

## MEMORANDUM BY THE MINISTER OF JUSTICE

Legislation for the exemption from Income Tax  
of persons taking up residence in Malta

The Law Officers have recently been giving consideration, in collaboration with the Inland Revenue, to the draft of a law for the exemption from Income Tax of persons who come to live in Malta from abroad.

It was originally suggested to the Law Officers that the exemption should be limited to U.K. pensioners coming to retire in Malta. It was subsequently stated to them that the amendment of the Income Tax Act should cover all persons (U.K. pensioners included) coming from abroad to retire or at any rate to live in Malta.

No precise drafting instructions have at any time been given in writing, except for a secret memo addressed by the Secretary to the Cabinet to the C.I.R. On the other hand it is feared, in view of certain comments made in the Legislative Assembly and elsewhere, that there is not an adequate understanding of the complications involved. This memorandum is therefore being submitted in order to enable the Government to give further consideration to the problem and to formulate more exactly the policy to be adopted.

The first point for consideration arises from the fundamental principle of income tax legislation that persons ordinarily resident and domiciled in a country are liable to the income tax of that country on their world income. It is therefore necessary to fix with some reasonable degree of precision the guiding principle of the new law which will be a "particular" law and a "law of privilege", and, as such, subject to strict interpretation. It is being assumed, though confirmation is desirable, that in view of the economic situation and the need for attracting persons from abroad to come to live in Malta (thereby to some extent filling the gap caused by the Services run-down) the Government

/wishes that .....

wishes that the relative amendment should be conceived in the widest possible terms, namely that notwithstanding the encroachment on the aforesaid fundamental principle of income tax and notwithstanding the sometimes invidious distinctions likely to be created between persons possessing the same ordinary residence and domicile, the exemption should apply to all persons who come to live or to retire here even if by so doing they would acquire ordinary residence and perhaps also a new domicile of choice in these Islands.

If the above is confirmed as a general statement of policy and as a basis for the new law, the scope of the remaining investigations could be broken down to four headings, each of which is dealt with hereunder, namely legal position of -

- a) returned Maltese emigrants;
- b) U.K. residents;
- c) Commonwealth residents, and
- d) aliens.

decides to make Malta his home and the seat of his affairs. Though the two cases bear a definite resemblance to each other from such limited point of view, they are far from identical.

In general it bears with other cases (U.K. residents etc.) the element of discrimination between persons having the same ordinary residence and domicile, but it also bears a further element of discrimination, namely between persons of the same Maltese nationality. It would, of course, be a different matter if the returned Maltese emigrant had, in the meantime, acquired a different nationality abroad. In such a case his position would be almost completely on all fours with that of non-Maltese persons.

In addition it is felt that before the Government decides to grant income tax exemption to all



Whatever may ultimately be the Government's decision, there is clearly a need for further consideration under this heading.

(B) U.K. Residents

Under this heading the main difficulty arises from the Double Taxation Relief (Taxes on Income) (United Kingdom) Order, 1961 hereinafter called "the Agreement". The arrangements made by the Agreement may be terminated only after the 31st December, 1964 and the tax liability of U.K. residents thereunder may, for the present purposes, be considered from the point of view of (i) Government Pensioners, (ii) non-Government Pensioners, and (iii) other tax payers.

(i) U.K. Government Pensioners

The chief obstacles here are that (a) a U.K. Government Pension remains liable to U.K. tax, as income arising in the U.K., wherever the pensioner may be resident, and (b) under the Agreement, the pension is exempted from Malta tax provided the pensioner does not establish his ordinary residence in Malta.

It becomes immediately apparent that if, as is desired, the U.K. Government pensioner establishes his ordinary residence in Malta he will become immediately liable to Malta tax in addition to U.K. tax and the only benefit he can enjoy under the Agreement is by way of relief (tax credit). Such relief is allowable by the country of residence and cannot in any case exceed the lower of the two taxes.

The conclusion to be reached about this class of case is that the existence of the Agreement is a disincentive to the acquisition of ordinary residence in Malta. In fact U.K. Government pensioners may be said to be already exempted from Malta tax on their pension provided they do not become ordinary residents here, and they can enjoy no greater benefit whatever amendment is proposed. There is, in addition, a risk that if such

/pensioners lose .....

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pensioners lose their U.K. residence their liability to U.K. tax will increase by a withdrawal of their personal deductions. It appears that there is very little that can be done to help these cases.

Should the Agreement be eventually amended the position could be reconsidered.

(ii) U.K. non-Government Pensioners

Here again, under the Agreement, if the pension is one which is not paid by the U.K. Government, then if the pensioner is resident in Malta and subject to Malta tax, income tax is not payable in the U.K. The proposed amendment to exempt such persons from Malta tax would therefore work diametrically opposite to the intention as they would become liable to U.K. tax, which is in the majority of cases higher.

A way out of the difficulty is that of making these cases subject to a nominal tax of 6d in the £ instead of exempting them "in toto". The U.K. Government might object that such a measure is against the spirit, if not the letter, of the Agreement.

(iii) Other U.K. taxpayers

In the case of other categories of U.K. taxpayers the Agreement offers no obstacle and the exemption from Malta tax would be beneficial to the taxpayers concerned as they would continue to be liable to tax only in their country of origin and in respect of income arising in that country. Obviously in this category of taxpayers any income tax exemption would not benefit the taxpayers concerned as the same position would be obtained if no exemption is provided but relief under the Agreement is granted. Here it is necessary to strike once more the note of warning that their tax liability in their country of origin might become heavier due to loss of personal deductions in the U.K. consequent upon their establishing ordinary residence here.



(C) Commonwealth Citizens

With regard to Commonwealth citizens taking up residence here the proposed amendment would not have any serious repercussions on them. On the other hand it would not appear likely to provide them with any very great benefit. If one looks at their position from the point of view of existing law one would find that under the Malta Income Tax Act relief is already available which is practically equal to the lower of the two taxes. Such relief, however, is granted only if the two territories agree on reciprocal treatment.

Several Commonwealth countries have signified their intention of granting reciprocal relief. Such arrangements are operative under section 69 (3) of the Income Tax Act. In this connexion it is to be pointed out, that some countries (South Africa is a case in point) have shown no interest in entering into such such arrangements. These countries, in fact, oppose such agreements with us on the same grounds which rendered the Double Taxation Agreement with Malta attractive to the U.K. Government.

The conclusion to be reached in respect of this category of persons is that substantially the same relief as would be provided by a total exemption from Malta tax is to some extent already available under existing law in the form of relief on the lower tax granted in the country of residence (which would be Malta).

However, it should also be borne in mind that the main influx of retired persons is expected to be from the U.K. itself and not from other Commonwealth countries.

(D) Aliens

Under the existing law aliens are worse off than Commonwealth citizens. The only relief available to them is that of tax on tax. The amendment in the sense of their exemption from local income tax would therefore be definitely beneficial to them. The number of aliens likely to decide to settle in Malta, however, cannot be very great.

/Conclusions .....

Conclusions

The main conclusions to be drawn from the foregoing may be summarised as follows:-

1) The proposed law is not as simple a matter, from the drafting point of view, as has perhaps been anticipated and instructions are required on the basis of the distinctions to be made in respect of each different category of persons.

2) Even if the legal draftsman were able, on the basis of the instructions emerging from the consideration of this paper, to incorporate the permutations and combinations in a rational legal pattern, the financial returns likely to be achieved are not perhaps as great as has been hoped. Whatever measures are passed in Malta cannot affect the income tax law of other countries.

3) The main point of concern would appear to be the attraction of U.K. residents to Malta and it has been pointed out above that -

4) ... little can be done for the U.K. Government

5) The position of returned Maltese emigrants also merits further consideration.

Other Collateral Points for Consideration

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1. Under the Immigration (British Subjects) Ordinance, 1948 (section 18 (1)) the Immigration Officer is debarred from giving residence permits for a period exceeding one year unless the Prime Minister uses the powers conferred by section 36. Copies are attached.

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2. The Aliens Ordinance, 1949 also sets up obstacles to the smooth running of any income tax scheme contemplating the attraction of foreigners to Malta. Section 18 (copy attached) empowers the Governor to grant exemptions from all or any of the provisions of this Ordinance and a greater use of that provision, together with some further amendment of the Ordinance, may be necessary.

3. Instructions are also required as to whether any exemptions or reduced rates of tax eventually





APPENDIX A

Immigration (British Subjects) Ordinance, 1948

Extension of  
leave to  
remain in  
Island.

18. (1) Where a British subject has been granted leave to remain in the Island under sections 13, 14, 15, 16 or 17 of this Ordinance for a period of less than twelve months, the Immigration Officer, acting under the directions of the Prime Minister, may extend such period up to a maximum period of twelve months from the date of entry.

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Exemptions.

36. The Prime Minister may direct that any British subject or class of British subjects shall be exempt, either unconditionally or subject to such conditions as the Prime Minister may impose, from all or any of the provisions of this



Aliens Ordinance, 1949

Power to  
grant  
exemptions.

18. The Governor may direct that any person or class of persons shall be exempt either conditionally or subject to such conditions as His Excellency may impose from all or any of the provisions of this Ordinance.

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