



Legislative Update 1: February 2022

The purpose of this update is to give an overview of recent amendments to the Income Tax Act, implemented through the Budget Measures Implementation Act VII of 2022 published on 8th February 2022.

These measures come into force, unless otherwise stated, on 1 January 2022.

Definition of “industrial building or structure”

The definition of a “car park” within the term “industrial building or structure” for the purposes of the ITA has been extended to car parks whose operation involves substantial activity, having regard to the capital employed, the organisation of the operation and the income it generates. Wear and tear allowances on the industrial building category of car parks is thus extended since previously it was only available where the operation was exclusively that of a car park.

Recognised stock exchanges

Several references to stock exchanges recognised by the Financial Markets Act, Chapter 345 of the Laws of Malta (‘FMA’), throughout articles 5, 5A, 12 and 41 of the ITA have been amended to refer to stock exchanges recognised by the Commissioner for Revenue (‘CfR’) for the purposes of such provisions within the respective provisions of the ITA. The main purpose of the amendment is that the exemption on capital gains made on the stock exchange is now extended to all international stock exchanges and so does not apply solely to the Maltese Stock Exchange. One should remember that trading in shares still remains taxable.

Reduced final withholding tax on transfers of property leased at affordable rates

With effect from 1 January 2022, transfers of property that:

- a) had been leased for a period of at least 10 years (ending on the date of the transfer), and
- b) during that whole period of 10 years the tenant was entitled to a benefit in respect of that lease under the Private Rent Housing Benefit Scheme administered by the Housing Authority, and
- c) that transfer is made to the tenant of that property,

no final withholding tax shall be chargeable on the first €200,000 of the transfer value. Tax on the excess, if any, shall be chargeable at the normal rate.

When a transfer satisfies the three conditions referred to above except that:

- 1) it is not made to the tenant but to another person; or
- 2) the period during which the tenant was entitled to the said benefit was less than 10 years but not less than 3 years;



the final withholding tax on the first €200,000 of the value of the property shall be chargeable at the rate of one half of the rate that would have otherwise applied and the tax and duty on the excess, if any, shall be chargeable at the normal rate.

The parties to the transfer must produce to the notary a document issued by the Housing Authority certifying the period during which the tenant of the lease of the property had been entitled to a benefit in respect of that lease under the Private Rent Housing Benefit Scheme. The notary shall make a reference to that document in that deed and shall produce that document to the CfR together with the notice of the transfer.

Clarification on the tax exemption on gains or profits derived by non-residents

In terms of article 12(1)(c) of the ITA, certain gains or profits derived by non-residents when realised on the transfer of units in collective investment scheme, units relating to long-term insurance policies, interests in a partnership, and shares or securities in a company are exempt from income tax in Malta unless the partnership or company's assets consist wholly or principally of immovable property situated in Malta.

This exemption has been clarified and now also refers to "transfers of any rights over" the above-mentioned assets.

Introduction of a limitation on deductions relating to expenditure of a capital nature on intellectual property or any intellectual property rights

The deduction for capital expenditure on intellectual property (IP) spread over the useful life of such IP (subject to minimum of 3 years) is being restricted. When the IP or IP rights were transferred to the said person ("the acquirer") by a company ("the transferor") in terms of an exempt intra group transfer, the total deduction that may be claimed by the acquirer shall be the lower of the cost of acquisition and the market value of the said property or rights as at the time of that transfer, reduced, in either case, by the amount, if any, that the transferor had originally claimed as a deduction in respect of the IP rights that have been transferred.



Removal of claw-back rule in relation to persons resident in Malta becoming beneficially entitled to the profits of an entity that applied a notional interest deduction

The deemed distribution rule in the case of an individual resident in Malta becomes beneficially entitled, directly or indirectly, to the profits (whether or not distributed) of a company that claimed the notional interest deduction, is being deleted. All references to such sub-article are removed from the ITA. This deletion is with effect from year of assessment 2022.

Clarification on school fees deductions

Article 14B of the ITA allows for the deduction of qualifying school fees for Malta income tax purposes subject to the satisfaction of a number of requirements stipulated therein.

By means of this Act, reference to “a school named by the Minister” (through the relevant LN) has been substituted to refer to “a licensed independent school, as confirmed by the Education Ministry(MEDE). In practice, this means that the qualifying schools will be those confirmed by MEDE and submitted to Cfr with no further need for the aforementioned LN.

Clarification on trusts electing to be treated as a company

In terms of article 27D of the ITA, resident trustees may, in certain instances and subject to the satisfaction of a number of formalities, make an election to be treated as companies for Malta income tax purposes.

The Budget Act clarifies that trustees making in an election in terms of article 27D of the ITA include trustees that have been granted authorisation under article 43(3) of the Trust and Trustees Act, Chapter 331 of the Laws of Malta (TTA) as well as trustees that are not required to obtain such authorisation in terms of article 43(6) of the TTA.



Clarification regarding the reduced tax rate of 15% applicable to overseas employment

The reduced 15% flat tax rate on employment income in terms of a contract requiring the individual to carry out the activities wholly or mainly outside of Malta will include new conditions which clarify existing CfR interpretation. The reduced rate will not apply to emoluments payable under a contract of employment for a period of less than twelve (12) months or that lasts less than twelve (12) months. Moreover, the benefit shall not apply for a year of assessment if, during the year immediately preceding that year of assessment, the individual was present in Malta for a period that exceeds or for periods that in aggregate exceed thirty (30) days, disregarding any period during which that individual was present in Malta on vacation leave or sick leave and disregarding any period preceding the commencement or following the termination of the contract.

New 7.5% rate on income derived by individuals from artistic activity

An individual who derives income from a full-time or part-time artistic activity shall have an option to be charged to tax on all such income at the rate of 7.5% of the gross amount of the income so derived. This tax would be final and no set-off or refund shall be granted to any person in respect of the tax so charged.

Income shall be deemed to have been income derived from an artistic activity if it has been so certified by the Arts Council Malta, in a statement produced to the CfR on such form and in such manner and within such time as the CfR may approve.

Reduced tax rate of 10% on qualifying part-time income

With effect from year of assessment 2023, the rate of tax on income from part-time work in terms of article 90A of the ITA shall be reduced from 15% to 10%.