

Nagħti l-kunsens tiegħi.

(L.S.)

EDWARD FENECH ADAMI
President

16 ta' Marzu, 2007

ATT Nru. II ta' l-2007

ATT li jemenda diversi liġijiet

IL-PRESIDENT bil-parir u l-kunsens tal-Kamra tad-Deputati, Imlaqgħa f' dan il-Parlament, u bl-awtorità ta' l-istess, hareġ b'liġi dan li ġej:-

1. (1) It-titolu fil-qosor ta' dan l-Att huwa l-Att ta' l-2007 li jemenda diversi liġijiet. Titolu fil-qosor.

(2) Id-disposizzjonijiet ta' dan l-Att għandhom jitqiesu li bdew fis-seħh kif ġej: Bidu fis-seħh ta' dan l-Att.

(a) id-disposizzjonijiet ta' dawn l-artikoli u paragrafi għandhom jitqiesu li bdew fis-seħh mis-sena ta' stima 2008:

(i) paragrafi (b), (d), (e), (f), (i), (j), (k) u (l) ta' l-artikolu 3;

(ii) l-artikoli 4, 5(b), 6, 7, 8, 16, 18(a), 19(a), 20, 21, 23 u 28;

(b) id-disposizzjonijiet ta' dawn l-artikoli u paragrafi għandhom jitqiesu li bdew fis-seħh fl-1 ta' Jannar, 2007:

(i) paragrafi (a), (ċ), (ġ) u (h) ta' l-artikolu 3;

(ii) l-artikoli 5(a), 9, 10, 11, 12, 13, 14, 15, 17, 18(b), 19(b), 24, 25, 26 u 27.

TAQSIMA I

Emenda ta' l-Att
dwar it-taxxa fuq l-
income.
Kap. 123.

2. Din it-Taqsima temenda l-Att dwar it-Taxxa fuq l-*Income* u ghandha tinqara' u tiftiehem haġa wahda ma' l-Att dwar it-Taxxa fuq l-*Income*, hawnhekk iżjed 'l quddiem f'din it-Taqsima msejjah "l-Att prinċipali".

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

3. L-artikolu 2 ta' l-Att prinċipali ghandu jiġi emendat kif ġej:

(a) Minnufih wara t-tifsira ta' "imghax fuq obbligazzjonijiet" ghandha tidhol din it-tifsira ġdida:

"imghax jew *royalties* passivi" tfisser *income* minn imghax jew *royalties* li ma jiġix direttament jew indirettament minn xi sengha jew negozju, fejn dawk l-imghax jew *royalties* ma ġewx intaxxati jew ġew soġġetti ghal xi taxxa barranija direttament, minn ras il-ghajn, jew b'xort'ohra, b'rata ta' taxxa li hi inqas minn hamsa fil-mija (5%);";

(b) Minnufih wara t-tifsira ta' "individwu mizzewweg" ghandhom jidhlu dawn it-tifsiriet godda li ġejjin:

"investment ta' portafoll" tfisser investment f'titoli bhalma huma azzjonijiet, *bonds* u strumenti ohra bhalhom u mizmuma bhala wiehed minn dawk l-investimenti bl-ghan ta' investment b'riskju mifruq meta dak l-investment mhuwiex investment strateġiku u jsir bla interest fi u minghajr intenzjoni li tiġi influwenzata t-tmexxija tal-kumpannija fejn ikun sar l-investment u kif ukoll, isir biss b'tali mod li isegwi l-prezz tal-ishma u l-dividend *policy* tal-kumpannija fejn sar l-investment biex isir l-aħjar gwadann mill-investment u biex jinbiegh l-investment malli jidher li l-valur ta' l-ishma jista' jinzel;

"kont intaxxat" u "kontijiet intaxxati" ifissru xi jew kull kont tat-taxxa finali, kont tal-proprjeta' immobbli, kont ta' *income* barrani, il-kont intaxxat f'Malta u l-kont mhux intaxxat;";

(c) It-tifsira ta' "kont mhux intaxxat" ghandha tiġi sostitwita b'din li ġejja:

“kont mhux intaxxat” ikun magħmul minn dawk il-profitti (jew telf skond il-każ), li jirrappreżentaw it-total tal-profitti li jistgħu jitqassmu (ammont pożittiv) jew it-total tat-telf akkumulat (ammont negattiv) skond il-każ, u li minnu titnaqqas is-somma totali ta’ l-ammont allokati għal kontijiet intaxxati ohra.

(d) Fit-tifsira “kont ta’ *income* barrani”:

(i) Minflok il-kliem “kumpannija residenti f’Malta” kull fejn jidhru għandhom jidhlu l-kliem “kumpannija registrata f’Malta”;

(ii) Fil-paragrafu (a) tiegħu, wara l-kliem “imghax, kirjiet” għandu jizdied il-kliem “, *income* jew qligh minn sehem partċipanti jew mid-disponiment minn dak is-sehem,”;

(iii) Fit-tielet proviso tagħha minflok il-kelma “fl-ahharnett” għandha tidhol il-kelma “ukoll” u minflok il-kliem “ikunu hekk allokati;” jidhlu il-kliem “ikunu hekk allokati:”;
u

(iv) Minnufih wara t-tielet proviso tagħha għandu jizdied dan il-proviso ġdid li ġej:

“Izda wkoll minkejja dak kollu li jinsab f’ dan l-Att jew regoli magħmula bis-sahha tiegħu, kull profitti miksuba sal-31 ta’ Diċembru 2010 minn kumpannija li kienet residenti f’Malta qabel l-1 ta’ Jannar 2007 (li ma tkunx kumpannija li eżerċitat il-jedd ta’ għażla skond il-paragrafu (i) (2) tal-proviso għall-artikolu 48(4A)(b) ta’ L-Att dwar l-Amministrazzjoni tat-Taxxa) illi kienu jkunu allokati fil-kont ta’ *income* barrani li kieku dawk il-profitti ġew intaxxati fis-sena ta’ stima 2007 għandhom jiġu allokati fil-kont ta’ *income* barrani;”

(e) Minnufih wara t-tifsira ta’ “kont ta’ *income* barrani” għandhom jidhlu dawn it-tifsiriet ġodda li ġejjin:

“kont ta’ proprjetà immobbli” tfisser il-kont tat-taxxa li għalih il-profitti li jistgħu jitqassmu, li jkunu ġew intaxxati u li ma jkunux allokati lill-kont tat-taxxa finali kalkolati b’dak il-mod li jista’ jiġi preskritt, għandhom jiġu allokati qabel kull profitti li jistgħu jitqassmu ma jiġu allokati lill-kontijiet intaxxati ohra.

“kont tat-taxxa finali” tfisser il-kont intaxxat li ghalih ammont ta’ profitti li jistghu jitqassmu li jkun gie intaxxat, kalkolat b’dak il-mod u ghal dak l-ammont li jista’ jiġi preskritt, għandu jiġi allokat qabel kull profitti li jistghu jitqassmu ma jiġu allokatil kwalunkwe kont iehor tat-taxxa;”

(f) Fit-tifsira ta’ “kumpannija b’kummerċ internazzjonali”:

(a) Minnufih wara il-kliem “kumpannija reġistrata f’Malta” għandhom jidhlu l-kliem “sa mhux iktar tard mill-31 ta’ Diċembru 2006”;

(b) Fil-proviso tagħha, il-kliem “taht xi wahda mid-disposizzjonijiet ta’ l-Atti dwar it-Taxxi;” għandhom jidhlu l-kliem “taht xi wahda mid-disposizzjonijiet ta’ l-Atti dwar it-Taxxi;”

(c) Għandhom jizdiedu magħha dawn il-*provisos* godda li ġejjin:

“Izda sakemm il-kumpannija ma tkunx għażlet li ma tibqax kumpannija b’kummerċ internazzjonali skond l-artikolu 48(4A) (b)(i)(1) ta’ l-Att dwar l-Amministrazzjoni tat-Taxxa;

Izda wkoll meta, minkejja xi disposizzjonijiet ohra ta’ dan l-Att jew xi liġi ohra inkluż id-disposizzjonijiet ta’ l-artikolu 52(8) ta’ dan l-Att, l-ebda kumpannija m’għandha titqies bħala kumpannija b’kummerċ internazzjonali b’sehh mill-1 ta’ Jannar 2011;”

(g) Minnufih wara t-tifsira ta’ “kumpannija b’kummerċ internazzjonali” għandha tiżdied din it-tifsira ġdida li ġejja:

“kumpannija reġistrata f’Malta” tfisser kumpannija residenti f’Malta, jew kumpannija li minkejja li mhix residenti f’Malta, tmexxi attività f’Malta u f’każ ta’ kumpannija li la hija inkorporata u lanqas residenti f’Malta tfisser kumpannija li hija reġistrata għal dan il-ghan mal-Kummissarju b’dak il-mod li jista’ jiġi preskritt;”;

(h) It-tifsira ta’ “profitti li jistghu jitqassmu” għandha tiġi sostitwita b’dan li ġej:

“profitti li jistgħu jitqassmu” tfisser il-profitti totali li jkunu disponibbli biex jitqassmu minn kumpannija reġistrata f’Malta skond il-liġijiet li matul dak iż-żmien ikunu fis-seħh f’Malta, u l-profitti li jistgħu jitqassmu għandhom għall-finijiet ta’ dan l-Att, ikunu allokati fil-kontijiet li ġejjin, jiġifieri, kont tat-taxxa finali, kont tal-proprjetà immobbli, kont ta’ *income* barrani, kont intaxxat f’Malta, u kont mhux intaxxat u għall-finijiet ta’ din it-tifsira l-kontijiet jinkludu biss il-profitti li jistgħu jitqassmu kif muri fit-tifsiriet rispettivi:

Izda meta f’każ ta’ kumpannija li la hi inkorporata u lanqas residenti f’Malta il-profitti li jistgħu jitqassmu jkunu l-profitti attribwibbli għall-attivitajiet ta’ dik il-kumpannija f’Malta u li għalihom il-kumpannija giet irreġistrata mal-Kummissarju nieqes dawk il-profitti li l-kumpannija tkun qassmet fi snin ta’ qabel;”;

(i) Fit-tifsira ta’ sehem b’ekwità, il-kelma “nominali” għandha tithassar.

(j) It-tifsira ta’ “sehem partiiipanti” għandha tiġi emendata kif ġej:

(i) fil-paragrafu (e) tagħha wara l-kliem “mhux residenti f’Malta” għandhom jiżdedu l-kliem “u dak l-investment fil-kumpannija mhux residenti f’Malta jinżamm għal perijodu kontinwu ta’ mhux inqas minn 183 ġurnata”;

(ii) fil-paragrafu (f) tagħha, eżatt wara l-kliem “biex tmexxi ’l quddiem in-negozju tagħha stess” għandhom jiżdedu l-kliem “u s-sehem ma jkunx miżmum bħala stokk ta’ negozju għall-finijiet ta’ kummerċ”;

(iii) il-*proviso* tiegħu għandu jinbidel b’dan li ġej:

“Izda li s-sehem ta’ kumpannija f’korp ta’ persuni kostitwit, inkorporat jew irreġistrat barra minn Malta, li ma jkunx residenti f’Malta, u jkun ta’ natura simili għal soċjetà *en commandite* li l-kapital tagħha ma jkunx maqsum f’ishma kostitwita skond l-Att dwar il-Kumpanniji, għandu jitqies li jikkostitwixxi sehem partiiipanti jekk jissodisfa d-dispożizzjonijiet ta’ xi wiehed mill-paragrafi (a) sa (f) hawn fuq li japplikaw *mutatis mutandis* għal sehem ta’ dan it-tip. Għall-finijiet ta’ dan il-*proviso*, it-terminu “ishma b’ekwità”

jew “ishma” ghandu jinftiehem li jirreferi għall-kapital fl-imsemmi korp ta’ persuni li jagħti l-jedd lill-possessor tiegħu għal dritt ta’ votazzjoni, għall-profitti li jistgħu jitqassmu u għall-assi li jistgħu jitqassmu f’każ ta’ xoljiment ta’ l-imsemmi korp ta’ persuni, u t-terminu “azzjonist b’ekwità” għandu jinftiehem skond hekk.”.

Emenda ta’
l-artikolu 5A ta’
l-Att prinċipali.

4. L-artikolu 5A(10)(d) ta’ l-Att prinċipali għandu jiġi emendat kif ġej:

(a) minflok il-kliem “kont intaxxat f’Malta” għandhom jidhlu l-kliem “kont tat-taxxa finali”;

(b) il-kliem li jibdeu minn “L-imsemmija profitti li jistgħu jitqassmu għandhom” sal-kliem “mir-riserva ta’ profitti minn trasferimenti ta’ proprjetà”, għandhom jiġu sostitwiti bil-kliem “L-imsemmija profitti li jistgħu jitqassmu għandhom jiġu stabbiliti b’dak il-mod li jista’ jkun preskritt”.

Emenda ta’
l-artikolu 12 ta’
l-Att prinċipali.

5. L-artikolu 12 ta’ l-Att prinċipali għandu jinbidel kif ġej:

(a) il-proviso għas-subartikolu (1)(c) għandu jinbidel b’dan li ġej:

“Izda li s-sid benefiċjarju ta’ l-imghax, *royalties*, qligh, jew profitt, skond il-każ, tkun persuna mhix residenti f’Malta u din il-persuna ma tkunx il-proprjetà ta’ u kkontrollata minn, direttament jew indirettament, jew taġixxi f’isem individwu jew individwi li huma ordinarjament residenti u domiciljati f’Malta.”;

(b) immedjatament wara l-paragrafu (t) tas-subartikolu (1) għandu jizjed dan il-paragrafu ġdid li ġej:

“(u) kull *income* jew qligh miksub minn kumpannija reġistrata f’Malta minn sehem partiċipanti jew minn trasferiment ta’ dak is-sehem, meta *t-taxpayer* ma’ weriex dak l-*income* jew qligh bhala parti mill-*income* taxxabbli fil-prospett magħmul skond l-artikolu 10 ta’ l-Att dwar l-Amministrazzjoni tat-Taxxa:

Izda, għar-rigward ta’ dividend miksub minn sehem partiċipanti akkwistat fi jew wara l-1 ta’ Jannar 2007, l-eżenzjoni mahsuba f’dan il-paragrafu għandha tapplika biss

meta l-kundizzjonijiet stabbiliti fil-paragrafi (i) jew (ii) hawn taht ikunu sodisfatti:

(i) meta l-korp ta' persuni li fih ikun hemm sehem partċipanti jissodisfa xi wahda minn dawn il-kundizzjonijiet, jiġifieri:

(1) jkun residenti jew inkorporat f'pajjiż jew territorju li jiffirma parti mill-Unjoni Ewropea;

(2) jkun soġġett għal xi taxxa barranija ta' mill-anqas hmistax fil-mija (15%);

(3) ma jkollux iżjed minn hamsin fil-mija (50%) ta' l-*income* tiegħu miksub minn imghax passiv jew *royalties*;

(ii) jekk ebda wahda mill-kundizzjonijiet stabbiliti fil-paragrafu (i) ma jkunu sodisfatti għandhom ikunu sodisfatti ż-żewġ kundizzjonijiet li ġejjin:

(1) is-sehem b'ekwità tal-kumpannija reġistrata f'Malta fil-korp ta' persuni li mhux residenti f'Malta ma jkunx investiment ta' portafoll u għal dan il-ghan il-pussess ta' azzjonijiet minn kumpannija residenti f'Malta f'korp ta' persuni li mhux residenti f'Malta li jikseb iktar minn hamsin fil-mija (50%) ta' l-*income* tiegħu minn investimenti ta' portafoll għandu jitqies bhala investiment ta' portafoll; u

(2) il-korp ta' persuni li mhux residenti f'Malta jew l-imghax jew *royalties* passivi tiegħu kienu soġġetti għal xi taxxa barranija b'rata ta' mhux inqas minn hamsa fil-mija (5%):

Iżda wkoll illi d-disposizzjonijiet tal-*proviso* immedjatement preċedenti għandhom, b'seħħ mill-1 ta' Jannar 2011, japplikaw ukoll għal dividendi riċevuti minn sehem partċipanti akkwistat qabel l-1 ta' Jannar 2007.”.

6. L-artikolu 14(1)(g) ta' l-Att prinċipali għandu jiġi emendat kif ġejj:-

Emenda ta' l-artikolu 14 ta' l-Att prinċipali.

(a) fil-proviso minflok il-kliem “skond dan l-Att;” ghandhom jidhlu l-kliem “skond dan l-Att;”;

(b) ghandu jiżdid il-proviso ġdid li ġej:

“Iżda wkoll li telf kif intqal qabel m’ghandux jitnaqqas kontra *income* li jiġi allokat lill-kont tat-taxxa finali u kull telf li jirriżulta mill-attivitajiet jew minn ghejun li l-profitti miksuba minnhom kienu jkunu allokat lill-kont tat-taxxa finali m’ghandux jitqies bhala telf li ghalih japplika dan il-paragrafu;”

Emenda ta’
l-artikolu 18 ta’
l-Att prinċipali.

7. Il-paragrafu (ċ) ta’ l-artikolu 18(1) ta’ l-Att prinċipali ghandu jiġi sostitwit b’dan li ġej:

“(ċ) Meta it-telf li jista’ jinghata, li kieku kien profitt, kien ikun allokat lill-kont tal-proprjetà immobbli jew lill-kont intaxxat f’Malta tal-kumpannija li tagħmel ċessjoni, il-kumpannija li tagħmel it-talba tista’ tnaqqas dak it-telf mill-*income* tagħha li ghandu jiġi allokat lill-kont tal-proprjetà immobbli jew lill-kont intaxxat f’Malta, u dak it-telf jista’ biss jingieb ’il quddiem kontra l-*income* totali tal-kumpannija li tagħmel it-talba li jinqala’ fi snin sussegwenti u li kieku ikun allokat ghal kull wiehed minn dawn il-kontijiet intaxxati.”

Emenda ta’
l-artikolu 25 ta’
l-Att prinċipali.

8. L-Artikolu 25 ta’ l-Att prinċipali ghandu jiġi sostitwit b’dan li ġej:

“25. Għall-finijiet tal-artikoli 14 sa 24 it-tnejn inklużi, l-ispejjeż li jsiru fil-produzzjoni ta’, u t-tnaqis li jista’ jinghata dwar, *income* miksub minn profitti li huma allokat lil xi kont intaxxat ghandhom l-ewwel jitnaqqsu kontra dan l-*income*.”

Emenda ta’
l-artikolu 27D ta’
l-Att prinċipali.

9. L-artikolu 27D(3)(ċ) ta’ l-Att prinċipali ghandu jiġi emendat kif ġej:–

(a) il-kliem “minn dawk il-benefiċjarji.” ghandhom jiġu sostitwiti bil-kliem “minn dawk il-benefiċjarji.”;

(b) ghandu jiżdid dan il-proviso ġdid li ġej:

“Iżda li l-*income* imsemmi f’dan il-paragrafu ghandu jinkludi wkoll dividendi mhallsa mill-profitti allokat lil xi wiehed mill-kontijiet intaxxati.”

10. L-artikolu 33(1) ta' l-Att prinċipali għandu jiġi emendat kif ġej: Emenda ta' l-artikolu 33 ta' l-Att prinċipali.

(a) Fil-proviso għal dan l-artikolu l-kliem “ikun individwu li” għandhom jithassru u l-kliem “fl-artikolu 56(6).” jiġu sostitwiti bil-kliem “fl-artikolu 56(6).”;

(b) Il-proviso li ġej għandu jizzied wara il-proviso ezistenti tiegħu:

“Iżda wkoll fil-każ ta' *income* minn investiment imsemmi fl-artikolu 41(a)(viii) (2), (3) u (4) fejn ir-riċevitur ma jkunx fil-fatt irċieva dak l-*income* imma jitqies li rċieva dak l-*income* skond id-disposizzjonijiet ta' l-artikolu 43(6)(a),(b) jew (ċ), ir-rata li biha t-taxxa għandha titnaqqas għandha tkun ta' wiehed u tletin punt hamsa, sebgha, tmienja fil-mija (31.578%) jew kwalunkwe rata ohra kif jista' jiġi preskritt u regoli fuq kif id-disposizzjonijiet dwar *income* minn investiment għandhom jiġu applikati f'dawn iċ-ċirkostanzi jistgħu jiġu preskritti.”.

11. L-Artikolu 35(1) ta' l-Att prinċipali għandu jiġi sostitwit b'dan li ġej: Emenda ta' l-artikolu 35 ta' l-Att prinċipali.

“(35) (1) Hlief għall-*income* minn investiment msemmi fl-Artikolu 41(a)(viii)(2), (3) u (4) riċevitur jista' jagħzel li jithallas *income* minn investiment minghajr ma jsir tnaqqis ta' taxxa u dik l-għazla għandha ssir bil-miktub u tintbagħat lil min jagħmel il-hlas.”

12. L-Artikolu 40 ta' l-Att prinċipali għandu jiġi emendat kif ġej: Emenda ta' l-artikolu 40 ta' l-Att prinċipali.

(a) fis-subartikolu (2) tiegħu minflok il-kliem “u fl-artikolu 41(a)(viii)”, għandhom jidhlu l-kliem “u fl-artikolu 41(a)(viii)(1)”;

(b) minnufih wara l-Artikolu 40(2) għandhom jizziedu dawn is-subartikoli godda li ġejjin:

“(3) Kull persuna (hawnhekk iżjed 'il quddiem f'dan is-subartikolu msejha “l-ewwel persuna”) li tkun f'posizzjoni li tirċievi jew li titqies li tkun irċeviet l-*income* imsemmi fis-sub-paragrafi (2), (3) u (4) ta' l-artikolu 41(a)(viii):

(a) ghandha tinforma bil-miktub lill-persuna li tagħmel il-hlas ta' dak l-*income* jekk l-ewwel persuna kellha tirċievi jew titqies li rċeviet dak l-*income*, li f'dak il-każ l-ewwel persuna tkun ir-riċevitur ta' dak l-*income*; u

(b) meta l-ewwel persuna tkun irċeviet jew tkun tqieset li rċeviet dak l-*income*, hija ghandha, hlief meta min jagħmel il-hlas ikun hallas it-taxxa skond id-disposizzjonijiet ta' l-*income* minn investment, ihallas dik it-taxxa hu stess fi żmien sebat ijiem mid-data meta min jagħmel il-hlas kellu jhallas it-taxxa; u

(ċ) minghajr hsara għal xi disposizzjonijiet ohra ta' l-Atti dwar it-Taxxi, kull persuna li ma tkunx għamlet il-hlas imsemmi fil-paragrafu (b) ta' hawn fuq meta kellha tagħmlu, tkun, b'żieda mal-hlas tat-taxxa dovuta, sugġetta għat-taxxa addizzjonali ta' sebgħa fil-mija (7%) tal-ammont ta' dik it-taxxa għal kull xahar jew parti minnu li t-taxxa tibqa' ma tithallasx, liema żmien jibda għaddej mix-xahar li fih t-taxxa kellha tithallas, u kull hlas li jsir mill-imsemmija persuna dwar it-taxxa li ghandha tithallas skond dan is-subartikolu ghandu l-ewwel jiġi applikat kontra kull taxxa addizzjonali dovuta fuq dak il-hlas.

(4) Id-disposizzjonijiet tas-subartikolu (3) ma japplikawx meta il-persuna imsemmija f'dak is-subartikolu tipprowa għas-sodisfazzjon tal-Kummissarju li ma kinitx taf u ma setgħatx raġonevolment tkun taf li kienet riċevitur u għal dan il-ghan ikun prezunt li dik il-persuna kienet taf bid-disposizzjonijiet u l-implikazzjonijiet tal-Atti dwar it-Taxxi.

(5) Meta min jagħmel il-hlas ma jkunx naqqas jew hallas it-taxxa mill-*income* imsemmi fis-subparagrafi (2) (3) and (4) tal-Artikolu 41(a)(viii), id-disposizzjonijiet ta' l-Artikoli 38 u 39 m'għandhomx japplikaw."

Emenda ta'
l-artikolu 41 ta'
l-Att prinċipali.

13. L-Artikolu 41 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) il-paragrafu (a)(viii) għandu jiġi sostitwit b'dan li ġej:

“(viii) (1) profitti imqassmin minn kumpannija li mhix residenti f’Malta (u li mhix skema ta’ investment kollettiv) u fejn dawn il-profitti jithallsu permezz tas-servizzi ta’ intermedjarju finanzjarju awtorizzat lil xi individwu li jkun residenti f’Malta sakemm daww il-profitti mqassmin ikunu jikkonstitwixxu *income* f’idejn individwu bhal dak li jkun miksub minn ishma f’dik il-kumpannija, hekk li kull sehem ikun assi kwalifikattiv kif imfisser fid-disposizzjonijiet ta’ l-artikolu 9B;

(2) L-ammont tad-dividend nett li jithallas minn kumpannija registrata f’Malta li dwaru l-azzjonist riċeventi ikun registrat għall-finijiet ta’ l-Artikolu 48(4) jew l-Artikolu 48(4A) tal-Att dwar l-Amministrazzjoni tat-Taxxa;

(3) L-ammont li thallas skond is-subartikolu 48(4) jew is-subartikolu 48(4A) tal-Att dwar l-Amministrazzjoni tat-Taxxa;

(4) Id-dividend imsemmi fl-artikolu 43(6)(a) u l-artikolu 43(6)(ċ).”;

(b) F’paragrafu (b) tiegħu wara l-kliem “tagħmel hlas ta’ *income* minn investment” għandhom jiżdiedu l-kliem “ u għall-*income* minn investment imsemmi fil-paragrafu (a) (viii) (4) ta’ dan l-artikolu għandha tfigħer il-kumpannija li qalgħet il-profitti li ġew meqjusa imqassma skond l-artikolu 43(6)(a) u l-artikolu 43(6)(ċ).”;

(ċ) F’paragrafu (ċ)(iii):–

(i) il-kliem “msemmija fis-sub-paragrafu (i).” għandhom jiġu sostitwiti bil-kliem “msemmija fis-sub-paragrafu (i).”;

(ii) il-proviso l-ġdid li ġej għandu jiżdied mal-paragrafu (ċ):

“Iżda fir-rigward ta’ l-*income* imsemmi fis-subartikolu (2), (3) u (4) tal-paragrafu (viii) riċevitur għandu jkun individwu residenti f’Malta u fiċ-ċirkustanzi msemmija fl-artikolu 43(6)(e) dak l-individwu għandu jkun ordinarjament residenti u domiciljat f’Malta.”.

14. Fl-Artikolu 43 ta' l-Att prinċipali għandu jizjed is-subartikolu (6) ġdid li ġej:

“(6) (a) Meta individwu residenti f'Malta ikun registrat għall-finijiet ta' l-Artikolu 48(4) u l-Artikolu 48(4A) ta' l-Att dwar l-Amministrazzjoni tat-Taxxa, jew ikollu l-jedd li jibbenefika, direttament jew indirettament, mill-profitti ta' kumpannija li hija hekk reġistrata, dak l-individwu għandu jitqies li rċieva dividend jew dividendi li jikkorrispondu għall-ammont tal-profitti (jiġifieri, il-profitti netti mit-taxxa mhallsa jew li għandha tithallas mill-kumpannija u li dwarhom l-individwu jew il-kumpannija msemmija huma hekk irreġistrati) li huwa jkollu l-jedd li benefiċjarjament jirċievi mill-kumpannija jew kumpanniji, fl-ewwel jum tal-perjodu ta' kontjar minnufih wara dak meta daww il-profitti kienu inqalghu mill-imsemmija kumpannija jew kumpanniji: iżda li daww il-profitti ma jkunux ġew distribwiti qabel dik id-data;

(b) Individwu li għandu l-jedd li jibbenefika direttament jew indirettament, mill-profitti ta' entità li rċeviet jew li għandha l-jedd li tirċievi, direttament jew indirettament, l-*income* msemmi fis-subparagrafi (2) u (3) ta' l-Artikolu 41(a)(viii) jitqies li rċieva fl-istess hin li l-entità tkun rċeviet dak l-*income*, dik il-parti ta' l-*income* li tikkorrispondi għal jedd li jirċievi, direttament jew indirettament, dak l-*income* permezz ta' dividend jew b'mod ieħor permezz ta' jew mingħand kull persuna jew entità bi kwalunkwe mod:

Izda fil-każ ta' l-*income* msemmi f'paragrafu (2) ta' l-Artikolu 41(a)(viii) dik il-persuna m'għandhiex titqies li rċiviet dak l-*income* jekk u sakemm il-profitti li jistgħu jitqassmu u li jirriżultaw f'dak l-*income* ikun tqies li huwa l-*income* msemmi fil-paragrafu (4) ta' l-Artikolu 41(a)(viii) mhallas lil riċevitur kif imfisser fid-disposizzjonijiet dwar l-*income* minn investiment;

(ċ) Meta individwu residenti f'Malta ikun benefiċjalment intitolat, direttament jew indirettament, għall-profitti ta' kumpannija li tkun applikat id-disposizzjonijiet ta' l-artikolu 12 (1) (u) għal xi parti mill-*income* tagħha, dak l-individwu jitqies li jkun irċieva, fiż-żmien meta l-imsemmija kumpannija tkun issottomettiet il-prospett tagħha fejn dak l-*income* kien ikun intaxxat kieku hija m'applikatx l-imsemmija ezenzjoni jew l-aħħar data meta dan il-prospett kellu jiġi sottomess, skond liema tiġi qabel, tant minn dak l-*income* li jikkorrispondi għall-jedd tiegħu, dirett jew indirett, li jirċievi dak l-*income* bhala dividend jew b'mod

iehor permezz ta' jew minn xi persuna jew entità bi kwalunkwe mod;

(d) Meta individwu jikseb l-jedd li jibbenefika, direttament jew indirettament, mill-profitti ta' entità jew kull jedd bhal dan jiżdied b'kull mod u dik l-entità tkun irċeviet iżda ma tkunx ghadha qassmet, jew jkollu l-jedd li jirċievi (fiż-żmien li dak l-individwu kiseb dak il-jedd jew li kellu l-jedd tiegħu hekk miżjud) direttament jew indirettament, l-*income* imsemmi fis-subparagrafi (2) u (3) ta' l-Artikolu 41(a)(viii), dak l-individwu ghandu jitqies li ikun irċieva dividend taxxabli skond dan l-Att fiż-żmien li kiseb dak il-jedd jew li kellu l-jedd tiegħu hekk miżjud li jikkorrispondi għall-jedd, dirett jew indirett, tiegħu jew għall-jedd miżjud tiegħu li jirċievi dak l-*income* permezz ta' dividend jew meżzi ohra permezz ta' jew minn kull persuna jew entità bi kwalunkwe mod u dak l-individwu ghandu l-obbligu li jiddikjara l-imsemmi dividend fil-prospett tal-*income* tiegħu:

Iżda d-disposizzjonijiet ta' dan il-paragrafu m'għandhomx japplikaw meta l-Kummissarju jkun sodisfatt li l-ġrajjet imsemmija f'dan il-paragrafu ma kienux riżultat ta' xi arrangament jew skema li l-għan wahdieni jew ewlieni tagħom kien l-evitar jew il-posponiment tal-hlas tat-taxxa.

(e) Meta l-azzjonist dirett tal-kumpannija msemmija fil-paragrafu (a) ma jkunx individwu u ma jkunx residenti f'Malta jew meta l-entità msemmija fil-paragrafi (b) u (ċ) li tkun fil-fatt irċeviet, jew li tkun fil-fatt intitolata li tirċievi, l-*income* imsemmi fis-sub-paragrafi (2) u (3) ta' l-artikolu 41(a)(viii) mhijiex residenti f'Malta, id-disposizzjonijiet ta' dan is-subartikolu għandhom japplikaw biss meta l-individwu msemmi jkun ordinarjament residenti u domiciljat f'Malta;

(f) Meta l-imsemmi jedd benefiċjarju, dirett jew indirett, huwa jedd għall-profitti ta' kumpannija pubblika jew entità ohra, u meta wiehed jew aktar individwi, li huma ordinarjament residenti u domiciljati f'Malta, m'għandhomx il-proprjetà jew il-kontroll ta' parti sostanzjali tal-kumpannija jew entità, jew m'humiex benefiċjalment intitolati għal parti sostanzjali tal-profitti jew *income* ta' din il-kumpannija jew entità, u l-ishma jew titoli ohra bhal dawn marbuta ma' l-imsemmija kumpannija jew entità:

(i) huma elenkati f'borża rikonossuta taht l-Att dwar is-Swieq Finanzjarji u l-Kummissarju jkun sodisfatt li dawn

l-ishma jew titoli ohra bhal dawn huma miżmuma minn hafna persuni u negozjati ta' spiss; jew

(ii) li ghalkemm mhumiex elenkati f'borża rikonoxxuta u li ma' jkunux negozjati ta' spiss, huma miżmuma minn hafna persuni;

il-Kummissariju jista', fid-diskrezzjoni assoluta tiegħu, jiddetermina li d-disposizzjonijiet ta' dan is-subartikolu ma japplikawx.”

(g) Għall-finijiet ta' dan is-subartikolu, il-kelma “entità” tfisser persuna minbarra individwu u għandha tinkludi kull *trust* jew korp ta' persuni.”.

Emenda ta'
l-artikolu 52 ta'
l-Att prinċipali.

15. L-Artikolu 52 ta' l-Att prinċipali għandu jiġi emendat kif ġej;

(a) Fis-subartikolu (5):

(i) il-kliem “kumpannija b'kummerċ internazzjonali.” għandhom jiġu sostitwiti bil-kliem “kumpannija b'kummerċ internazzjonali.”;

(ii) għandhom jiżdiedu l-*provisos* li ġejjin:

“Iżda l-ebda deċiżjoni ta' dan it-tip m'għandha tiġi notifikata dwar kumpannija li kienet registrata f'Malta fi jew wara l-1 ta' Jannar, 2007 iżda li ma kintx residenti f'Malta qabel din id-data:

Iżda wkoll li kumpanniji registrati f'Malta bejn it-18 ta' April 2006 u l-31 ta' Diċembru 2006 għandhom jkollhom biss il-jedd li japplikaw għal deċiżjoni taht id-disposizzjonijiet ta' l-artikolu 52(5) sa mhux iktar tard mit-30 ta' Ġunju, 2007.”;

(b) Minnufih wara s-subartikolu (5) għandu jiżdied dan is-subartikolu (5A) ġdid li ġej:

“(5A) Il-Kummissarju għandu, wara l-applikazzjoni minn xi persuna, jinnotifika d-deċiżjoni tiegħu li kumpannija ma tkun prekluzi milli tkun kumpannija hekk kif msemmija fil-paragrafu (b) ta' l-Artikolu 48(4A) ta' Att dwar l-Amministrazzjoni tat-Taxxa bħala konsegwenza tal-paragrafu (ii) tiegħu:

Iżda meta l-Kummissarju jkun innotifika d-deċiżjoni tiegħu hekk kif għadu kif intqal, dik id-deċiżjoni għandha tibqa' torbot u valida biss jekk dik il-kumpannija flimkien mad-denunzja tal-prospett tat-taxxa fuq l-*income* tagħha, tagħti wkoll id-dokumenti li ġejjin:

(a) dikjarazzjoni, ffirmata mid-diretturi kollha tal-kumpannija jew mis-segretarju tal-kumpannija meta din id-dikjarazzjoni tkun approvata mill-bord tad-diretturi tal-kumpannija, u li tikkonferma li matul il-perjodu ta' kontjar rilevanti l-attivitajiet tal-kumpannija kienu jikkonsistu biss f'attivitajiet msemmija fl-applikazzjoni tal-kumpannija li għaliha nġatad id-deċiżjoni. Fejn id-dikjarazzjoni tkun iffirmata mis-segretarju tal-kumpannija, din għandha tghid ukoll:

(i) jekk id-diretturi kollha tal-kumpannija kienux preżenti għall-laqgħa li fiha kienet approvata id-dikjarazzjoni u, jekk id-diretturi ma kienux kollha preżenti, jekk il-laqgħa kienitx msejja kif inhu mitlub mill-memorandum u l-istatut ta' assoċjazzjoni tal-kumpannija;

(ii) jekk id-dikjarazzjoni kienitx wahda approvata unanimament mid-diretturi kollha preżenti waqt il-laqgħa u, jekk ma kienitx approvata unanimament, in-numru ta' voti kontra u n-numru ta' voti favur il-mozzjoni; u

(b) dikjarazzjoni, ffirmata mill-awditur tal-kumpannija għal-perjodu ta' kontjar in kwistjoni, li tikkonferma li, safejn jaf u mill-aħjar li jaf, id-dikjarazzjoni msemmija fil-paragrafu (a) hija korretta.

(ċ) Fis-subartikolu (8) tiegħu għandu jizdied il-paragrafu (ċ) li ġej:

“(ċ) Minkejja id-diposizzjonijiet tal-paragrafi preċedenti ta' dan is-subartikolu ebda deċiżjoni skond is-subartikolu (5) inkluż kull tiġdid ta' dik id-deċiżjoni m'għandhom ikollhom effett fi jew wara l-1 ta' Jannar 2011.”

16. L-Artikolu 59(5) ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) F'paragrafu (a):

(i) il-kliem “ċertifikat tad-dividend.” għandhom jiġu sostitwiti bil-kliem “ċertifikat tad-dividend.”;

(ii) il-proviso li ġej għandu jiżdied :

“Izda ċ-ċertifikat tad-dividend għar-rigward ta' dividend li jithallas minn profitti maqlughin fil-perjodu ta' kontjar li fih id-dividend ikun thallas ma għandux jiġi pprezentat fiż-żmien tal-hlas ta' dividend iżda għandu jiġi hekk ipprezentat mill-aktar fis wara t-tmiem tal-perjodu ta' kontjar li fih id-dividend ikun thallas u f'kull każ bhal dan għandu jiġi pprezentat mhux iktar tard mid-data tal-prospett ta' taxxa tas-sena ta' stima relattiva għal dak il-perjodu ta' kontjar.”;

(b) Minnufih wara l-kelma “kont” fil-paragrafu (b)(i) u (b)(iii) għandha tiżdied il-kelma “intaxxat”;

(ċ) Is-sub-paragrafu (ix) tal-paragrafu (b) tiegħu għandu jiġi enumerat mill-ġdid bhala (x) u minnufih qabel dan il-paragrafu hekk rinumerat għandu jiżdied is-subparagrafu (ix) ġdid li ġej:

“(ix) analiżi tal-profitti li minnhom id-dividend ikun thallas li tidistingwi bejn:

(1) profitti taxxabbli fis-sena ta' stima 2007 u snin ta' stima ta' qabel; u

(2) profitti taxxabbli fis-sena ta' stima 2008 u fis-snin ta' stima sussegwenti li juru b'mod separat l-ammonti ta' profitt attribwibbli għal kull waħda minn dawk is-snin ta' stima.”.

17. L-artikolu 67 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu eżatt qabel il-kliem “kont intaxxat f'Malta” għandu jidhol il-kliem “kont ta' proprjetà immobbli, lill-”;

(b) fis-subartikolu (4) tieghu minflok il-kliem “li taġixxi f’isem persuna, li” ghandu jidhol il-kliem “li taġixxi fl-isem ta’, individwu li”.

18. L-artikolu 67A ta’ l-Att prinċipali ghandu jiġi emendat kif ġej: Emenda ta’ l-artikolu 67A ta’ l-Att prinċipali.

(a) fis-subartikolu (1) tieghu wara l-kliem “Minkejja d-disposizzjonijiet li hemm fit-tifsira ta’ “kont ta’ *income* barrani” fl-artikolu 2,” ghandu jiżdied il-kliem “iżda minghajr preġudizzju ghal xi obbligazzjoni li jkunu allokatati profitti lill-kont tat-taxxa finali u l-kont ta’ proprjetà immobbli,”;

(b) is-subartikolu (5) tieghu ghandu jiġi sostitwit b’dan li ġej:

“(5) Għall-finijiet ta’ dan l-artikolu “persuna residenti f’Malta” ghandha tinkludi persuna mhix residenti (inkluża kumpannija mhix residenti) li hija ta’ proprjetà u kontrollata minn, direttament jew indirettament jew li taġixxi f’isem individwu li huwa ordinarjament residenti u domiciljat f’Malta.”.

19. L-Artikolu 68 tal-Att prinċipali ghandu jiġi emendat kif ġej: Emenda ta’ l-artikolu 68 ta’ l-Att prinċipali.

(a) Fis-subartikolu (1) il-kliem “imhallas mill-profitti li jistgħu jitqassmu allokatati lill-kont ta’ *income* barrani jew lill-kont intaxxat f’Malta”, ghandhom jiġu mħassrin.

(b) Ghandhom jiżdiedu is-subartikoli ġodda li ġejjin:

“(3) Dividend imhallas minn kumpannija ghandu jkun imhallas minn profitti allokatati lil xi wiehed mill-kontijiet tat-taxxa li ġejjin, jiġifieri l-kont tat-taxxa finali u l-kont tal-proprjetà immobbli (inkluż l-ammont ta’ profitti allokatati lil dawn il-kontijiet intaxxati fil-perjodu ta’ kontjar li fih id-dividend thallas) qabel kull profitti allokatati lill-kont intaxxat f’Malta ikunu mqassma.

(4) Dividend imhallas minn kumpannija li kienet kumpannija residenti f’Malta qabel l-1 ta’ Jannar 2007 mill-profitti allokatati lill-kont intaxxat f’Malta ghandu jitqies li thallas mill-profitti maqlughin fil-perjodi ta’ kontjar li jibdwu mill-1 ta’ Jannar 2011, u biss meta daww il-profitti ikunu tqassmu kollha l-profitti maqlughin fil-perjodi ta’ kontjar

sussegwenti ghandhom jitqiesu li tqassmu għall-finijiet tal-Atti dwar it-Taxxa; u għal dan l-ghan kull dividend imhallas fi jew wara l-1 ta' Jannar 2007 li fil-fatt ma' jinvolvi il-hlas ta' dividend fi flus kontanti għandu jiġi injorat u meqjus bħalli kieku qatt ma sar.

(5) Meta kumpanija thallas xi dividendi li huma *income* minn investiment msemmi fl-artikolu 41(a)(viii) (2), (3) u (4) lill riċevitur jew meta dan *income* ikun meqjus li thallas lil riċevitur mill-profitti allokat li iktar minn kont intaxxat wiehed, kull persuna li tirċievi dawk id-dividendi għandha titqies li rċeviet dividend minn kull wiehed minn dawk il-kontijiet f'ammont li jikkorrispondi għas-sehem tagħha tad-dividendi totali hekk imhallsin. Kull disposizzjoni fil-memorandum u l-istatut ta' assoċazzjoni tal-kumpanija jew f'kull ftehim li jipprovdi li azzjonist jkollu l-jedd li jithallas dividendi biss jew prinċipalment minn kont intaxxat wiehed jew iktar bi preferenza għal kont intaxxat ieħor jew iktar għandhom ikunu injorati għall-finijiet tal-Atti dwar it-Taxxa u għall-finijiet ta' dan is-subartikolu *income* minn investiment msemmi fl-artikolu 41(a)(viii) (4) għandu jitqies li kien dividend li fil-fatt thallas mill-kumpanija li l-profitti tagħha kienu meqjusa li ġew mqassma permezz ta' l-artikolu 43(6)(a) jew l-artikolu 43(6) (ċ):

Izda meta l-profitti jkunu ġew intaxxati b'rata skond l-artikolu 15 ta' l-Att dwar il-Promozzjoni tan-Negożju jew l-artikolu 56(20) ta' dan l-Att, id-disposizzjonijiet ta' dan is-subartikolu m'għandhomx japplikaw għal dawn il-profitti u sakemm l-azzjonijiet (li jinkludu azzjonijiet li jissostitwixxu l-azzjonijiet oriġinali li jirriżultaw minn kull skambju ta' azzjonijiet jew rijorganizzazzjoni) li jkunu taw dritt għal dawn il-profitti ma jkunux għandhom jeżistu, dawk il-profitti għandhom jitqassmu biss lill-persuna li bis-saħħa tagħha dawn l-artikoli msemmija qabel kienu japplikaw jew lil xi persuna oħra li akkwistat l-azzjonijiet minghand din il-persuna.”.

Emenda ta'
l-artikolu 82 ta'
l-Att prinċipali.

20. Artikolu 82 ta' l-Att prinċipali għandu jiġi emendat skond dak li ġej:

(a) il-kliem “meta applikati dwar kumpanija, hawnhekk iżjed 'il quddiem f'dan l-artikolu imsejja “il-kumpanija ta' Malta, u” għandhom jithassru;

(b) f'paragrafu (a) tieghu:

(i) il-kliem “mhux residenti f'Malta” ghandhom jithassru ; u

(ii) il-kliem “l-kumpannija ta' Malta” ghandhom jigu sostitwiti bil-kliem “il-persuna li qed tagħmel it-talba”.

21. L-artikolu 92 ta' l-Att prinċipali ghandu jiġi emendat kif ġej: Emenda ta' l-artikolu 92 ta' l-Att prinċipali.

(a) fil-paragrafu (a) tieghu minflok il-kliem “kumpannija residenti f'Malta” ghandu jidhol il-kliem “kumpannija reġistrata f'Malta”;

(b) il-paragrafu (b) tieghu ghandu jiġi sostitwit b'dan li ġej:

“(b) li l-kumpannija tkun speċifikament mogħtija s-setgħa li tirċievi u li ghandu jiġi allokat fil-kont ta' *income* barrani kif imfisser fl-artikolu 2, iżda minbarra profitti li jirrizultaw minn dividendi mhallsa mill-kont ta' *income* barrani ta' kumpannija ohra residenti f'Malta: iżda li fil-każ ta' kumpanniji residenti f'Malta qabel l-1 ta' Jannar 2007 l-ewwel kundizzjoni ta' dan il-paragrafu (b) ghandha tapplika b'effett mill-1 ta' Jannar 2011; u”.

TAQSIMA II

22. Din it-taqsima temenda l-Att dwar l-Amministrazzjoni tat-Taxxa, u ghandha tinqara' u tinftiehem haġa waħda ma' l-Att dwar l-Amministrazzjoni tat-Taxxa, hawnhekk iżjed il-quddiem f'din it-Taqsima imsejjah “l-Att Prinċipali”. Emenda ta' l-Att dwar l-Amministrazzjoni tat-Taxxa. Kap. 372.

23. L-artikolu 19(4)(a) ghandu jiġi emendat kif ġej: Emenda ta' l-artikolu 19 ta' l-Att Prinċipali.

(a) minflok il-kliem “kumpannija residenti f'Malta” ghandhom jidhlu l-kliem “kumpannija reġistrata f'Malta”;

(b) minflok il-kliem “u 181 ta' dak l-Att;” ghandhom jidhlu l-kliem “u 181 ta' dak l-Att.”;

(ċ) il-*proviso* li ġej ghandu jizdied mieghu:

“Izda fil-każ ta' kumpannija li mhix residenti f'Malta, dawn ir-records ghandhom ikunu dawk li jirreferu għall-attivitajiet tal-kumpannija f'Malta.”.

Żieda ta' artikolu
ġdid 42B fl-Att
prinċipali.

24. Minnufih wara l-artikolu 42A ta' l-Att prinċipali għandu jżied l-artikolu ġdid li ġejj:

*Advance
Company
Income Tax.*

“42B. (1) Flimkien mad-disposizzjonijiet l-oħra ta' din il-Parti u b' mod partikolari l-artikoli 42 u 43, kumpannija għandha thallas ukoll it-taxxa imponibbli fuq l-*income* tagħha kif stabbilit f' dan l-artikolu.

(2) Meta jsir pagament ta' dividend minn profitti allokat lill-kont ta' l-*income* barrani jew allokat lill-kont intaxxat f' Malta it-taxxa li kumpannija għandha jedd li tnaqqas skond l-artikolu 59 ta' l-Att dwar it-Taxxa fuq l-*Income* fir-rigward ta' dan id-dividend flimkien ma kull taxxa addizzjonali dovuta skond l-artikolu 44 (1)(a), wara li jitnaqqas kull kreditu ta' taxxa marbuta mal-profitti li minnhom jkun thallas id-dividend bl-esklużjoni ta' kull kreditu tat-taxxa marbuta ma' talba għall-helsien mit-taxxa doppja skond l-artikoli msemmija fl-artikoli 74 (a), (b), u (ċ) ta' l-Att dwar it-Taxxa fuq l-*Income*, għandu jissejjaħ *Advance Company Income Tax*.

(3) L-ammont ta' *Advance Company Income Tax* wara li titnaqqas kull talba għall-helsien minn taxxa doppja u kull taxxa li l-kumpannija tkun hallset, sad-data tal-pagament skond dan l-artikolu, fuq profitti li minnhom ikun thallas id-dividend għandu jkun imhallas mill-kumpannija fi żmien sittin jum mill-aħhar tax-xahar wara dak li fih ikun thallas id-dividend.

(4) Meta dividend ikun mhallas minn profitti li ġejjin mil-perjodu ta' kontjar li fih id-dividend ikun imhallas, id-dividend għandu, għal finijiet ta' dan l-artikolu, jkun meqjus li ġie mhallas fl-aħhar ġurnata ta' dak il-perjodu ta' kontjar.

(5) Meta pagament ta' *Advance Company Income Tax* ikun sar skond dan l-artikolu l-ammont hekk mhallas, minbarra kull taxxa addizzjonali inkluża fih, għandu jiġi mpaċi ma' kull pagamenti oħra ta' taxxa li l-kumpannija tkun mitluba tagħmel fil-ġejjieni fuq il-profitti li minnhom ikun imhallas id-dividend.

(6) Matul il-perjodu mill-1 ta' Jannar 2007 sal-31 ta' Diċembru 2010 id-disposizzjonijiet ta' dan l-artikolu

għandhom japplikaw biss għal kumpannija li kienet kumpannija reġistrata f'Malta fi jew wara l-1 ta' Jannar 2007, iżda ma kinetx residenti f'Malta qabel dik id-data u għal kumpannija li għaliha l-paragrafu (i) tal-*proviso* għall-artikolu 48(4A)(b) ġie applikat.”.

25. L-artikolu 48 ta' l-Att prinċipali għandu jiġi emendat kif ġej: Emenda ta' l-artikolu 48 ta' l-Att prinċipali.

(a) fis-subartikolu (4)(b):

(i) minflok “rigward dawk il-profitti.” għandhom jidhlu l-kliem “rigward dawk il-profitti.”;

(ii) il-*provisos* li ġejjin għandhom jizjeddu:

“Izda għal talba għal hlas lura ta' taxxa relatata ma' dividendi miksuba minn sehem parteċipanti akkwistat fi jew wara l-1 ta' Jannar 2007, ir-rimbors skond dan il-paragrafu jkun dovut biss meta l-kundizzjonijiet stabbiliti fil-paragrafu (i) jew fil-paragrafu (ii) hawn taht ikunu sodisfatti:

(i) meta l-korp ta' persuni li fih ikun hemm sehem parteċipanti jissodisfa xi wahda minn dawn il-kundizzjonijiet, jiġifieri:

(1) jkun residenti jew inkorporat f'pajjiż jew territorju li jiffirma parti mill-Unjoni Ewropea;

(2) jkun soġġett għal xi taxxa barranija ta' mill-anqas hmistax fil-mija (15%);

(3) ma jkollux aktar minn hamsin fil-mija (50%) ta' l-*income* tiegħu miksub minn imghax passiv jew *royalties*;

(ii) meta ebda wahda mill-kundizzjonijiet stabbiliti fil-paragrafu (i) ma tkun sodisfatta għandhom jiġu sodisfatti ż-żewġ kundizzjonijiet li ġejjin:

(1) is-sehem b'ekwità mill-kumpannija reġistrata f'Malta fil-korp ta' persuni li mhux

residenti f'Malta mhux investment ta' portafoll u ghal dan il-ghan il-pussess ta' azzjonijiet ta' kumpanija residenti f'Malta f'korp ta' persuni li mhux residenti f'Malta li jikseb iktar minn hamsin fil-mija (50%) ta' l-*income* tieghu minn investment ta' portafoll ghandu jitqies bhala investment ta' portafoll; u

(2) il-korp ta' persuni li mhux residenti f'Malta jew l-imghax jew *royalties* passivi tieghu kienu soġġetti ghal xi taxxa barranija b'rata ta' mhux inqas minn hamsa fil-mija (5%):

Izda wkoll illi d-disposizzjonijiet tal-*proviso* immedjatament preċedenti ghandhom, b'seħh mill-1 ta' Jannar 2011, japplikaw ukoll ghal talba ta' hlas lura ta' taxxa ta' Malta mhallsa fuq il-profitti mqassma inklużi f'dividendi riċevuti minn sehem parteċipanti akkwistat qabel l-1 ta' Jannar 2007.”;

(b) fis-subartikolu (4)(ċ):

(i) minflok il-kliem “skond il-każ.” ghandhom jidhlu l-kliem “skond il-każ.”;

(ii) il-*proviso* li ġej ghandu jiżdied:

“Izda ghal dak li jirrigwarda talbiet maghmula relatati mal-pagament ta' dividendi minn profitti allokat lill-kont ta' *income* barrani u intaxxati fis-sena ta' stima 2008 u s-snin ta' stima ta' wara, l-espressjoni “taxxa ta' Malta mhallsa” ghandha tfisser it-taxxa li fil-fatt tithallas mill-kumpanija lill-Kummissarju fuq il-profitti hekk allokat flimkien ma' l-ammont, jekk ikun hemm, li bih din it-taxxa kienet mnaqqsa permezz ta' talba ghall-helsien mit-taxxa doppja skond l-artikoli msemmija fl-artikolu 74(a), (b) u (c) ta' l-Att dwar it Taxxa fuq l-*Income*.”;

(ċ) id-disposizzjonijiet li ġejjin ghandhom jiżdiedu mas-subartikolu (4) ta' dan l-artikolu:

“Iżda li l-*provisos* li ġejjin ghandhom japplikaw ukoll ghas-subartikolu (4) kollu:

(i) mill-1 ta’ Jannar 2011 sal-31 ta’ Diċembru 2014, fir-rigward ta’ dividendi mhallsa minn kumpannija li kienet kumpannija b’kummerċ internazzjonali fil-31 ta’ Diċembru 2010, id-disposizzjonijiet ta’ dan l-artikolu ghandhom ikomplu japplikaw wara l-31 ta’ Diċembru 2010 fir-rigward tat-tqassim ta’ profitti li jkunu nqalghu minn din il-kumpannija meta kienet kumpannija b’kummerċ internazzjonali;

(ii) persuna residenti f’Malta, reġistrata sabiex taghmel talba skond dan is-subartikolu hekk kif jista’ jiġi preskritt, tista’ titlob ukoll hlas lura ta’ taxxa kontemplat f’dan is-subartikolu rigward dividendi mhallsa mill-profitti allokat lill-kont ta’ l-*income* barrani meta dan id-dividend ikun imhallas:

(1) minn kumpannija li kienet kumpannija rreġistrata f’Malta fi jew wara l-1 ta’ Jannar 2007 iżda ma kienetx residenti f’Malta qabel dik id-data; u

(2) minn kull kumpannija ohra reġistrata f’Malta minn profitti miksuba mill-imsemmija kumpannija fil-perjodi ta’ kontjar li jibdew fi jew wara l-1 ta’ Jannar 2011.”;

(d) Minnufih wara is-subartikolu (4) ta’ dan l-artikolu ghandu jiżdied dan l-subartikolu ġdid li ġej:

“4A. (a) B’senh mill-1 ta’ Jannar 2007, persuna li tirċievi dividend imhallas lilha minn kumpannija reġistrata f’Malta minn profitti allokat lill-kont intaxxat f’Malta jew lill-kont ta’ *income* barrani tagħha tista’ titlob lura sitta minn kull seba’ parti (*six-sevenths*) ta’ l-*Advance Company Income Tax* mhallsa mill-kumpannija fuq dawk il-profitti mqassma lilha bhala dividend, sakemm dik il-persuna tkun reġistrata ghal dan il-ghan skond kif ikun preskritt:

Iżda meta dividend ikun imhallas minn profitti:

(i) li jkunu maghmula minn imghax jew *royalties* passivi ir-rata ta’ hlas lura ta’ taxxa tkun ta’ hamsa minn kull seba’ parti (*five-sevenths*) ta’ *Advance Company Income Tax* imhallas;

(ii) allokati lill-kont ta' *income* barrani u li ghalihom il-kumpannija tkun talbet il-helsien mit-taxxa doppja ma jistax ikun hemm talba ghal hlas lura ta' taxxa taht dan is-subartikolu.

(b) Matul il-perjodu mill-1 ta' Jannar 2007 sal-31 ta' Diċembru 2010, kull talba ghal hlas lura kontemplata f'dan is-subartikolu tista' ssir biss minn persuna li tirċievi dividend minn kumpannija li kienet kumpannija reġistrata f'Malta fi jew wara l-ewwel ta' Jannar 2007 iżda ma kinetx residenti f'Malta qabel dik id-data:

Iżda:

(i) persuna li tirċievi dividend minn kumpannija msemmija f'wiehed mis-subparagrafi (1) jew (2), u mhallas wara li dik il-kumpannija tkun informat lill-Kummissarju kif kontemplat fis-subparagrafi (1) jew (2) hawn taht, tista' wkoll titlob il-hlas lura ta' taxxa skond dan is-subartikolu matul il-perjodu msemmi jekk il-kondizzjonijiet imsemmija fil-paragrafu (a) ikunu sodisfatti:

(1) kumpannija li tikkwalifika bhala kumpannija b'kummerċ internazzjonali u li tinforma lill-Kummissarju li tkun għażlet li tiegaf tkun kumpannija b'kummerċ internazzjonali liema għażla għandha tkun approvata b'rizoluzzjoni straordinarja tal-membri ta' din il-kumpannija;

(2) kumpannija li tkun infurmat lill-Kummissarju li tkun għażlet li tiġi trattata bhala kumpannija li kienet reġistrata f'Malta fi jew wara l-1 ta' Jannar 2007 iżda li ma kinetx residenti f'Malta qabel dik id-data, fejn dik il-kumpannija kellha, fit-tliet perijodi ta' kontjar eżatt qabel dak li fih tkun hekk infurmat lill-Kummissarju, flimkien aktar minn 50% tal-profitti tagħha allokati fil-kont ta' taxxa barrani jew jikkonsisti minn *income* li ghalih l-eżenzjoni provduta bl-artikolu 12(1)(u) ta' l-Att dwar it-Taxxa fuq l-*Income* hija applikabbli u ġiet applikata, liema għażla għandha tkun approvata permezz ta' rizoluzzjoni straordinarja tal-membri ta' dik il-kumpannija:

Iżda:

(aa) meta l-kumpanija ma kinetx teżisti jew ma kinetx residenti jew registrata f'Malta matul il-perjodu kollu ta' tliet snin imsemmi hawn fuq il-kondizzjoni dwar in-natura ta' l-*income* tagħha kif dispot fil-paragrafu (2) hawn fuq għandha tiġi determinata b'referenza għall-perjodu li dik il-kumpanija kienet teżisti, residenti jew registrata f'Malta skond il-kaz;

(bb) il-Kummissarju jista, fid-diskrezzjoni tiegħu, jiddetermina li l-paragrafu (2) ta' hawn fuq għandu japplika għal kumpanija jekk, fl-opinjoni tiegħu jkun probabbli li iktar minn nofs il-profitti tal-kumpanija li jistgħu jitqassmu jiġu allokat fil-kont ta' *income* barrani fil-futur prevedibbli:

Iżda wkoll li kumpanija li għaliha japplika l-paragrafu (2) hawn fuq ma tkun intitolata li titlob hlas lura tat-taxxa mhallsa Malta fuq profitti allokat għal kont ta' taxxa Maltija fis-snin ta' stima ta' qabel is-sena ta' stima 2008.

(ii) din il-kumpanija ma tkun kisbet ebda mill-profitti tagħha, (anki jekk dawn il-profitti ma jkunux inkluzi fl-imsemmi dividend) direttament jew indirettament, minn sengħa, negozju jew attività oħra (hawnhekk iżjed 'il quddiem imsejha "l-attività l-ġdida") li tkun kollha kemm hi jew parzjalment l-istess jew espansjoni, sostituzzjoni jew duplikazzjoni ta' sengħa, negozju jew attività oħra li kienet titmexxa f'Malta qabel l-1 ta' Jannar 2007, minn kwalunkwe persuna (hawn iżjed 'il quddiem imsejha "l-attività l-qadima"); u dan li ntqal għandu jiġi interpretat fid-dawl ta' dan li ġej:

(1) meta r-rizorsi umani, tanġibbli u intanġibbli ta' l-attività l-ġdida jkunu sostanzjalment l-istess bhal daww użati fl-attività l-qadima, għandu jkun meqjus, sakemm il-kuntrarju

ma jkunx ippruvat, li l-attività l-ġdida hija l-istess jew espansjoni, sostituzzjoni jew duplikazzjoni ta' l-attività l-qadima;

(2) meta l-attività l-ġdida titmexxa, direttament jew indirettament, minn xi persuna li hija b'xi mod, dirett jew indirett, konnessa jew assoċjata ma' xi persuna li kienet tmexxi l-attività l-qadima permezz ta' azzjonijiet, drittijiet ta' votazzjoni jew drittijiet ta' proprjetà jew kontrolli oħra, għandu jkun meqjus, sakemm il-kuntrarju ma jkunx ippruvat, li l-attività l-ġdida hija l-istess jew espansjoni, sostituzzjoni jew duplikazzjoni ta' l-attività l-qadima;

(3) attività ġdida m'għandhiex titqies li hi l-istess jew espansjoni, sostituzzjoni jew duplikazzjoni ta' l-attività l-qadima biss għaliex l-attività l-ġdida tixbah l-attività l-qadima għax, *inter-alia*, tipprova l-istess tip ta' prodotti jew servizzi jew għax l-attività l-ġdida topera fl-istess suq bħal l-attività l-qadima u tikkompeti ma' l-attività l-qadima:

Iżda li meta l-attività l-qadima kienet magħmula minn kumpannija li għaliha l-proviso (i) għal dan il-paragrafu (b) jista' jiġi applikat l-attività l-ġdida m'għandhiex titqies, fl-intier tagħha jew parti minnha, li hija l-istess attività jew espansjoni, sostituzzjoni jew duplikazzjoni ta' l-attività l-qadima.

(ċ) Għall-finijiet tal-paragrafu (b) (ii) meta l-Kummissarju jkun ta' l-opinjoni li kull attività magħmula minn kumpannija li tikkonsisti minn xi parti minn xi attività amministrattiva, manigerjali jew attività oħra mmexxija minn xi persuna bħala parti minn negozju tiegħu qabel l-ewwel ta' Jannar 2007, u kull attività li tagħmel parti minn skema li l-għan uniku jew prinċipali tagħha jkun li jiġu evitati d-disposizzjonijiet tal-paragrafu (b) għandha tkun senġha, negozju jew attività li kienet saret f'Malta, qabel l-1 ta' Jannar 2007, minn kwalunkwe persuna; u għal dan il-għan il-kelma "skema" għandu jkollha t-tifsira mogħtija fl-artikolu 51(5) ta' l-Att dwar it-Taxxa fuq l-*Income*.

(d) Minghajr preġudizzju għall-*proviso* (i) tal-paragrafu (b) ta' dan l-artikolu talba għal hlas lura skond id-disposizzjonijiet tal-paragrafu (a) ta' dan is-subartikolu fir-rigward ta' dividend mhallas minn profitti allokat li lill-kont intaxxat f'Malta minn kumpanniji li kienu residenti f'Malta qabel l-1 ta' Jannar 2007 tista' ssir biss fir-rigward tat-taxxa mhallsa fuq profitti miksuba mill-kumpannija msemmija għas-sena ta' kontjar li tibda fi jew wara l-1 ta' Jannar 2011.”;

(e) Fis-subartikolu (5), minflok il-kliem “kif intqal qabel” għandhom jidhlu l-kliem “skond is-subartikolu (4) jew is-subartikolu (4A)”;

(f) Is-subartikolu (6) ta' dan l-artikolu għandu jiġi emendat kif ġej:

(i) wara l-kliem “skond is-subartikolu (4) għandhom jidhlu l-kliem “jew is-subartikolu (4A)”;

(ii) minflok il-kliem “Dan il-hlas lura m'għandux ikun taxxabli” għandhom jidhlu l-kliem “Dan il-hlas lura, hlief jekk ikun provdut mod iehor fl-Att dwar it-Taxxa, m'għandux ikun taxxabli”;

(iii) Il-*proviso* li ġej għandu jizdied:

“Izda li minkejja d-disposizzjonijiet ta' l-Att dwar it-Taxxa fuq l-*Income*, il-Kummissarju m'għandux jagħmel dawk il-pagamenti sakemm ma tkunx thallset kull taxxa dovuta skond id-disposizzjonijiet ta' l-*income* fuq l-investment imsemmija fl-artikolu 41 (a)(viii)(2) jew (4) li jinkludu profitti mqassma li t-taxxa imhallsa fuqhom hija t-taxxa li għaliha tkun saret it-talba skond dan is-subartikolu.”;

(g) Is-subartikolu (7) tiegħu għandu jiġi emendat skond dak li ġej:

(i) Wara l-kliem “is-subartikolu (4)” kull fejn jidhru għandhom jizdiedu l-kliem “jew is-subartikolu (4A)”;

(ii) Fil-paragrafu (ċ) tiegħu l-kliem “li dwarha tkun saret it-talba.” għandhom jinbidlu bil-kliem “li dwarha tkun saret it-talba.”;

(iii) Ghandu jizzied dan il-paragrafu (d) ġdid li ġej:

“(d) Hlas lura ta’ taxxa pagabbli skond is-subartikolu (4) jew is-subartikolu (4A) m’ghandu fl-ebda każ jeċċedi l-ammont ta’ taxxa li fil-fatt ikun imħallas mill-kumpanija li thallas id-dividend fuq il-profitti mqassma inklużi f’dak id-dividend li dwaru ssir it-talba skond dawk is-subartikoli.”;

(iv) fil-*proviso* ghalih minflok il-kliem “disposizzjonijiet ta’ dan l-Att” ghandu jidhol il-kliem “disposizzjonijiet ta’ dan l-Att.”;

(v) immedjament wara l-*proviso* ghalih ghandu jizzied il-*proviso* ġdid li ġej:

“Izda wkoll li d-disposizzjonijiet tal-*proviso* li jġi eżatt qabel ghandhom, fil-perijodu mill-1 ta’ Jannar 2011 sal-31 ta’ Dicembru 2014, japplikaw ukoll fil-każ ta’ kull profitti mqassma minn kumpanija li kienet kumpanija b’kummerċ internazzjonali fil-31 ta’ Diembru 2010 fejn dawk il-profitti kienu maqlugħa minn dik il-kumpanija meta kienet kumpanija b’kummerċ internazzjonali.”.

(h) Ghandu jizzied dan is-subartikolu (10) ġdid li ġej ma’ dan l-artikolu:

“(10) Jekk persuna tagħmel talba għal hlas lura skond is-subartikolu (4) jew is-subartikolu (4A) meta din il persuna ma kinitx intitolata għal dan il-hlas lura din il-persuna jkollha thallas penali daqs l-ammont ta’ hlas lura mitlub u jekk il-hlas lura jkun fil-fatt thallas lilha, dik il-persuna jkollha wkoll thallas l-ammont ta’ taxxa mħallas lura kif ukoll taxxa addizzjonali ta’ sebgħa fil-mija fix-xahar jew parti minnu b’bidu mix-xahar li fih l-imsemmi hlas lura jkun ġie magħmul lilu sax-xahar li fih ikun hallas it-taxxa mħallsa lura u kull pagament magħmul minn din il-persuna fir-rigward tat-taxxa li ghandha tiġi mħallsa lura minnha skond dan il-paragrafu ghandha tkun applikata kontra kull taxxa addizzjonali dovuta fuqha:

Iżda d-disposizzjonijiet ta' dan is-subartikolu (9) m'għandhomx japplikaw meta l-persuna msemmija f'dan is-subartikolu tipprova li ma kinitx taf jew li ma setgħetx raġonevolment tkun taf li ma kellhiex jedd għal dak il-hlas lura ta' taxxa.”.

26. L-artikolu 56(8) ta' l-Att prinċipali għandu jiġi emendat kif ġej : Emenda ta' l-artikolu 56 ta' l-Att prinċipali.

(a) fil-paragrafu (a) tiegħu flok il-kliem “persuna jew persuni” għandu jidhol il-kliem “individwu jew individwi”;

(b) fil-paragrafu (b) tiegħu minflok il-kliem “persuna jew persuni” għandu jidhol il-kliem “individwu jew individwi”;

(c) fil-paragrafu (b) tiegħu minflok il-kliem “domiciljati f'Malta” għandu jidhol il-kliem “domiciljati f'Malta.”;

(d) Il-*proviso* li ġej għandu jiżdied miegħu:

“Iżda li b'effett mill-1 ta' Jannar 2011 u sal-31 ta' Diċembru 2014, fir-rigward ta' dividendi mħallsa minn kumpannija li kienet kumpannija b'kummerċ internazzjonali fil-31 ta' Diċembru 2010, id-disposizzjonijiet ta' dan is-subartikolu għandhom ikomplu japplikaw wara l-31 ta' Diċembru 2010 fir-rigward tat-tqassim ta' profitti maqluġha minn dik il-kumpannija meta kienet kumpannija b'kummerċ internazzjonali.”.

27. Fl-artikolu 61 (a) (ii) ta' l-Att prinċipali, il-kliem “li taġixxi f'isem, persuna li” għandu jinbidel bil-kliem “li taġixxi f'isem, individwu li”. Emenda ta' l-artikolu 61 ta' l-Att prinċipali.

28. Fil-*proviso* għall-artikolu 81 ta' l-Att prinċipali eżatt qabel il-kliem “ma tkunx residenti f'Malta” għandu jiżdied il-kliem “jew tkun kumpannija registrata f'Malta.”. Emenda ta' l-artikolu 81 ta' l-Att prinċipali.

TAQSIMA III

29. Din it-Taqsima temenda l-Att dwar il-Kunsilli Lokali u għandha tinqara u tinftiehem bhala haġa waħda ma' l-istess Att hawnhekk iżjed 'il quddiem f'din it-Taqsima msejjah “l-Att prinċipali”. Emenda ta' l-Att dwar il-Kunsilli Lokali, Kap. 363.

Emenda
tat-Tielet Skeda
ta' l-Att prinċipali.

30. Minflok il-paragrafu (1) tar-regolament 103 tar-Regolamenti ta' l-1993 dwar l-Elezzjonijiet għall-Kunsilli Lokali li hemm fit-Tielet Skeda ma' l-Att prinċipali għandu jidhol dan li ġej:

“(1) Kull min jagħmel att illegali jehel, meta jinsab hati, multa ta' mhux iżjed minn hames mitt lira:

Iżda l-Ministru jista', minn żmien għal żmien b'avviż fil-Gazzetta jispeċifika pieni ohra li f'kull każ ma jkunux aktar minn multa ta' tlett elef lira.”.

Disposizzjoni
Transitorja.

31. Id-disposizzjonijiet ta' l-artikolu 27 ta' dan l-Att għandhom japplikaw għal kull proċedimenti kriminali kemm jekk mibdija qabel kemm jekk mibdija wara d-dhul fis-sehħ ta' din it-Taqsima ta' dan l-Att; u ma għandu jkun hemm l-ebda inkapaċità u ebda post ma għandu jsir battal b'konsegwenza tal-paragrafu (1) tar-regolament 103 ta' l-Att dwar il-Kunsilli Lokali kif kien fis-sehħ qabel id-dhul fis-sehħ ta' din it-Taqsima u jekk kien hemm xi inkapaċità jew xi post sar battal b'konsegwenza ta' l-istess paragrafu ta' l-istess regolament dik l-inkapaċità ma għandhiex tkompli fis-sehħ u l-istess post għandu jitqies li qatt ma sar battal anki jekk id-dikjarazzjoni ta' htija tar-reat taht ir-regolament 103 imsemmi tkun saret qabel id-dhul fis-sehħ ta' din it-Taqsima ta' dan l-Att.

Mghoddi mill-Kamra tad-Deputati fis-Seduta Nru. 504 tas-7 ta' Marzu, 2007.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

I assent.

(L.S.)

EDWARD FENECH ADAMI
President

16th March, 2007

ACT No. II of 2007

An Act to amend various laws

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) The short title of this Act is the Various Laws (Amendment) Act, 2007. Short title.

(2) The provisions of this Act shall be deemed to have come into force as follows: Coming into force of this Act

(a) The provisions of the following articles and paragraphs shall be deemed to have come into force as from the year of assessment 2008:

(i) paragraphs (b), (d), (e), (f), (i), (j), (k), and (l) of article 3;

(ii) articles 4, 5(b), 6, 7, 8, 16, 18(a), 19(a), 20, 21, 23 and 28;

(b) The provisions of the following articles and paragraphs shall be deemed to have come into force on the 1 January, 2007:

(i) paragraphs (a), (c), (g) and (h) of article 3;

(ii) articles 5(a), 9, 10, 11, 12, 13, 14, 15, 17, 18(b), 19(b), 24, 25, 26 and 27.

PART I

Amendment to the
Income Tax Act,
Cap. 123.

2. This Part amends the Income Tax Act, and shall be read and construed as one with the Income Tax Act, hereinafter in this Part referred to as “the principal Act”.

Amendment of
article 2 of the
principal Act.

3. Article 2 of the principal Act shall be amended as follows:

(a) Immediately before the definition of “body of persons” there shall be added the following new definition:

““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;”;

(b) The definition of “distributable profits” shall be substituted by the following:

““distributable profits” shall mean the total profits which are available for distribution by a company registered in Malta under the laws for the time being in force in Malta, and the distributable profits shall, for the purposes of this Act, be allocated to the following accounts, that is to say, final tax account, immovable property account, foreign income account, Maltese taxed account, and untaxed account, and for the purposes of this definition these accounts shall comprise the distributable profits as set out in the respective definitions:

Provided that in the case of a company which is neither incorporated nor resident in Malta the distributable profits shall be the profits attributable to the activities of such company in Malta and in respect of which it has registered with the Commissioner less any of such profits which the company has distributed in previous years;”;

(c) In the definition of “equity holding” the word “nominal” shall be deleted;

(d) Immediately after the definition of “equity holding” there shall be added the following new definition:

““final tax account” shall mean the taxed account to which an amount of distributable profits which suffered tax, calculated in such manner and in such amount as may be prescribed, shall be allocated before any distributable profits are allocated to any other taxed account;”;

(e) In the definition of “foreign income account”:

(i) The words “a company resident in Malta” wherever they appear shall be substituted by the words “a company registered in Malta”;

(ii) In paragraph (a) thereof after the words “interest, rents” there shall be added the words “, income or gains derived from a participating holding or from the disposal of such holding,”;

(iii) In the third proviso thereto for the word “finally” there shall be substituted the word “further”, and for the words “be so allocated;” there shall be substituted the words “be so allocated:”;

(iv) Immediately after the third proviso thereto there shall be added the following new proviso:

“Provided further that notwithstanding anything contained in this Act or in any rules made thereunder any profits derived up to the 31 December 2010 by a company which was resident in Malta prior to the 1 January 2007 (other than a company which has exercised its option in terms of paragraph (i) (2) of the proviso to Article 48(4A)(b) of the Income Tax Management Act) which would have been allocated to the foreign income account had such profits been brought to charge to tax in the year of assessment 2007 shall be allocated to the foreign income account;”;

(f) Immediately after the definition of “foreign income account” there shall be added the following new definition:

“immovable property account” shall mean the taxed account to which distributable profits which have suffered tax and which are not allocated to the final tax account calculated in such manner as may be prescribed, shall be allocated before any distributable profits are allocated to the other taxed accounts;”;

(g) In the definition of “international trading company”:

(i) Immediately after the words “a company registered in Malta” there shall be added the words “by not later than 31 December 2006”;

(ii) In the proviso thereto for the words “under any of the provisions of the Income Tax Acts;” there shall be substituted the words “under any of the provisions of the Income Tax Acts.”;

(iii) The following provisos shall be added thereto:

“Provided that the company has not opted to cease to be an international trading company pursuant to article 48(4A)(b)(i)(1) of the Income Tax Management Act:

Provided further that notwithstanding any other provisions of this Act or any other law including the provisions of article 52(8) of this Act no company shall be an international trading company with effect from 1 January 2011.”;

(h) The definition of “participating holding” shall be amended as follows:

(i) in paragraph (e) thereof after the words “not resident in Malta” there shall be added the words “and that investment in the company not resident in Malta is held for an uninterrupted period of not less than 183 days”;

(ii) in paragraph (f) thereof immediately after the words “the furtherance of its own business” there shall be added the words “and the holding is not held as trading stock for the purpose of a trade”;

(iii) the proviso thereto shall be substituted by the following:

“Provided that a holding of a company in a body of persons constituted, incorporated or registered outside Malta, which is not resident in Malta, and is of a nature similar to a partnership *en commandite* the capital of which is not divided into shares constituted under the Companies Act, shall be deemed to constitute a participating holding if it satisfies the provisions of any of paragraphs (a) to (f) above which shall apply *mutatis mutandis* to such holding. For the purposes of

this proviso, the terms “equity shares” or “shares” shall be construed as referring to the capital in the said body of persons which entitles the holder to a right to votes, to profits available for distribution and to assets available for distribution on a winding up of the said body of persons, and the term “equity shareholder” shall be construed accordingly.”;

(i) Immediately after the definition of “participating holding” there shall be added the following new definition:

““passive interest or royalties” shall mean interest or royalty income which is not derived, directly or indirectly, from a trade or business, where such interest or royalties have not suffered or suffered any foreign tax, directly, by way of withholding, or otherwise, at a rate of tax which is less than five per cent (5%);”;

(j) Immediately after the definition of “petroleum” there shall be added the following new definition:

““portfolio investment” is an investment in securities such as shares, bonds, and such like instruments and which is held as one of many such investments for the purpose of investment by risk spreading where such an investment is not a strategic investment and is made with no interest in and without the intention of influencing the management of the company invested in and in addition is made only to follow the share price and dividend policy of the company invested in to maximise investment returns and to sell the investment as soon as it appears that the shares may lose value;”;

(k) Immediately after the definition of “tax” there shall be added the following new definition:

““taxed account” and”“taxed accounts” shall mean any or all of the final tax account, immovable property account, foreign income account, Maltese taxed account and untaxed account;”;

(l) The definition of “untaxed account” shall be substituted by the following:

““untaxed account” shall consist of those profits (or losses as the case may be), which represent the total distributable profits (a positive amount) or the total accumulated losses (a negative amount) as the case may be,

and deducting therefrom the total sum of the amounts allocated to other taxed accounts;”.

Amendment of article 5A of the principal Act.

4. Article 5A (10)(d) of the principal Act shall be amended as follows:

(a) for the words “Maltese taxed account” there shall be substituted the words “final tax account”;

(b) the words commencing from “The said distributable profits shall” to the words “out of the property transfers reserve” shall be substituted by the words “The said distributable profits shall be determined in such manner as may be prescribed”.

Amendment of article 12 of the principal Act

5. Article 12 of the principal Act shall be amended as follows:

(a) the proviso to subarticle (1)(c) shall be substituted by the following:

“Provided that the beneficial owner of the interest, royalty, gain or profit, as the case may be, is a person not resident in Malta and such person 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.”;

(b) immediately after paragraph (t) of subarticle (1) there shall be added a new paragraph:

“(u) any income or gains derived by a company registered in Malta from a participating holding or from the disposal of such holding, where the taxpayer has not shown such income or gain as part of his chargeable income in the return made pursuant to article 10 of the Income Tax Management Act:

Provided that with respect to a dividend derived from a participating holding acquired on or after 1 January 2007 the exemption contemplated by this paragraph shall only apply when the conditions set out in either paragraph (i) or paragraph (ii) below are satisfied:

(i) where the body of persons in which the participating holding is held satisfies any one of the following conditions, that is to say:

(1) it is resident or incorporated in a country or territory which forms part of the European Union;

(2) it is subject to any foreign tax of at least fifteen per cent (15%);

(3) it does not have more than fifty per cent (50%) of its income derived from passive interest or royalties;

(ii) where none of the conditions set out in paragraph (i) are satisfied then both of the following two conditions must be satisfied:

(1) the equity holding by the company registered in Malta in the body of persons not resident in Malta is not a portfolio investment and for this purpose 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; and

(2) the body of persons not resident in Malta or its passive interest or royalties have been subject to any foreign tax at a rate which is not less than five per cent (5%):

Provided further that the provisions of the immediately preceding proviso shall, with effect from 1 January 2011, also be applicable to dividends received from a participating holding acquired before the 1 January 2007.”.

6. Article 14(1)(g) of the principal Act shall be amended as follows:

Amendment of article 14 of the principal Act.

(a) In the proviso, for the words “under this Act;” there shall be substituted the words “under this Act.”;

(b) The following new proviso shall be added:

“Provided further that a loss as aforesaid shall not be deducted against income which stands to be allocated to the final tax account and any loss resulting from activities or sources the profit derived from which would have been allocated to the final tax account shall not be a loss to which this paragraph applies;”.

Amendment of article 18 of the principal Act.

7. Paragraph (c) of article 18(1) of the principal Act shall be substituted by the following:

“(c) Where the allowable loss, had it been a profit, would have been allocated to the immovable property account or the Maltese taxed account of the surrendering company, the claimant company may deduct such loss from its income which stands to be allocated to either its immovable property account or its Maltese taxed account, and such loss may only be carried forward against the claimant company’s total income arising in subsequent years as would stand to be allocated to any of these taxed accounts.”.

Amendment of article 25 of the principal Act.

8. Article 25 of the principal Act shall be substituted by the following :

“25. For the purposes of articles 14 to 24 both inclusive, expenses incurred in the production of, and allowable deductions given in respect of, income derived from profits which are allocated to a taxed account must first be deducted against such income.”.

Amendment of article 27D of the principal Act.

9. Article 27D(3)(c) of the principal Act shall be amended as follows:

(a) for the words “by such beneficiaries.” there shall be substituted the words “ by such beneficiaries;”

(b) the following new proviso shall be added:

“Provided that the income referred to in this paragraph shall also include dividends paid out of profits allocated to any of the taxed accounts.”.

Amendment to article 33 of the principal Act.

10. Article 33(1) of the principal Act shall be amended as follows:

(a) In the proviso thereto the words “is an individual who” shall be deleted and for the words “in article 56(6).” there shall be substituted the words “in article 56(6);”;

(b) The following proviso shall be added after the existing proviso thereto:

“Provided further that in the case of investment income referred to in article 41(a)(viii) (2),(3) and (4) where the recipient is not in the actual receipt of that income but is deemed to have received such income pursuant to the provisions of article 43(6)(a), (b) or (c) the rate at which tax shall be deducted shall be of thirty

one point five, seven, eight per cent (31.578%) or such other rate as may be prescribed and rules may also be prescribed on how the investment income provisions are to be applied in such circumstances.”.

11. Article 35(1) of the principal Act shall be substituted by the following: Amendment to article 35 of the principal Act.

“(35) (1) Except in respect of investment income referred to in article 41(a)(viii) (2), (3) and (4), a recipient may elect to be paid investment income without deduction of tax being made and such an election shall be made in writing and sent to the payor.”.

12. Article 40 of the principal Act shall be amended as follows: Amendment to article 40 of the principal Act.

(a) in subarticle (2) for the words “and 41(a)(viii)” there shall be substituted the words “and 41(a)(viii)(1)”;

(b) immediately after article 40(2) there shall be added the following new subarticles:

“(3) Any person (hereinafter in this subarticle referred to as the “first person”) who is in a position to receive or be deemed to have received the income referred to in sub-paragraphs (2), (3) and (4) of article 41(a) (viii):

(a) shall inform in writing the person who would be the payor of such income if the first person were to receive or be deemed to have received such income, that in such an eventuality the first person would be the recipient of that income; and

(b) when the first person has received or has been deemed to have received such income, he shall, unless the payor has paid the tax in accordance with the investment income provisions, pay such tax himself within seven days from the date that the payor should have paid the tax; and”

(c) without prejudice to any other provisions of the Income Tax Acts, any such person who does not make the payment referred to in paragraph (b) above when he ought to have made it shall, in addition to the payment of the tax due, be liable to pay additional tax of seven per cent of the amount of such tax for every month or

part thereof that the tax remains unpaid commencing from the month in which the tax should have been paid and any payment made by the said person in respect of the tax payable by him in terms of this subarticle shall first be applied against any additional tax due thereon.

(4) The provisions of subarticle (3) shall not be applicable when the person referred to therein proves to the satisfaction of the Commissioner that he did not know and could not reasonably have known that he was a recipient and for this purpose it shall be presumed that such person was fully cognisant of the provisions and implications of the Income Tax Acts.

(5) Where the payor has not deducted or paid the tax from the income referred to in sub-paragraphs (2), (3) and (4) of article 41(a)(viii), the provisions of articles 38 and 39 shall not be applicable.”.

Amendment to
article 41 of the
principal Act.

13. Article 41 of the principal Act shall be amended as follows:

(a) paragraph (a)(viii) shall be substituted by the following:

“(viii)(1) profits distributed by a company that is not resident in Malta (and that is not a collective investment scheme), and where such profits are paid through the services of an authorised financial intermediary to an individual who is resident in Malta, provided that such distributed profits constitute income in the hands of such individual that is derived from shares in such company, each share being a qualifying asset as defined in the provisions of article 9B;

(2) the amount of the net dividend paid by a company registered in Malta in respect of which the recipient shareholder is registered for the purpose of article 48(4) or article 48(4A) of the Income Tax Management Act;

(3) the amount paid pursuant to subarticle 48(4) or subarticle 48(4A) of the Income Tax Management Act;

(4) the dividend referred to in article 43(6)(a) and article 43(6)(c).”;

(b) in paragraph (b) thereof after the words “makes a payment of investment income” there shall be added the words “and with respect to investment income referred to in paragraph

(a) (viii) (4) of this article shall mean the company which earned the profits deemed distributed pursuant to article 43(6) (a) and article 43(6)(c)”;

c) in paragraph (c)(iii):

(i) the words “referred to in sub-paragraph (i).” shall be substituted by the words “referred to in sub-paragraph (i):”;

(ii) the following new proviso shall be added to the said paragraph (c):

“Provided that with respect to the income referred to in sub-paragraphs (2), (3) and (4) of paragraph (viii) a recipient shall be an individual, who is resident in Malta and in the circumstances referred to in article 43(6) (e) such individual must be ordinarily resident and domiciled in Malta.”.

14. In article 43 of the principal Act there shall be added the following new subarticle (6):

Amendment to article 43 of the principal Act.

“(6) (a) Where an individual resident in Malta is registered for the purpose of article 48(4) or article 48(4A) of the Income Tax Management Act, or is beneficially entitled, directly or indirectly, to the profits of a company which is so registered, such individual shall be deemed to have received a dividend or dividends corresponding to the amount of profits (that is, the profits net of the tax paid or payable by the company in respect of which he or the said company are so registered) that he is beneficially entitled to receive from such company or companies, on the first day of the accounting period next following that in which such profits were earned by the said company or companies: provided that such profits have not been distributed before that date;

(b) An individual who is beneficially entitled, directly or indirectly, to the profits of an entity which has received, or is entitled to receive, directly or indirectly, the income referred to in sub-paragraphs (2) and (3) of article 41(a)(viii), shall be deemed to have received, at the time that the said entity has received the said income, so much of that income as corresponds to his, direct or indirect, entitlement to receive that income by way of dividend or other means through or from any person or entity in any manner whatsoever:

Provided that in the case of income referred to paragraph (2) of article 41(a)(viii) the said person shall not be deemed to

have received such income if and to the extent that the distributable profits resulting in such income have been deemed to be income referred to in paragraph (4) of the said article 41(a)(viii) paid to a recipient as defined in the investment income provisions;

(c) Where an individual resident in Malta is beneficially entitled, directly or indirectly, to the profits of a company which has applied the provisions of article 12(1)(u) to any of its income such individual shall be deemed to have received, at the time that the said company has submitted its tax return in which the said income would have been charged to tax but for the fact that it applied the said exemption or the last date on which such a tax return is due to be submitted, whichever is the earlier, so much of that income as corresponds to his, direct or indirect, entitlement to receive that income by way of dividend or other means through or from any person or entity in any manner whatsoever;

(d) Where an individual becomes beneficially entitled, directly or indirectly to the profits of an entity or any such entitlement is increased in any way and such entity has received but not yet distributed, or is entitled to receive (at the time such individual became so entitled or had his entitlement so increased), directly or indirectly, the income referred to in sub-paragraphs (2) and (3) of article 41(a)(viii), such individual shall be deemed to have received a dividend chargeable to tax under this Act at the time that he became so entitled or had his entitlement so increased as corresponds to his, direct or indirect, entitlement or increased entitlement to receive that income by way of dividend or other means through or from any person or entity in any manner whatsoever and such individual shall be obliged to declare the said dividend in his return of income:

Provided that the provisions of this paragraph shall not be applicable where the Commissioner is satisfied that the events referred to in this paragraph were not the result of some arrangement or scheme the sole or main purpose of which was the avoidance of or postponement of the payment of tax;

(e) Where the immediate shareholder of the company referred to in paragraph (a) is not an individual and is not resident in Malta or where the entity referred to in paragraphs (b) and (c) which has actually received, or is actually entitled to receive, the income referred to in sub-paragraphs (2) and (3) of article 41(a)(viii) is not resident in Malta, the provisions of this subarticle shall only be applicable when the said individual is ordinarily resident and domiciled in Malta;

(f) where the direct or indirect beneficial entitlement referred to above is an entitlement to the profits of a public company or other entity, and where one or more individuals, ordinarily resident and domiciled in Malta, do not own or control a substantial part of such company or entity, or are not beneficially entitled to a substantial part of the profits or income of such company or entity, and the shares or other similar security in relation to such company or entity:

(i) are listed on a stock exchange recognised under the Financial Markets Act, and the Commissioner is satisfied that the shares or other similar security are widely held and frequently traded; or

(ii) although not listed on such a recognised stock exchange and not frequently traded, are widely held;

the Commissioner may, in his absolute discretion, determine that the provisions of this subarticle are not applicable;

(g) for the purpose of this subarticle the word “entity” means a person other than an individual and shall include any trust or body of persons.”.

15. Article 52 of the principal Act shall be amended as follows: Amendment of article 52 of the principal Act.

(a) In subarticle (5):

(i) for the words “international trading company.” there shall be substituted the words “international trading company.”;

(ii) the following new provisos shall be added:

Provided that no such ruling shall be notified in respect of a company which was a company registered in Malta on or after 1 January 2007 but was not resident in Malta before that date.

Provided further that companies registered in Malta between the 18 April 2006 and 31 December 2006 shall only be entitled to apply for a ruling in terms of Article 52(5) by not later than 30 June 2007.”;

(b) Immediately after subarticle (5) there shall be added the following new subarticle (5A):

“(5A) The Commissioner shall, on the application of any person, notify his ruling that a company is not precluded from being a company to which paragraph (b) of article 48(4A) of the Income Tax Management Act refers to as a consequence of paragraph (ii) thereof:

Provided that where the Commissioner has notified his ruling as aforesaid, such ruling shall only remain binding and valid as long as such company together with the filing of its income tax return also submits the following documents:

(a) a declaration, signed by all the directors of the company or by the company secretary where such declaration is approved by the board of directors of the company, confirming that throughout the relevant accounting period the company’s activities consisted solely of the activities referred to in the company’s application for the said ruling. Where the declaration is signed by the company secretary it shall also state:

(i) whether all the directors of the company were present at the meeting approving the declaration and, if not all the directors were present, whether the meeting was properly convened as required by the company’s memorandum and articles;

(ii) whether the declaration was unanimously approved by all the directors present at the meeting and, if approval was not unanimous, the number of votes against and the number of votes for the motion; and

(b) a declaration, signed by the auditor of the company for the accounting period in question, confirming that, to the best of his knowledge and belief, the declaration referred to in paragraph (a) is correct.”;

(c) In subarticle 8 there shall be added the following new paragraph (c):

“(c) Notwithstanding the provisions of the preceding paragraphs of this sub-article no ruling pursuant to subarticle (5) including any renewal of such ruling shall be effective on or after the 1 January 2011.”.

16. Article 59(5) of the principal Act shall be amended as follows:

(a) In paragraph (a):

(i) for the words “dividend certificate.” there shall be substituted the words “dividend certificate.”;

(ii) the following proviso shall be added:

“Provided that a dividend certificate in respect of a dividend paid out of profits earned in the accounting period in which the dividend is paid need not be furnished at the time of payment of a dividend but shall be so furnished as soon as practicable after the end of the accounting period in which the dividend is paid and in any such event shall be furnished by not later than the tax return date of the year of assessment relative to that accounting period.”;

(b) Immediately preceding the word “account” in paragraph (b)(i) and (b)(iii) there shall be added the word “taxed”;

(c) Sub-paragraph (ix) of paragraph (b) thereof shall be renumbered as (x) and immediately preceding this paragraph as renumbered there shall be added the following new sub-paragraph (ix):

“(ix) an analysis of the profits out of which the dividend is paid distinguishing between:

(1) profits which are chargeable to tax in the year of assessment 2007 and previous years of assessments; and

(2) profits which are chargeable to tax in the year of assessment 2008 and subsequent years of assessment showing separately the amount of such profits pertaining to each such year of assessment..”.

17. Article 67 of the principal Act shall be amended as follows: Amendment of article 67 of the principal Act.

(a) in subarticle (1) thereof immediately preceding the words “the Maltese taxed account” there shall be added the words “immovable property account.”;

(b) in subarticle (4) thereof for the words “who acts on behalf of a person who” there shall be substituted the words “who acts on behalf of, an individual who”.

18. Article 67A of the principal Act shall be amended as follows: Amendment of article 67A of the principal Act.

(a) in subarticle (1) thereof after the words “Notwithstanding the provisions contained in the definition of “foreign income account” in article 2,” there shall be added the words “but without prejudice to any obligation to allocate profits to the final tax account and the immovable property account,”;

(b) subarticle (5) thereof shall be substituted by the following:

“(5) For the purposes of this article a person resident in Malta shall include a non-resident person (including a non-resident company) who is owned and controlled by, directly or indirectly or who acts on behalf of an individual who is ordinarily resident and domiciled in Malta.”.

Amendment of article 68 of the principal Act.

19. Article 68 of the principal Act shall be amended as follows:

a) In subarticle (1) the words “paid out of the distributable profits allocated to the foreign income account or to the Maltese taxed account” shall be deleted;

b) There shall be added the following new subarticles:

“(3) A dividend paid by a company shall be paid out of profits allocated to any of the following taxed accounts, that is to say the final tax account and the immovable property account (including the amount of profits allocated to these taxed accounts in the accounting period in which the dividend is paid) before any profits allocated to the Maltese taxed account are distributed.

(4) A dividend paid by a company which was resident in Malta before the 1 January 2007 out of profits allocated to the Maltese taxed account shall be deemed to be paid out of profits earned in accounting periods commencing prior to the 1 January 2011, and only when such profits are wholly distributed shall profits earned in subsequent accounting periods be considered as being distributed for the purpose of the Income Tax Acts; and for this purpose any dividend paid on or after the 1 January 2007 which did not involve the actual payment of a dividend in cash shall be ignored and deemed to never have been made.

(5) When a company pays any dividends which are investment income referred to in article 41(a)(viii) (2), (3) and (4) paid to a recipient, or when such income is deemed to be paid to a recipient out of profits allocated to more than one taxed account, each person in receipt of such dividends shall be deemed to have received a dividend

from each such account in an amount that corresponds to his share of the total dividends so paid. Any provisions in the memorandum and articles of association of the company or in any agreement which provide that a shareholder shall be entitled to be paid dividends solely or mainly from one or more taxed account or accounts in preference to one or more other taxed account or accounts shall be disregarded for the purpose of the Income Tax Acts, and for the purpose of this subarticle investment income referred to in article 41(a)(viii)(4) shall be deemed to have been a dividend actually paid by the company the profits of which are deemed distributed by virtue of article 43(6)(a) or article 43(6)(c):

Provided that where profits have been subject to tax at a rate pursuant to article 15 of the Business Promotion Act or article 56(20) of this Act, the provisions of this subarticle shall not apply as regards such profits and unless the shares (including any shares substituting the original shares resulting from any share exchange or reorganisation) which gave rise to the entitlement to such profits are no longer in existence, such profits shall be distributable only to the person in respect of whom the aforementioned articles were applicable or to any other person who acquired the shares from such person.”.

20. Article 82 of the principal Act shall be amended as follows: Amendment of article 82 of the principal Act.

(a) the words “when applied to a company, hereinafter in this article referred to as “the Malta company”, and” shall be deleted;

(b) in paragraph (a) thereof:

(i) the words “not resident in Malta” shall be deleted; and

(ii) for the words “by the Malta company” there shall be substituted the words “by the person making the claim”.

21. Article 92 of the principal Act shall be amended as follows: Amendment of article 92 of the principal Act.

(a) in paragraph (a) thereof for the words “company resident in Malta” there shall be substituted the words “company registered in Malta”;

(b) paragraph (b) thereof shall be substituted by the following:

“(b) which the company is specifically empowered to receive and fall to be allocated to the foreign income account as defined in article 2, but excluding profits resulting from

dividends paid out of the foreign income account of another company resident in Malta: provided in the case of companies resident in Malta prior to the 1 January 2007 the first condition of this paragraph (b) shall apply with effect from 1 January 2011; and”.

PART II

Amendment to the
Income Tax
Management Act.
Cap. 372.

22. This Part amends the Income Tax Management Act, and shall be read and construed as one with the Income Tax Management Act, hereinafter in this Part referred to as “the principal Act”.

Amendment of
article 19 of the
principal Act.

23. Article 19(4)(a) of the principal Act shall be amended as follows:

(a) for the words “company resident in Malta” there shall be substituted the words “company registered in Malta”;

(b) for the words “and 181 of that Act;” there shall be substituted the words and “and 181 of that Act:

(c) the following proviso shall be added thereto:

“Provided that in the case of a company which is not resident in Malta, such records shall be those which refer to the company’s activities in Malta.”

Addition of new
article 42B

24. Immediately after Article 42A of the principal Act there shall be added the following new Article:

“Advance
Company
Income Tax.

42B. (1) In addition to the other provisions of this Part and in particular articles 42 and 43 hereof a company shall also pay the tax chargeable on its income in the manner set out in this article.

(2) Upon the payment of a dividend from profits allocated to the foreign income account or the Maltese taxed account the tax which a company is entitled to deduct in terms of article 59 of the Income Tax Act in respect of such dividend together with any additional tax payable in terms of article 44 (1) (a), after deducting any tax credits relative to the profits out of which the dividend is paid excluding any tax credits relative to a claim for relief of double taxation under the articles referred to in articles 74 (a), (b) and (c) of the Income Tax Act, shall be referred to as Advance Company Income Tax.

(3) The amount of Advance Company Income Tax less any claim for relief of double taxation and any tax that the company has paid, as at the date of payment contemplated herein, on the profits out of which the said dividend is paid shall be paid by the company within sixty days the end of the month following that in which the dividend is paid.

(4) Where a dividend is paid out of profits earned in the accounting period in which the dividend is paid the dividend shall, for the purpose of this article, be deemed to have been paid on the last day of that accounting period.

(5) Where a payment of Advance Company Income Tax has been made in accordance with this article, the amount so paid, excluding any additional tax included therein, shall be set-off against any other future payments of tax that the company is required to make on the profits out of which the dividend is paid.

(6) During the period from 1 January 2007 to the 31 December 2010 the provisions of this article shall only be applicable to a company which was a company registered in Malta on or after the 1 January 2007, but was not resident in Malta before that date and to a company in respect of which paragraph (i) of the proviso to article 48(4A)(b) has been applied.”.

25. Article 48 of the principal Act shall be amended as follows: Amendment of article 42A of the principal Act

(a) in subarticle (4)(b):

(i) for the words “in respect of those profits.” there shall be substituted the words “in respect of those profits.”;

(ii) the following provisos shall be added:

“Provided that with respect to a claim for refund relative to dividends derived from a participating holding acquired on or after 1 January 2007, the refund contemplated by this paragraph shall only be due when the conditions set out in either paragraph (i) or paragraph (ii) below are satisfied:

(i) where the body of persons in which the participating holding is held satisfies any one of the following conditions, that is to say:

(1) it is resident or incorporated in a country or territory which forms part of the European Union;

(2) it is subject to any foreign tax of at least fifteen per cent (15%);

(3) it does not have more than fifty per cent (50%) of its income derived from passive interest or royalties;

(ii) where none of the conditions set out in paragraph (i) are satisfied then both of the following two conditions must be satisfied:

(1) the equity holding by the company registered in Malta in the body of persons not resident in Malta is not a portfolio investment and for this purpose the holding of shares by a company resident 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; and

(2) the body of persons not resident in Malta or its passive interest or royalties have been subject to any foreign tax at a rate which is not less than five per cent (5%):

Provided further that the provisions of the immediately preceding proviso shall, with effect from 1 January 2011, also be applicable to a claim for refund in respect of the Malta tax paid on distributed profits comprised in dividends received from a participating holding acquired before the 1 January 2007.”;

(b) in subarticle 4(c):

(i) for the words “as the case may be.” there shall be substituted the words “as the case may be.”;

(ii) the following proviso shall be added:

“Provided that as regards claims made relative to the payment of dividends from profits allocated to the foreign income account and brought to charge to tax in year of assessment 2008 and subsequent years of assessment the expression Malta tax paid shall mean the tax actually paid by the company to the Commissioner on the profits so allocated plus the amount, if any, by which such tax has been reduced by a claim of relief of double taxation under the articles referred to in articles 74 (a), (b) and (c) of the Income Tax Act.”;

(c) the following provisos shall be added to subarticle (4) thereof:

“Provided that the following provisos shall also apply to the whole of subarticle (4):

(i) with effect from 1 January 2011 and up to 31 December 2014, as regards dividends paid by a company which was an international trading company as at 31 December 2010, the provisions of this article shall continue to apply after 31 December 2010 with respect to the distribution of profits earned by such company while it was an international trading company;

(ii) a person resident in Malta, registered for the purpose of making a claim in terms of this subarticle in such manner as may be prescribed, may also claim a tax refund contemplated by this subarticle with respect to dividends paid from profits allocated to the foreign income account when such dividend is paid:

(1) by a company which was a company registered in Malta on or after 1 January 2007 but was not resident in Malta before that date; and

(2) by any other company registered in Malta out of profits derived by the said company in respect of accounting periods which commenced on or after 1 January 2011.”;

(d) Immediately after subarticle (4) there shall be added the following new subarticle:

“4A. (a) With effect from 1 January 2007 a person, in receipt of a dividend paid to him by a company registered in Malta from profits allocated to its Maltese taxed account or its foreign income account may claim a refund of six-sevenths of the Advance Company Income Tax pertaining to those profits distributed to him by way of such dividend, provided that such person is for such purpose registered in such manner as may be prescribed:

Provided that where the dividend is paid out of profits:

(i) consisting of passive interest or royalties the rate of refund shall be of five-sevenths of the said Advance Company Income Tax;

(ii) allocated to the foreign income account and in respect of which profits the company has claimed relief of double taxation no claim for refund may be made under this subarticle.

(b) During the period from 1 January 2007 to 31 December 2010, any refund contemplated in this subarticle may only be claimed by a person in receipt of a dividend from a company which was a company registered in Malta on or after 1 January 2007 but was not resident in Malta before that date:

Provided that:

(i) a person in receipt of a dividend from a company referred to in any of sub-paragraphs (1) or (2) and paid after the said company has informed the Commissioner as contemplated in the said paragraphs (1) or (2) below, may also claim a tax refund in terms of this subarticle during the aforementioned period if the conditions of paragraph (a) are satisfied:

(1) a company which qualifies as an international trading company and which informs the Commissioner that it has opted to cease to be an international trading company which option shall be approved by an extraordinary resolution of the members of such company;

(2) a company which has informed the Commissioner that it has opted to be treated as a

company which was registered in Malta on or after 1 January 2007 but was not resident in Malta before that date, where such company had, in the three accounting periods immediately preceding that in which it has so informed the Commissioner, in the aggregate more than 50% of its profits allocated to the foreign income account or consisting of income in respect of which the exemption provided by article 12(1)(u) of the Income Tax Act is applicable and has been applied, which option shall be approved by an extraordinary resolution of the members of such company:

Provided that:

(aa) where the company was not in existence or was not resident or registered in Malta during the whole of the above mentioned three year period the condition relating to the nature of its income set out in paragraph (2) above shall be determined by reference to the period that such company was in existence, resident or registered in Malta as the case may be;

(bb) The Commissioner may, in his discretion, determine that paragraph (2) above applies to a company if, he is of the opinion that it is likely that more than half of the distributable profits of the company will be allocated to the foreign income account in the foreseeable future:

Provided further that a company to which paragraph (2) above applies shall not be entitled to claim a refund in respect of the Malta tax paid on profits allocated to its Maltese taxed account in years of assessment prior to year of assessment 2008.

(ii) such company did not derive any of its profits, (even if such profits are not comprised in the said dividend) directly or indirectly, from a trade, business or other activity (hereinafter referred to as “the new activity”) which is in whole or in part the same or an expansion, replacement or duplication of a trade,

business or other activity which was carried on in Malta, prior to the 1 January 2007, by any person (hereinafter referred to as the “old activity”); and the foregoing shall be interpreted in the light of the following:

(1) where the human, tangible or intangible resources of the new activity are substantially the same as those which were utilised by old activity, it shall be presumed, unless the contrary is proved, that the new activity is the same or an expansion, replacement or duplication of an old activity;

(2) where the new activity is carried on directly or indirectly by any person in any way directly or indirectly connected or associated with the persons which carried on the old activity through shareholding, voting or other ownership or controlling rights it shall be presumed, unless the contrary is proved, that the new activity is the same or an expansion, replacement or duplication of an old activity;

(3) a new activity shall not be presumed to be the same or an expansion, replacement or duplication of an old activity merely because the new activity is similar to an old activity because, inter-alia, it provides the same type of goods or services or because the new activity operates in the same market as the old activity and competes with the old activity:

Provided that where the old activity had been carried by a company to which proviso (i) to this paragraph (b) may be applied the new activity shall not be considered in whole or in part the same or an expansion, replacement or duplication of the old activity.

(c) For the purpose of paragraph (b) (ii) where the Commissioner is of the opinion that any activity carried out by any company which consists of any part of any administrative, management or other activity carried on by any person as part of his business activities prior to the 1 January 2007, and any other activity forms part of a scheme the sole or main purpose of which is the avoidance of the provisions of paragraph (b) shall be a trade, business or activity

which was carried on in Malta, prior to the 1 January 2007, by any person; and for this purpose the word “scheme” shall have the meaning assigned to it by article 51(5) of the Income Tax Act.

(d) Without prejudice to proviso (i) of paragraph (b) hereof a claim for refund pursuant to paragraph (a) hereof in respect of dividends paid from profits allocated to the Maltese taxed account by companies which were resident in Malta prior to the 1 January 2007 may only be made in respect of the tax paid on profits derived by the said company in respect of accounting periods which commenced on or after 1 January 2011.”;

(e) In subarticle (5) thereof for the words “as aforesaid” there shall be substituted the words “pursuant to subarticle (4) or subarticle (4A)”;

(f) Subarticle (6) thereof shall be amended as follows:

(i) after the words “under subarticle (4)” there shall be added the words “or subarticle (4A)”;

(ii) for the words “Such refund shall not be taxable.” there shall be substituted the words “Such refund, unless otherwise provided for in the Income Tax Acts, shall not be taxable.”;

(iii) The following proviso shall be added thereto:

“Provided that notwithstanding anything contained in the Income Tax Acts the Commissioner shall not make such payment unless any tax due under the investment income provisions in respect of investment income referred to in article 41 (a)(viii)(2) or (4) comprising the distributed profits the tax paid on which is the tax in respect of which the claim pursuant to this subarticle is made, has been paid.”;

(g) Subarticle (7) thereof shall be amended as follows:

(i) after the words “subarticle (4)” wherever they appear there shall be added the words “or subarticle (4A)”;

(ii) in paragraph (c) thereof for the words “said claim has been made:” there shall be substituted the words “said claim has been made.”;

(iii) there shall be added the following new paragraph (d):

“(d) A tax refund payable in terms of subarticle (4) or subarticle (4A) shall in no case exceed the amount of tax actually paid by the company paying the dividend on the distributed profits comprised in that dividend in respect of which the claim pursuant to those subarticles is made:”;

(iv) in the proviso thereto for the words “provisions of this Act.” there shall be substituted the words “provisions of this Act:”;

(v) immediately after the proviso thereto there shall be added the following new proviso:

“Provided further that the provisions of the immediately preceding proviso shall during the period 1 January 2011 to 31 December 2014 also apply in the case of any profits distributed by a company which was an international trading company as at 31 December 2010 where such profits were earned by such company while it was an international trading company.”.

(h) the following new subarticle (10) shall be added thereto:

“(10) If any person claims a refund in terms of subarticle (4) or subarticle (4A) when that person was not entitled to the said refund such person shall be liable to pay a penalty equal to the amount of the refund claimed and if the refund was in fact paid to him that person shall in addition be liable to repay the tax so refunded and to additional tax of seven per cent per month or part thereof commencing from the month in which the said refund was paid to him up to the month in which he repaid the tax refunded and any payment made by the said person in respect of the tax repayable by him in terms of this paragraph shall first be applied against any additional tax due thereon:

Provided that the provisions of this subarticle (9) shall not be applicable when the person referred to therein proves that he did not know and could not reasonably have known that he was not entitled to such a tax refund.”.

26. Article 56(8) of the principal Act shall be amended as follows: Amendment of article 56 of the principal Act.

(a) in paragraph (a) thereof for the words “a person or persons” there shall be substituted the words “an individual or individuals”;

(b) in paragraph (b) thereof for the words “person or persons” there shall be substituted the words “individual or individuals”;

(c) in paragraph (b) thereof for the words “domiciled in Malta.” there shall be substituted the words “domiciled in Malta.”;

(d) the following proviso shall be added thereto:

“Provided that with effect from 1 January 2011 and up to 31 December 2014, as regards dividends paid by a company which was an international trading company as at 31 December 2010, the provisions of this subarticle shall continue to apply after 31 December 2010 with respect to the distribution of profits earned by such company while it was an international trading company.”.

27. In article 61(a)(ii) of the principal Act for the words “who acts on behalf of, a person who” there shall be substituted the words “who acts on behalf of, an individual who”. Amendment of article 61 of the principal Act.

28. In the proviso to article 81 of the principal Act immediately after the words “is resident in Malta” there shall be added the words “or is a company registered in Malta”. Amendment of article 81 of the principal Act.

PART III

29. This Part amends the Local Councils Act and shall be read and construed as one with the same Act, hereinafter in this Part referred to as “the principal Act”. Amendment of the Local Councils Act, Cap. 363.

30. Paragraph (1) of regulation 103 of the Local Councils (Elections) Regulations, 1993 shall be substituted by the following: Amendment of the Third Schedule to the principal Act.

“(1) Any person committing an illegal practice shall, on conviction, be liable to a fine (*multa*) not exceeding five hundred liri.

Provided that the Minister may, from time to time, by notice in the Gazette specify higher penalties which in no case shall exceed a fine (*multa*) not exceeding three thousand liri.”.

Transitory
provision.

31. The provisions of article 27 of this Act shall apply to any criminal proceedings whether instituted before or instituted after the coming into force of this Part of this Act; and no incapacity shall arise and no election shall be vacated in virtue of paragraph (1) of regulation 103 of the Local Councils Act as in force before the coming into force of this Part and if any incapacity had arisen or any election had been vacated in virtue of the same paragraph of the same regulation such incapacity shall cease and the said election shall be deemed to have never been vacated even if the conviction for the offence under the said regulation 103 preceded the date of the coming into force of this Part of this Act.”.

Passed by the House of Representatives at Sitting No. 504 of 7th March, 2007.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives