INTRODUCTION TO TAXATION

Lecture 1 - Tax Law Fundamentals

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Diploma in Law (Malta)

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Overview

1. The Maltese Basis of Taxation – Jurisdiction to Tax
2. Deductions, Exemptions & Capital Allowances
3. Tax on Employment Income
4. Tax Administration
5. Tax Law and Human Rights

Jurisdiction to Tax

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Main Body of Legislation

INCOME TAX ACT

CAP. 123 OF THE LAWS OF MALTA

INCOME TAX MANAGEMENT ACT

CAP. 372 OF THE LAWS OF MALTA

Jurisdiction to Tax

- The right of a country to tax the income of a person is based on a factor that determines that person's connection to that country.
- Most countries tax on the basis of an **established nexus** with that country whether due to source or residence and therefore we normally speak of **TWO TYPES** of jurisdiction to tax:

Residence jurisdiction

Nexus between Malta and the taxpayer.

Source jurisdiction

Nexus between Malta and the income.

Scope of Taxation

Who is a taxable person?

- Definition of "Persons" under ITA;
- Concept of Domicile & Residence

What is taxable?

- Income vs Capital
- Income/gains arising in Malta vs income/gains arising outside Malta

How much is taxable?

- What is the applicable rate of tax?

Taxable Persons

Article 2 ITA –Person: includes a **body of persons**.

Body of persons: any body corporate, including a company and any fellowship society or other association of persons, whether corporate or unincorporate, and whether vested with legal personality or not.

Company:

- A limited liability company constituted under the Companies Act or under the Commercial Partnerships Ordinance or any other company constituted as such under any other law in force in Malta;
- Any partnership *en nom collectif* and any partnership *en commandite* constituted under the Companies Act or under the Commercial Partnerships Ordinance;
- Any body of persons constituted, incorporated or registered outside Malta, and of a nature similar to the aforesaid partnerships; and
- Any co-operative society duly registered as such under the appropriate law for the time being in force in Malta.

Domicile for Companies

Domicile by operation of the law:

The country under the laws of which the person has been **incorporated** or **established.**

Domicile of choice:

The country to which the company **seeks to continue** to exist or migrate (the country **re-domiciliation**).

Domicile for Individuals

- Maltese law does not contain any rules in this respect.
- Domicile for individuals is **NOT** determined by ***nationality*** or ***residence*** and various conditions surrounding a person should be taken into consideration.
- Generally considered to be the place of a **person's permanent home**; i.e. the place where a ***person originated from and belongs by origin*** as opposed to the place where a person lives.
- An individual usually acquires the domicile of his father on his birth but he may acquire a **domicile of choice** in another country if he is present in that country with the intention of remaining there permanently (with no realistic intention of returning to the previous country of domicile).

Residence for Legal Persons

When applied to a body of persons, means any body of persons the **CONTROL AND MANAGRMENT** of whose business are exercised in Malta
OR
which is **INCORPORATED** in Malta

Incorporation Principle

- A company **incorporated under the laws of Malta** is considered to be resident in Malta.
- **AUTOMATICALLY** domiciled and resident in Malta.
- Subject to tax on **WORLD-WIDE** income.

Management & Control Principle

- A company whose management and control of its business **is exercised in Malta** is also considered to be resident in Malta, **IRRESPECTIVE** of where it is incorporated.

Residence for Legal Persons (continued)

Management and control test:

- The 'control and management' of a company's business refers to that practiced and exercised at the **level of the board of directors** of the given company.
- In practice, the following are typically considered relevant for the purposes of determining tax residence in Malta:
  - The **MAJORITY** of the directors are persons who are **resident in Malta**.
  - All **meetings** of the board of directors are **PHYSICALLY held in Malta**.
  - The company has **properly equipped OFFICE SPACE** at its disposal in Malta.
  - The company has sufficient **HUMAN AND TECHNICAL RESOURCES** at the disposal of the company in Malta so as to take **key management and commercial decisions from Malta**.

Residence for Individuals

Article 2 ITA **– Resident in Malta:**

When applied to an individual means an individual who **resides in Malta**,
EXCEPT
for such ***temporary absences***
as to the Commissioner for Tax and Customs may seem reasonable and not inconsistent with the claim of such individual to be resident in Malta.

Rule of Thumb

When an individual is present in Malta for **MORE** than **183 days** (in any particular year); OR

An individual who is in Malta for more than 183 days in each year **over a long period** - say, for **three consecutive years** and establishes personal and economic ties with Malta.

Residence vs Ordinary Residence

- Ordinary residence implies a narrower concept than mere or simple residence:
  - A **regular physical presence** in a country, residence which is part of the **regular order of a person's life;**
  - indicates a level of **continued residence** (notwithstanding occasional temporary absences);
  - typically implies **repeated/successive (<u>voluntary</u>) residence** over a number of years.
- It is the fact pattern of a person's presence in Malta which is to be taken into account when deciding upon the degree (simple vs. ordinary) of residence.
- Nationality or citizenship is not relevant.

Ordinary Residence

EXAMPLE:

- Cristiano Ronaldo was living in Portugal , however, he then moved to the UK in order to play football with Manchester United for two seasons.

- In the UK, he purchased a house together with his girlfriend.

- During the years he spent in the UK he occasionally travelled to Portugal to represent the Portuguese national team as well as to spend some time with his mother in Portugal. Ronaldo's main source of income was his remuneration from playing football with Manchester United, but he also received some remuneration for promotional activities carried out in Portugal and from some investments held in Portugal (rental income).

Ordinary Residence

EXAMPLE:

Where would Cristiano Ronaldo be deemed to be resident?

- It is likely that Cristiano Ronaldo would be deemed as having held the centre of his vital interests in the UK during the time he was playing there - income derived from the football activity in the UK was probably much more significant than income derived from activities carried out in Portugal (football wages much higher than any rental income fee). Moreover, it is also likely for Cristiano Ronaldo to be perceived as having centered his career, his own personal life, and a house, in the UK for the years at stake, and that he should therefore be regarded as a UK tax resident for that period.

Basis of Taxation

Status in Malta	Basis of Taxation
Domiciled and Resident	Worldwide Basis
Resident not domiciled	Malta source and remittance basis
Domiciled not resident	Malta source and remittance basis
Not resident and not domiciled	Malta source basis

Basis of Taxation

Worldwide basis:

Liability to tax in Malta on **Malta source income** and **capital gains** and on **foreign source income and capital gains.**

- On all income derived from or arising in Malta.
- On all income derived from or arising outside Malta whether received in Malta or otherwise.
- On all capital gains derived from or arising in Malta.
- On all capital gains derived from outside Malta whether received in Malta or otherwise.

Source & Remittance basis

Liability to tax in Malta on **Malta source income** and **capital gains** and on **foreign source income remitted to Malta.**

Source basis

Liability to tax in Malta on **Malta source income and capital gains.**

What is subject to tax?

CHARGING PROVISION– Article 4 ITA

Income tax shall be payable at the rate or rates specified hereafter upon:

INCOME

The income of any person accruing in or derived from Malta or elsewhere, and whether received in Malta or not.

CAPITAL

Capital gains accruing or derived from Malta or elsewhere, and whether received in Malta or not.

What is subject to tax? (continued)

CHARGEABLE INCOME

'Chargeable income' means the **TOTAL INCOME** of any person for any year.

TOTAL INCOME

The **AGGREGATE** amount of the income of any person from the **sources** specified in Part II of the ITA, remaining <u>AFTER</u> allowing the **EXEMPTIONS** under Part III of the ITA and the **DEDUCTIONS** under Part IV of the ITA.

Income (Article 4 ITA)

Active Income	Passive Income
▪ Gains or profits from trade, business, profession or vocation ▪ Gains or profit from any employment or office	▪ Dividends, premiums, interest or discounts. ▪ Pension, charge, annuity or annual payments ▪ Rents, royalties, premiums and any other profits arising from property ▪ Gains or profit not falling under any of the foregoing paragraphs

Capital (Article 5 ITA)

List of limited **capital assets** which would constitute a chargeable receipt if a GAIN or PROFIT is derived upon the **transfer** (or **deemed transfer**):

- Immovable Property
- Securities, business, goodwill, business permits, copyright, patents, trademarks and trade-names
- Beneficial interest in a trust/foundations
- Interests in a partnership

Sources of Income – General Principles

Active Income

- Considered to arise in the country where **the income earning activity** takes place.
- **Director's fees** (fees and similar payments received in the person's capacity as a member of the board of directors) considered as income arising where the company is resident, i.e .where it has its management and control.

Passive Income

- Considered to arise in the country where the **income earning asset is situated**:
- Income from **immovable property:** where the property is situated.
- **Dividend income** –generally in the country where the company distributing the dividends is registered and incorporated.

Tax Rates

- Article 56(1)(b) ITA –Individual income tax rates.
- Article 56(1)(a) ITA –Individual income tax rates for married couples.
- Article 56(1)(b) proviso ITA –Individual income tax rates for parents.
- Article 56(1)(c) ITA –Individual income tax rates for non-residents.
- Article 56(5) ITA – Corporate income tax rate.

Tax Rates – Individuals

Revised Income Tax Brackets for 2025					
Single		Married		Parent	
Income (€)	Rate	Income (€)	Rate	Income (€)	Rate
0 - 12,000	0%	0 - 15,000	0%	0 - 13,000	0%
12,001 - 16,000	15%	15,001 - 23,000	15%	13,001 - 17,500	15%
16,001 - 60,000	25%	23,001 - 60,000	25%	17,501 - 60,000	25%
60,001 +	35%	60,001 +	35%	60,001 +	35%

Tax Rates – Companies

Standard Corporate Income Tax Rate:
35%
(article 56(6) Income Tax Act)

Tax Deductions, Exemptions & Capital Allowances

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General Rule for Tax Deductibility

- Tax profit **does not equate** to accounting profit – certain expenditure which is deducted for accounting purposes must be added back for tax purposes.

- Expenditure of a **REVENUE** nature is deductible when incurred;

- Expenditure of a **CAPITAL** nature is **NOT** taken as a deduction – in case where it is the capital which is producing the income, for example holding property to derive rental income (unless it is of a trading nature). *HOWEVER*, **specific exclusion** under Art 26(c), ITA (the negative test) in relation to **capital allowances**.

- Trading losses can be set off against trading income.

Deductions

TWO tests must be satisfied for an expense to be deductible:

- It must **fall within the ambit** of the Article which grants a deduction (Art 14);

AND

- It must **not be prohibited** under the provisions of the Article which specifically denies the deduction of certain items (Art 26)

Allowable Deductions	Non-Allowable Deductions
Article 14 (Positive Test)	Article 26 (Negative Test)

Deductions – Positive Test

The positive test set out under Article 14 ITA stipulates that:

> *"there shall be deductible all outgoings and expenses incurred by such person during the year preceding the year of assessment to the extent to which such outgoings and expenses are* ***wholly and exclusively incurred in the production of the income****"*.

A direct relationship must exist between the expense and the income

Expense must be incurred in an income earning activity - Not enough that expense is required for producing the income or is connected with the business

Deductions – Incurred in the Production of the Income

Example 1

A taxpayer deals in the buying and selling of cars for profit, such as a motor dealer. Expenses incurred in buying cars for resale would be of a revenue nature and thus would be **DEDUCTIBLE** for tax purposes.

Example 2

If a pharmaceutical company purchases the same car, to be used by its sales representative, such car would be part of their income-earning structure, and the expense would therefore be of a capital nature and thus **NOT DEDUCTIBLE.**

Pre-Trading Expenses

- Pre-trading expenses are generally **NOT ALLOWABLE** as deductions since they are **not incurred in the production of the income.**

- There is however an **EXCEPTION** for certain pre-trading expenses subject to certain conditions:
  - Expenses incurred not more than 18 months before a person begins his trade or business.
  - Expenses would have been deductible if incurred during the production of income,
  - Specific expenses as prescribed (S.L. 123.62): staff training, salaries and wages and advertising.

List of Specific Deductible Items under the ITA

- Interest
- Repairs
- Rent
- Wear & Tear Allowances
- Scientific Research
- Marketing & Promotion
- Childcare
- Pension Contributions
- Trading Losses
- Patent Box Regime
- Notional Interest Deduction
- Bad Debt

Deductions – Negative Test

The negative test set out under Article 26 ITA stipulates that:

> *"for the purpose of ascertaining the total income of any person **NO DEDUCTION** shall be allowed in respect of:"*

Deductions – Negative Test (continued)

- No deduction shall be allowed in respect of:

➢ Domestic or private expenses other than those specifically allowed by this Act.
➢ Any outgoings and expenses to the extent to which they are not wholly and exclusively incurred in the production of the income.
➢ Any loss, diminution, exhaustion or withdrawal of capital, any sum employed or intended to be employed as capital or any expenditure for a capital purpose or of a capital nature, save as provided in article 14 and 23,
➢ The cost of any improvements.
➢ Any loss or expense which is recoverable under any insurance or contract of indemnity.
➢ Rent of any premises or part of premises not paid for the purpose of producing the income.
➢ Payments of a voluntary nature, e.g. donations and gifts (certain exceptions apply, for instance in relation to donations made to certain heritage organisations & to certain sports and cultural organisations).

Capital Allowances (1)

The ITA presents a number of specific instances whereby it explicitly **DEPARTS** from the general principle that ***only*** expenditure of a revenue nature is allowable as a deduction against chargeable income.

Capital Allowances

e.g. deductions in respect of **wear and tear**

computation follows a set of rules enshrined within the ITA itself coupled with subsidiary legislation

Capital Allowances (2)

Deductions of capital allowances in terms of wear and tear are narrowed down to **identified categories of FIXED ASSETS**.

In fact, in order for the taxpayer to claim deductions of a capital nature, the allowances for wear and tear must necessarily relate to '**plant and machinery**' or an '**industrial building** or **structure**' under Article 14(f)ITA.

Plant & Machinery

'In its ordinary sense, it includes **whatever apparatus** is used by a businessman for carrying on his business – not his stock in trade, which he buys or makes for sale, but all **goods and chattels, fixed or moveable**, **live or dead,** which he keeps for permanent employment in his business

Industrial Building Or Structure

Typically comprises of factories and buildings used for manufacturing, assembly, repairing and processing purposes. & includes hotels and car parks.

Exemptions

- As mentioned earlier, *the **AGGREGATE** amount of the income of any person from the s**ources** specified in Part II of the ITA, remaining AFTER allowing the **EXEMPTIONS** under Part III of the ITA…*

- Therefore, while a person's income may fall within the scope of the ITA, there are certain **exemptions from tax** which may be availed of vis-à-vis **certain types of income** or provided **certain conditions are satisfied**.

- **Article 12** of the ITA provides a list of tax exemptions.

Exemptions

Exemptions Specific to Individuals

- any **stipend** or **maintenance grant** paid to a **student** by the Government or any Government institution;
- **allowances** and **benefits** as may be specified by the Minister responsible for finance by notice published in the Gazette which are **payable under the Social Security Act**;

Exemptions Specific to Organisations

- the income of the **University of Malta** and **MCAST**;
- with effect from year of assessment 2022, a **voluntary organisation** shall be exempt from tax if its turnover for a given year does not exceed €50,000;
- the income of any **political party** including the income of clubs adhering to political parties

Exemptions (Continued)

Exemptions Specific to Non-Residents

1. **Interest, discount, premium or royalties accruing to or derived by non-residents [Article 12(1)(c)(i)]:**

The exemption applies provided that the non-resident who derives the income:

- is not in the relevant year engaged in trade or business in Malta through a permanent establishment situated therein; and
- where the royalties or the debt claim in respect of which the interest, discount or premium, is paid are not effectively connected with such permanent establishment.

Exemptions (Continued)

Exemptions Specific to Non-Residents

2. **Capital gains and gains of an income nature derived by non-residents upon disposal of securities [Article 12(1)(c)(ii)]:**

The above-mentioned gains must be derived as a result of any of the below **TRANSFERS**:

- of units in a **collective investment scheme**;
- of units and such like instruments relating to linked **long term business of insurance**;
- of **interest in a partnership** which is not a property partnership;
- of **shares or securities in a company** which is not a property company (as defined in the ITA).

Exemptions (Continued)

What constitutes a *transfer* for the purpose of Article 5 ITA?

- any assignment, sale, emphyteusis or sub-emphyteusis, partition, donation, settlement of property on trust, distribution and reversion of property settled on trust, sale by instalments, and any alienation under any title;

- any redemption, liquidation or cancellation of units or shares in a collective investment scheme as defined in article 2 of the Investment Services Act maturity or surrender of linked long term policies of insurance;

- any occurrence that is deemed to be a transfer in accordance with the provisions of sub-articles (9A) and(13)(b) ITA, for the avoidance of doubt includes any transfer of an asset by a company to its shareholders, or by a commercial partnership *en nom collectif* or commercial partnership *en commandite* the capital of which is not divided into shares to its members, in the course of winding up the company or partnership or in the course of a distribution of assets to its shareholders or partners pursuant to a scheme of distribution.

- Also includes ***deemed transfers*** (provisions relating to value shifting).

Exemptions (Continued)

Beneficial Ownership Test Linked to Article 12(1)(c) exemptions
An anti-tax provision

The exemptions provided under 12(1)(c) (interest, discount, premiums & capital gains upon disposal of securities) apply 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*

Exemptions (Continued)

Exemptions Specific to Non-Residents

3. The Royalties Exemption [Article 12(1)(v]:

- Royalties, advances and similar income derived from -
  - i. **patents** in respect of **inventions***;
  - ii. **copyright**;
  - iii. **trademarks**

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

* *Implemented by means of S.L. 123.117 – Exemption on Royalties derived from Patents Rules. The exemption is only applicable to "**qualifying patents**" & the activity must **lead to an invention.***

Exemptions (Continued)

Exemptions Specific to Non-Residents

4. **The Participation Exemption [Article 12(1)(u)]:**

- Malta's participation exemption applies to **dividends** and **capital gains** derived from a **participating holding** OR from the **transfer** of part or all of such participating holding.

- A participating holding arises where a company holds directly at least **5%** of the equity shares of a company whose capital is wholly or partly divided into shares, which holding confers an entitlement, *inter alia,* to at least **5%** of any two of the following:
  - i. right to vote;
  - ii. profits available for distribution; and
  - iii. assets available for distribution on a winding up

Employment Income and FSS

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Employment Income and FSS

- **The main discussion points will concern:**
  - Taxation of employment income;
  - The Final Settlement System;
  - The taxation of certain fringe benefits;

Employment Income

Charging provision
Article 4(1)(b) ITA

Brings employment income to tax and states as follows:

*"**Gains** or **profits** from any **employment** or **office**, including the **value of any benefit** provided by reason of any employment or office; and –"*

Type of Income Included

Gains or profits from an employment or office includes the following:

- Payment for Services rendered;
- Wages, salaries and overtime;
- Commissions and Bonuses;
- Fees, Remuneration, Honoraria;
- Other Cash Allowances;
- Non-Cash Allowances and Benefits
- **NOT** gains of a capital nature

Personal Deductions

The following are the main personal deductions which may be deducted against employment income:

- Alimony payments to estranged spouse;
- School Fees paid to private independent schools;
- Fees paid for the services of a facilitator;
- Fees paid for childcare services;
- Fees paid for approved sports activities;
- Fees paid for residence in private homes for the elderly or in private homes or respite centers for the disabled;
- Fees paid for tertiary education;
- Fees paid for approved cultural and creative activities;
- Fees paid for school transport.

Employment Income

Nexus with Malta

Income derived from employment or from a profession, business or other self-employment arises in Malta if the **activities are PERFORMED** in Malta.

Incidental or ***ancillary*** links to Malta are however **NOT SUFFICIENT** in order to establish where the activities are performed.

For example, a person whose business or employment is based outside Malta is not considered as deriving income from Malta simply because he makes occasional visits to Malta.

Employment Income – Fringe Benefits (1)

What is a fringe benefit?

Any **BENEFIT**/income provided, or deemed to be provided, by reason of **employment** or **office**.

- Fringe benefits are subject to tax only in those circumstances where the income from the relative employment or office falls within the scope of the Income Tax Acts.
- The value of the benefit is deemed to arise in the country where the services are wholly or principally performed and therefore taxed in that country.
- If the benefit is deemed to arise by reason of a directorship in a company, then the value of the benefit is deemed to arise in the country where the company is managed and controlled.

Employment Income – Fringe Benefits (2)

Circumstances in which a benefit is deemed to be provided by reason of an employment or office:

- Employer / Employee relationship; **or**
- Company/Partnership to a person holding an office; **or**
- Company to an employee/officer for past employment; **or**
- Provided by a company on a continuing basis during employment and even after termination of office; **or**
- Provided to the holder of an office by the person responsible for remuneration of duties under that office; **or**
- Provided by third party to an employee of a company as a reward for services rendered; **or**
- Provided by an associated company; **or**
- Provided to a member of the family

Employment Income – Fringe Benefits (3)

Types of categories of Fringe Benefits:

Category 1
Benefits relating to Motor Vehicles

The use of **VEHICLES** owned, leased or hired by employers and made available to their employees for their **private use**;
OR
Cash allowance in respect of the use of own car

Category 2
Use of Property

Use of **ASSETS** owned or leased by employers and made available to their employees for their private use.(other than a vehicle or consumable items)

Category 3
Other Benefits

- **Share Options / Share Awards**;
- Payment or reimbursement by the employer of **private costs** (utility bills, school fees etc.);
- Provision of **free or discounted goods and services** like travel, entertainment, insurance,.

Employment Income – Fringe Benefits (4)

EXAMPLE

- A company makes a **company car available** for the private use of the **spouse of one of its directors.**

- The private use of a company car is a **fringe benefit**.

- If the spouse is not **an employee** or **an officer of the company** then the use of the car will be deemed to be a **fringe benefit provided to the director**.

- The same applies also where the car is **not owned by that company** but by its **parent or another associated company.**

The Final Settlement System (FSS)

Charging Provision: **Article 23 Income Tax Management Act**

*"(1)Where any person pays income chargeable under article 4(1)(a), (b) or (d) of the Income Tax Act, or any other income as may be prescribed, he shall, at the time of payment **deduct tax therefrom** at such amount and in such manner as may be prescribed under this sub- article or under any other provision of the Income Tax Acts."*

(2) Any tax deducted as required under sub-article (1) shall be remitted to the Commissioner in such manner and within such period as may be prescribed."

The Final Settlement System is a system provides for the **payment of tax on employment income** by means **of deductions from the emoluments.** The deductions are then **remitted to the Malta Tax and Customs Administration by the employer.**

The FSS ensures that the **correct amount** of tax is deducted from gross emoluments as they are received. This in turn ensures that the individual **does not receive hefty tax bills** or is **due refunds** from the Malta Tax and Customs Administration.

The Final Settlement System (FSS)

FSS applies to emoluments in the form of:

1. Any **income**, including any fringe benefits, chargeable to tax under article 4(1)(b) of the Income Tax Act:
    - Including Basic Wage, Salary, Overtime and Allowances, Fringe Benefits or Benefits in Kind;
    - Including Directors' fees, Honoraria and Car Allowances;
    - Commission payments, bonus payments and statutory bonus.
2. Any **pension** arising or received in Malta chargeable to tax under article 4(1)(d) of the said Act;
3. Any **other remuneration** payable or **fringe benefits** that are provided to an individual for services rendered by him, except where such individual receives such payment in the course of his trade, business, profession or vocation

The Final Settlement System (FSS)

Methods of Tax Deduction

Where any payment of emoluments made to a payee is to be considered for deduction purposes under the FSS Main Tax deduction method the Payer shall compute the amount of tax deduction there from by applying either: -

The Main Cumulative Tax Deduction Formula

OR

The Main Tax Deduction tables

By default, and unless the Commissioner advises otherwise, The Main Cumulative Tax Deduction Formula would apply.

The Main Tax Deduction tables may find application where the payer has less than **ten (10) full time payees.**

The Final Settlement System (FSS)

Prescribed Forms

The employer, will be obliged to submit the following forms:

- ✓ **PE Registration Form** – the employer is required to register as a Private Employer on a prescribed payer registration form and is assigned a PE number by the Commissioner of the Inland Revenue. The obligation is for the employer to register within **15 days** from the date the first emoluments due to be paid by him start to accrue.
- ✓ **FS5** - Payer's Monthly Payment Advice;
- ✓ **FS3 & FS7** – End of year employees' statements of earnings;
- ✓ **FS4** - Payee Status Declaration Form (upon employment of an employee).

Social Security Contributions (1)

- All persons who are:

  ✓ **OVER** the age of 16; and

  ✓ who have **NOT** yet attained **retirement age of 65 years;** and

  ✓ who are in **INSURABLE EMPLOYMENT**,

  are liable to pay Social Security Contributions.

- Social Security Contributions are paid in weekly rates, and each year of gainful occupation will carry 52 or 53 Social Security Contributions (depending on the annual number of Mondays) on the payee's contribution record.

Social Security Contributions (2)

What is Insurable Employment?

- Employment in Malta under any contract of service or apprenticeship, written or oral, and whether expressed or implied, including employment by or under the Government of Malta.
- There can **ONLY** be **ONE** insurable employment at the same time, and in case of more than one concurrent employment, the insurable employment will be that which provides the **HIGHEST** income or earnings.

- Insurable employments are classified into 2 categories:
  - **Employed Persons** (employed with a provider of employment or employer);
  - **Self-Occupied Persons** (earning income from a Trade or Skill)

- Under specific cases as prescribed by the Social Security Act (Cap. 318.) persons can also be insured as:
  - **Self-Employed Persons** (earning income from rents, interests, and investments)

Social Security Contributions (2)

Employed Persons

- Social Security Contributions paid by employed persons are called **Class 1 Contributions** and are paid by **direct deductions** from the **same employees' wages/salary.**

- In a normal case scenario, an equivalent rate paid or deducted from the employee's wage/salary, is **ALSO paid by the employer**.

- The Social Security Contribution rate due is based on earning derived from the **Basic Weekly Wage.**

- Both employer and employee's share of Class 1 Social Security Contributions are paid to the Commissioner of Inland Revenue in **MONTHLY** payments by the employer.

- Persons working in more than one part-time job will have the option to pay the **contribution on more than one job** (up to a maximum of 40 working hours) in order to pay a higher contribution rate thanks to which they can benefit from a higher pension rate.

Tax Administration

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Tax Returns (1)

Who is obliged to submit a tax return?

- **Article 10(i) ITMA -** establishes that the CfTC may, **by notice in writing**, require any person to submit **a RETURN ON INCOME, for the year preceding the year of assessment,** within such date as may be prescribed.

- The return should contain or be accompanied by such **particulars, statements, accounts, computations or other documents to determine the amount of income and expenses** and to enable the **calculation of tax payable by**, or **refundable to**, that person.

- **Article 11 ITMA –** in the absence of the notice referred to under Article 10(i), "***any person chargeable with tax***" is requested to furnish a return.

Tax Returns (2)

- The tax return is in the form of a **SELF-ASSESSMENT -** i.e. a computation showing the chargeable income and tax payable.

- Article 10(2) of the ITMA sets out what needs to be included in the tax return: a computation showing:.
  - The **chargeable income** based on the information provided in the return;

  - The **tax chargeable** thereon;

  - The **tax payable** or **refundable** after **DEDUCTING**:
    - Any **provisional tax** paid or tax deducted at source relating to the chargeable income;
    - Any **tax credit or relief** allowable under the Income Tax Act or any other legislation against tax chargeable on the income contained in the tax return.

Tax Returns (3)

- Together with the return and self-assessment, a **COMPANY** is required to submit:

  1. A **Profit and Loss Account** and **Balance Sheet** drawn up in accordance with sections 167, 168 and 169 of the Companies Act; and

  1. An **auditor's report** in accordance with sections 179 and 181 of the Companies Act.

Tax Returns (4)

FILERS

VS.

NON- FILERS

Refers to the general rule i.e. individuals who fall within the **Self-Assessment system** and are **required to file a Tax Return** to make their own 'assessment' for tax purposes.

The Non-Filer system applies to a taxpayer who is **not required** to file a Tax Return.

e.g. Individuals **earning only employment income** on which tax has already been deducted

Tax Payment Deadlines

Income Tax Returns

Obligation to submit **Income Tax Return**
Article 10 ITMA

Legal Persons

Submission to the IRD by the later of **NINE MONTHS** following accounting year end or **31st MARCH**

Individuals

30th of June following the YA

Tax Returns

- If eligible, a person may make an election **NOT TO SUBMIT** an income tax return (Art. 12 ITMA).
- Any income of such person which is required to be disclosed is still assessable to tax.
- Persons eligible to make such an election are:

a) Individuals who:
   i. do **not derive any Article 4(1)(a) income** (i.e. profits from trade, business, profession or vocation); **AND**
   ii. Whose income falls **below the taxability threshold** applicable to their tax status.

b) Individuals resident in Malta whose total income **is taxed at source** (e.g. individuals who only receive investment income);

c) A person to whom the option applies on the basis of regulations prescribed under this section of the ITA.

Tax Returns

- A person who in terms of **ITMA s.12 has opted not to submit a return** may, within the year or **within 5 years from the year of assessment**, submit a full return in terms of article 12 ITMA as long as a tax assessment has not been issued under Article 31 ITMA.

- A person who has delivered a return of income may at anytime before an assessment is made under article 31 make such **CORRECTIONS** to or **ADDITIONS** to that return as he may consider appropriate by furnishing a further return in such manner and on such form as may be prescribed.

The Commissioner for Tax and Customs

The CfTC is responsible to Government for the administration of the **Income Tax Act,** the **Income Tax Management Act,** and the **Capital Transfer Duty Act,** as well as the enforcement of social security contributions under the direction of the Ministry for Finance.

Capital Transfer Duty

- Collects duties payable on capital transfers;

International Tax & Corporate Unit

- Responsible for all areas relating to international taxation, including refund claims and double taxation treaties.

Powers of the Commissioner for Tax and Customs

Request for Additional information [Article 14 ITMA]

- The Commissioner may request any person to produce **fuller or further returns** and information, or to **attend personally** or by a **representative,** and to produce for examination any **books, documents**, **accounts and returns** (including bank statements and pass books) as is deemed necessary.

- The Commissioner has **wide powers** to **request further information** where there is reasonable grounds to suspect that a person has **evaded tax**.

- The Commissioner may request a person who has opted not to file a return in terms of Article 12 ITMA to submit a tax return in terms of Article 10 ITMA within a reasonable time, **not being less than 30 days.**

Powers of the Commissioner for Tax & Customs

1. Notice of Assessment

The CfTC has several powers, most notably that of **serving a NOTICE OF ASSESSMENT on persons assessed to tax** stating the amount of **chargeable income and the amount of tax payable** thereupon, essentially disputing the amounts submitted by the individual.

2. Notice of Objection

Notice of assessment is not absolute and may be **challenged by the recipient through a NOTICE OF OBJECTION,** within **30 days** from the date of service of the notice of assessment, stating the **grounds for objection** & requesting that the assessment made by the CfTC be reviewed and revised. The tax return for the relative year must have been submitted before filing the objection.

3. Notice of Refusal

The CfTC will proceed to **ACCEDE** or **REFUSE** the objection. In the latter scenario, a **NOTICE OF REFUSAL** is served upon the person objecting. In making a decision the CfTC has the power to summon and **demand the production of materials** from the person objecting and any other person as necessary in connection with the income.

Appeals

1. Administrative Review Tribunal

Any aggrieved party has the right to appeal the notice of refusal before the **Administrative Review Tribunal within 30 days of service.**

The burden of disputing the assessment falls upon the appellant and once proceedings have been concluded, the Tribunal shall proceed to confirm, reduce, increase or annul the assessment, or make any order as it deems fit.

The ART may **confirm**, **reduce**, **increase** or **annul** the assessment appealed from.

2. Court of Appeal

Decisions from the Tribunal are subject to appeal **<u>on points of law ONLY</u>,** to be made within 20 days from Tribunal's decision.

- Where the total amount of tax, additional tax, fines, and interests is **LESS THAN €1,165,000 →** the appeal is lodged before the Court of Appeal in its ***Inferior*** Jurisdiction.
- Anything in **EXCESS →** is to be lodged before the Court of Appeal in its ***Superior*** Jurisdiction

Penalties (1)

OMISSION TAX

- If a person **FAILS** to declare income s/he would be liable to pay omissions tax ***in addition to*** the original tax due,
- Additional tax chargeable for omitting the declaration of chargeable income is based at a percentage of the ***endangered tax***.

Endangered Tax

- *Endangered tax* is defined as the **difference** between the **tax calculated on the declared income** and the **tax calculated on the proper amount of income chargeable to tax.**
- The additional tax is chargeable per month from the month in which the tax was due and ending on the month in which the omission is rectified.
- Additional tax for an omission is chargeable at the rate of **1.5% per month** of the endangered tax

Penalties (2)

OMISSION TAX

- Additional tax is **REDUCED** where the correction is made **BEFORE** the Commissioner notifies the taxpayer that an inquiry is being made on his declaration and tax liability.

- The reduction depends on when the correction is made:

Within 12 months of tax return submission date

The additional tax is reduced in **FULL**;

After 12 months of tax return submission date

The additional tax is reduced to:

- **0.1%** per month of the endangered tax; OR
- **0.75%** if the person is notified that an investigation will be carried out, but an assessment has not been issued.

Penalties (3)

Penalties relating to Income Tax

- General Provisions regarding offences for **failure to comply with Income Tax Acts or rules made thereunder.**
- Penalty for **failure to comply with notice**, **intimation, request or demand note** without sufficient cause.
- Penalty for **incorrect returns***
- Penal provisions relating to **fraud****

e.g. making false statements & falsifying books

Where such penalties subsist, the person shall be guilty of an **OFFENCE,** and liable on conviction to a **FINE (multa).**

*In addition to the above, the person would also be liable to pay **DOUBLE** the amount of tax undercharged.

** The person would be further liable to pay **TREBLE** the amount of tax;
OR
to **IMPRISONMENT** for any term **not exceeding six months;**
OR
To **BOTH** such fine and imprisonment.

Penalties – Additional Tax

- Additional tax is tax chargeable for **not submitting a tax return within the prescribed time** and depends on the number of months the default persists. Such additional tax is payable at the rates contained in **Tables A** and **B** of the **Schedule** to the Income Tax Act.

	Individual €	Company €
Within 6 months	10	50
6 months to 12 months	50	200
12 months to 18 months	100	400
18 months to 24 months	150	600
24 months to 36 months	200	800
36 months to 48 months	300	1,000
48 months to 60 months	400	1,200
Later than 60 months	500	1,500

Penalties – Additional Tax

- Where the Commissioner is satisfied that the late submission of the return is due to a **REASONABLE EXCUSE** the additional tax may be **remitted** in **FULL** or **IN PART**.

- A reasonable excuse **SHALL NOT** include:
  a) An insufficiency of funds to pay the tax; or
  b) A default made by a person on whom the taxpayer relied.

Interest

- Interest is payable on **UNPAID TAX, which was payable after the 31 August 2022,** at the rate of **0.6%** for every month or part thereof during which the tax remains unpaid, and the total interest shall not exceed the amount of the said tax.

Executive Title

- Tax authorities have certain **PRIVILEGES** in legal procedures for the enforcement of claims,

- A request for payment of tax that is **not in dispute** will constitute an executive title without the need of requesting a court judgement.

- Enforcement may therefore be made by any of the warrants established in the COCP.

- Article 40 of the ITMA sets out an exhaustive list of situations that will give rise to an Executive Title.

Tax Law and Human Rights

Diploma in Law (Malta)

CAMILLERI PREZIOSI

ADVOCATES

Right to a Fair Hearing – Article 6 ECHR

Article 6 ECHR safeguards the right to a **fair hearing.**

The right to a fair hearing applies in the determination of civil rights and obligations and criminal charges.

What constitutes a fair hearing?

Right to have access to a tribunal

Right to legal aid

Right to justice within a reasonable time

Right be heard by an independent and impartial tribunal

Classification is Key (1)

- When a dispute is either in respect of a criminal charge or is of a civil nature, all the safeguards of Article 6 apply, **BUT** when a dispute is of a '***fiscal nature***' 'the public law character of the obligation concerned predominates.
- In fact, for a long time, as evident from a number of judgements handed down by the ECHR (predominantly the ***Ferrazzini*** judgement), the Court considered that tax matters still form part of the hard-core of public authority prerogatives, thereby considering that **tax disputes fall outside the scope of civil rights and obligations**, despite the pecuniary effect which they necessarily produce for the taxpayer.
- Therefore, the position of the Court was to **RESTRICT** the application of human rights safeguards to taxation disputes.

Classification is Key (2)

When does a pure tax case become either a civil dispute or a criminal case?

- Reference is made to the **Engel Criteria** developed in the case **Engel v. Netherlands** (1976) 1 EHRR 647:

  1. The classification of the proceedings in domestic law;
  2. The nature of the offence; and
  3. The severity of the penalty which may be imposed.

Leading Maltese Judgements (1)

John Geranzi Limited v. The Commissioner for Income Tax et.

Facts of the case

- In 1980 an income tax assessment was served on the company for the year 1977 in the amount of Lm7, 912. The company immediately filed an objection to the assessment. This objection was refused by the Commissioner in 2007, ***twenty-seven years*** after it was filed and it was only then that the plaintiff could contest the assessment in a tribunal, the Board of Special Commissioners.

- The Board rejected all of the arguments brought forward by the plaintiff company. The plaintiff had two other pleas, both relating to the right to a fair trial; these were:
  1. That the length of time which had passed had severely prejudiced its case as the relevant documents were lost and the relevant persons dead;
  2. That the charges imposed created a criminal charge and hence it should benefit from having the burden of proof imposed on the authorities.

Leading Maltese Judgements (2)

John Geranzi Limited v. The Commissioner for Income Tax et.

Facts of the case (contd.)

- The First Hall Civil Court (Constitutional Jurisdiction) held that the 27-year delay to issue a notice of refusal amounted to a violation of its right to justice within a reasonable time. The court decided in favour of the company and ordered the Revenue to pay the company financial compensation of Eur 30,000, however both the taxpayer and the Revenue appealed the judgement.

- The Commissioner appealed to the Constitutional Court submitting that the delay in the processing of the company's objection to the *ex officio* tax assessment was due to the failure on the part of the company to submit the necessary documentation at the opportune stage. The Commissioner added that the law did not impose a time limit within which an objection had to be processed.

- The taxpayer asked the court to declare that in a case involving punitive measures, the right to a fair hearing must apply under its criminal head resulting in the right to silence and the presumption of innocence. The taxpayer moreover demanded a cancellation of the original assessment.

Leading Maltese Judgements (3)

John Geranzi Limited v. The Commissioner for Income Tax et.

Facts of the case (contd.)

- The Constitutional Court ruled that tax penalties are - for the purposes of the European Convention - a punitive measure, therefore, proceedings over tax penalties, must - regardless of the way the Maltese State denominates such penalties - respect the right to a fair hearing in terms of Article 6 of the European Convention of Human Rights.

- The Constitutional Court ultimately decided to annul the financial compensation of €30,000 awarded to John Geranzi Ltd by the First Court and annulled the Commissioner's *ex officio* assessment and any related administrative fines and interest on any tax which may be due by the company.

Leading Maltese Judgements (4)

John Geranzi Limited v. The Commissioner for Income Tax et.

Important Takeaways:

The decision of the Constitutional Court in John Geranzi confirms that:

(1) The right to a fair hearing applies to tax disputes;

(2) Additional tax imposed on a taxpayer is in the nature of a criminal sanction and should therefore attract the protection of Article 6 ECHR under its criminal head.