

**MALTA**

**ATT Nru. XVIII ta' l-1993**

ATT mahruġ b'ligi mill-Parlament ta' Malta.

ATT biex jemenda l-Att dwar it-Taxxa fuq l-*Income*, Kap. 123.

**ACT No. XVIII of 1993**

AN ACT enacted by the Parliament of Malta.

AN ACT to amend the Income Tax Act, Cap. 123.

Naghti l-kunsens tieghi.

(L.S.)

ĊENSU TABONE  
President  
16 ta' Lulju, 1993

**ATT Nru. XVIII ta' l-1993**

*ATT biex jemenda l-Att dwar it-Taxxa fuq l-Income, Kap. 123.*

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità ta' l-istess, hareg b'ligi dan li ġej:—

1. (1) Dan l-Att jista' jissejjah l-Att ta' l-1993 li jemenda l-Att dwar it-Taxxa fuq l-*Income*, u għandu jinqara u jiftiehem haġa waħda ma' l-Att dwar it-Taxxa fuq l-*Income*, hawnhekk iżjed 'il quddiem imsejjah "l-Att prinċipali".

Titolu fil-qosor  
u bidu fis-sehh.  
Kap. 123.

(2) Id-dispożizzjonijiet ta' dan l-Att għandhom jibdew isehħu kif ġej:

(a) id-dispożizzjonijiet ta' dan l-artikolu u ta' l-artikoli 6, 7 u 8 ta' dan l-Att għandhom jibdew isehħu mal-pubblikazzjoni ta' dan l-Att fil-Gazzetta, dwar is-sena ta' stima li tibda fl-1 ta' Jannar, 1994 u dwar is-snin ta' stima sussegwenti;

(b) id-dispożizzjonijiet ta' l-artikolu 10 ta' dan l-Att għandhom jibdew isehħu fid-data tal-pubblikazzjoni ta' dan l-Att fil-Gazzetta; u

(ċ) id-dispożizzjonijiet ta' l-artikoli l-oħra ta' dan l-Att għandhom jitqiesu li bdew isehħu fil-25 ta' Novembru, 1992.

2. Minnufih wara t-tifsira ta' "imghax fuq obligazzjonijiet" fis-subartikolu (1) ta' l-artikolu (2) ta' l-Att prinċipali għandha tidhol din it-tifsira ġdida li ġejja:

Emenda ta'  
l-artikolu 2 ta'  
l-Att prinċipali.

““*income*” hliet għall-finijiet tas-subartikolu (1) ta' l-artikolu 5 u tat-Taqsima V ta' dan l-Att tinkludi qliegh kapitali kif imfisser fl-artikolu 5A ta' dan l-Att;”.

Emenda ta'  
l-artikolu 5 ta'  
l-Att prinċipali.

3. L-artikolu 5 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu, minnufih wara l-kliem "speċifikati hawn taht" għandhom jiżdiedu l-kliem "għas-sena ta' stima li tibda fl-1 ta' Jannar, 1993 iżda biss dwar qliegħ kapitali li jkun sar fil-25 ta' Novembru, 1992 jew wara u għal kull sena ta' stima sussegwenti fuq il-qliegħ kapitali kif imfisser fl-artikolu 5A ta' dan l-Att li jkun dovut jew derivat minn Malta jew band'ohra, u sew jekk jasal Malta jew le, u"; u

(b) minflok iż-żewġ provisos li hemm mas-subartikolu (1) għandu jidhol dan l-proviso ġdid li ġej:

"Iżda:

(i) fil-każ ta' *income* li jinqala' barra minn Malta minn persuna li ma tkunx ordinarjament residenti f'Malta jew mhux domiciljata f'Malta, it-taxxa għandha tithallas fuq l-ammont li jasal f'Malta;

(ii) ma tithallas ebda taxxa fuq qliegħ kapitali li jinqala' barra minn Malta minn persuna li ma tkunx ordinarjament residenti f'Malta jew mhux domiciljata f'Malta jew lil persuna li tkun qeghda tiġi ntaxxata bir-rata ta' 15-il ċenteżmu fil-lira kif stipulat fis-subartikolu (9) ta' l-artikolu 31 ta' dan l-Att;

(iii) fil-każ ta' xi persuna li tkun qeghda tiġi ntaxxata bir-rata ta' 15-il ċenteżmu fil-lira kif stipulat fis-subartikolu (9) ta' l-artikolu 31 ta' dan l-Att, it-taxxa għandha tithallas biss fuq kull *income* jew qliegħ kapitali li jinqala' f'Malta u fuq kull ammont ta' *income* li jinqala' barra minn Malta u li jiġi riċevut f'Malta."

Zieda ta'  
artikolu ġdid 5A  
ma' l-Att  
prinċipali.

4. Minnufih wara l-artikolu 5 ta' l-Att prinċipali għandu jidhol dan l-artikolu ġdid li ġej:

"Qliegħ  
kapitali.

5A. (1) (a) Qliegħ kapitali derivat minn persuna mit-trasferiment ta' attiv għandu jiġi ntaxxat skond ma hemm fis-subartikolu (1) ta' l-artikolu 5 ta' dan l-Att. Minkejja kull haġa li tinsab x'imkien iehor f'dan l-Att, dak il-qliegħ għandu jiġi aċċertat kif stipulat f'dan l-artikolu u b'dak il-mod li jista' jiġi stabbilit. Il-qliegħ kapitali li għalih iġhoddu d-dispożizzjonijiet ta' dan l-artikolu huwa:

(i) qliegħ jew profitt li jinqala' mit-trasferiment ta' proprjetà jew użufrutt ta' kull proprjetà immobbli jew assenjament jew ċessjoni ta' kull jedd fuq dik il-proprjetà; u

(ii) qliegħ jew profitt li jinqala' mit-trasferiment ta' proprjetà jew użufrutt ta', jew mill-assenjament jew ċessjoni ta' kull jedd fuq titoli, avvjament ta' negozju, drittijiet ta' l-awtur, privattivi, *trade marks* u l-ismijiet ta' ditti kummerċjali; u

(b) F'dan l-artikolu —

“trasferiment” tinkludi kull assenjament, bejgh, emfitewsi jew sub-emfitewsi, qsim, donazzjoni, bejgh bi hlas gradwali u kull trasferiment b'kull titolu, iżda ma tinkludix trasferiment *causa mortis*; u

“titoli” tfisser ishma u *stocks* u kull dokument tali li b'kull mod ikollu sehem fil-profitt ta' kumpannija u li l-imghax tieghu mhuwiex limitat b'xi rata ta' mghax fissa.

(2) Għall-fini li jiġi aċċertat x'inhum l-qliegħ jew il-profitt li jsir minn trasferiment ta' proprjetà immobbli skond is-subparagrafu (i) tal-paragrafu (a) tas-subartikolu (1) ta' dan l-artikolu —

(a) għandhom jitnaqqsu b'dak il-mod u f'dak l-ammont li jista' jiġi stabbilit, l-ispiza li ssir għall-akkwist, l-element ta' inflazzjoni, kull ċens imhallas fuq il-proprjetà u li dwaru ma jsir ebda tnaqqis għal min ihallas it-taxxa taht kull dispożizzjoni oħra ta' dan l-Att, il-manutenzjoni, il-benefikati, spejjeż oħra li żiedu l-valur tal-proprjetà immobbli minn meta tkun giet akkwistata u spejjeż oħra li għandhom x'jaqsmu b'mod dirett mat-trasferiment;

(b) kull trasferiment ta' proprjetà immobbli permezz ta' Permuta għandu jitqies bħallikieku kienu qegħdin isiru atti ta' trasferiment separati bejn il-partijiet f'dak l-att;

(ċ) meta proprjetà immobbli tingħata b'emfitewsi jew sub-emfitewsi għal żmien li jaqbeż il-hamsin sena, jew li jista' jiġi estiż għal dawg il-perijodi, għandhom japplikaw dawn ir-regoli li ġejjin:

(i) meta l-*premium* jeċċedi l-ammont minfuq fl-akkwist skond il-paragrafu (a) ta' dan is-subartikolu, dak l-eċċess għandu jitqies bħala qliegħ jew profitt;

(ii) meta l-ammont minfuq fl-akkwist skond il-paragrafu (a) ta' dan is-subartikolu jeċċedi l-*premium* dak l-eċċess għandu jitnaqqas minn kull qliegħ jew profitt li jirriżulta skond ma hemm fis-subparagrafu (iii) ta' dan il-paragrafu;

(iii) ma għandu jitqies ebda ċens jew żieda fiċ-ċens li tidhol fit-trasferiment sakemm dak iċ-ċens jew żieda fiċ-ċens ma tinfedix, jew sakemm id-*directum dominium* jew *subdirectum dominium* skond il-każ, ma jiġix trasferit u f'dak il-każ kull qliegħ jew profitt jitqies li jkun il-prezz għall-fidwa

jew bejgh li minnu jitnaqqas kull tnaqqis skond ma hemm fis-subparagrafu (ii) ta' dan il-paragrafu;

(d) (i) trasferiment ma jinkludix kuntratt ta' qsim fejn ebda kumpens ma jkun dovut lil xi wiehed minn dawk li jaqsmu l-proprjeta', u mat-trasferiment ta' proprjeta' minn xi wiehed li jkun qasam l-ammont minfuq fl-akkwist ghandu jitqies bhala l-ammont minfuq fl-akkwist tal-proprjeta' involuta filwaqt ta' l-akkwist minn dak il-wiehed li jkun qasam;

(ii) ghall-finijiet ta' dan il-paragrafu ghandha titqies biss dik il-proprjeta' immobbli li tkun proprjeta' komuni u li tinqasam, u meta jinghataw flus jew jiggu trasferiti mobbli ohra li jkunu kollha proprjeta' komuni lil wiehed minn dawk li jaqsmu bhala kunsiderazzjoni ghat-tnaqqis fis-sehem ta' l-immobbli moghtija jew trasferiti lilu, il-qasma ghandha titqies bhala wahda li fiha jkun thallas kumpens;

(iii) meta persuna tircievi kumpens fuq kuntratt ta' qsim hija ghandha titqies li tkun ghamlet qliegh kapitali ekwivalenti ghal daqskemm tkun iz-zieda fil-valur tal-proprjeta' bejn iz-zmien tal-akkwist minn dawk li jkunu qasmu bejniethom u z-zmien tal-qasma, b'dan illi t-taxxa fuq il-qliegh kapitali ghandha biss tithallas fi zmien il-qasma fuq dak is-sehem tal-qliegh kapitali maghmul hekk kif mhux maghdud fi z-zieda fil-valur tal-proprjeta' moghtija lil dak il-wiehed li jkun qasam bejn iz-zmien tal-akkwist minn dawk li jaqsmu u l-qasma, u meta dak il-wiehed li jkun qasam jittrasferixxi l-proprjeta' moghtija lilu l-ammont minfuq fl-akkwist ghandu jitqies bhala l-ammont minfuq fl-immobbli meta dawn jiggu akkwistati minn dawk kollha li jaqsmu qabel ma jkunu qasmu;

(iv) meta wiehed li jkun qasam ihallas kumpens fi zmien il-qasma, huwa ghandu jitqies li ma jkunx ghamel qliegh kapitali fi zmien il-qasma, u meta dak il-wiehed li jkun qasam jittrasferixxi proprjeta' immobbli moghtija lilu fil-qasma, l-ammont minfuq fl-akkwist ghandu jitqies bhala dak is-sehem tas-somma ta' l-ammont minfuq fl-akkwist tas-sehem ta' min qieghed jaqsam fl-immobbli kollha maqsuma flimkien mal-kumpens imhallas mal-kuntratt tal-qasma, daqskemm huwa ekwivalenti ghas-sehem mill-valur tal-immobbli trasferit ghall-valur totali ta' immobbli moghtija lil dak il-wiehed li jkun qasam fil-kuntratt ta' akkwist;

(e) donazzjoni ghandha titqies daqlikieu bejgh maghmul bil-valur kummercjali tal-proprjeta' fil-waqt tat-trasferiment. Izda ma ghandha tithallas ebda taxxa meta d-donazzjoni ssir minn persuna lil:

(i) konjuġi, dixxendenti u axxendenti f'linja diretta u l-konjuġi tagħhom, jew fin-nuqqas ta' dixxendenti lil hutu subien jew bniet u d-dixxendenti tagħhom, jew

(ii) istituzzjonijiet filantropiċi approvati għall-finijiet tal-paragrafu (e) tas-subartikolu (1) ta' l-artikolu 11 ta' dan l-Att;

(f) mingħajr preġudizzju għad-dispożizzjoni tal-paragrafu (e) tas-subartikolu (1) ta' l-artikolu 11, meta l-proprjetà msemmija fil-paragrafu (e) ta' dan is-subartikolu titneħha minn min ikun irċeviha b'donazzjoni fi żmien hames snin minn meta tkun saret id-donazzjoni, min ikun irċieva d-donazzjoni għandu jintalab iħallas fuq il-qliegh aċċertat skond id-dispożizzjonijiet ta' dan l-artikolu billi jikkunsidra l-ammont minfuq fl-akkwist tal-proprjetà meta din giet akkwistata minn min ikun għamel id-donazzjoni; jekk il-proprjetà tinbiegħ minn min ikun irċieva d-donazzjoni wara li jgħaddu hames snin l-ammont minfuq fl-akkwist għandu jitqies li jkun il-valur tal-proprjetà hekk kif dikjarat fl-att tad-donazzjoni;

(g) qliegh u profitti li għandhom x'jaqsmu ma' trasferiment b'donazzjoni jfissru d-differenza fil-valur kummerċjali tal-proprjetà meta ssir id-donazzjoni u l-ammont minfuq fl-akkwist tal-proprjetà meta din giet akkwistata minn min ikun għamel id-donazzjoni.

(3) Għall-fini tal-aċċertament tal-qliegh jew profitt li jsir minn xi trasferiment ta' proprjetà skond is-subparagrafu (ii) tal-paragrafu (a) tas-subartikolu (1) ta' dan l-artikolu:

(a) l-ammont minfuq fl-akkwist ta' ishma qabel il-25 ta' Novembru, 1992 għandu jiġi valorizzat jew fuq il-Metodu ta' Ekwiżità ta' valutazzjoni ta' ishma (valur nett tal-attiv) bażat fuq l-aħħar kontijiet mogħtijin lill-Kummissarju fit-18 ta' Diċembru, 1992 billi jitqies il-valur ta' proprjetà immobbli eżistenti fil-kontijiet imsemmija u dan jiġi aġġustat skond ma hemm fil-paragrafu (a) tas-subartikolu (2) ta' dan l-artikolu, jew fuq il-prezz tax-xiri attwali, skond liema hu l-oghla;

(b) ishma elenkati kwotati fi *Stock Exchange* fil-25 ta' Novembru, 1992 għandhom jiġu valorizzati skond il-prezz eżistenti f'dik id-data; u f'każ ta' ishma kkwotati fi flus barranin, għandha tintuża r-rata tal-kambju (*middle rate* tal-Bank Centrali) tad-data msemmija;

(c) ishma akkwistati wara l-25 ta' Novembru, 1992 għandhom jiġu valorizzati fuq l-ammont minfuq fl-akkwist tagħhom;

(d) meta mat-trasferiment ta' ishma il-jeddijiet marbutin ma' dawk l-ishma jinbidlu b'liema mod ikun, il-valur tat-trasferiment ta' dawk l-ishma ghandu jitqies daqslikieku ma saret ebda bidla bhal dik;

(e) kull trasferiment li jikkonsisti fi skambju ghandu jitqies bhallikieku jkunu qeghdin isiru zewg trasferimenti separati; u

(f) id-dispozizzjonijiet tal-paragrafi (d), (e), (f) u (g) tas-subartikolu (2) ta' dan l-artikolu ghandhom ikunu jghoddu *mutatis mutandis* ghal dan is-subartikolu.

(4) Id-dispozizzjonijiet tal-paragrafu (d) tas-subartikolu (2) ghandhom ikunu jghoddu *mutatis mutandis* meta l-attiv maqsum ikun jinkludi kull attiv taht is-subparagrafi (i) u (ii) tal-paragrafu (a) tas-subartikolu (1).

(5) Id-dispozizzjonijiet tas-subparagrafu (i) tal-paragrafu (a) tas-subartikolu (1) ta' dan l-artikolu ma ghandhomx ikunu jghoddu ghal qliegh jew profitt li ghandu x'jaqsam mat-trasferiment ta' proprjeta' immobbli:

(a) meta kopja ta' l-att ta' trasferiment relattiv li jkollu data qabel il-25 ta' Novembru, 1992 jew tal-konvenju relattiv ta' trasferiment jew xiri li jkollu wkoll data qabel il-25 ta' Novembru, 1992, maghmul favur min se jakkwista, ikun gie debitament registrat ghand id-Dipartiment tat-Taxxi Interni sa l-1 ta' Dicembru, 1992 u jkun inhareg certifikat mill-Kummissarju dwar dik ir-registrazzjoni u f'kaz ta' att ta' trasferiment, l-att ikun gie insinwat kif imiss fir-Registru Pubbliku sa l-1 ta' Dicembru, 1992;

(b) meta l-Kummissarju jkun sodisfatt li l-proprjeta' jew sehem indiviz mill-proprjeta' kienet proprjeta' ta' min ghamel it-trasferiment u okkupata minnu bhala r-residenza tieghu stess ghal perijodu ta' mill-anqas tliet snin li jigu minnufih qabel id-data ta' trasferiment u sakemm il-proprjeta' titnehha fi zmien tnax-il xahar minn meta jitbattal il-fond;

(c) ghall-finijiet tal-paragrafu (b) ta' dan is-subartikolu "residenza tieghu stess" tfisser ir-residenza principali li jkollu min ihallas it-taxxa jew il-konjugi tieghu li tkun dar ta' residenza li kienet ir-residenza unika jew principali tal- proprjetarju. Garaxx imniffed ma' dar jew blokk appartamenti jew li jinsab tahtom, jew garaxx ta' mhux aktar minn 30 metru kwadru li jkun jinsab f'distanza ta' hames mitt metru mid-dar ta' residenza, u li jigi trasferit bl-istess att flimkien mar-residenza principali ghandu jitqies bhala li jaghmel sehem mir-residenza. Il-perijodu ta' residenza jinkludi l-okkupazzjoni fizika tal-fond u kull nuqqas minn Malta bhalma hu minhabba f'xi mpjeg estern, mard, vakanza jew studju. Jekk xi parti mid-dar tintuza eskklusivament

ghal ghanijiet kummerċjali f'xi żmien matul sentejn qabel it-trasferiment din ma ghandhiex titqies bhala "residenza tiegħu stess" u din il-parti ghandha tinqasam fuq il-bażi ta' l-area okkupata ghal dan il-ghan bhala proporzjon ta' l-area kollha tad-dar residenzjali relattiva;

(d) meta l-proprjeta tkun ittiehdet mill-Gvern u l-President ta' Malta jkun hareġ dikjarazzjoni dwar hekk skond l-Ordinanza dwar l-Akkwist ta' Artijiet ghal Skopijiet Pubbliċi qabel il-25 ta' Novembru, 1992;

Kap. 88.

(e) meta l-proprjeta tigi trasferita bejn il-konjuġi wara li ssir firda bil-Qorti jew bil-kunsens tat-tnejn;

(f) meta l-proprjeta kienet tagħmel sehem mill-komunjoni ta' l-akkwisti bejn il-konjuġi jew kienet mod ieħor proprjeta komuni bejniethom u tigi trasferita lil xi konjuġi max-xoljiment tal-komunjoni jew tinqasam bejn il-konjuġi, jew bejn il-konjuġi li jibqa' haj u l-werrieta tal-konjuġi mejjet; u

(g) meta l-proprjeta tigi trasferita b'emfitewsi ghal hamsin sena jew inqas.

(6) Id-dispożizzjonijiet tas-subparagrafu (ii) tal-paragrafu (a) tas-subartikolu (1) ta' dan l-artikolu ma ghandhomx japplikaw ghal qliegh jew profitt li ghandu x'jaqsam ma':

(a) it-trasferiment ta' *Bonds* u *Stocks* tal-Gvern ta' Malta;

(b) it-trasferiment ta' titoli elenkati ta' kumpanniji kwotati fil-Borża ta' Malta; u

(c) proprjeta trasferita fiċ-ċirkostanzi msemmija fil-paragrafi (e) u (f) tas-subartikolu (5) ta' dan l-artikolu.

(7) Meta persuna jkollha jedd ghal *allowances* kapitali taht il-paragrafi (f) u (j) tas-subartikolu (1) ta' l-artikolu 13 ta' dan l-Att dwar attiv li jkun inbiegħ bi prezz li jeċċedi l-ammont minfuq fl-akkwist tiegħu u kull benefikat magħmul dwaru, l-ammont minfuq fl-akkwist ghandu jinhadem fuq l-ammont minfuq fl-akkwist u l-ammont minfuq f'kull benefikat magħmul dwaru.

(8) Meta attiv imsemmi fil-paragrafu (a) tas-subartikolu (1) ta' dan l-artikolu li jkun użat f'negozju ghal perijodu ta' mill-inqas tliet snin jiġi trasferit u fi żmien sena jitqiegħed floku attiv li jiġi unikament użat ghal ghan simili fin-negozju, kull qliegh kapitali li jintgħamel mat-trasferiment ma ghandux jiġi ntaxxat iżda l-ammont minfuq fl-akkwist ta' l-attiv ġdid ghandu jitnaqqas bil-qliegh

imsemmi. Meta l-attiv jitnehha minghajr ma jitqiegħed xejn minfloku, fil-qliegħ totali għandu jitqies ukoll il-prezz tat-trasferiment kif ukoll l-ammont minfuq fl-akkwist imnaqqas kif imsemmi qabel.

(9) Meta attiv jiġi trasferit minn kumpannija għall-oħra fil-kuntest ta' grupp ta' kumpanniji, għandu jitqies li ma jkun sar ebda telf jew qliegħ minn dak it-trasferiment. Fl-aċċertament tal-qliegħ kapitali meta dak l-attiv jiġi sussegwentement trasferit barra mill-grupp ta' kumpanniji, l-ammont minfuq bażiku ta' l-attiv li għandu jitqies huwa l-ammont minfuq originali li kien jeżisti qabel ma sehħ l-ewwel trasferiment.

F'dan is-subartikolu, "grupp ta' kumpanniji" jfisser:

(a) kumpannija matriċi u s-sussidjarji tagħha; kumpannija titqies li hija waħda sussidjarja jekk iktar minn hamsin fil-mija ta' l-ishma votanti tagħha jkunu proprjetà benefika tal-kumpannija matriċi tagħha; u

(b) kumpanniji li jkunu kontrollati minn, u proprjetà benefika ta', direttament jew indirettament sal-limitu ta' iktar minn hamsin fil-mija mill-istess attivisti.

(10) (a) Telf kapitali għandu jinhadem bl-istess mod bħala qliegħ kapitali.

(b) Kull telf li jirriżulta mit-transazzjonijiet li jsiru taħt is-subartikolu (1) ta' dan l-artikolu ma għandhiex issir it-tpaċija tagħhom ma' xi *income* iehor għas-sena ta' stima iżda għandhom jitmexxew 'il quddiem u ssir it-tpaċija tagħhom mal-qliegħ kapitali ta' snin ta' stima ta' wara sakemm it-telfien shiħ jiġi hekk assorbit.

(ċ) Djun li ma jistgħux jingabru li jsiru dwar dawk it-transazzjonijiet li jiġu ppruvati għas-sodisfazzjon tal-Kummissarju bħala li ma jistgħux jingabru matul is-sena li tiġi minnufih qabel is-sena ta' stima, minkejja li dawk id-djun li ma jistgħux jingabru kienu dovuti u kellhom jithallsu qabel il-bidu tas-sena msemmija, għandhom jithallew jitnaqqsu mill-qliegħ kapitali fis-sena li jkunu saru u jekk ma jkun hemm ebda qliegħ f'dik is-sena, dawn għandhom jitmexxew 'il quddiem u ssir it-tpaċija tagħhom ma' qliegħ li jsir fil-futur:

Iżda kull ammont li jingabar dwar ammonti li qabel ikunu indikati bħala djun li ma jistgħux jingabru għandu jitqies bħala qliegħ għall-finijiet ta' dan l-artikolu u jiġu ntaxxati kif dovut għas-sena li fiha dawn jiġu rikoverati.

(11) Kull qliegħ jew profitt minn kull transazzjoni li hi taxxabbli taħt il-paragrafu (a) tas-subartikolu (1) ta' l-artikolu 5 ta' dan l-Att ma għandux ikun taxxabbli bħala qliegħ kapitali dwar l-istess transazzjoni taħt dan l-artikolu.

(12) (a) Il-valur kummerċjali ta' attiv għandu jkun il-prezz li dak l-attiv iġib meta jinbiegħ f'suq hieles filwaqt tat-trasferiment;

(b) Meta l-valur kummerċjali ta' attiv jenħtiegħ sabiex jiġi stabbilit mill-Kummissarju huwa jista' jieh u l-opinjoni jew l-għajnuna ta' stimatur, perit arkitett jew kull persuna li tagħmel xi valutazzjoni oħra; u

(ċ) Min jagħmel l-istima jew il-valutazzjoni f'isem il-Kummissarju għandu jitqies, bil-għan li jwettaq ix-xogħol mogħti lilu, li jkun persuna impjegata fid-Dipartiment tal-Kummissarju u li jkollha kariga ufficjali taħt dan l-Att.

(13) (a) Meta persuna tittrasferixxi attiv li, fiż-żmien ta' l-akkwist tiegħu, kien jagħmel sehem individw minn attiv ikbar (hawnhekk iżjed 'il quddiem f'dan il-paragrafu msejjah "l-attiv shih"), kull tnaqqis permess sabiex wiehed jasal għall-qliegħ magħmul minn dak it-trasferiment ikun daqs il-proporzjon tan-nefqa li tkun saret sabiex l-attiv shih ikun gie akkwistat u ta' kull tnaqqis iehor li jkun dovut skond dan l-artikolu li kieku dik il-persuna tkun ittrasferiet l-attiv shih, hekk kif il-konsiderazzjoni għat-trasferiment tkun relatata fi żmien it-trasferiment mal-valur kummerċjali ta' l-attiv shih.

(b) Tnaqqis tal-kapital tal-ishma ta' kumpannija għandu jitqies bħala trasferiment ta' dak il-proporzjon ta' kemm ikollu l-proprjetarju daqskemm hu l-proporzjon tat-tnaqqis tal-kapital tal-kumpannija u għandu jikkostitwixxi qliegħ jew telf għall-għan ta' dan l-artikolu fis-sena meta jsir dak it-tnaqqis.

(ċ) Ma' kull trasferiment sussegwenti tal-ishma msemmija, l-ammont minfuq fl-akkwist tagħhom għandu jitqies li jkun dik il-parti li jifdal ta' l-ammont minfuq fl-akkwist li ma jkunx tqies meta jkun sar it-tnaqqis tal-kapital.

(14) Meta jsir trasferiment li jkun jinvolvi l-iskambju ta' ishma mar-ristrutturazzjoni tal-kumpannija meta jsiru *mergers*, *demergers*, amalgamazzjonijiet u rijorganizzazzjonijiet, għandu jitqies li ma kien hemm ebda telf jew qliegħ minn dak it-trasferiment u li l-ammont minfuq fl-akkwist meta jsir trasferiment sussegwenti għandu jitqies bħala l-ammont minfuq fl-akkwist tal-ishma originali.

(15) Meta negozju jew soċjetà f'isem kollettiv, li jkunu jirrendu u, jiġu inkorporati f'kumpannija ta' responsabbiltà limitata, li tkun proprjetà benefika sa limitu ta' mhux anqas minn 75% ta' l-istess persuni li kienu

proprjetarji tan-negozju jew tas-soċjetà f'isem kollettiv, u jkun hemm trasferiment ta' l-attiv, għandu jitqies li ma jkun sar ebda telf jew qliegh mit-trasferiment. Iżda meta dak l-attiv jiġi sussegwentement trasferit mill-kumpannija, l-ammont minfuq bażiku ta' l-attiv li għandu jitqies ikun l-ammont minfuq originali eżistenti qabel ma jkun sehh l-ewwel trasferiment.

(16) Għall-finijiet ta' dan l-artikolu l-valur ta' l-użufrutt u tan-*nuda proprietas* għandu jinhadem skond id-dispożizzjonijiet stipulati fl-Att ta' l-1993 dwar Taxxa fuq Dokumenti u Trasferimenti.

Emenda ta' l-artikolu 13 ta' l-Att prinċipali.

5. Fil-paragrafu (g) tas-subartikolu (1) ta' l-artikolu 13 ta' l-Att prinċipali, minnufih wara l-kliem "Ma jistax kollu kemm hu jitnaqqas" u "ma setax jiġi mnaqqas għal kollox" għandhom jiżdiedu l-kliem "mill-qliegh kapitali jew".

Emenda ta' l-artikolu 28 ta' l-Att prinċipali.

6. L-artikolu 28 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) is-subartikoli (3) u (4) tiegħu għandhom jithassru;

(b) is-subartikolu (5) għandu jiġi enumerat mill-ġdid (3) u għandu jiġi emendat billi flok il-kliem "tas-subartikoli (2), (3) u (4) ta' dan l-artikolu" għandhom jidhlu l-kliem "tas-subartikolu (2) ta' dan l-artikolu"; u

(ċ) is-subartikoli (6), (7) u (8) għandhom jiġu enumerati mill-ġdid (4), (5) u (6).

Emenda ta' l-artikolu 31A ta' l-Att prinċipali.

7. L-artikolu 31A ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) is-subartikoli (12), (13), (14) u (15) tiegħu għandhom jiġu enumerati mill-ġdid (15), (16), (17) u (18); u

(b) minnufih wara s-subartikolu (11) tiegħu, għandhom jidhlu dawn is-subartikoli ġodda li ġejjin:—

“(12) Fil-każ ta' individwu residenti f'Malta fis-sena minnufih qabel is-sena ta' stima, li jġib prova għas-sodisfazzjon tal-Kummissarju li fis-sena minnufih qabel is-sena ta' stima membru tal-familja tiegħu kien ibati minn marda jew mard kroniku preskritt, għandu jingħata *rebate* ta' taxxa ta' hamsa u ghoxrin lira dwar kull membru tali:

Iżda meta żewġ individwi jew aktar ikunu intitolati għal tnaqqis skond il-paragrafu (a) tas-subartikolu (1) ta' l-artikolu 28 ta' dan l-Att jew għal *rebate* ta' taxxa skond il-paragrafu (b) tas-subartikolu (2) ta' dan l-artikolu dwar l-istess dipendent jew tifel jew tifla, kull *rebate* skond dan is-subartikolu dwar id-dipendent jew it-tifel jew tifla għandu jitqassam bejn l-individwi bi proporzjon ta' kull tnaqqis jew *rebate* ta' taxxa dovut lil kull wiehed skond l-imsemmija paragrafi.

(13) Fis-subartikolu (12) ta' dan l-artikolu "membru tal-familja tieghu" tisser l-individwu li jibbenefika mir-*rebate* mahsub f'dan l-artikolu, il-mara tieghu, jekk tghix mieghu jew ghal kollox minnu mantnuta, u kull individwu iehor li dwaru hu jkun intitolat ghal tnaqqis personali skond il-paragrafu (a) tas-subartikolu (1) ta' l-artikolu 28 ta' dan l-Att jew ghal *rebate* ta' taxxa skond il-paragrafu (b) tas-subartikolu (2) ta' dan l-artikolu.

(14) Ghall-finijiet tas-subartikoli (12) u (13) ta' dan l-artikolu, kull riferenza ghall-paragrafu (b) tas-subartikolu (2) ta' dan l-artikolu ghandha tiftiehem bhala riferenza ghall-imsemmi paragrafu minghajr konsiderazzjoni tad-dispożizzjonijiet tal-paragrafu (i) tal-proviso li hemm ghalih."

8. Fl-artikolu 31B ta' l-Att principali minflok il-kliem "tnejn u hamsin lira" ghandhom jidhlu l-kliem "sebgha u sebghin lira".

Emenda ta' l-artikolu 31B ta' l-Att principali.

9. Is-subartikolu (1) ta' l-artikolu 42 ta' l-Att principali ghandu jigi emendat billi minnufih wara l-kliem "ta' l-artikolu 32" ghandhom jidhlu l-kliem "jew ta' l-artikolu 74A".

Emenda ta' l-artikolu 42 ta' l-Att principali.

10. Minnufih wara l-proviso fis-subartikolu (9) ta' l-artikolu 55 ta' l-Att principali, ghandu jiddied dan il-proviso li gej:—

Emenda ta' l-artikolu 55 ta' l-Att principali.

"Izda wkoll ir-reat taht dan is-subartikolu ghandu jkompli jezisti sakemm min jaghmel ir-reat jikkonforma ruhu u jaqbel mad-dispożizzjonijiet ta' dan l-artikolu jew ta' kull regola maghmula tahtu."

11. Minnufih wara l-artikolu 74 ta' l-Att principali, ghandu jidhol dan l-artikolu gdid li gej:

Zieda ta' l-artikolu 74A gdid ma' l-Att principali.

"Taxxa Provvizorja fuq taxxa dovuta ghat-trasferiment ta' proprjeta."

74A. (1) Meta persuna tikseb qliegh jew profitt mit-trasferiment ta' proprjeta msemmi fis-subparagrafi (i) u (ii) tal-paragrafu (a) tas-subartikolu (1) ta' l-artikolu 5A ta' dan l-Att, irrispettivament jekk dak il-qliegh jew profitt ikunx taxxabli taht id-dispożizzjonijiet ta' dak l-artikolu jew taht kull dispożizzjoni ohra ta' dan l-Att, hija ghandha tibghat lill-Kummissarju fi zmien hmistax-il jum mit-trasferiment relattiv b'dak il-mod li jista' jigi preskritt, hlas ta' taxxa provvizorja ekwivalenti ghal 7% tal-konsiderazzjoni li ghandha x'taqsam mat-trasferiment tal-proprjeta jew tal-valur tad-donazzjoni:

Izda f'kuntratti ta' enfitewsi jew sub-enfitewsi ma ghandu jittiehed ebda qies ta' xi cens jew sub-cens li jithallas ta' kull sena skond il-kuntratt.

(2) Ma ghandhiex tithallas taxxa provvizorja taht dan l-artikolu dwar:

(a) kull trasferiment ta' attiv li mhux suggett ghat-taxxa fuq qliegh kapitali, jew ghat-taxxa taht l-artikolu 5 ta' l-Att;

(b) trasferiment ta' proprjetà fuq kuntratti ta' qsim;

(c) trasferiment ta' ishma f'kumpanniji pubbliċi.

(3) Il-Kummissarju jista' jawtorizza lil persuna li hi ntaxxabbli taht il-paragrafu (a) tas-subartikolu (1) ta' l-artikolu 5A ta' dan l-Att li thallas it-taxxa provvizorja taht dan l-artikolu b'rata li tkun iktar baxxa minn dik imsemmija fis-subartikolu (1) ta' dan l-artikolu, jekk tkun tista' tingieb prova li l-qliegħ kapitali huwa inqas minn 20% tal-konsiderazzjoni jew tal-valur tad-donazzjoni skond il-każ.

(4) Kull taxxa provvizorja mħallsa għall-finijiet ta' dan l-artikolu matul jew dwar is-sena li tiġi qabel xi sena ta' stima għandha tinhadem għall-finijiet ta' għbir relattivament għat-taxxa mitluba dwar is-sena ta' stima msemmija u jekk ikun hemm xi ammont iktar wara li jkun nħadmu l-kontijiet, dak l-ammont iktar għandu jingħata lura skond id-dispożizzjonijiet ta' l-artikolu 79 ta' dan l-Att. Dik it-taxxa provvizorja għandha tkun separata u distinta minn dik imħallsa jew li għandha tithallas taht id-dispożizzjonijiet ta' l-artikolu 74 ta' dan l-Att hlief għal persuni li jagħmlu qliegħ jew profitt minn proprjetà immobbli skond kif hemm fil-paragrafu (a) tas-subartikolu (1) ta' l-artikolu 5 ta' dan l-Att.

(5) Jekk persuna tonqos milli thallas it-taxxa provvizorja kif hemm provdut taht dan l-artikolu, huwa għandu jintalab iħallas it-taxxa li kellha hekk tithallas u, b'żieda ma' dan, taxxa addizzjonali kif provdut fil-paragrafu (a) tas-subartikolu (1) ta' l-artikolu 75, u dik it-taxxa u taxxa addizzjonali għandhom jingābru minn dik il-persuna bl-istess mod bħalma tingābar taxxa oħra li tiġi stmata u li tingābar mingħandu.

(6) Għall-finijiet tas-subartikolu (5) ta' dan l-artikolu avviz mill-Kummissarju lil persuna li jkun juri t-taxxa li kellha tithallas kull taxxa addizzjonali li kellu wkoll iħallas talli naqas iħallas it-taxxa għandu jkun, sakemm ma tingiebx prova għall-kuntrarju, prova biżżejjed li l-ammont muri fl-imsemmi avviz huwa l-ammont dovut li jithallas lill-Kummissarju minn dik il-persuna.

(7) Is-setgħat mogħtija lill-Kummissarju bis-subartikoli (5) u (6) ta' dan l-artikolu għandhom ikunu b'żieda ma' kull jedd mogħti lilu sabiex jistitwixxi proċedimenti dwar reat taht is-subartikolu (8) ta' dan l-artikolu.

(8) Kull min jikser jew jonqos milli jikkonforma ruħu mad-dispożizzjonijiet ta' dan l-artikolu jista' jehel, meta jinsab hati, multa ta' mhux inqas minn Lm50 u mhux iktar minn Lm500, jew prigunerija għal kull żmien mhux iktar minn

sitt xhur, jew ghal dik il-multa u prigumerija flimkien, u ghal multa ohra ta' mhux inqas minn Lm2 iżda mhux aktar minn Lm10 ghal kull ġurnata li matulha r-reat jibqa' jsehh wara s-sejbien ta' htija. Iżda l-Kummissarju jista' jasal f'arrangamenti dwar kull reat taht dan l-artikolu u jista', qabel is-sentenza, iżomm jew jasal f'arrangamenti fuq kull proċedimenti taht dan l-artikolu.

(9) (a) It-taxxa provvizorja li tithallas taht dan l-artikolu ghandha tintghamel b'dak il-mod li jista' jiġi hekk preskritt.

(b) Minkejja kull haġa li hemm dispożizzjoni dwarha fir-regoli dwar it-trasferiment ta' proprjetà immobbli jew jeddijiet relattivi permezz ta' att pubbliku, in-Nutar li jippubblika dak l-att ikollu l-istess jeddijiet u responsabbiltà dwar il-ġbir u l-hlas tat-taxxa provvizorja li ghandha tithallas b'dak l-att u skond dan l-artikolu bhal ma hemm imposta fl-Att ta' l-1993 dwar Taxxa fuq Dokumenti u Trasferimenti fuq Nutara li jippubblikaw dawk l-atti, f'dak li ghandu x'jaqsam mat-taxxa li ghandha tithallas u tingabar fuq trasferimenti skond dak l-Att. Kull nuqqas ta' Nutar dwar il-ġbir u hlas ta' taxxa provvizorja taht dan l-artikolu ghandu, ghall-finijiet kollha ta' l-Att ta' l-1993 dwar Taxxa fuq Dokumenti u Trasferimenti, jitqies bhala nuqqas fit-twettieq ta' dmirijietu taht dan l-Att.

(c) Meta jinbiegh bl-irkant fil-qorti xi attiv li t-trasferiment tieghu huwa sugġett ghat-taxxa fuq qliegh kapitali taht l-artikolu 5A ta' dan l-Att, ir-Registratur tal-Qrati ghandu jkollu l-istess jeddijiet dwar iż-żamma u l-hlas tat-taxxa provvizorja taht dan l-artikolu bhalma ghandu taht l-artikolu 66 ta' l-Att ta' l-1993 dwar Taxxa fuq Dokumenti u Trasferimenti mposta fuqu dwar it-taxxa li ghandha tingabar fuq trasferimenti *causa mortis* taht l-istess Att.”.

12. Fil-paragrafu (c) tas-subartikolu (1) ta' l-artikolu 75 ta' l-Att prinċipali, minflok il-kliem “ta' l-artikoli 32, 42, 55,” ghandhom jidhlu l-kliem “ta' l-artikoli 32, 42, 55, 74A,”.

Emenda ta' l-artikolu 75 ta' l-Att prinċipali.

13. (1) Id-dispożizzjonijiet ta' l-artikolu 10 ta' dan l-Att ghandhom japplikaw fil-każ ta' kull min fid-data tad-dhul fis-sehh ta' dan l-Att ma jkun ikkonferma ruhu jew naqas milli jaqbel mad-dispożizzjonijiet ta' l-artikolu 55 ta' l-Att prinċipali jew ta' kull regola maghmula tahtu, u li ma jkun hekk ikkonforma ruhu jew qabel fi żmien xahar mid-dhul fis-sehh ta' dan l-Att.

Dispożizzjonijiet transitorji.

(2) Hadd ma jista' jiehu ebda azzjoni kontra Nutar li qabel il-pubblikazzjoni ta' dan l-Att ikun aġixxa b'mod konformi ma' kull ordni jew direttiva moghtija mill-Ministru responsabbli ghall-finanzi jew mill-Kummissarju, dwar il-ġbir u hlas tat-taxxa provvizorja li tithallas taht l-artikolu 74A ta' dan l-Att u li jkun ġabar minghand dik il-persuna dik it-

taxxa provvizorja iktar minn dik li kellha tithallas skond dan l-Att. F'każ bhal dak, in-Nutar ghandu jghaddi lill-Kummissarju kull taxxa provvizorja hekk miġbura iżda li tkun għadha ma thallsietx lill-Kummissarju fid-data tal-pubblikazzjoni ta' dan l-Att f'dak iż-żmien li seta' gie stabbilit f'dawk l-ordnijiet jew direttivi.

(3) Il-Kummissarju jkollu jedd ta' azzjoni kontra Nutar għall-ħlas ta' kull taxxa provvizorja miġbura minnu iktar minn dik dovuta skond dan l-Att iżda li tkun ingabret skond kull ordni jew direttiva imsemmija qabel.

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Mghoddi mill-Kamra tad-Deputati fis-Seduta Nru. 159 tas-7 ta' Lulju, 1993.

LAWRENCE GONZI  
*Speaker*

RICHARD J. CAUCHI  
*Skrivan tal-Kamra tad-Deputati*

I assent.

(L.S.)

ĈENSU TABONE  
President

16th July, 1993

**ACT No. XVIII of 1993**

*AN ACT to amend the Income Tax Act, Cap. 123*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the Income Tax (Amendment) Act, 1993, and shall be read and construed as one with the Income Tax Act, hereinafter referred to as “the principal Act”.

Short title and  
commencement  
Cap. 123

(2) The provisions of this Act shall come into force as follows:

(a) the provisions of this section and of sections 6, 7 and 8 of this Act shall come into force upon the publication of this Act in the Gazette, in respect of the year of assessment commencing on the 1st January, 1994 and of subsequent years of assessment;

(b) the provisions of section 10 of this Act shall come into force on the date of the publication of this Act in the Gazette; and

(c) the provisions of the other sections of this Act shall be deemed to have come into force on the 25th November, 1992.

2. Immediately after the definition of “incapacitated person” in subsection (1) of section 2 of the principal Act there shall be inserted the following new definition:

Amendment of  
section 2  
of the  
principal Act.

““income” except for the purposes of subsection (1) of section 5 and Part V of this Act shall include capital gains as defined in section 5A of this Act;”.

Amendment of  
section 5  
of the  
principal Act.

3. Section 5 of the principal Act shall be amended as follows:

(a) in subsection (1) thereof, immediately after the words "specified hereafter" there shall be added the words "for the year of assessment commencing on 1st January, 1993 but only with respect to any capital gains made on or after the 25th November, 1992 and for each subsequent year of assessment upon the capital gains as defined in section 5A of this Act accruing or derived from Malta or elsewhere, and whether received in Malta or not, and"; and

(b) the existing two provisos to subsection (1) shall be substituted by the following new proviso:

"Provided that:

(i) in the case of income arising outside Malta to a person who is not ordinarily resident in Malta or not domiciled in Malta, the tax shall be payable on the amount received in Malta;

(ii) no tax shall be payable on capital gains arising outside Malta to a person who is not ordinarily resident in Malta or not domiciled in Malta or to a person who is charged to tax at the rate of 15 cents in the Lm as laid down in subsection (9) of section 31 of this Act;

(iii) in the case of any person who is charged to tax at the rate of 15 cents in the Lm as laid down in subsection (9) of section 31 of this Act, the tax shall be payable only on any income or capital gains arising in Malta and on any amount of income arising outside Malta and received in Malta."

Addition of  
new section 5A  
to the  
principal Act.

4. Immediately after section 5 of the principal Act, there shall be introduced the following section:

"Capital gains. 5A. (1) (a) Capital gains derived by a person from the transfer of a capital asset shall be charged under subsection (1) of section 5 of this Act. Notwithstanding anything contained in any other part of this Act, such gains shall be ascertained as laid down in this section and in such manner as may be prescribed. The capital gains to which the provisions of this section shall apply are:

(i) gains or profits arising from any transfer of the ownership or usufruct of any immovable property or the assignment or cession of any rights over such property; and

(ii) gains or profits arising from the transfer of the ownership or usufruct of or from the assignment or cession of any rights over any securities, business goodwill, copyright, patents, trademarks and tradenames; and

(b) In this section —

“transfer” includes any assignment, sale, emphyteusis or sub-emphyteusis, partition, donation, sale by instalments, and any alienation under any title, but does not include a transfer *causa mortis*; and

“securities” shall mean shares and stocks and such like instrument that participate in any way in the profits of the company and whose return is not limited to a fixed rate of return.

(2) For the purpose of ascertaining the gains or profits arising from any transfer of immovable property in terms of sub-paragraph (i) of paragraph (a) of subsection (1) of this section —

(a) there shall be deducted in such manner and amount as may be prescribed, the cost of acquisition, the inflation element, any ground rent paid on the property and for which a deduction is not due to the taxpayer under any other provision of this Act, maintenance, improvements, other expenses that have increased the value of the immovable property since it was acquired and other expenses directly related to the transfer;

(b) any transfer of immovable property by means of a Deed of Exchange shall be considered as if separate deeds of transfer were taking place between the parties to the deed;

(c) where immovable property is granted on emphyteusis or sub-emphyteusis for a period exceeding fifty years, or extendable to such periods, the following rules shall apply:

(i) where the premium exceeds the cost of acquisition in accordance with paragraph (a) hereof, such excess shall be deemed to be gains or profits;

(ii) where the cost of acquisition in accordance with paragraph (a) hereof exceeds the premium such excess shall be deductible from the gains or profits arrived at in accordance with sub-paragraph (iii) hereof;

(iii) no account shall be taken on any ground rent or increase in ground rent involved in the transfer unless and until such ground rent or increase in ground rent is redeemed, or the *directum dominium* or *sub directum dominium*, as the case may be, is transferred and in such case the gains or profits shall be deemed to be the price of redemption or sale less any deduction in accordance with sub-paragraph (ii) hereof;

(d) (i) a transfer shall not include a contract of partition where no owelty is due to any of the co-partitioners, and upon a transfer of any property by a co-partitioner the cost of acquisition shall be deemed to be the cost of acquisition of the property in question at the time of acquisition by the co-partitioner;

(ii) for the purposes of this paragraph only the immovable property held in common and partitioned shall be taken into account, and where money or other movables held in common is assigned to a co-partitioner in consideration for the reduction in the share of immovables assigned to him the partition shall be deemed to be one where an owelty has been paid;

(iii) where a person receives an owelty on a contract of partition he shall be deemed to have made capital gains as is equivalent to as much of the increase in the value of the property between the time of the acquisition by the co-partitioners and the time of partition, so however that tax on capital gains shall only be payable at the time of partition on such part of the capital gains made as is not included in the increase in the value of the property assigned to that co-partitioner between the time of acquisition by the co-partitioners and the partition, and where such co-partitioner transfers the property assigned to him the cost of acquisition shall be deemed to be the cost of acquisition of the immovables when acquired by the co-partitioners before the partition;

(iv) where a co-partitioner pays an owelty at the time of the partition, he shall be deemed to have made no capital gain at the time of the partition, and where such co-partitioner transfers any immovable property assigned to him in the partition, the cost of acquisition shall be deemed to be such portion of the sum of the cost of acquisition of the co-partitioner's share of all the immovables partitioned together with the owelty paid on the contract of partition, as is equivalent to the portion of the value of the immovable transferred to the total value of immovables assigned to the co-partitioner in the deed of acquisition;

(e) a donation shall be considered as a deemed sale made at the market value of the property at the time of transfer. Provided that no tax shall be payable where the donation is made by a person to:

(i) his spouse, descendants and ascendants in the direct line and their relative spouses, or in the absence of descendants to his brothers or sisters and their descendants, or

(ii) philanthropic institutions approved for the purposes of paragraph (e) of subsection (1) of section 11 of this Act;

(f) without prejudice to the provision of paragraph (e) of subsection (1) of section 11, where the property referred to in paragraph (e) of this subsection is disposed of by the donee within five years of the donation, the donee shall be charged on the gain ascertained in accordance with the provisions of this section by taking into account the cost of acquisition of the property at the time it was acquired by the donor; where the property is sold by the donee after the lapse of five years the cost of acquisition shall be deemed to be the value of the property as declared in the deed of donation;

(g) gains and profits relating to a transfer by donation shall mean the difference in the market value of the property at the time of the donation and the cost of acquisition of the property at the time of acquisition by the donor.

(3) For the purpose of ascertaining the gains or profits arising from any transfer of property in terms of subparagraph (ii) of paragraph (a) of subsection (1) of this section:

(a) the acquisition cost of shares acquired before the 25th November, 1992 shall be valued either on the Equity method of share valuation (net asset value) based on the last accounts submitted to the Commissioner by the 18th December, 1992 by taking into account the value of immovable property existing in the said accounts and adjusted in terms of paragraph (a) of subsection (2) of this section or on the actual purchase price, whichever is the higher;

(b) listed shares quoted on a Stock Exchange on the 25th November, 1992 shall be valued at the price existing on that date; and in the case of shares quoted in foreign currency, the rate of exchange (*middle rate* of the Central Bank) on that date shall be used;

(c) shares acquired after the 25th November, 1992, shall be valued on the cost of acquisition;

(d) where on a share transfer the rights pertaining to those shares are changed in any way, the transfer value of the shares shall be taken as if no such change has been made:

(e) any transfer consisting of an exchange shall be considered as if two separate transfers were taking place; and

(f) the provisions of paragraphs (d), (e), (f) and (g) of subsection (2) of this section shall apply *mutatis mutandis* to this subsection.

(4) The provisions of paragraph (d) of subsection (2) shall apply *mutatis mutandis* where the assets partitioned include both assets under sub-paragraphs (i) and (ii) of paragraph (a) of subsection (1).

(5) The provisions of sub-paragraph (i) of paragraph (a) of subsection (1) of this section shall not apply to gains or profits relating to transfer of immovable property:

(a) where a copy of the relevant deed of transfer dated prior to the 25th November, 1992 or of the relevant promise to transfer or acquire also dated prior to the 25th November, 1992, made in favour of the transferee, has been duly registered with the Inland Revenue Department by the 1st December, 1992 and a certificate to that effect has been issued by the Commissioner or, in the case of a deed of transfer, the deed has been duly enrolled in the Public Registry by the 1st December, 1992;

(b) where the Commissioner is satisfied that the property or undivided part of the property has been owned and occupied for a period of at least three years as the transferor's own residence immediately preceding the date of transfer and provided that the property is disposed of within twelve months of vacating the premises;

(c) for the purposes of paragraph (b) of this subsection "own residence" means the principal residence owned by the taxpayer or his spouse being a dwelling house which has been the owner's only or main residence. A garage attached to or underlying a house or a block of flats, or a garage of not more than 30 square metres situated within five hundred metres of the dwelling house, and transferred through the same deed with the principal residence shall be deemed to be included as part of the residence. The period of residence includes the physical occupation of the premises and any absences from Malta such as on account of foreign employment, illness, holiday or study. Any part of the house which is used exclusively for commercial purposes for any time within two years of the transfer shall not be considered as "own residence" and this part shall be apportioned on the basis of the area occupied for this purpose as a proportion of the whole area of the relative dwelling house;

Cap. 88. (d) where the property was taken over by Government and in respect of which a declaration by the President of Malta has been issued in terms of the Land Acquisition (Public Purposes) Ordinance before the 25th November, 1992;

(e) where the property is assigned between spouses consequent to a judicial or consensual separation;

(f) where the property formed part of the community of acquests between the spouses or was otherwise owned in common between them and is assigned to one of the spouses on the dissolution of the community or is partitioned between the spouses, or the surviving spouse and the heirs of the deceased spouse; and

(g) where the property is assigned on emphyteusis for fifty years or less.

(6) The provisions of sub-paragraph (ii) of paragraph (a) of subsection (1) of this section shall not apply to gains or profits relating to:

(a) transfer of Malta Government Bonds and Stocks;

(b) transfer of listed securities of quoted companies on the Malta Stock Exchange; and

(c) property transferred in the circumstances listed in paragraphs (e) and (f) of subsection 5 of this section.

(7) Where a person is entitled to capital allowances under paragraphs (f) and (j) of subsection (1) of section 13 of this Act in respect of a capital asset which is sold at a price exceeding its cost of acquisition and any improvements made thereto, the cost of acquisition shall be computed on the cost of acquisition and the cost of any improvement made thereto.

(8) Where an asset referred to in paragraph (a) of subsection (1) of this section used in a business for a period of at least 3 years is transferred and replaced within one year by an asset used solely for a similar purpose in the business, any capital gains realised on the transfer shall not be taxed but the cost of acquisition of the new asset shall be reduced by the said gain. When the asset is disposed of without replacement, the overall gain shall take into account the transfer price and the cost of acquisition reduced as aforesaid.

(9) Where an asset is transferred from one company to another within a group of companies, it shall be deemed that no loss or gain has arisen from the transfer. In ascertaining the capital gain where such an asset is subsequently transferred outside the group of companies, the base cost of the asset that would be considered is the original cost existing before the first transfer took place.

In this subsection, "a group of companies" means:

(a) a holding company and its subsidiaries: a company shall be deemed to be a subsidiary if more than fifty per cent of its voting shares are beneficially owned by its holding company: and

(b) companies which are controlled and beneficially owned directly or indirectly to the extent of more than fifty per cent by the same shareholders.

(10) (a) A capital loss shall be computed in the same manner as a capital gain.

(b) Any loss resulting from the transactions falling under subsection (1) of this section shall not be set off against other income for the year of assessment but shall be carried forward and set off against capital gains in respect of subsequent years of assessment until the full loss is absorbed.

(c) Bad debts incurred in relation to the said transactions proved to the satisfaction of the Commissioner to have become bad during the year immediately preceding the year of assessment, notwithstanding that such bad debts were due and payable prior to the commencement of the said year, shall be allowed as a deduction against the capital gains in the year in which they were incurred and if there are no gains for that year shall be carried forward and set off against future gains:

Provided that all sums recovered in respect of amounts previously allowed as bad debts shall be treated as gains for the purposes of this section and charged accordingly for the year in which they are recovered.

(11) The gains or profits from any transaction chargeable under paragraph (a) of subsection (1) of section 5 of this Act shall not be chargeable again as capital gains in relation to the same transaction under this section.

(12) (a) The market value of an asset shall be the price which that asset would fetch if sold on the open market at the time of transfer;

(b) where the market value of an asset is required to be determined by the Commissioner he may seek the opinion or assistance of any appraiser, architect or other valuer; and

(c) the person making the appraisal or valuation on behalf of the Commissioner shall for the purpose of carrying out the task so entrusted to him be deemed to be a person serving in the Department of the Commissioner and as having an official duty under this Act.

(13) (a) Where a person transfers an asset which, at the time of acquisition, formed an undivided part of a larger asset (hereinafter in this paragraph referred to as "the whole asset"), the deductions allowable in ascertaining the gain arising from that transfer shall be equivalent to such proportion of the cost of acquisition of the whole asset and of the other deductions that would be due in terms of this section had that person transferred the whole asset, as the consideration for the transfer bears at the time of the transfer to the market value of the whole asset.

(b) A reduction of the share capital of a company shall be deemed to be a transfer of such proportion of the holding of the owner as is equal to the proportion of the reduction of the capital of the company and shall constitute a gain or loss for the purpose of this section in the year in which such reduction is effected.

(c) On any subsequent transfer of the shares in question, the cost of acquisition shall be deemed to be the residual part of the cost of acquisition not taken into account on the reduction of capital.

(14) Where a transfer involving the exchange of shares on restructuring of holding upon mergers, demergers, amalgamation and reorganisations takes place it shall be deemed that no loss or gain has arisen from such transfer and the cost of acquisition upon a subsequent transfer shall be deemed to be the cost of acquisition of the original shares.

(15) Where a business or a partnership *en nom collectif*, as a going concern is incorporated into a limited liability company, which is beneficially owned to the extent of not less than 75% by the same persons who owned the business or the partnership *en nom collectif* and there is a transfer of assets it shall be deemed that no loss or gain has arisen from the transfer. Provided that where such assets are subsequently transferred by the company, the base cost of the assets that would be considered is the original cost existing before the first transfer took place.

(16) For the purposes of this section the value of the usufruct and of the *nuda proprietas* shall be computed in accordance with the provisions set out in the Duty on Documents and Transfers Act, 1993.

Amendment  
of section 13  
of the  
principal Act.

5. In paragraph (g) of subsection (1) of section 13 of the principal Act, immediately after the words "cannot be set off against" and "wholly set-off against", there shall be added the words "capital gains or".

Amendment  
of section 28  
of the  
principal Act.

6. Section 28 of the principal Act shall be amended as follows:

(a) subsections (3) and (4) thereof shall be deleted;

(b) subsection (5) shall be renumbered (3) and amended by deleting the words "subsections (2), (3) and (4) of this section" and substituting therefor the words "subsection (2) of this section"; and

(c) subsections (6), (7), (8) shall be renumbered (4), (5) and (6).

Amendment  
of section 31A  
of the principal  
Act.

7. Section 31A of the principal Act shall be amended as follows:

(a) subsections (12), (13), (14) and (15) thereof shall be renumbered (15), (16), (17) and (18); and

(b) immediately after subsection (11) thereof, there shall be added the following new subsections:

"(12) In the case of an individual resident in Malta in the year immediately preceding the year of assessment, who proves to the satisfaction of the Commissioner that in the year immediately preceding the year of assessment a member of his household was suffering from one or more prescribed chronic illnesses, there shall be granted a tax rebate of twenty five liri in respect of each such member:

Provided that where two or more individuals are entitled to a deduction under paragraph (a) of subsection (1) of section 28 of this Act or to a tax rebate under paragraph (b) of subsection (2) of this section in respect of the same dependant or child, any rebate under this subsection in respect of the dependant or child shall be apportioned between the individuals in proportion to the deductions or rebates due to each under the said paragraphs.

(13) In subsection (12) of this section "member of his household" means the individual benefitting from the rebate herein contemplated, his wife, if living with or wholly maintained by him, and any other individual in respect of whom he is entitled to a personal deduction under paragraph (a) of subsection (1) of section 28 of this Act or to a tax rebate under paragraph (b) of subsection (2) of this section.

(14) For the purposes of subsections (12) and (13) hereof, any references to paragraph (b) of subsection (2) of this section shall be construed as being references to the said paragraph without having regard to the provisions of paragraph (i) of the proviso thereto."

8. In section 31B of the principal Act, there shall be substituted the words "seventy seven liri" for the words "fifty two liri".

Amendment of section 31B of the principal Act.

9. Subsection (1) of section 42 of the principal Act shall be amended by adding the words "or of section 74A" immediately after the words "of section 32".

Amendment of section 42 of the principal Act.

10. Immediately after the proviso in subsection (9) of section 55, of the principal Act there shall be added the following further proviso:

Amendment of section 55 of the principal Act.

"Provided further that the offence under this subsection shall continue to subsist until the offender shall have conformed and complied with the provisions of this section or of any rules made thereunder."

11. Immediately after section 74 of the principal Act, there shall be introduced the following section:

Amendment of section 74 of the principal Act.

"Addition of new section 74A of the principal Act.

74A. (1) Where any person derives gains or profits from the transfer of property referred to in subparagraphs (i) and (ii) of paragraph (a) of subsection (1) of section 5A of this Act, irrespective of whether such gains or profits are chargeable under the provisions of that section or under any other provision of this Act, he shall remit to the Commissioner within fifteen days of the relative transfer in such manner as may be prescribed, a provisional tax payment equivalent to 7% of the consideration relating to the transfer of the property or of the value of the donation:

Provided that in deeds of emphyteusis or sub-emphyteusis no account shall be taken of any yearly ground rent or sub-ground rent payable according to the deed.

(2) Provisional tax under this section shall not be payable in respect of:

- (a) any transfers of assets not subject to tax on capital gains, or to tax under section 5 of the Act;
- (b) transfer of property on deeds of partition;
- (c) transfer of shares in public companies.

(3) The Commissioner may authorise any person chargeable under paragraph (a) of subsection (1) of section 5A of this Act to pay provisional tax under this section at a rate lower than that referred to in subsection (1) of this section, if it can be proved that the gain is less than 20% of the consideration or of the value of the donation as the case may be.

(4) Any provisional tax paid for the purposes of this section during or in respect of the year preceding any year

of assessment shall be set off for the purpose of collection against the tax charged in respect of the said year of assessment and if there is an excess after the aforesaid set off has been made, such excess shall be refunded in accordance with the provisions of section 79 of this Act. Such provisional tax shall be separate and distinct from that paid or payable under the provisions of section 74 of this Act except for persons who have gains or profits from immovable property falling under paragraph (a) of subsection (1) of section 5 of this Act.

(5) If any person fails to pay any provisional tax as provided under this section he shall be chargeable with the tax which should have been so paid and, in addition, with further tax as provided for in paragraph (a) of subsection (1) of section 75, and such tax and additional tax shall be recovered from such person in the same manner as other tax assessed and charged upon him.

(6) For the purposes of subsection (5) of this section a notice by the Commissioner to any person showing the tax which should have been paid and any additional tax to which he is liable for having failed to pay the tax shall, unless the contrary is proved, be sufficient evidence that the amount shown in the said notice is the amount due to be paid to the Commissioner by the said person.

(7) The powers conferred upon the Commissioner by subsections (5) and (6) of this section shall be in addition to any right conferred upon him to commence proceedings in respect of an offence under subsection (8) of this section.

(8) Any person who contravenes or fails to comply with the provisions of this section shall be liable on conviction to a fine (*multa*) of not less than Lm50 and not exceeding Lm500 or to imprisonment for any term not exceeding six months or to both such fine and imprisonment, and to a further fine (*multa*) of not less than Lm2 but not exceeding Lm10 for every day during which the offence continues after conviction. Provided that the Commissioner may compound any offence under this section and may before judgement stay or compound any proceedings thereunder.

(9) (a) The provisional tax payable under this section shall be made in such manner as may be prescribed.

(b) Notwithstanding anything that may be provided for in the rules where immovable property or any rights annexed thereto are transferred by means of a public deed the Notary publishing such deed shall have the same duties and liability in connection with the collection and payment of the provisional tax payable on such deed in accordance with this section as are by the Duty on Documents and Transfers Act, 1993, imposed on Notaries publishing such deeds, in connection with the duty chargeable and collected on transfers in accordance with that Act. Any failure by a Notary in connection with the collection and payment of

provisional tax under this section shall for all purposes of the Duty on Documents and Transfers Act 1993, be deemed to be a failure of his duties under that Act.

(c) Where any assets the transfer of which is subject to tax on capital gains under section 5A of this Act is sold in a judicial auction, the Registrar of Courts shall have the same duties with regard to the withholding and payment of the provisional tax under this section as are under section 66 of the Duty on Documents and Transfers Act, 1993 imposed on him in relation to the duty leviable on transfers *causa mortis* under the said Act.”.

12. In paragraph (c) of subsection (1) of section 75 of the principal Act, for the words “of sections 32, 42, 55,” there shall be substituted the words “of sections 32, 42, 55, 74A,”.

Amendment  
of section 75  
of the  
principal Act.

13. (1) The provisions of section 10 of this Act shall apply in the case of any person who on the date of the coming into force of this Act had not conformed or had failed to comply with the provisions of section 55 of the principal Act or of any rules made thereunder, and who shall not have so conformed or complied within a month of the coming into force of this Act.

Transitory  
provisions.

(2) No action shall be competent to any person against any Notary who before the publication of this Act has acted in conformity with any instructions or directive given by the Minister responsible for finance or the Commissioner, in respect of the collection and payment of provisional tax payable under section 74A of this Act, and has collected from such person any such provisional tax in excess of that which is payable in accordance with this Act. In any such case the Notary shall remit to the Commissioner any provisional tax so collected but not yet paid to the Commissioner on the date of publication of this Act within such time as may have been established in such instructions or directives.

(3) The Commissioner shall have an action against any Notary for the payment of any such provisional tax collected by him in excess of that due in accordance with this Act but which is in accordance with any instructions or directives as aforesaid.

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Passed by the House of Representatives at Sitting No. 159 of the 7th July, 1993.

LAWRENCE GONZI  
*Speaker*

RICHARD J. CAUCHI  
*Clerk to the House of Representatives*

