



MALTA TAX LAW UPDATE

UPDATE 13

EDITOR'S NOTE

It has been an eventful summer that witnessed the publication of a number of important legal notices including especially, the Investment Registration Scheme. From a conceptual point of view, the Pensions Bill proposes some interesting changes.

A number of recent legal notices incorporate rules similar to Rule 5 (4) GRPR. The remittance basis is not what it used to be. Rule 5 (4) of the GRPR Rules of 2013 incorporated a rule which I found to be somewhat pretentious because I am uncomfortable with subsidiary legislation that purports to create derogations from main legislation. The rule introduced in 2013 provided that,

“(4) Notwithstanding any provision in the Act, an individual who falls under paragraphs (a) or (b) of the definition of "long-term resident of Malta" in rule 2, shall be taxable on any income accruing in or derived from Malta or elsewhere, and whether received in Malta or not in respect of income mentioned in article 4 of the Act and subject to tax at the rates mentioned in article 56 of the Act.”

I suspect that many practitioners will overlook the significance of these major amendments introduced by these legal notices. The remittance basis of taxation will no longer apply to Permanent Residents of Malta and Long-term Residents.

Meanwhile, judgements dealing with the personal liability of directors are a cause of concern. Clarity and consistency is required.

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25/08/14

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1. LEGISLATIVE DEVELOPMENTS

1.1 ACTS OF PARLIAMENT

1.1.1 AMENDMENTS TO THE ITA

Act No. XXII of 2014, An ACT to amend the Investment Services Act

This Act is entitled 'Act No. XXII of 2014, An ACT to amend the Investment Services Act' but it amends the ITA too by adding a proviso to the commutation of pension exemption (recently limited to 30% of the total pension). The text of the proviso is reproduced hereunder:

"Provided that in the case of commutation of pensions in relation to retirement schemes, licensed, registered or otherwise authorised under the Special Funds (Regulation) Act or any Act replacing the same, the maximum capital sum that may benefit from this exemption shall be as provided under that Act, including any regulations or directives issued thereunder;".

1.1.2 AMENDMENTS TO THE ITMA

None of which we are aware of.

1.1.3 AMENDMENTS TO THE DDTA

None of which we are aware of.

1.1.4 AMENDMENTS TO THE VATA

None of which we are aware of.

1.1.5 THE COMMISSIONER FOR REVENUE ACT

1.1.5.1 Act No. XXIII of 2014 AN ACT to amend the Commissioner for Revenue Act

This Act creates special rules relating to notification of judicial acts (the revenue act in question must be indicated under the Court's name whenever an act is either issued by the Commissioner or served to him). The Act establishes the Revenue Remissions Supervisory Board for the purpose of providing oversight on the remission of amounts due to revenue departments under the revenue acts.

The Act amends the Income Tax Act, Article 9B providing for the most recent Investment Registration Scheme.

1. LEGISLATIVE DEVELOPMENTS

1.2 LEGAL NOTICES

L.N. 256 OF 2014 EXTERNAL TRANSACTIONS ACT (CAP. 233) INVESTMENT REGISTRATION SCHEME REGULATIONS, 2014

This Legal Notice provides for a tax amnesty. The amnesty applies to Income Tax and not to VAT. The Scheme applies to residents of Malta subject to tax in Malta who own eligible assets without declaring the relevant income for the purposes of the relevant laws. This Legal Notice grants them the right to regularise their position by registering such assets under the Scheme by submitting a form and paying a registration fee.

Registration of eligible assets is executed through appointed registration agents namely credit institutions licensed in Malta under the Banking Act, financial institutions licensed in Malta under the Financial Institutions Act, stockbrokers licensed under the Investment Services Act, and persons holding a category 2 or category 3 Investment Services Licence granted under the Investment Services Act and in each case appointed as registration agents by the Central Bank of Malta.

Registration of eligible assets under this Scheme is open to eligible assets held in or outside Malta on 4 November 2013 and still belonging to the applicant or to a fiduciary on behalf of or at the request of the applicant on date of registration.

The registration fee is equivalent to:

- a) in the case of immovable property 7.5% of the original cost on date of purchase of the registered asset;
- b) in the case of all other eligible assets, 7.5% of the current market value of the registered eligible assets. In the event that the applicant can provide documentary evidence that the acquisition cost exceeded the current market price, the applicable registration fee shall be charged on such acquisition cost.

In respect of eligible assets referred to in paragraphs (a) and (b) which were held abroad on 4 November 2013 and are still held abroad on date of registration, a rate of 5% is charged where the applicant makes an irrevocable commitment to repatriate the relative proceeds within two weeks after date of registration and to invest such funds in locally listed securities or in deposits with domestic banks, subject that the applicant shall provide to the registration agent within three weeks from date of registration documentary evidence of such repatriation and local investment, and that the repatriated assets will be retained locally for at least three years after date of registration.

L.N. 259 OF 2014 INCOME TAX ACT (CAP. 123) DOUBLE TAXATION RELIEF (TAXES ON INCOME) (THE PRINCIPALITY OF LIECHTENSTEIN) (AMENDMENT) ORDER, 2014

This Legal Notice brings into force the Double Tax Treaty with Liechtenstein with effect from 1 July 2014.

1. LEGISLATIVE DEVELOPMENTS

L.N. 260 OF 2014 INCOME TAX MANAGEMENT ACT (CAP. 372) FINAL SETTLEMENT SYSTEM (FSS) (AMENDMENT) RULES, 2014

This L.N. provides for a new FS4 form. It provides for emoluments that are exempt from tax.

L.N. 267 OF 2014 INCOME TAX ACT (CAP. 123) GLOBAL RESIDENCE PROGRAMME (AMENDMENT) RULES, 2014

This LN clarifies that, for the purposes of the obligation to retain a property holding, dependants and household staff can reside with the beneficiary in the property used. The LN establishes that the linguistics skills obligation is met if applicant 'can adequately communicate in one of the official languages of Malta'.

More, importantly, long-term residents are being excluded from the remit of the remittance basis of taxation. This LN adds Sub-rule 4 (a) to Rule 5, a rule that indirectly modifies Article 4 ITA. Our pretentious 4 (a) provides that:

"Notwithstanding any provision in the Act, an individual who falls under the definition of "long-term resident" in rule 2 shall be taxable on any income accruing in or derived from Malta or elsewhere, and whether received in Malta or not in respect of income mentioned in article 4 of the Act and subject to tax at the rates mentioned in article 56 of the Act."

Major obligations have been imposed on authorised registered mandatories who are being bound by audit and notification obligations. Failures to abide by obligations create liability to an administrative penalty of EUR10,000. With respect to the levying of this penalty, no judicial review mechanisms seem to be envisaged.

L.N. 268 OF 2014 INCOME TAX ACT (CAP. 123) HIGH NET WORTH INDIVIDUALS - EU/EEA/ SWISS NATIONALS (AMENDMENT) RULES, 2014

This LN provides that the Commissioner shall not receive any applications for special tax status under these rules closing the scheme to new applicants but this measure must be read in conjunction with the creation of the new Resident Programme Rules.

L.N. 269 OF 2014 INCOME TAX ACT (CAP. 123) MALTA RETIREMENT PROGRAMME (AMENDMENT) RULES, 2014

This Legal Notice amends the unsuccessful MRPR. 'Household staff' is being allowed to reside with the beneficiary without prejudicing the status of the property as a property holding. Thresholds have been tweaked. More importantly, this new LN prescribes that:

"(4) (a) Notwithstanding any provision in the Act, an individual who applies for or acquires a permanent residence certificate in terms of article 7 of the Free Movement of European Union Nationals and their Family Members Order, will be taxable on any income accruing in or derived from Malta or elsewhere, and whether received in Malta or not in respect of income mentioned in article 4 of the Act and subject to tax at the rates mentioned in article 56 of the Act.'

1. LEGISLATIVE DEVELOPMENTS

Auditing and reporting obligations are being imposed on authorised registered mandatories. Fines for non-compliance are contemplated.

L.N. 270 OF 2014 INCOME TAX ACT(CAP. 123) THE RESIDENCE PROGRAMME RULES, 2014

This LN creates a new tax residence scheme that uses the familiar legal structure adopted in the HQPR, HNWI Rules, the GRPR, MRPR, QEIC and RPEFE.

Basically, the Scheme contemplated in LN 270 is a GRPR Scheme for EU, EEA and Swiss nationals not being Maltese nationals. Arguably, the most important rule in this LN is rule that over-rides Article 4 ITA. Rule 5 (4) prescribes that:

‘Notwithstanding any provision in the Act, an individual who falls under the definition of "permanent resident of Malta" in rule 2, will be taxable on any income accruing in or derived from Malta or elsewhere, and whether received in Malta or not in respect of income mentioned in article 4 of the Act and subject to tax at the rates mentioned in article 56 of the Act.’

The term "permanent resident of Malta" is defined as meaning:

- a) a person who has right of permanent residence in terms of article 6 and is in possession of a permanent residence certificate issued in terms of article 7 of the Free Movement of European Union Nationals and their Family Members Order; or
- b) a person who applies for right of permanent residence in terms of article 6 of the Free Movement of European Union Nationals and their Family Members Order;

L.N. 272 OF 2014 INCOME TAX ACT (CAP. 123) INCOME TAX EXEMPTION (PHILANTHROPIC WORK) NOTICE, 2014

This LN exempts from income tax the Emergency Response Rescue Corps (ERRC)

L.N. 273 OF 2014 COMMISSIONER FOR REVENUE ACT (CAP. 517) REVENUE DEPARTMENT POSTS (EQUIVALENCE OF CERTAIN REFERENCES) (AMENDMENT) REGULATIONS, 2014

This Legal Notice clarifies that all tax departments other than the Customs Department will fall directly under the Commissioner for Revenue.

L.N. 290 OF 2014 INCOME TAX ACT(CAP. 123)EXCHANGE OF INFORMATION (UNITED STATES OF AMERICA)(FATCA) ORDER, 2014(L.N. 78 OF 2014)

This LN notifies that FATCA (published as a Schedule to Legal Notice 78 of 2014) has entered into force on 26 June 2014.

1. LEGISLATIVE DEVELOPMENTS

1.3 BILLS

BILL ENTITLED AN ACT TO AMEND THE INCOME TAX ACT, CAP.123.

The Bill proposes the establishment of a Board to be known as the Remission of Interest Board for the purpose of making recommendations to the Commissioner with regard to any application for the remission of interest payable in terms of the ITA and the VATA.

The Bill proposes 2 important changes to the Income Tax Act consisting in:

The addition of Article 12 (1) (x) ITA exempting from tax:

- a) "(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.

- b) Article 57 ITA providing for a tax credit with respect to contributions paid to personal retirement schemes. The proposed new Article 57 provides that an amount which is equal to the lower of:

- (i) 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

€150 or such other amount as may be prescribed by the Minister from time to time,

is to be allowed as a credit against the income tax chargeable in Malta 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, and the amount of the income tax so chargeable shall be reduced by the amount of the credit.

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

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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 in terms of article 50, each of the spouses may claim the credit.

The credit will 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 where such refund would have been otherwise due as a result of the person having availed himself of the credit.

For the purposes of this article 'licence holder' is defined as meaning 'any person, whether a natural person or otherwise, who holds a licence under the Special Funds (Regulation) Act or any Act substituting the said Act, or to carry on long term business under the Insurance Business Act, and is recognised by the Commissioner for the purpose of issuing certificates in terms of this article.'

2. JUDICIAL DECISIONS

2.1

DECISIONS OF THE ADMINISTRATIVE REVIEW TRIBUNAL

RIKORS NUMRU. RIKORS NUMRU. 45/2013 DIRETTUR GENERALI TAXXA VALUR MIZJUD VS DIRETTUR ALFAVIL CONSTRUCTION LIMITED

This judgement is a partial judgement delivered with respect to a preliminary plea raised by the taxpayer. A VAT assessment was served to a company while it was in liquidation and the company argued that notification was invalid because assessments were raised in the name of the company via a covering letter addressed to the company's directors. It transpired that assessments were notified to liquidator's address as instructed by the liquidator. The Tribunal held that assessments had been correctly served.

RIKORS NUMRU 48/09 (GIA APPELL NUMRU 12/03) KENNETH VASSALLO VS DIRETTUR GENERALI (TAXXI INTERNI)

The ART cancelled an assessment to duty on documents because the ART was not satisfied with the Government Architect's valuation. Furthermore, it found that the fact that the same property has been subject to an assessment to property transfers tax that had become final and conclusive vis-à-vis the sellers of the property was entirely irrelevant.

RIKORS NUMRU 220/2011 NAZZARENO VASSALLO GHAN-NOM U IN RAPPRESENTANZA TAS-SOCIETA VASSALLO BUILDERS GROUP LIMITED VS IL-KUMMISSARJU TAT-TAXXI INTERNI

The ART cancelled an assessment because it disagreed with the Government Architect's evaluation of the property.

2.2

DECISIONS OF THE COURT OF APPEAL

APPELL CIVILI NUMRU. 95/2011/1 SALVINA SIVE SYLVIA BUGEJA VS DIRETTUR GENERALI (TAXXI INTERNI)

This case involved a dispute over the notification of an assessment which had become final and conclusive. The Court held that appellant had failed to prove that she had not been with the tax document.

2.3

DECISIONS OF THE COURT OF MAGISTRATES AND THE FIRST HALL CIVIL COURT

No relevant judgement of which we are aware of.

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2.4

DECISIONS OF THE FIRST HALL CIVIL COURT (CONSTITUTIONAL JURISDICTION) AND THE CONSTITUTIONAL COURTS

RIKORS NUMRU. 33/2013 ANGELO ZAHRA VS L-ONOREVOLI PRIM MINISTRU ET

An appeal against this judgement is pending. In this judgement, the first-tier Court upheld the validity of FSS provisions on personal liability.

2.5

DECISIONS OF THE MAGISTRATES COURT (CRIMINAL JUDICATURE) AND COURT OF CRIMINAL APPEAL

APPELL KRIMINALI NUMRU. 27/2011 IL-PULIZIJA (SPT. A.P. MIRUZZI) VS DESMOND MIZZI

The Court of Appeal acquitted the accused, a director of a limited liability company that had failed to file its tax returns because appellant had proven, on a balance of probabilities that he had acted diligently.

3. DECISIONS OF THE ECtHR

3.

DECISIONS OF THE ECtHR

CASE OF GLANTZ V. FINLAND (APPLICATION NO. 37394/11)

This case involved the non bis in idem principle. A Finish taxpayer who failed to comply with Finnish Tax law was held liable to a penalty contemplated in the Finnish criminal code system and a tax surcharge. The ECtHR concluded that the tax surcharge was essentially a criminal penalty within the meaning of the ECHR and a taxpayer cannot be punished twice for the same offence. The ECtHR found a violation of Article 4 of Protocol No. 7.

CASE OF NYKÄNEN V. FINLAND (APPLICATION NO. 11828/11)

The merits and conclusions of this judgement are similar to those in the Glantz case discussed above.

CASE OF MAGYAR KERESZTÉNY MENNONITA EGYHÁZ AND OTHERS V. HUNGARY (APPLICATION NOS. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 AND 56581/12)

Applicants complained under Article 11 (right of association) read in the light of Article 9 (freedom of thought) that the de-registration of their church and the discretionary re-registration amounted to violations of their rights to freedom of religion and association. Registration as a church was linked to tax benefits. The ECtHR concluded that, in removing the applicants' church status altogether rather than applying less stringent measures, in establishing a politically tainted re-registration procedure, whose justification is open to doubt as such, and, in treating the applicants differently from the incorporated churches not only in the possibilities of co-operation but also in securing benefits for the purposes of faith-related activities, the authorities neglected their duty of neutrality vis-à-vis the applicant communities. These elements, jointly and severally, enable the Court to find that the impugned measure cannot be said to correspond to a "pressing social need".

Applicants further complained under Article 14 of the Convention, read in conjunction with Articles 9 and 11, that they had been discriminated against on account of their position as a religious minorities. In view of its decision on the Article 11 complaint, the ECtHR did not enter into the merits of this grievance.

Applicants further complained under Article 1 of Protocol No. 1 (right to property), read alone and in conjunction with Article 14 of the Convention, about the loss of State subsidies due to the loss of their former church status. It complained of a violation of a right to a fair hearing too. The ECtHR did not enter into the merits of this grievance because its deliberations covered this grievance too.