



MALTA
INSTITUTE
OF TAXATION

Award in Taxation
2026/2027
Module A – Lecture 4

Exemptions
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Date: 13 October 2026



Introduction

- Part III of the ITA is made up of Articles 12 and 13.
- Generally, exemptions set out within Article 12 of the ITA can be sub-divided into three main categories:
 - Exemptions depending on the **person deriving the income**;
 - Exemptions depending on the **nature of the income derived**.
 - Exemptions depending on **both** the person deriving the income and the nature of such income.
- Details on some exemptions are provided through Subsidiary Legislation.
- Article 13 provides a specific exemption to Temporary Residents as defined



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Article 12(1)(a) and 12(1)(b)

- Article 12(1)(a)(i) exempts the income of the University of Malta
- Article 12(1)(a)(ii) exempts the income of the Malta College of Arts, Science and Technology
- Article 12(1)(b) exempts certain allowances and benefits paid under the Social Security Act. The exempt benefits are listed in S.L. 123.21:
 - Disability assistance and assistance for the visually impaired
 - Social assistance, unemployment benefit, sickness benefit
 - Age pension
 - Marriage grant
 - Maternity benefit
 - Children's allowance, foster care allowance, disabled child allowance and orphan's allowance
 - Widow's pension and survivor's pension



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Article 12(1)(c)(i)

- Article 12(1)(c)(i) exempts Interest, discount, premium or royalties accruing to or derived by persons who are not resident in Malta
- The exemption does not apply where:
 - The non-resident person is engaged in trade or business in Malta through a permanent establishment situated therein; and
 - The royalties or the debt claim in respect of which interest, discount or premium, is paid are effectively connected with such permanent establishment.
- The applicability of this exemption is also subject to the beneficial ownership test set out in the proviso relevant to article 12(1)(c)(i) and (ii).



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Article 12(1)(c)(ii)

- Article 12(1)(c)(ii) exempts gains or profits accruing to or derived by any person not resident in Malta upon the transfer of, or a transfer of any rights over:
 - units in a CIS
 - units and such like instruments relating to linked long term business of insurance
 - interest in a partnership which is not a property partnership
 - shares or securities in a company which is not a property company



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Beneficial ownership test

- The exemptions under article 12(1)(c)(i) and (ii) are subject to the beneficial ownership test
- The exemption applies if the **beneficial owner** of the interest, royalty, gains or profits
 - is a person not resident in Malta and
 - is not owned and controlled by, directly or indirectly, nor acts on behalf of an individual or individuals who are ordinarily resident and domiciled in Malta
- A 'beneficial owner' is not defined in the Income Tax Act.
- In terms of recognized international tax principles, a 'beneficial owner' is the person that has the right to use and enjoy the benefits of the income in an unconstrained manner without a legal or contractual obligation to pass on such income to someone else.



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Property company

"property company" shall mean a company which **owns immovable property situated in Malta or any real rights thereon** or a company which holds, directly or indirectly, **shares or other interests** in any entity or person, which owns immovable property situated in Malta or any real rights thereon **where five percent or more of the total value of the said shares or other interests so held is attributable to such immovable property or rights**:

Provided that where a company, entity or person **carrying on a trade or business** owns immovable property situated in Malta or any real rights thereon, consisting only of a **factory, showroom, warehouse or office used solely for the purpose of carrying on such trade or business**, such company, entity or person shall, for the purpose of this definition, be **treated as not owning immovable property if not more than fifty percent of the value of its assets** consist of immovable property situated in Malta or any rights over such property and **it does not carry on any activity the income from which is derived directly or indirectly from immovable property situated in Malta**;



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Article 12(1)(c)(iii)

- Article 12(1)(c)(iii) exempts dividends paid by a company registered in Malta to an individual out of profits allocated to the MTA, FIA or IPA during YA 2018 onwards, and where the individual's chargeable income, excluding such dividend, is equal to or exceeds the relevant threshold
- Relevant thresholds:

Married rates	Single rates	Parent rates
EUR 28,700	EUR 19,500	EUR 21,200

- Exemption not applicable to (i) a portion of dividends against which a deduction is claimed, and (ii) Dividends from shares listed on a stock exchange recognized by the Commissioner, provided that the individual holds less than 0.5% of paid-up issued share capital



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Article 12(1)(c)(iii)

- If the individual's chargeable income excluding the relevant dividend is less than the relevant threshold, the exempt amount is equal to the individual's chargeable income including the dividend less the relevant threshold.
- The limitation does not apply if the individual's total chargeable income does not exceed the relevant threshold.



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Article 12(1)(d)

- Article 12(1)(d) exempts the income of any **retirement fund or retirement scheme** licensed, registered or otherwise authorized under the Special Funds (Regulation) Act or any Act replacing the said Act, or derived by a company from **long term contracts of insurance that are treated as qualifying personal retirement schemes or qualifying occupational retirement schemes** in terms of the provisions of such rules as may be prescribed, other than income from immovable property situated in Malta



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Article 12(1)(e)

- Article 12(1)(e) exempts the income of any institution, trust, bequest or foundation, of a **public character**, and of any other similar organisation or body of persons, also of a public character, which is engaged in **philanthropic work** and either qualifies for exemption under this paragraph in accordance with rules made for this purpose by the Minister responsible for finance under article 96 or is named by the said Minister as engaged in philanthropic work for the purposes of this paragraph and there is not in respect of it a declaration by the said Minister that it has ceased to be so named
- Various philanthropic organisations are listed in the Exemption on Philanthropic Work Notice (S.L. 123.24)



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Article 12(1)(f) and 12(1)(g)

- Article 12(1)(f) exempts the income of any **political party** including the income of clubs adhering to political parties
- Article 12(1)(g) exempts **wound and disability pensions** granted in respect of wounds or disabilities caused by war and any pensions granted to dependent relatives of members of the armed forces of the Commonwealth killed on war service



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Article 12(1)(h)

- Article 12(1)(h) exempts any capital sum received by way of:
 - commutation of pension (up to a maximum of 30% of the total pension) – the exemption applies irrespective of whether the capital sum is paid as one lump sum or in a series of tranches within one year from date of retirement
 - retiring or death gratuity
 - consolidated compensation for death or injuries
- (for the purposes of this paragraph, "total pension" means the total value of the pension available to provide pension payments)



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Article 12(1)(i)

- Article 12(1)(i) exempts the income arising from a **scholarship** held by a person receiving full time instruction at a university, college or similar educational institution
- Not applicable to income paid out of funds disbursed or otherwise provided by the employer of the recipient which the recipient would have received by reason of his employment if he had not held such scholarship – this would be chargeable to tax in accordance with article 4(1)(b)



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Article 12(1)(j) and 12(1)(k)

- Article 12(1)(j) exempts the income of any **trade union** under the Employment and Industrial Relations Act in so far as such income is not derived from a trade or business carried on by such trade union
- Article 12(1)(k) exempts the profits of a **non-resident shipowner** as defined in article 28, provided that the country to which such non-resident shipowner belongs extends a similar exemption to shipowners who are not resident in such country but who are resident in Malta



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Article 12(1)(l)

- Article 12(1)(l) exempts the income of a **club or similar institution** which the Commissioner is satisfied that:
 - It is organised and operated exclusively for social welfare, civic improvement, pleasure or recreation, or for any other purpose except profit;
 - No part of the income of which is payable to, or is otherwise available for the personal benefit of, any proprietor, member or shareholder; and
 - Is not deemed to carry on a business in accordance with Article 4(4)
- If more than $\frac{1}{2}$ of gross receipts on revenue account are received from members (incl. entrance fees and subscriptions) – not a business.
- If less than $\frac{1}{2}$ of gross receipts are from members – whole of income is deemed to be receipts from business.



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Article 12(1)(n) and 12(1)(o)

- Article 12(1)(n) exempts the income of a **philharmonic society** which the Commissioner is satisfied constitutes a **bona fide band club**, provided that such society has regular premises registered with the Police as a club and that such premises are in daily use as a place of resort by its members
- Article 12(1)(o) exempts the income of a club or similar institution which the Commissioner is satisfied constitutes a **bona fide sports club**, provided that no part of the income of which is payable to, or is otherwise available for the personal benefit of, any proprietor, member or shareholder, and provided also on winding up of such club or institution, no funds are distributed or available to such proprietor, member or shareholder



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Article 12(1)(p)

- Article 12(1)(p) exempts any dividend paid by a company whose main source of income in the relevant year is charged at the rate provided for in article 56(13) in respect of a Contractor
 - Article 56(13) – makes reference to the tax rate chargeable to persons referred to as Contractors under Article 23 of the ITA
 - Article 23 – refers to persons engaged in the business of exploration for, or the production of petroleum in Malta



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Article 12(1)(q) and 12(1)(r)

- Article 12(1)(q) exempts the income of a cooperative society
 - Distributions made by cooperative societies to their members out of the Untaxed Account – possibly taxed at 15% withholding tax.
- Article 12(1)(r) exempts subsidies as may be prescribed related to the Common Agricultural Policy or to any other scheme introduced in accordance with international or supra-national agreements
 - A list of agricultural subsidies can be found in the Agricultural Subsidies (Income Tax Exemption) Rules (S.L. 123.91)



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Article 12(1)(s)

- Article 12(1)(s) exempts the income of a collective investment scheme other than income from immovable property and investment income to which article 41A(a) refers
- A collective investment scheme is defined in Article 2 of the ITA as a scheme or arrangement which is licensed under the Investment Services Act or notified in terms of the Investment Services Act (List of Notified AIFs) Regulations
- The tax implications relevant to CISs will be dealt with in more detail in a separate lecture



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Article 12(1)(s)

- Exclusion: Article 41A(a) – refers to investment income that is paid to a CIS which qualifies as a prescribed fund and is not paid by another CIS
- A fund is a prescribed fund if it:
 - Is a Malta based scheme
 - Declares that the value of assets situated in Malta that will be allocated to that fund for the purposes of its operations is expected to be at least 85% of the value of the total assets that will be so allocated, and
 - Is classified as such by the CfTC by means of a notice in writing.



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Article 12(1)(t)

- Article 12(1)(t) exempts any financial assistance received by an individual from his/her estranged spouse in respect of the maintenance of a child
 - As determined by the courts of an EU or EEA State
 - As determined by the courts of another country as the Commissioner may approve
 - As agreed by a public deed of personal separation under the authority of the courts of an EU or EEA Member State
 - As ordered by the courts of an EU or EEA Member State in a divorce, judgement or decree
 - As ordered by the courts or authorities of another country as the Commissioner may approve in a divorce, judgement or decree



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Article 12(1)(u)

- Article 12 (1)(u)(1) provides for an optional exemption of any income or gains derived by a company registered in Malta from a participating holding or from the transfer of such holding...
- Optional exemption with respect to:
 - Dividend income from a participating holding
 - Gains on disposal of a participating holding
- "a company registered in Malta" shall mean a company which is resident in Malta or a company which, although not resident in Malta, carries on any activity in Malta and in the case of a company which is neither incorporated nor resident in Malta shall mean a company that is registered for this purpose with the Commissioner in such manner as may be prescribed



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Article 12(1)(u)

Defining a 'Participating Holding'

1. The holding qualifies as an 'equity holding' if it constitutes a holding of share capital in a company which is not a property company, and satisfies at least any 2 of the following 3 rights:
 - Right to vote
 - Right to profits available for distribution to shareholders; and
 - Right to assets available for distribution on a winding up

The Commissioner is entitled to determine that an equity holding exists even where such holding is not a holding of the share capital in a company or does not consist solely of such a holding of share capital, but where it can be demonstrated that in substance there is at any time an entitlement to at least two of the equity holding rights



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Article 12(1)(u)

Defining a 'Participating Holding'

2. The holding qualifies as a 'participating holding', by satisfying any one of the following six conditions:
 - a) A company holds directly at least 5% of the equity shares of a company whose capital is wholly or partly divided into shares, which holding confers an entitlement to at least 5% of any 2 of the following: (i) right to vote; (ii) profits available for distribution; and (iii) assets available for distribution on a winding up.
 - b) A company is an equity shareholder in a company and the equity shareholder company is entitled at its option to call for and acquire the entire remaining balance of shares not held by that equity shareholder;
 - c) A company is an equity shareholder in a company and the equity shareholder company is entitled to first refusal in the event of the proposed disposal, redemption or cancellation of all of the equity shares of that company not held by the equity shareholder company; or



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Article 12(1)(u)

Defining a 'Participating Holding'

- d) to either sit on the Board or appoint a person to sit on the Board of that company as a director; or
- e) A company is an equity shareholder which holds an investment representing a total value, as on the date or dates on which it was acquired, of a minimum of one million, one hundred and sixty-four thousand euro (€1,164,000) (or the equivalent sum in a foreign currency) in a company and that holding in the company is held for an uninterrupted period of not less than 183 days; or
- f) A company is an equity shareholder in a company and where the holding of such shares is for the furtherance of its own business and the holding is not held as trading stock for the purpose of a trade.



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Article 12(1)(u)

The definition of a 'participating holding' is extended to the following, subject to the satisfaction of any of the conditions in (a) – (f) under the definition of a participating holding:

- a) A partnership or EEIG referred to in sub-paragraph (iii) of paragraph (a) of the definition of "company" in sub-article (1) of Article 2 of the Act, not being a property partnership, and which has not elected to be treated as a company in terms of article 27(6) of the Income Tax Management Act
- b) A body of persons referred to in sub-paragraph (ii) of paragraph (b) of the definition of "company" in sub-article (1) of article 2 of the Act, not being a property partnership, and which has not elected to be treated as a company in terms of article 27(6) of the Income Tax Management Act
- c) A collective investment vehicle constituted, incorporated or registered outside Malta and which is not resident in Malta, where the liability of investors in such scheme is limited to the amount invested by them



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Article 12(1)(u) - Dividends

- The participation exemption in relation to **dividend income from a participating holding** applies provided that the body of persons in which the participating holding is held satisfies any one of the following conditions:
 - is resident or incorporated in the EU
 - is subject to any foreign tax of at least 15%
 - does not have more than 50% of its income derived from passive interest or royalties
 - The equity holding by the company registered in Malta in the body of persons not resident in Malta is not a portfolio investment and the body of persons not resident in Malta or its passive interest or royalties have been subject to foreign tax of at least 5%

the holding of shares by a company registered in Malta in a body of persons not resident in Malta which derives more than fifty per cent of its income from portfolio investments shall be deemed to be a portfolio investment.



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Article 12(1)(u) – Dividends

The applicability of the participation exemption in relation to dividend income is also subject to two additional provisions:

- When the participating holding is held in an entity that is resident in another EU Member state and such participating holding qualifies as a subsidiary in terms of the Parent-Subsidiary Directive, the participation exemption shall apply only provided such dividend is not deductible in the other EU Member State.
- The participation exemption shall not apply to income derived from a participating holding in a body of persons resident for tax purposes in a jurisdiction which is included in the EU list of non-cooperative jurisdictions for any period of three months during the year preceding the year of assessment. This exclusion does not apply if it is proved to the satisfaction of the Commissioner that the said body of persons maintains sufficient significant people functions in the said jurisdiction as is commensurate with the type and extent of the activity carried on in that jurisdiction and the income earned therefrom.



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Article 12(1)(u) – Gains from transfer of PH

- The additional conditions for the applicability of the participation exemption with respect to dividend income do not apply with respect to gains from a transfer of a participating holding
- The applicability of the participation exemption with respect to gains from a transfer of a participating holding is subject to a **'beneficial ownership'** test where the participating holding is held:
 - a) in a company or in a partnership, EEIG, other body of persons or collective investment scheme referred to in the first proviso to the definition of "participating holding" in sub-article (1) of article 2, that is **resident in Malta**; or
 - b) in any other body of persons that holds, directly or indirectly, shares or other interests in a company or in a partnership, EEIG, other body of persons or collective investment scheme referred to in the first proviso to the definition of "participating holding" in sub-article (1) of article 2, that is **resident in Malta**



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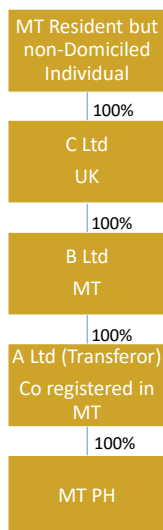
Article 12(1)(u) – Gains from transfer of PH

- Beneficial ownership test: the participation exemption is available if, **had the transfer of the shares been made by the beneficial owner of the transferor company, such transfer would have been exempt in terms of Article 12(1)(c)(ii) of the ITA.**
- If there is more than one beneficial owner of the transferor – if the gains or profits made by one or more beneficial owners would have been exempt (the "exempt beneficial owner") and others not been exempt, the participation exemption would apply to the portion of the gain or profit to which the exempt beneficial owner/s is beneficially entitled.
- For the purpose of this proviso, any body of persons or collective investment vehicle which is resident in Malta shall be deemed not to fall within the purport of the term "beneficial owner"



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Article 12(1)(u) – Gains from transfer of PH



Scenario: disposal of a participating holding resident in Malta by the Transferor

Application of the beneficial ownership test

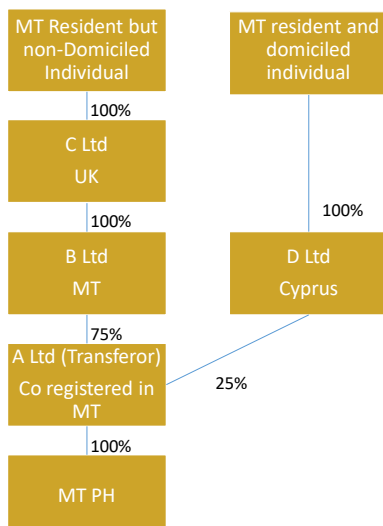
- B Ltd is not deemed to fall within the purport of the term “beneficial owner”
- C Ltd qualifies as the “beneficial owner”
- If the transfer was made by C Ltd, the transfer would have been exempt under article 12(1)(c)(ii) because C Ltd is not resident in Malta and is not owned and controlled by, directly or indirectly, nor acts on behalf of an individual or individuals who are ordinarily resident and domiciled in Malta.

BO Test satisfied, therefore PEX applies.



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Article 12(1)(u) – Gains from transfer of PH



Where the transferor claimed the participation exemption with respect to gains or profits from the transfer of a PH resident in Malta, which gains or profits are not yet distributed by the transferor; and

Any person becomes beneficially entitled to all or any of such gains or profits, or to a larger part of such profits than was the case at the time they arose; and

Such person is not an “exempt shareholder” on the basis that the BO test would not have been satisfied with respect to his portion:

Such gains or profits to which the non-qualifying shareholder becomes entitled, or the additional part thereof, shall be taxed at the rate of 35% in the hands of the transferor



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Article 12(1)(u) – Profits attributable to foreign PE

- Article 12(1)(u)(2) provides for an optional exemption with respect to income or gains derived by a company registered in Malta which are attributable to its permanent establishment situated outside Malta or to the transfer of such permanent establishment.
- The profits or gains attributable to the permanent establishment shall be determined by assuming that such permanent establishment is an independent enterprise operating in similar conditions and at arm's length.
- Subject to an anti-abuse provision such that the exemption shall not apply if a series of transactions are effected with the sole or main purpose of reducing the amount of tax payable



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Article 12(1)(v)

- Article 12(1)(v) exempts royalties, advanced and similar income derived from:
 - i. patents in respect of inventions
 - ii. copyright
 - iii. trademarks

whether in the course of a trade, business, profession or vocation or otherwise, subject to the satisfaction of such terms and conditions (including any limits on the maximum amount of the exempt income) and obtaining such determinations as may be prescribed

Was available up to 30th June 2016



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Article 12(1)(w)

- Article 12(1)(w) – the income from employment (other than from the holding of an office of director) of a married person over 40 years of age returning to work after having been absent from gainful occupation for at least 5 years
- Conditions:
 - Person was not registered as unemployed with JobsPlus during the said time
 - Income does not exceed €12,050 per annum
 - Person is chargeable to tax jointly with her or his spouse under the married rates
- Exemption applies for a period of five consecutive years of assessment commencing from the basis year in which the work is resumed.



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Article 12(1)(x)

- Article 12(1)(x) exempts 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 EU Member State in respect of a sum of money deposited into a special individual saving account recognised as such by the CfTC; and
 - ii. The Government of an EU 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 CfTC

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 must not exceed €1,000 in any year or such other amount as may be prescribed by the Minister from time to time

The Individual Savings Account Rules (S.L. 123.164) sets out rules for the application of this exemption



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Article 12(1)(y) and 12(1)(z)

- Article 12(1)(y) exempts any stipend or maintenance grant paid to a student by the Government or any Government institution
- Article 12(1)(z) exempts any income or gains derived by the trustee of a disability trust or by a disability foundation upon the transfer of immovable property forming part of the disability trust or the disability foundation where the sale proceeds are to be exclusively utilised by the trustee or foundation for the maintenance of the disabled beneficiary, and an undertaking to that effect is made by the trustee or the foundation in the deed of sale – subject to certain conditions



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Article 12(2)

- “The minister responsible for finance may exempt any person or class of persons with or without retrospective effect from all or any of the provisions of the Act on any ground which to him may seem sufficient. Any such exemption may be made subject to such conditions or the payment of such other rate or rates of tax, whether related to income or otherwise, or to both such conditions and payment, as the Minister may deem appropriate.”
- Other exemptions are set out in other articles of the ITA (e.g. exemptions only applicable to capital gains set out under articles 5 and 5A), subsidiary legislation and other Acts (e.g. the Merchant Shipping Act).



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Article 13 – Temporary residents

- “Tax shall not be payable in respect of any income arising outside Malta to any person who is in Malta for some temporary purpose only and not with any intent to establish his residence therein and who has not actually resided in Malta at one or more times for a period equal in the whole to six months in the year preceding the year of assessment.”
- Applicable to individuals only
- Temporary residents shall not be taxable on income arising outside Malta IRRESPECTIVE of whether such income is remitted to Malta.



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Pensions (Tax Exemption) Rules – S.L. 123.204

Pension income derived by an individual on or after 1 January 2022 shall be partially or fully exempt from tax as follows:

Applicability of the exemption	Amount exempt
Pension income derived in the year preceding YA 2023	20% - max €2,864
Pension income derived in the year preceding YA 2024	40% - max €5,987
Pension income derived in the year preceding YA 2025	60% - max €9,732
Pension income derived in the year preceding YA 2026	80% - max €13,309
Pension income derived in the year preceding YA 2027 and subsequent years	100% - max €37,104



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Pensions (Tax Exemption) Rules – S.L. 123.204

From YA 2027 onwards, an individual who benefits from this exemption and who is chargeable to tax at the married rates, is entitled to a tax rebate calculated as follows:

Tax rebate = (Chargeable income less 15,000) x 15%

The rebate is capped at €540

Provided further that any negative result shall not be taken into account and any rebate granted under this rule may not give rise to a refund or be available to be carried forward.



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Tax accounting considerations

- General rule: exempt income is allocated to the Untaxed Account
- Distributions out of the Untaxed Account to a recipient as defined in Article 61 of the ITA shall trigger a 15% withholding tax
- Profits exempt under the Participation Exemption were previously allocated to the FTA, however as from YA 2020 such profits are allocated to the Untaxed Account
- Where the income is also exempt in the hands of the shareholders as specifically set out in the relevant article – e.g. Article 12(1)(v) of the ITA: income is allocated to the FTA



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