



THE TAX ADVISER

**AN IN-HOUSE NEWSLETTER FOR MEMBERS OF THE MALTA
INSTITUTE OF TAXATION: ISSUE NO 1: FEBRUARY 2015**

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FROM THE PRESIDENT'S DESK

Dear Members,



I would like to welcome you to the first number of our in-house newsletter: THE TAX ADVISER, which we are hoping to be able to issue from time to time, but several times each year. It will appear on the Institute's website in the area reserved for members but, as is being done with this number, notice of publication will be circulated directly to the members by e-mail. THE TAX ADVISER will be taken care of by our new CEO Mr. George Portanier.

This year will see the Institute celebrating its twentieth anniversary. It may therefore be useful to reproduce what was said in respect of the proposed functions of the new Institute during the Foundation Meeting held on 15th March 1995, and to check whether these intentions had been implemented in practice. Mr. Edwin Vella who conducted the meeting and later served for several years as the Institute's first President, stated that it had been felt necessary for some time to have an Institute of Taxation in Malta which would group together tax practitioners, be they on the 'official' side or on the 'private' side. The Institute's main purpose would be to introduce professionalism in the field. The Institute would be mostly academic in nature and would only function as a moral pressure group, motivated solely by excellence. It did not aspire to have any rights under the law and would not function as a trade union on behalf of members. In fact the

Institute would not require registration with any authority. The Institute was not intended to compete with any other constituted body and one of its prime purposes would be that of co-operation with whomsoever had an interest in taxation. The professional formation of the members and the education of the public were to be taken as being the prime purposes of the Institute. It was also hoped that the Institute could influence positively the formation and implementation of tax policies. Mr. Vella emphasised that all members would be joining the Institute in their personal capacity, and he reminded the meeting that 'taxation' extended beyond income tax to include, inter alia, VAT, Customs Duty and Duty on Documents and Transfers.

Have we lived up to expectations? I think we can claim that we have done enough to be fairly able to claim that we have. Subsequent legislation made it advisable to register as a Legal Person with the Registrar for Legal Persons under number LPA-66. The certificate of registration is being reproduced in this issue. As regards our expressed intentions, we have members from both sides of the tax fence, mostly from the legal and accountancy professions, but also from other areas. We have carried out extensive educational activities: courses, seminars and lectures and we have produced our own text-books on taxation, which is a fairly unique achievement in Malta. We have made submissions to Government and to political parties on tax problems and issues, and we formally became members of the Confederation Fiscale Europeenne five years after our constitution, joining up with some two hundred thousand other tax practitioners from all over Europe. We successfully hosted the CFE Annual General Meeting in Malta in 2011. We now have our own premises at Attard, and we have three part-time employees.

The list of our activities and achievements is long, and it is our intention to make it even longer, more so through your co-operation. Could I therefore invite your help in making our newsletter a success? Please tell us what topics you would like to see discussed in THE TAX ADVISER. Better still, we would welcome your contributions on tax matters for inclusion in future numbers.

NEW CHIEF EXECUTIVE OFFICER FOR THE INSTITUTE



This year we welcome Mr. George Portanier, B.Sc (Hons) Econ (Lond), M.Sc (York), M.B.A. (Edin), M.A. (Econ of Comp Law), Dip.Tax, as our first Chief Executive Officer. George is a former director and C.E.O. of Portanier Brothers Ltd. Currently he is a member of the Board of Directors of the Bank of Valletta, and also serves on the boards of various private companies. George has held several posts in connection with the promotion and regulation of commerce and industry in Malta. He will also be taking care of THE TAX ADVISER.

Il-Kodiċi Ċivili, it-Tieni Skeda
The Civil Code, Second Schedule

Kapitlu 16 tal-Liġijiet ta' Malta
Chapter 16 of the Laws of Malta

ĊERTIFIKAT TA' REĠISTRAZZJONI TA' PERSUNA ĠURIDIKA
CERTIFICATE of REGISTRATION of a LEGAL PERSON

Isem tal-Organizzazzjoni u Indirizz Registrat f' Malta:
Name of Organisation and Registered Address in Malta:

MALTA INSTITUTE OF TAXATION
66, Mosta Road, Attard

Numru ta' Ċertifikat ta' Reġistrazzjoni :
Certificate of Registration Number: LPA-66

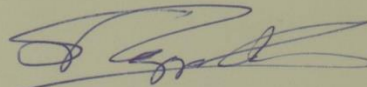
Niċċertifika illi l-Organizzazzjoni hawn fuq imsemmija tissodisfa l-provvedimenti
This is to certify that the aforementioned Organisation satisfies the provisions of

tat-Tieni Skeda tal-Kodiċi Ċivili u giet registrata bħala Persuna Ġuridika mir-
the Second Schedule, Civil Code and has been registered as a Legal Person by the

Reġistratur għal Persuni Ġuridiċi.
Registrar for Legal Persons.

Data ta' Reġistrazzjoni: Illum id-disgħa u ghoxrin jum t' Awwissu tas-sena korrenti
elfejn u erbatax.

Date of Registration: Today the twenty ninth day of August of the current year two thousand and fourteen.



Dr. Stephanie Pappalardo LL.D.
Reġistratur għal Persuni Ġuridiċi
Registrar for Legal Persons

NEW COUNCIL FOR THE INSTITUTE

Following the Annual General Meeting for the year, the Council of the Institute for 2015 has been constituted s follows:-

President:	Dr Renald Micallef
Vice-President	Mr George Farrugia
Secretary	Ms Ritianne Camilleri Galea
Assistant Secretary	Mr Chris Borg
Treasurer	Ms Geraldine Schembri
Assistant Treasurer	Mr Christian Vella
Members	Dr Conrad Cassar Torregiani
	Dr Robert Taylor East
	Dr Jonathan Abela
	Dr Jonathan DeGiovanni
	Ms Jeanette Calleja Borg
Life President	Dr Robert Attard
	Mr Edwin A Vella

Chairpersons of the subcommittees are as follows:-

Diploma in Taxation	Mr Edwin A Vella
Education	Dr Conrad Cassar Torregiani
Technical: Direct Tax	Ms Geraldine Schembri
Technical: Indirect Tax	Mr Christian Vella
Publications	Dr Renald Micallef
FIAU	Dr Robert Taylor East

(The IT sub-committee had been discontinued as the Chief Executive Officer of the Institute will be taking care of these matters from now on).

The Council has authorized the Chairpersons of the sub-committees to modify and/or reconstitute the composition of each team.

THE THREE PILLAR PENSION SCHEMES AND TAXATION

Act XXXVII of 2014 launched Third Pillar Pension arrangements in Malta by introducing into the Income Tax Act various reliefs and exemptions. A new article 12(1)(x) now grants exemption to certain interest income therein indicated, while under a new article 57 (there had been no article 57 for several years) a tax credit will be allowable in respect of payments made to approved personal retirement schemes. The exemption under article 12(1)(x) will be up to EUR 1,000 per annum, while the tax credit under the new article 57 is capped at EUR 150 per annum. There appears to be no reason why the two benefits should not be obtained concurrently by any individual.

Tax benefits lie at the basis of all pension scheme arrangements. This holds good even in Second Pillar arrangements which, unfortunately, appear to have been once again postponed indefinitely. The First Pillar arrangements have now been with us for some four decades, and it may not be quite correct to state that no tax benefits are granted in its respect. It is true that the personal deductions formerly allowable in respect of life insurance and pension scheme contributions (including social service payments) were removed with all other personal deductions in 1997, but at the same time the tax free portion of an individual's total income was substantially increased, in part to make good for this removal. It could perhaps be argued that a fairly long time has passed since 1997, and that it may be useful to have another look at this issue, particularly since the other Pillars of the Pension tripod will clearly comprise tax benefits.

The necessity of granting tax benefits in respect of pension schemes was immediately recognized on the introduction of income tax in Malta by Act LIV of 1948. In fact, section 22(1)(d) of that Act granted a personal deduction of up to Lm 100 (capped at one-sixth of an individual's total income for the year), on account of premiums on life insurance policies and of contributions to pension schemes and similar funds. Section 8(1)(e) granted exemption to the income of "any pension fund, provident fund or other fund" which had received official approval. Section 10(1)(f) granted a deduction in respect of "any sum contributed by an employer to a pension, saving, provident or other society or fund" which had been granted approval as aforesaid. Finally, exemption was granted by section 8(1)(i) in respect of "any capital sum received by way of commutation of pension or retiring gratuity". One need not review the history of these provisions over the

years, but it may be noted that they contained the seeds of all Three Pillar arrangements. These provisions became largely obsolete following the introduction of the national pension arrangements in 1979. In the meantime, however, the courts and tribunals had delivered some useful decisions on the topic. These may be found summarised in the Institute's latest publication, the Digest of Tax Cases, under the section dealing with Insurance.

The personal deduction of Lm 100 granted in 1948, converted into euros and taking account of the increase in inflation of some 725% since 1948, would translate into approximately EUR1,690 in today's money. It is difficult to make a comparison with the benefits now available as the underlying concepts are different, particularly a provision in the new article 57(4) to the effect that: "The income in respect of which a credit is granted under this article shall be deemed to constitute the first part of that person's total income for the relative year of assessment". It appears *prima facie*, however, that the tax benefit in this regard has been placed somewhat below the level it was in 1948. In any case, whether and, if so, to what extent, the arrangements are actually effective in helping the construction of the Second and Third Pillars it may be too early to decide, and only time will tell.

Comparisons with other countries may also not be very useful, but it may be interesting to note that in the U.K. the tax free allowance was £235,000 in 2008/9. This went down to £50,000 in 2011/12, and to £40,000 in 2013/14. These figures which would translate into some EUR 300,000, EUR 62,500 and EUR 50,000, respectively, appear to be extremely large when seen from our view point, but it is rather difficult to compare the economic and social realities of Malta with those of a country which has one of the largest economies in the world. It has still to be pointed out, however, that the allowance now available in the U.K. is 50% above the estimated average yearly family expenditure of £27,000 in that country. No attempt is being made to work out the same ratio in Malta.

The Malta Institute of Taxation has been following closely developments in this field. Following the publication of the first White Paper on the subject, a memorandum was submitted to the Ministry of Finance on the 24th February 2005. We explained how all pension schemes are tax driven, and that double taxation should be avoided by ensuring that the creation of pension or other funds should be a tax free operation (within reasonable limits) once the eventual distributions/payments therefrom would always be

taxable in the recipients' hands under the Income Tax Act which brings to charge "...any pension..." received.

The Institute also recommended that some of the former Revenue practices regarding the grant of approval for pension schemes should be reviewed and revised. All recommendations then made were repeated when the Institute made its updated proposals to the Pensions Working Group on 6 September 2010. Representatives of the Institute met with the Chairman of the Working Group on 20 November 2010, and discussed in detail the Institute's proposals. The Group, which was reviewing progress up to that date, accepted our proposals in full saving the question of whether regulation of pension schemes should fall within the ambit of the Inland Revenue Department. This had emerged from the Group's proposals (Recommendation no. 31) that the Department should serve as a general clearing house for pension schemes and related matters. This recommendation was based on article 41 of the Special Fund Regulation Act which had laid down that:

"A retirement fund or scheme shall comply with any requirements as are established from time to time by the Commissioner".

We submitted that, at the very best, this provision had been poorly drafted, and at worst could be very dangerous. No such fund or scheme should be made liable to this sword of Damocles hanging over it. Effectively, the Commissioner was being authorized, both on an individual basis, and generally, to lay down such conditions which he feels like imposing since the powers so granted were in no way defined or circumscribed. Moreover, we felt that that this was not a proper Revenue function and that it would allow unnecessary taxation-slanted intrusions into a delicate area.

The provisions introduced into the Income Tax Act by Act XXXVII of 2014 curtailed extensively the discretionary powers of the Revenue on this matter, but the powers of "recognizing" qualifying savings accounts, and of issuing vital "certificates" should, in our opinion, not be vested in a taxing authority, but in another body better able to cope with purely social and financial matters.

In further submissions made to the Pensions Working Group, we had summarized our position as follows. The points raised were not set out in any particular order, and some

were applicable to Pillar II or to Pillar III arrangements, or in fact to all arrangement irrespective of under whichever Pillar they had been constituted:-

- Retirement Schemes are, and have to remain tax driven. Any current loss of revenue is made good when pensions are received by the beneficiaries. Europe was then already said to require a further Euro 1,690 billion every year to be set aside for this purpose. Whatever tiny fraction of this vast sum had to be sourced from Malta, its generation could only succeed if fiscal aid was forthcoming. Past disasters abroad where this aid had been withdrawn, curtailed or denied proved the point conclusively.
- The wording used in the Income Tax Act regarding exemptions in this regards required to be aligned better with that of the Special Funds (Regulation) Act. An example was the word “fund” which seemed to have possibly different meanings in the two laws.
- The powers granted to the Revenue required to be clarified and reined in. Concurrent authority over retirement schemes also appeared to be given to the Malta Financial Services Authority and the Inland Revenue Department.
- Personal deductions, or exemptions, in respect of subscriptions by employees to all schemes could require to be re-introduced.
- Generous tax allowances had to be granted particularly in respect of Pillar III schemes where the burden of constitution and maintenance of any Fund or Scheme fell entirely on the individual concerned.
- Past restrictive practices in this field by the Revenue needed to be curtailed.
- Initial lump sum payments for newly constituted, or up-dated schemes, needed to be made deductible for tax purposes, despite the authoritative rulings in some fairly old U.K. cases. In the U.K. itself these payments had been made deductible, though split over several years.
- Schemes constituted by foreign employers which cover also their local employees need to qualify for local tax purposes if they enjoy approval in their home territory. This principle should also be applicable to any scheme, irrespective of under which Pillar it stood to be categorised.
- Rules regarding Fringe Benefits under the Income Tax Acts must not be applicable to any aspect of schemes falling under the Three Pillars.

- There is no reason why rental income received by Funds and Schemes should not enjoy the same tax benefits as other income. Well established pension schemes find it sound practice to invest heavily in immovable property.
- The 15% tax payable on the maturity of life insurance policies should be refunded to the insured person if it is proved that the receipts on maturity are utilised for the purpose of creating a pension through the acquisition of an annuity, or in some other relevant way.
- Annuities purchased for the purpose of creating pensions involve the conversion of capital into taxable income. Annuity payments should therefore (as has long been done in the U.K.) be dissected into their capital and income elements, with only the latter portion being taxable.
- The possible impact of VAT on pension and other retirement arrangements appeared not to have been studied at any depth. This is something which still has to be delved into further.

Nothing much further needs to be added to these submissions. The Malta Institute of Taxation will continue to study all proposals made in respect of any and all of the Three Pillars on the lines set out above, and it will be constantly up-dating its views in line with national social and other developments.

DIPLOMA COURSE 2014 – 2015

FIRST ASSIGNMENT

Students of the Institute's Diploma Course are required to submit two Assignments during the year on one of themes which are set by the Education Committee. We are reproducing below the themes set for the first Assignment during the current Course.

THEME I

Domicile and residence (whether ordinary or otherwise) are important concepts in the Maltese tax system. Considering the increasingly strong presence of international persons in Malta, and the demand by them for advice on our tax laws, how do these concepts determine one's tax position in Malta? Is case law, foreign and local, of any help?

THEME II

People may think that the levying of a charge on trade is simply a charge on buying and selling transactions, but tax law and practice suggest otherwise. Elaborate on this statement and set out the major rules and trends to be followed.

THEME III

The labour market in Malta is in constant evolution, and with the increasing influx of foreigners seeking employment in Malta, employees are seen to be not only after cash benefits, but also other perks. Certain employees may prefer perks because they think that these would not attract tax: is this true in the context of our tax law and regulations? Develop your argument on the basis of perks related to accommodation, provision of electronic appliances and services, holiday travel, school fees, and discounted services offered by employers, which are some of the typical perks on offer.

THEME IV

The Income Tax Act makes provision for several particular matters, including the following eight items: shipping companies and non-resident ship-owners, clubs and associations, venture capital, finance leasing, trade or business via joint ventures, insurance profits, oil production, and ecclesiastical and allied income. Set out the provisions made in respect of three of the above matters, and explain why special provisions are required in their respect.

WRITING OFF ARREARS OF TAX

In its submissions to Political Parties on the occasion of the 2013 General Election, the Institute made a review of the problem regarding the arrears of tax said to be due to Government, and we made suggestions as to how this problem could be tackled. The Institute noted that the causes of these 'arrears' were numerous, fairly complicated and of long standing. In fact though Income tax in Malta was only introduced in 1949, by the middle of the 1950s the arrears figure had already risen to over one million pounds. This was a very large sum for those years (at least equal to a year's actual take), and had led to a political storm which, however, eventually petered out. It does not appear that the issue has again been politicized since: in fact, the new provisions discussed below have hardly seemed to attract any discussion, inside or outside Parliament.

No official figures regarding what are considered to be arrears have been published for several years by the Inland Revenue Department in its reports, but very high figures in respect of income tax were from time to time rumoured to be due. The 2013 report on the workings of the VAT Department, on the other hand, showed that while tax collected amounted to EUR 605 million, debit balances were EUR 664 million, of which only EUR 58.5 million were "realistically collectible after deducting estimated assessments and interest". In other words, over EUR 600 million were considered to be arrears when there was no hope of these being ever collectible, still less collected, and in fact the public purse had no rosy expectations in their regards. Net income tax revenue for 2013 was reported as being EUR 967.6 million so that, considering the VAT situation and pronouncements made in the past in this respect, there must have existed another awesomely large figure of phantom 'arrears', again to a large extent not really due at all.

In making its submissions on this problem, the Institute was clearly concentrating on income tax aspects: this was perhaps understandable as the income tax situation was the problem which visibly seemed to be most pressing. The Institute did not attempt to make an analysis of what had caused the problem that had become so conspicuous, and which could no longer be ignored as being merely a quirk of public administration to be swept under the carpet of anonymity. The M.I.T., however, recognised that the financial administration rules and regulations, as rigidly interpreted in Malta, made it difficult for anybody to readily shoulder the responsibility of wiping off the huge amounts said to be

due¹. It was however submitted that: “Fundamentally..... the problem can only be solved through write-offs regarding tax which everybody recognises to be not recoverable”. While recognizing that write offs were notionally already possible under existing regulations², the Institute felt that normal procedures were extremely long and cloaked with bureaucracy, so that nothing was really achieved. The extremely wide powers of the Revenue departments which were freely used to raise estimated assessments did not help the situation, as clearly shown by the admission of the VAT Office in its annual report as above reproduced. The original rules regarding writing off amounts due to the state were probably fairly, and wisely, made (the ultimate long term source being the Colonial Regulations of British Empire days³), since authority could not be given to all and sundry to write off amounts due to the Government, but the procedures set out, and the consequential practices developed on their basis hardly fitted the operative systems of tax legislation⁴. Solutions had therefore to be sought elsewhere as it was quite obvious that the so-called arrears were never going to be collected. At the same time, it was clear that no solution would be acceptable if it required a complete re-thinking and revision of the existing general financial administration and audit rules which were an in-built and extremely valuable feature of the public service.

The solution recommended by the Institute was couched in these precise terms: “The M.I.T. therefore suggests that an independent Board be set up with power to cancel such tax for any reason which to it seems justified, particularly where some doubt could arise as regards the legality of the relative claim⁵, and where, though legally due, too much time had passed to expect successful collection action. The Institute appreciates that this would be a hard decision for any government to take but, on the other hand, one could

¹ Even though article 67 of the Financial Administration & Audit Act requires the Accountant General to advise the Auditor General regarding the situation in respect of what are called ‘abandoned claims’. This is to be done annually within six months of the end of year.

² Various high ranking public officers are in fact given powers to write off certain amounts due to Government, but in actual fact few seemed ready to do so. It must be said that, given the context in which civil servants work, they can hardly be blamed for not tackling this chore.

³ These regulations were operative whenever the country did not have self-government. As soon as this status was re-acquired, they were replaced by legal provisions on the lines now found in Chapter 174 of the Revised Laws of Malta and subsidiary regulations.

⁴ The situation was clearly very much in line with the old Maltese ditty (in a completely different context, of course!): “*qalbi dahlet gewwa qalbek bhal frejgata gewwa l-port, biex dahlet dahlet tigri, biex tohrog tohrog bil-mod*”.

⁵ A clear reference to the Court condemned ‘ex officio assessments’ and blanket ‘deemed distribution orders’.

not simply proceed as has been done for so long. It is clear that such a Board will not simply set about cancellation of tax frivolously, but it must be recognised by the administration and the public to be acting as a '*bonus pater familias*' though writing off amounts that were prima facie due to the state. Membership of the Board should probably be set at the level of retired judges, but they would require the support of tax, I.T. and accountancy experts. They would have no contact with the taxpayers concerned, but the Board had to have the full support and co-operation of the Department. Necessary amendments to the legislation would have to be made to enable such a project to be successfully launched. The proposed Board would have no power to cancel tax that was legally due and could be collected".

It was therefore with satisfaction that the Institute greeted the setting up of such a Board by Act XXIII of 2014, the Commissioner for Revenue (Amendment) Act, 2014: "There shall be set up a Board to be known as the Revenue Remissions Supervisory Board for the purpose of providing oversight on the remission of amounts due to revenue departments under revenue acts". It will be observed that the amendment was not made through any of the laws levying particular taxation, but rather through the law constituting the office of the Commissioner for Revenue, so that the new Board will automatically have jurisdiction in respect of all tax laws falling under the said Commissioner. Constitution through this law also gives the Board the standing which it requires to be able to function properly and freely.

It may be noted that the Board will have competence regarding any amount due to the Revenue departments: this should include tax, additional tax, penalties, administrative fines and any other similar imposition – but presumably not court imposed liabilities. A somewhat unwelcome development is that the Board is not vested with powers to write-off uncollectible tax, but only to supervise its remission. The two terms may be considered synonymous, and to a great extent they are, but reference to text books indicates an important distinction between them. Thus, the Oxford Universal Dictionary defines 'write-off' to mean "the deletion in an account or financial statement" and, more specifically: "the cancellation of a sum as a bad debt or otherwise". "Remission" on the other hand is defined as "release from a debt or payment, the action of remitting or giving up, partially or wholly, a debt, tax penalty etc", and to be based on the fundamental concept of "forgiveness or pardon of sins or offences the cancelling out, or deliverance from, the guilt and penalties of sin" and "Pardon for a political, legal or other

offence". These two concepts are repeated in Roget's Thesaurus, so that while write-off is considered under the heading of cancellation, remission is considered under moderation or relaxation. Hopefully, the use of the term 'remission' is just a euphemism for 'write-off', as the Board may otherwise be expected to function more like an Ombudsman than as an agency for the practical and rapid cancellation of useless balances from the relative departments' books.

Detailed provisions are made regarding the membership of the Board. The Chairperson will be a person who is not a public officer or other employee in the public sector. The other members will, however, be appointed from among serving public officers and employees. This is rather disappointing and the Institute would have preferred a clean cut separation of the Board membership from public officials as the proposed structure will allow the independent chairman to be overruled by the public officials on the Board. It is true that all members will have to take a rather detailed oath of office regarding fairness, impartiality, secrecy etc, but the loading of the Board with serving public officers will inevitably cast doubts on whether much change and progress has in fact been achieved. Moreover, how will the public officers find enough time from their normal duties to attend to this chore? Should such public officers be seconded to do duty with the Board, if only for a temporary period? The possibility of constituting different sections of the Board (though only one Chairperson is contemplated) indicates that a heavy workload for the Board is contemplated.

It is also not clear as to how will cases will end up before the Board. The Board is set up to *oversee* the remission of tax: will its decisions be final, or will it merely oversee the decisions taken by somebody else? What is it to do if it does not agree with such decisions? Will the Board be able to require certain cases to be referred to it? Will it be in a position to require, for example, that all cases where tax for a given year of assessment is outstanding are to be referred to it, or that reference is to be done in a particular category of cases, say outstanding cases (if any) regarding deemed distribution of corporate profits. To what extent will the Board be able to interfere with what the departments may consider to be settled policy?

The Board will be able not only to report on their conclusions (*to note: not **decisions***) on individual cases, but also to make recommendations of a general or specific nature. These will be referred to the Commissioner for Revenue, who will report back to the Board on what final decision has been taken on its recommendations. Will this reporting back be

only in respect of recommendations, but not in respect of conclusions? Will the Board be able to **direct** that tax be written off (or that it should not be written-off or remitted), or will it be merely advisory, but not executive?

Another issue which seems to require to be threshed out is whether the Board will have the power to require, or at least to ask, that certain tax legally due be cancelled, or certain unfortunate attitudes be changed? It may not be appropriate to quote examples, but information is readily available from the decided cases about situations where one could repeat the old adage that “the law is an ass”.

It may well be that some, if not all, of the above considerations can be addressed through subsidiary legislation. It is not known what are Government’s intentions in this regards, but it would be a pity if the new Board will be just another quango when what is actually required is a brisk brush that will sweep useless balances into oblivion rather than just under the carpet of bureaucratic delay and expedience.