



The Budget Measures Implementation Act, 2020

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The Budget Measures Implementation Act, 2020 ('the Act'), published on 20th March 2020, contains a number of amendments to the Income Tax Act ('ITA'), Income Tax Management Act ('ITMA'), Commissioner for Revenue ('CfR') Act and Duty on Documents and Transfers Act ('DDTA'). We herein highlight the salient features of the Act.



Changes to the Income Tax Act

Changes to the definition of 'company' in relation to cell companies

The reference to cell companies in the definition of 'company' in article 2(1) of the ITA is no longer limited to cell companies as defined in the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations and Securitisation Cell Company Regulations. With effect from 20th March 2020 a cell company shall be construed by reference to the Companies Act or any regulations made thereunder, thereby extending to *inter alia*, incorporated cells of SICAVs and cell companies engaged in the maritime and aviation sectors in respect of which the Minister of Finance has recently, through Act V of 2020, been granted powers to make regulations.

Profits derived from the assignment of promise of sale agreements ('konvenji')

An amendment has been passed which allows the Minister to publish rules in relation to the tax treatment of any profits derived from the assignment of promise of sale agreements.

Indeed, in January 2020, [new rules](#) have been published on the Revenue's website on the matter.

In terms of the new rules, and as had been announced in the last Budget Speech of the Minister of Finance, as from 1st January 2020, proceeds derived from the assignment of rights on a promise of sale relating to immovable property, less qualifying deductions, will be taxed at a final tax rate of 15% on the first €100,000. Proceeds over €100,000 will be taxed at the rate of tax applicable to the assignor, subject to a provisional tax payment at 7%.

Restriction on the applicability of the 5% Property Transfers Tax

With effect from 20th March 2020, the 5% property transfers tax would not apply when a person transfers property which is not their sole ordinary residence, when the transfer is made within 5 years from acquisition, if development works requiring certain permissions are made to the property.

Deductible borrowing costs

The article which governs the deduction of interest incurred in the production of the income (article 14(1)(a) of the ITA) has been reworded to be aligned with the [Interest Limitation Rule](#) which was recently introduced through the Anti-Tax Avoidance Directive (ATAD 1). This change is effective from 1st January 2019. The wording now refers to borrowing costs incurred by a person for the purpose of trade, business, profession or vocation or on capital employed for the purpose of acquiring income. The deduction is subject to rules that may be prescribed with respect to limitations and carry forwards.

150% deduction applicable to expenditure on scientific research

With effect from 1st January 2019 the provision allowing an inflated deduction of 150% on scientific research expenditure has been repealed. This means that such deduction is no longer inflated and must be capped at the actual cost incurred.

15% tax on rental income derived from long private residential leases

A new proviso has been added to article 31D of the ITA, allowing for the abatement of the 15% final tax chargeable on long private residential lease income 'in circumstances and by such amounts as may be prescribed'.



Introduction of separate income tax returns for married couples

With effect from year of assessment 2021, married couples living together will be entitled to elect to file separate income tax returns if:

- During the year in which the election is made, each of the spouses derives income from employment or business (i.e. self-employment excluding director's fees) or pension income from past employment; or
- In terms of a public deed concluded by the spouses, the property they acquire during their marriage is governed by the system of separate property or by the system of community of residue with separate administration as provided for in the Maltese Civil Code or in terms of a similar foreign law system.

The election shall generally cover the calendar year in which the election is made and remains effective for subsequent years until it is revoked.

When electing for the separate income tax return, the income of each spouse shall be charged to tax in the name of the respective spouse separately from the income of the other spouse and each spouse shall be responsible to comply with the provisions of the ITA. Moreover, the income of a spouse shall include all income derived by that spouse regardless of any right that the other spouse may have in respect of that income.

Tax deductions against income are allowable as follows:

- Allowable expenses in respect of which the respective spouse is in possession of a receipt in his/her name are to be deducted in full.
- Allowable expenses in respect of which a receipt is issued jointly in the name of the spouses are to be treated as incurred by the spouses in equal portions and deductible accordingly.
- Any unabsorbed losses, unabsorbed capital allowances or unabsorbed tax credits brought forward (from a year preceding that from which the separate return option became effective) shall be accounted for in the tax computation of the spouse in whose name the income derived from the source that had given rise to such losses, capital allowances or tax credits is chargeable.
- Any unabsorbed capital losses arising from a transfer that had been made by the spouses jointly shall be available to the two spouses in proportion to the undivided shares transferred by them respectively.

Specific provisions apply on rental income taxed at a final rate of 15% and investment income on which the deduction of tax is not opted for.

Should the married couple revoke the election, it will not be available again to the spouses in respect of that year or any one of the four succeeding years of assessment.

Further changes to specific articles in the ITA and the ITMA were made for this option to become effective.

15% Tax on Overtime

As from 1st January 2020 income derived from qualifying overtime will be taxed at a reduced tax rate of 15%. This tax will be final, unless the taxpayer elects otherwise, meaning that it shall not be available as a credit or set off against the tax liability.

This amendment also allows the Minister to publish rules to establish conditions.



Changes to the Income Tax Management Act

Treatment of shares held by licensed financial service providers

As from 1st June 2020, where the registered holder of a share is a licensed trustee, an authorised/licensed central securities depository or a licensed investment manager, the CfR shall treat it as the beneficial owner of the share, unless it provides a certificate which identifies by name and taxpayer identification number the person/s for whom the share is held and the ultimate beneficial owner/s. Further details may be required by the CfR.

In line with these developments, the CfR has notified that any company that has registered its shareholders in terms of the Tax Refunds and Registration Procedure Rules (Subsidiary Legislation 372.25) should, where such company has not already complied with such requirement, revise such registration by disclosing online (through the CfR website) all the direct and indirect beneficial owners of the shareholder/s registered for refund. Where there are trustees/fiduciaries involved, the relevant details of the persons on behalf of whom such trustees/fiduciaries are acting should also be disclosed.



Provisional tax on the transfer of securities/interest in a property company/partnership

With effect from 20th March 2020, the provisional tax due on the transfer of securities in a property company or on the transfer of an interest in a property partnership shall be equal to an amount which will be prescribed, capped at 35% of the higher of the market value and consideration for the transfer.

Refund of Overpaid Tax

With effect from year of assessment 2021, any overpaid tax as declared in the income tax return is to be refunded by Government within 6 months, rather than 12 months, from the date when the return was submitted or required to be submitted in terms of the ITMA, whichever is the later.



Changes to the Value Added Tax Act

Online filing of VAT returns/forms

With effect from 20th March 2020, the online filing of VAT Returns/VAT Forms within the extended period of 7 days from the deadline date would not be subject to late filing penalties, irrespective of whether a VAT payment is made within the extended period. Prior to this change, the late filing penalties were inapplicable only if both the online filing of the VAT returns/VAT Forms and the VAT payment were made within this 7-day period.



Changes to the Commissioner for Revenue Act

Admissibility of certified documents of the Commissioner

A new article provides that a document that is certified by the Commissioner, or by a person authorised by him, as being a true reproduction of an electronic copy, prepared by or under the authority of the Commissioner, of a document that was furnished to or issued by the Commissioner, shall be deemed for all purposes of the law as an authentic copy of the original document and shall constitute and be admissible as evidence in any proceedings to the same extent as the original.



Changes to the Duty on Documents and Transfers Act

Assessments and penalties

For duty purposes, when the real value assessed by the CfR exceeds the amount declared by more than 15%, the penalties applicable have been reduced to 20% of the amount of duty assessed. Interest will however start to be charged at a rate yet to be prescribed by the Minister.

Reduced rate of duty on the acquisition of certain immovable property

With effect from 15th October 2019, individuals acquiring or inheriting residential property in which they plan to establish or have established their own residence will benefit from a reduced rate of duty of 3.5% on the first €175,000 (formerly €150,000).

Interest on late payment of duty

With effect from 1st January 2020, interest will be charged in cases where a taxpayer fails to pay duty in terms of certain provisions of the DDTA. Such cases include failure to pay duty payable on insurance policies, on transfers of immovable property, on transfers of marketable securities and on documents executed outside Malta when use thereof is made in Malta. The interest rate applicable in such circumstances has not yet been indicated but reference to a rate as prescribed by the Minister was made.

Duty on transfers of foreign marketable securities

No duty will arise upon the transfer of foreign marketable securities held in a property company when duty has been paid outside Malta in the country where the transfer is executed or where the company is registered.

Duty on transfers of interests in partnerships

With effect from 28th June 2019:

1. The value-shifting provisions have been extended to cover a reduction in the real value of an interest in a partnership. In other words, in principle, duty would be chargeable when the value of a partnership interest passes to other partners, in part or in full, as a result of a change in the partnership interests or in the voting rights attached to such interests.
2. The exemption from duty upon the restructuring of holdings through mergers, de-mergers, amalgamations and reorganisations has been extended to partnership interests.
3. The 'article 47' duty exemption (commonly known as the DDT10 exemption) applicable to the transfer of certain marketable securities has been extended to cover also transfers of interests in partnerships.

Extension of the period to act on a demand note and registration of privilege

Previously, when outstanding duty balances, including additional tax and interest, were not paid by taxpayers after notification, the CfR could enforce payment by means of an executive act (mandate) through (a) the issue of a demand note that is served on the taxpayer requesting payment within 15 days; (b) following failure to pay, the service of an intimation for payment by means of a judicial act; and (c) enforcement of the payment within 2 days. The Act extends the 15-day time-window to react to a demand note to 30 days.

In addition, after the lapse of the said 2 days, the CfR shall be entitled to register a note of privilege in the public registry or land registry for the amount included in the judicial act.



Changes to the Duty on Documents and Transfers Rules pursuant to Legal Notice 68 of 2020

Value of property where there is a promise of sale

In principle, for duty purposes, the value of any immovable property transferred inter vivos or transmitted causa mortis, shall be the value of such property on the date of the said transfer inter vivos or on the date of death of the person from whom the transfer causa mortis originates.

A new proviso to rule 3(1) of the Duty on Documents and Transfers Rules however establishes that, as from 15th October 2019, where a notice of a promise of sale is given and the promise of sale is made for a period not exceeding 1 year, or 3 years in the case of a property consisting of a unit in a project acquired on plan, the relevant date shall be the date of the promise of sale. Where improvements are however made between the date of the promise of sale and the date of transfer, the relevant date shall be the date of transfer.

Registration for duty purposes

A new rule provides that persons who are subject to duty in terms of the provisions of the DDTA shall be registered with the CfR.

Removal of the Schedules to the Duty on Documents and Transfers Rules

The Rules contained several Duty Schedules prescribing the format of forms that were required to be submitted when certain transactions were undertaken. L.N. 68 has repealed all such Schedules except for the Second Schedule relating to the value of a usufruct. Instead, when transaction details are required to be filed with the Revenue for duty purposes, they shall be filed on the forms or means as supplied by the CfR for this purpose, thereby giving flexibility to the CfR to alter the previously prescribed forms.



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