

**A BILL
entitled**

The Various Laws (Amendment) Act, 2007

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 on the 1 January 2007. Coming into force of this Act

PART I

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 to the Income Tax Act. Cap. 123.

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

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 or manages a source of income in Malta and in the case of a company not incorporated in Malta is for this purpose registered 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 not incorporated in Malta the distributable profits shall be the profits attributable to the operations 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;”;

c) 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;”;

d) 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 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:”;

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

“Provided 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 registered 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;”;

e) 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;”;

f) 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;”;

g) 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

suffered any tax, directly, by way of withholding, or otherwise, at a rate of tax which is less than five per cent (5%);”;

h) 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;”;

i) 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;”;

j) 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”.

5. In Article 12 of the principal Act immediately after paragraph (t) there shall be added a new paragraph: Amendment of article 12 of the principal Act

“(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, where more than fifty per cent (50%) of the income of such company consists of passive interest or royalties and such company is not resident or incorporated in a country or territory which forms part of the European Union or is subject to any foreign tax at a rate which is less than fifteen per cent (15%), the exemption contemplated in this paragraph may only be availed of if the following two additional conditions are satisfied:

(i) the equity holding by the company resident in Malta in the company 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 company 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

(ii) the company 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, 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 the income 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 profits.”.

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 provisions of this paragraph shall, with effect from 1 January 2007, be applicable where the income attributable to a trust consists of 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) or (b) and such recipient does not control and is not beneficially entitled, directly or indirectly, to more than fifty percent of the profits of the company which earned the profits which give rise to the income referred to in paragraphs (2) or (4) of the said article 41(a)(viii), the rate at which tax shall be deducted shall be of thirty one point five, seven, eight per cent (31.578%).”.

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 who is in receipt of or deemed to be in receipt of the income referred to in sub-paragraphs (2),(3) and (4) of article 41(a)(viii):

(a) shall inform in writing the payor of such income that he is a recipient of that income; and

(b) unless the payor has paid the tax in accordance with the investment income provisions, he shall 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 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:

“(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).”;

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)”;

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 subparagraphs (2), (3) and (4) of paragraph (viii) a recipient shall be a person, other than a company, who is resident in Malta and in the circumstances referred to in Article 43(6) (d) such person 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;

(b) An individual who is beneficially entitled, directly or indirectly, to the profits of a company 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 company 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;

(c) Where an individual becomes beneficially entitled, directly or indirectly to the profits of a company or any such entitlement is increased in any way and such company 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;

(d) For the purpose of paragraphs (a), (b) and (c), where the company which is registered for the purpose of article 48(4) or article 48(4A) of the Income Tax Management Act, or the company which has actually received 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;

(e) where the direct or indirect beneficial entitlement referred to above is an entitlement to the profits of a public company or other entity (including a trust), 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 and the shares or other similar security of 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 determine that the provisions of this subarticle are not applicable.”.

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 registered in Malta after 31 December 2006.

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 31 March 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 company shall together with the filing of its income tax return also submit 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.”.

Amendment of article 59 of the principal Act.

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) Paragraph (ix) thereof shall be renumbered as (x) and immediately preceding this paragraph as renumbered there shall be added the following new paragraph (ix):

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

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

(ii) 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. In article 67 of the principal Act immediately preceding the words “Maltese taxed account” there shall be added the words “immovable property account,”. Amendment of article 67 of the principal Act.

18. In Article 67A of the principal Act 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,” Amendment of article 67A of the principal Act.

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

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 first 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 registered 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):

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.”.

Amendment of article 82 of the principal Act.

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

(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”.

Amendment of article 92 of the principal Act.

21. In paragraph (b) of article 92 of the principal Act for the words “which fall to be allocated” there shall be substituted the words “which the company is specifically empowered to receive and which fall to be allocated”.

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”.

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

(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.”

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

“Advance
Company
Income Tax

42B. (1) 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 taking into account 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 or ACIT.

(2) The amount of ACIT 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 by the end of the month following that in which the dividend is paid.

(3) 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, and the date of payment referred to in sub-article 2 hereof shall be the date of the submission of that company’s tax return relative to that accounting period or the last date on which such return should be submitted whichever is the earlier.

(4) Where a payment of ACIT has been made in accordance with this article, the amount so paid 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.

(5) 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 is registered in Malta on or after the 1 January 2007 and to a company in respect of which paragraph (i) of the proviso to Article 48(4A)(b) has been applied.”.

Amendment of
article 42A of the
principal Act

25. Article 48 of the principal Act shall be amended as follows:

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, where more than fifty per cent (50%) of the income of the company not resident in Malta consists of passive interest or royalties and such company is not resident or incorporated in a country or territory which forms part of the European Union or is subject to any foreign tax at a rate which is less than fifteen per cent (15%), the following two additional conditions must be satisfied:

(i) the equity holding by the company resident in Malta in the company 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 company not resident in Malta which derives more than fifty per cent (50%) of its income from portfolio investments shall be deemed to be a portfolio investment; and

(ii) the company 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, 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 with effect from year of assessment 2008 as regards claims made relative to the payment of dividends from profits allocated to the foreign income account 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 sub-article (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 companies which were international trading companies 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 pursuant to this proviso in such manner as may be prescribed, may also claim a tax refund contemplated by this sub-article with respect to dividends paid from profits allocated to the foreign income account when such dividend is paid:

(1) by a company registered in Malta on or after 1 January 2007; 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 sub-article (4) there shall be added the following new sub-article:

“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 ACIT 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 ACIT;

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

(b) During the period from 1 January 2007 to 31 December 2010, any refund contemplated in this sub-article may only be claimed by a person in receipt of a dividend from a company which was registered in Malta on or after 1 January 2007:

Provided that:

(i) a person in receipt of a dividend from a company referred to in any of sub-paragraphs (1) or (2) may also claim a tax refund in terms of this sub-article 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 for the accounting period relative to which a claim for a tax refund in terms of this paragraph is first made had more than half its distributable profits allocated to the foreign income account where such claim is approved by an extraordinary resolution of the members of such company;

(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:

(1) 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 without prejudice to the foregoing:

(aa) 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;

(bb) 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;

(cc) 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.

(2) a source which was in whole or in part beneficially owned by another individual ordinarily resident and domiciled in Malta prior to 1 January 2007.

(c) For the purpose of paragraph b(ii) 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 other than an activity which in the opinion of the Commissioner is a bona fide business activity and any other activity which in the opinion of the Commissioner 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 registered 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 sub-article (5) thereof for the words “as aforesaid” there shall be substituted the words “pursuant to sub-article (4) or subarticle (4A)”;

(f) Sub-article (6) thereof shall be amended as follows:

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

(b) 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.”;

(c) The following proviso shall be added thereto:

“Provided that 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:”;

h) the following new subarticle (9) shall be added thereto:

“(9) If any person claims a refund in terms of this subarticle 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 percent 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.”.

Objects and Reasons

The object of the Bill is to make various amendments to the Income Tax Acts.