



## **Manual on how spouses may apply for a Separate Tax Return Article 49A of the Income Tax Act**

**These manuals contain technical guidance for CFR staff and tax professionals as well as the general public.**

**The guidance is not comprehensive and does not provide a definitive answer in every case. It is based on the law as it stood when they were published. CFR publishes amended or supplementary guidance if there's a change in the law or in the department's interpretation of it. These manuals are not to be considered as Guidelines of the CFR and therefore are not binding by law.**



## SUMMARY

- **Election:** In the case of a married couple who are living together, any of the spouses may elect to submit a separate tax return if both spouses earn qualifying income or where the couple have a separation of assets agreement in place.
- **Qualifying Income:** Refers to income from employment, self-employment or pension income from past employment but excludes directors' fees. All income earned by each individual spouse must be declared separately.
- **Spouses:** Refers to married persons or partners who have registered their partnership as a civil union.
- **Tax Rates:** The applicable rates are the single tax rates, or the parent tax rates. The married tax rates are not applicable.
- **Personal Deductions** (e.g., school fees, childcare fees etc.): These are allowed against earned income of the spouse who made the payment. Unless in possession of a receipt which indicates the details clearly, such deductions will be split equally against the income of both spouses.
- **Application:** Online using the e-ID.
- **Date of first submission:** A separate tax return can be availed of for the basis year in which an application is made. Thus, if an application is submitted between January and December 2022, the separate tax return is applicable as from basis year 2022 (year of assessment 2023).
- **Liability:** Each spouse shall be responsible and liable for their own tax declarations including all compliance requirements.
- **Revocation:** To revoke a separate return status, the Commissioner for Revenue (CfR) must be informed in writing and the letter must be signed by both spouses. A revocation will continue to apply for a minimum period of 4 years.
- **Losses, capital allowances and credits:** These shall be retained by the respective spouse in whose name they are attributed to.
- **Rental income:** Taxable at a final rate of 15% tax through submission of the TA24 form.
- **Investment income:** Taxable at a final rate of 15% withholding tax.



**If you wish to read more on how to apply for a separate tax return under Article 49A of the Income Tax Act (ITA) and the implications arising thereof, please read the following pages which provide a more detailed explanation of the above:**

### **Election for Separate Return**

As from year of assessment 2021 (basis year 2020) a married couple, where both spouses are living together, have the option to submit a separate tax return and may do so if either of the following conditions are met:

1. Each spouse must derive income subject to tax under either of the following provisions of the [ITA](#):

(a) Art 4(1)(a) – Gains or profits from any trade, business, profession or vocation

(b) Art 4(1)(b) – Gains or profits from any employment or office, excluding fees derived from the holding of an office of a director

(c) Art 4(1)(d) – Any pension, received for past employment

OR

2. The spouses have entered into a public deed outlining that the property they acquire during their marriage is governed by the system of separate property or community of residue with separate administration as provided in Article 1237(2) of the Civil Code, or the equivalent if entered into abroad.

### **Personal deductions allowed against the income of one of the spouses**

Where an election has been made, deductible expenses are deemed to have been paid by the spouse in whose name the receipt is issued. Receipts issued in both names are deemed to have been incurred by each spouse in equal portions. The following list provides examples of allowable deductions for which receipts are required and for which receipts may be claimed individually or jointly, as the case applies:

- a) Art 14B School Fees
- b) Art 14C Child Care Fees
- c) Art 14D Fees in Respect of Homes of the Elderly and Disabled
- d) Art 14E Sports Fees
- e) Art 14G Fees for Cultural Activities



f) Art 14H School Transport Fees

The maximum deductions allowed under the above provisions shall continue to apply.

The above must be endorsed by the service provided.

### How to apply

An election to submit a separate return can be made by a taxpayer using his/her e-id and by clicking on the following links; (<https://cfr.gov.mt/en/individuals/Pages/Online-Individuals-Return.aspx>), (<https://mytax.cfr.gov.mt/>).

### When does an election start to apply?

As from year of assessment 2021 (basis year 2020), a spouse may apply for an election to submit a separate tax return. The election shall apply with respect of the year of assessment commencing on 1 January of the year immediately following that in which the election is made.

### When does an election cease to apply?

The election shall continue to apply unless specifically revoked in one of the following ways:

1. A notice in writing, signed by both spouses, sent to the Office of the Commissioner for Revenue.
2. In any other case as deemed necessary by the Commissioner.

### When does a Revocation take effect?

Separate return election shall cease to have effect as from the year of assessment commencing on 1 January of the year immediately following that in which the notice of revocation is delivered to the Commissioner.



A revocation shall apply for a minimum of 4 succeeding years of assessment, with an election for separate tax returns only accepted by the Office of the Commissioner for Revenue after the latter period has elapsed.

### **Tax Liability of Individual Spouses**

Individual spouses may apply the single rate or parent rate of tax. An election under Article 49A of ITA would prohibit the application of married tax rates. The income of each spouse shall be charged to tax in the name of the respective spouse separately from the income of the other spouse. It is therefore the responsibility of each spouse to ensure that they comply with the provisions of the Income Tax Acts on an individual basis including timely submissions and compliance of their tax return. The income of a spouse shall comprise all income derived by that spouse regardless of any right which the other spouse may have in respect of that income.

Where either or both spouses are self-employed, any provisional tax payments must be paid in the name of the individual spouse to which they relate. The general compliance requirements continue to apply for all provisional tax payments.

### **Unabsorbed Losses, Capital Allowances and Tax Credits**

Once an election has been made, any unabsorbed losses, capital allowances, or tax credits brought forward shall remain and be accounted for by the spouse in whose name the income was derived. Where losses are jointly incurred, for instance in respect to unabsorbed capital loss arising from a transfer made by spouses jointly, any loss shall be divided in proportion to the undivided shares transferred by them respectively.

In the case of a revocation of separate returns, both spouses will again declare their income on one return. In such cases, losses of one spouse b/f can be set off against the income of the other spouse. As regards capital allowances, these can be allowed only against income from the relative source.

### **Declaration of Rental Income**

Rental income earned by the spouses shall be subject to 15% final withholding tax available under Article 31D of ITA. The final tax system option will continue to apply, and all rental income must be declared. Spouses are to declare their share of rental income in a separate [TA24](#) form.

Individuals earning less than €9,100 in the case of single tax rates or €10,500 in the case of parent tax rates, must declare any rental income using the TA24 form.

Individuals earning more than €9,100 in the case of single tax rates or €10,500 in the case of parent tax rates, may opt to declare their rental income using the TA24 form or else opt out of the final tax system and include all rental income in their separate tax return but the applicable tax rates will still start from 15%.

## Declaration of Investment Income

Investment income is to be declared as follows:

1. Investment income earned under Article 41(a) of ITA where no withholding taxes have been deducted must be declared by the spouse in receipt of that income,
2. Dividend income is to be declared by the spouse in receipt of that income, with the benefits of imputation applicable in the same manner.

The final tax system will continue to apply to all investment income.

Taxpayers who do not elect to have final withholding taxes deducted at source must declare that income in their individual tax return at the applicable rates.

A tax rate of 15% on investment income will continue to apply when investment income is declared by a spouse in their individual tax return, regardless of the income earned. Taxpayers earning less than €9,100, in the case of single tax rates or €10,500 in the case of parent tax rates, will still be required to pay 15% on any investment income declared in their separate tax returns. The same applies if each spouse earns more than the minimum tax rate thresholds and opts to declare investment income in their individual tax returns.

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