

MEMO FOR CABINET BY THE ACTING MINISTER  
OF ECONOMIC PLANNING AND FINANCE

Exemption of the Port Work Scheme from  
Income Tax

The Hon. Minister of Labour and Social Welfare is asking Hon. Members to recommend to the Hon. Minister of Economic Planning and Finance a reconsideration of his decision rejecting an "ex gratia" exemption in terms of Section 8(2) of the Income Tax Act (vide Attachment A) of the Port Work Scheme from tax on the interest and dividends it earns on its investments.

2. The Scheme is not deemed to carry on a trade or business in relation to its main activities and is not, therefore, subject to tax on any excess of income over expenditure remaining to its credit at the end of each year. It already enjoys therefore a measure of tax exemption. It does not however enjoy exemption from tax on its investment income:

(a) because Section 5(1)(d) of the Income Tax Act (Attachment A) specifically lays down that such an income is taxable; and

(b) because the Port Work Scheme (unlike the Monte di Pieta', Approved Pension Funds etc.) is not covered by the exemption provisions of Section 8(1) of the law (Attachment A).

On these grounds and in view of the absence of any element of hardship the Ministry of Economic Planning and Finance had to turn down a request for such an exemption made on an "ex gratia" basis about a year ago by the Hon. Minister of Labour & Social Welfare on behalf of the Port Work Scheme.

3. The Commissioner of Inland Revenue is still strongly of the view that Section 8(2) of the law cannot be applied in this case as corporate entities cannot be deemed to suffer hardship. In fifteen years, Maltese individuals who have been exempted under that provision number less than ten against hundreds of petitioners. No local corporate entity or body of persons has ever benefitted under this section and in the case of Maltese individuals only very real extreme hardship has been the sole determining factor. Even if the application of the hardship argument were not debarred because of the corporate nature of the organization, the Port Work Scheme would not, on its own merits, be eligible for this concession as in the interval between 1957 and 1962 it has not only succeeded to meet all its expenses but it has also saved something like £17,800 on which the investment income of £715 a year is earned. In addition it is known to have a substantial cash balance which at one time was as high as £3,000. By no stretch of imagination can it be said that by paying the tax the Scheme would suffer a real extreme financial setback.

4. As a matter of principle it will also be dangerous to depart from the rule so far followed that corporate entities cannot be deemed to suffer hardship and have recourse to the exemption provisions under Section 8(2) of the law because it would then be difficult to resist similar requests from other sources. The Port Work Scheme's features are in fact found in other bodies of persons in Malta although perhaps not all simultaneously. For example the Chamber of Commerce is also a body which does not carry on trade and though not Government-controlled has its set up and some of its functions laid down by law (Act 123 of the Commercial Code). If we agree to the Scheme's request we shall not be able to refuse the petition submitted by the Chamber for exemption from tax on its earned income which is appreciably higher. Besides there are other Government controlled bodies like the Gas Board which may claim immunity from tax.

5. Co-operatives are statutorily exempt on their income from mutual trading only. Proceeds from trading with non-members as well as all other income including investment income subject to tax. Trade Unions are likewise exempt on their income in so far as such income is not derived from a trade or business. Here again Government will have to give in to any 'moves' which may be made by Co-operatives and Unions to secure total exemption if the Scheme's request is met. There is also the possibility of a re-opening of a case with technical features identical to those of the Port Work Scheme (i.e. Government control, no trade and unearned income only) involving a refund of £22,000 by a Company which was taken over by the Custodian of Enemy Property during the war.

6. It can therefore be seen that there are many local bodies which if not exactly similar are technically (i.e. from the fiscal point of view) not dissimilar to the Port Work Scheme. Consequently any "ex gratia" treatment accorded to the latter is bound to have repercussions which may embarrass the Government and give rise to an impression of partiality in tax matters. It should also be pointed out that in the United Kingdom the various nationalized undertakings as well as other entities performing quasi-Governmental functions (including Harbour Boards which carry out 'inter alia' the functions of the Port Work Scheme) are all taxable.

7. It has been represented that the tax liability of the Port Work Scheme is negligible in relation to the total revenue from income tax. It may also be said however that this amount of tax is equally small in relation to the capital value of the Scheme's investments. It has been stated moreover that the Management of the Scheme are going out of their way in furnishing the Revenue with the annual emoluments of their members. It may be observed in this regard that it does not follow that compliance with certain income tax obligations gives rise to entitlement to exemption "ex gratia".

8. In view of all the above considerations and of the paramount need of safeguarding the principles so far applied for the collection of revenue it is felt that our recurrent resources should not be encroached upon by granting the concession sought by the Port Work Scheme.



P.S. The Hon. Minister of Emigration, Labour and Social Welfare's memorandum to Cabinet includes exemption from stamp duty in its heading although no recommendation for such an exemption is contained in the memo itself. Section 29 of the Stamp Duty Ordinance (Chapter 68) empowers the Minister responsible for the Department of Inland Revenue to sanction by order or by notice the exemption from stamp duty or an abatement thereof in respect of determinate instruments, writings etc. liable to duty in virtue of the Ordinance. But as it is not known what specific instruments or writings, if any, it is proposed to exempt, the Ministry of Economic Planning and Finance are not in a position to make any comments.

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L-ARKIVI NAZZJONALI TA' MALTA

5th July, 1965.

Extracts from Income Tax Act 1948

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5. (1)(d) dividends, interest, discounts, or bonus shares other than bonus shares representing the capitalization of profits made in any period ending before the 1st January, 1948.

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8. (1) There shall be exempt from the tax:-

(a) the official emoluments received by the Governor of Malta or by the Officer for the time being Administering the Government;

Exemptions

Amended by  
XX. 1955.2.

(b) the income accruing to the Metropolitan Archbishop of Malta and to the Bishop of Gozo by reason of their respective office;

XV. 1958.

XXV. 1960.5.

XXIV. 1961.2.

XXV. 1962.

(c) the income of the Monte di Pieta';

L.N. 4 of 1963

X. 1963.2.

XIV. 1963.2.

(d) the income of a co-operative society in so far as it is derived from dealing with its members: provided that the Minister responsible for finance is satisfied that the public interest is best served by such exemption;

(e) the income of any pension fund, provident fund or other fund approved by the Minister responsible for finance;

(f) the income of any educational institution of a public character, in so far as such income is not derived from a trade or business carried on by such institution, and the income of ecclesiastical or charitable institutions, trusts, bequests or foundations of a public character;

(g) the emoluments payable to members of the permanent consular services of foreign countries in respect of their offices or in respect of services rendered by them in their official capacity or to permanent official agents of such countries who are not British subjects and who are not employed in any trade, business or other undertaking carried on for the purpose of profit;

(h) wound and disability pensions granted in respect of wounds or disabilities caused by war and any pensions granted to dependent relatives of members of Her Majesty's Forces killed on war service;

(i) any capital sum received by way of commutation of pension, retiring or death gratuity or received as consolidated compensation for death or injuries;

(j) the income arising from a scholarship, exhibition, bursary or any other similar educational endowment held by a person receiving full time instruction at a University, college, school or educational establishment;

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(jj) the income of any trade union registered under the Trade Unions and Trade Disputes Ordinance, 1945 in so far as such income is not derived from a trade or business carried on by such trade union;

(k) the profits of a non-resident shipowner as defined in section 13 of this Act, provided that the country to which such non-resident shipowner belongs extends a similar exemption to shipowners who are not resident in such country but who are resident in Malta, and, if such country is a country other than the United Kingdom, to shipowners who are not resident in such country but who are resident in the United Kingdom;

(l) the income of a club or similar institution which the Commissioner is satisfied is organised and operated exclusively for social welfare, civic improvement, pleasure or recreation, or for any other purpose except profit, no part of the income of which is payable to, or is otherwise available for the personal benefit of, any proprietor, member or shareholder, so long as such club or similar institution is not deemed to carry on a business in accordance with subsection (4) of section 5 of this Act;

(m) the interest which, but for the provisions of this paragraph, would be included in the total income of an individual, paid in the year immediately preceding any year of assessment by the Malta Government Savings Bank in respect of every deposit in the name of such individual or in the name of any other person in respect of whom such individual is entitled to a personal deduction under paragraphs (a) and (b) of subsection (1) of section 22 of this Act, provided that where in any such year the interest paid as aforesaid in relation to such individual or to such other person exceeds twenty-five pounds, the provisions of this paragraph shall not apply to the amount of the excess;

(n) the income of a philharmonic society which the Commissioner is satisfied constitutes a bona fide band club, provided that such society has regular premises registered with the Police as a club and that such premises are in daily use as a place of resort by its members:

Provided that nothing in this subsection shall be construed to exempt in the hands of the recipients any dividends, interests, annuities, bonuses, salaries, wages, pensions or other profits paid wholly or in part out of the income so exempted.

(2) The Minister responsible for finance may exempt any person or class of persons with or without retrospective effect from all or any of the provisions of this Act on any ground which to him may seem sufficient.

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