a violation of his right to property. The Court held that taxpayer had filed his case somewhat prematurely and did not find a violation of the right to property rejecting the application. Nonetheless it referred to the rule that taxes and tax measures must be both reasonable and proportional.

Rikors Numru. 787/2014 Direttur Generali (Taxxi Interni) vs Carl-Johan Leonard Hagberg (detentur tal-karta tal-identita' numru 108422 A)

This case involved a tax collection procedure filed by the Revenue on behalf of another Member State.

2. JUDICIAL DECISIONS

Rikors Numru. 44/2012 Mario Borg -vs- L-Onorevoli Prim Ministru; LAVukat Ġenerali; Il-Kummissarju tat-Taxxa fuq il-Valur Mizjud; u Kummissarju tal-Pulizija

This case involved a Constitutional Appeal filed on the basis of the violation of the ne bis in idem principle. The Court refused to hear the case, rejecting it as inadmissible because it felt that that taxpayer had not yet used remedies of ordinary law.

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