



## INCOME TAX ACT 1970

### INCOME TAX (MALTA) (DOUBLE TAXATION) ORDER 2009

*Approved by Tynwald  
Coming into operation*

*19 January 2010  
22 January 2010*

The Council of Ministers makes this Order under section 54(1) to (1C) of the Income Tax Act 1970<sup>1</sup>.

**1 Title**

This Order is the Income Tax (Malta) (Double Taxation) Order 2009.

**2 Commencement**

If approved by Tynwald<sup>2</sup>, this Order comes into operation on 22 January 2010.

**3 Interpretation**

In this Order “applicable arrangements” means the arrangements for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income contained in an agreement between the Government and the Government of Malta signed in London on 23 October 2009 and set out in Schedule 1.

**4 Implementation of the agreement**

It is declared that —

- (a) the applicable arrangements have been made with Malta for the avoidance of double taxation and the prevention of fiscal evasion in relation to income tax and the tax of a similar character imposed by the laws of Malta; and

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<sup>1</sup> XXI p. 260 (section 54 was amended by section 10 of the Income Tax Act 2009 C.2.)

<sup>2</sup> As required by section 54(1G) of the Income Tax Act 1970

- (b) it is expedient that those arrangements have effect under section 54 of the Income Tax Act 1970.

**5 Modification of the effect of certain provisions of the Income Tax Act 1970**

- (1) The Income Tax Act 1970 is modified for the purpose of implementing or otherwise giving effect to the applicable arrangements as follows.

- (2) In section 105C(5) after “pending appeal” insert “either in the Island or in Malta”.

- (3) In section 105D —

- (a) in subsection (1) for the words after “the Assessor” substitute “believes it to be necessary for the purpose of responding to a request made by Malta in accordance with the applicable arrangements”; and

- (b) in subsection (6)(a) after “such form” insert “and authenticated in such manner”.

- (4) In section 105E —

- (a) after subsection (2) insert —

“(2A) In determining a reference under subsection (2), the Commissioners shall take account of the requirements of the applicable arrangements.”; and

- (b) in subsection (6)(a) for “General Revenue” substitute “the Revenue of the Island or Malta”.

- (5) In section 105F(5)(a) after “such form” insert “and authenticated in such manner”.

- (6) In section 105O insert the following definitions in the appropriate place in the alphabetical list —

“‘applicable arrangements’ means the arrangements for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income contained in an agreement between the Government and the Government of Malta signed in London on 23 October 2009;

'income tax' includes any tax of Malta to which the applicable arrangements relate, and 'tax', 'liability to income tax' and 'liability' shall be construed accordingly;

'income tax Acts' includes the laws of Malta that relate to any tax to which the applicable arrangements relate, and 'this Act' shall be construed accordingly;

'Malta' shall be construed in accordance with the applicable arrangements;

'taxpayer' includes a person who is or may be liable to any tax to which the applicable arrangements relate.".

- (7) Schedule 2 contains the text of sections 105C to 105O of the Income Tax Act 1970 as modified for the purposes of the applicable arrangements.

MADE 3rd December 09



Chief Secretary

**AGREEMENT BETWEEN**  
**THE ISLE OF MAN**  
**AND**  
**MALTA**  
**FOR THE AVOIDANCE OF DOUBLE TAXATION**  
**AND**  
**THE PREVENTION OF FISCAL EVASION**  
**WITH RESPECT TO TAXES ON INCOME**

**THE GOVERNMENT OF THE ISLE OF MAN**

**AND**

**THE GOVERNMENT OF MALTA,**

**DESIRING** to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

**HAVE AGREED** as follows:

**ARTICLE 1**  
**PERSONS COVERED**

This Agreement shall apply to persons who are residents of one or both of the Parties.

**ARTICLE 2**  
**TAXES COVERED**

1. This Agreement shall apply to taxes on Income imposed on behalf of a Party or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of Income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which this Agreement shall apply are:

(a) In the case of the Isle of Man:

taxes on Income or profit,

(hereinafter referred to as "Manx tax").

(b) in Malta:

the income tax;

(hereinafter referred to as "Malta tax").

4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Parties shall notify each other of any significant changes which have been made in their taxation laws.

### **ARTICLE 3**

#### **GENERAL DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term "Isle of Man" means the island of the Isle of Man, including its territorial sea, in accordance with international law;
- (b) the term "Malta" means the Republic of Malta and, when used in a geographical sense, means the island of Malta, the island of Gozo and the other islands of the Maltese archipelago including the territorial waters thereof, as well as any area of the sea-bed, its sub-soil and the superjacent water column adjacent to the territorial waters, wherein Malta exercises sovereign rights, jurisdiction, or control in accordance with international law and its national law, including its legislation relating to the exploration of the continental shelf and exploitation of its natural resources;
- (c) the terms "a Party" and "the other Party" mean the Isle of Man or Malta, as the context requires;
- (d) the term "person" includes an individual, a company and any other body of persons;
- (e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (f) the terms "enterprise of a Party" and "enterprise of the other Party" mean respectively an enterprise carried on by a resident

of a Party and an enterprise carried on by a resident of the other Party;

(g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Party, except when the ship or aircraft is operated solely between places in the other Party;

(h) the term "competent authority" means:

(i) in the case of the Isle of Man, the Assessor of Income Tax or his delegate;

(ii) in the case of Malta: the Minister responsible for finance or his authorised representative.

(i) the term "national", in relation to a Party, means, where applicable:

(i) any individual possessing the nationality of a Party;

(ii) any legal person, partnership or association deriving its status as such from the laws in force in a Party.

2. As regards the application of the Agreement at any time by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.



## **ARTICLE 4**

### **RESIDENT**

1. For the purposes of this Agreement, the term "resident of a Party" means any person who, under the laws of that Party, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that Party and any political subdivision or local authority thereof and any pension fund or pension scheme recognised by that Party. This term, however, does not include any person who is liable to tax in that Party in respect only of income from sources in that Party.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Parties, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident only of the Party in which he has a permanent home available to him; if he has a permanent home available to him in both Parties, he shall be deemed to be a resident only of the Party with which his personal and economic relations are closer (centre of vital interests);
- (b) if the Party in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Party, he shall be deemed to be a resident only of the Party in which he has an habitual abode;

- (c) If he has an habitual abode in both Parties or in neither of them, he shall be deemed to be a resident only of the Party of which he is a national;
- (d) if he is a national of both Parties or of neither of them, the competent authorities of the Parties shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Parties, then it shall be deemed to be a resident only of the Party in which its place of effective management is situated.

**ARTICLE 5**  
**PERMANENT ESTABLISHMENT**

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop; and
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than six months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person

- other than an agent of an independent status to whom paragraph 6 applies
- is acting on behalf of an enterprise and has, and habitually exercises, in a Party an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Party in respect of any activities which that person undertakes for the enterprise,

unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Party merely because it carries on business in that Party through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Party controls or is controlled by a company which is a resident of the other Party, or which carries on business in that other Party (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

**ARTICLE 6**  
**INCOME FROM IMMOVABLE PROPERTY**

1. Income derived by a resident of a Party from Immovable property (including income from agriculture or forestry) situated in the other Party may be taxed in that other Party.

2. The term "immovable property" shall have the meaning which it has under the law of the Party in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

## **ARTICLE 7**

### **BUSINESS PROFITS**

1. The profits of an enterprise of a Party shall be taxable only in that Party unless the enterprise carries on business in the other Party through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Party but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Party carries on business in the other Party through a permanent establishment situated therein, there shall in each Party be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Party in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a Party to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Party from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.



**ARTICLE 8**  
**SHIPPING AND AIR TRANSPORT**

1. Profits of an enterprise of a Party from the operation of ships or aircraft in International traffic shall be taxable only in that Party.
  
2. For the purposes of this Article, profits derived from the operation in International traffic of ships and aircraft include profits:
  - (a) derived from the rental on a bareboat basis of ships and aircraft if operated in International traffic; and
  - (b) derived from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise, where such rental profits or profits from such use, maintenance or rental, as the case may be, are incidental to the profits described in paragraph 1.
  
3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an International operating agency.

**ARTICLE 9**  
**ASSOCIATED ENTERPRISES**

1. Where

(a) an enterprise of a Party participates directly or indirectly in the management, control or capital of an enterprise of the other Party, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Party and an enterprise of the other Party,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Party includes in the profits of an enterprise of that Party - and taxes accordingly - profits on which an enterprise of the other Party has been charged to tax in that other Party and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Party if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Party shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the

other provisions of this Agreement and the competent authorities of the Parties shall if necessary consult each other.

## **ARTICLE 10**

### **DIVIDENDS**

1. Dividends paid by a company which is a resident of a Party to a resident of the other Party who is the beneficial owner thereof, shall be taxable only in that other Party.

2. However, so long as Malta operates a full imputation system of taxation of company profits, where the dividends are paid by a company which is a resident of Malta to a resident of the Isle of Man who is the beneficial owner thereof, Malta may also charge tax on the gross amount of the dividends, which tax shall not exceed that chargeable on the profits out of which the dividends are paid.

3. Paragraphs 1 and 2 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

4. The term "dividends" as used in this Article means income from shares, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Party of which the company making the distribution is a resident.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Party, carries on business in the

other Party of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other Party independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Where a company which is a resident of a Party derives profits or income from the other Party, that other Party may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other Party or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other Party, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Party.

## **ARTICLE 11**

### **INTEREST**

1. Interest arising in a Party and beneficially owned by a resident of the other Party shall be taxable only in that other Party.

2. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Party, carries on business in the other Party in which the interest arises, through a permanent establishment situated therein, or performs in that other Party independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the

amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Party, due regard being had to the other provisions of this Agreement.

## **ARTICLE 12**

### **ROYALTIES**

1. Royalties arising in a Party and beneficially owned by a resident of the other Party shall be taxable only in that other Party.

2. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Party, carries on business in the other Party in which the royalties arise, through a permanent establishment situated therein, or performs in that other Party independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed



upon by the payer and the beneficial owner In the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Party, due regard being had to the other provisions of this Agreement.

## **ARTICLE 13**

### **CAPITAL GAINS**

1. Gains derived by a resident of a Party from the alienation of immovable property referred to in Article 6 and situated in the other Party may be taxed in that other Party.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Party has in the other Party or of movable property pertaining to a fixed base available to a resident of a Party in the other Party for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other Party.

3. Gains derived by an enterprise of a Party from the alienation of ships or aircraft operated in international traffic, or from movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Party.

4. Gains derived by a resident of a Party from the alienation of shares deriving more than 50 percent of their value directly or indirectly from immovable property situated in the other Party may be taxed in that other Party.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the Party of which the alienator is a resident.

**ARTICLE 14**  
**INDEPENDENT PERSONAL SERVICES**

1. Income derived by a resident of a Party in respect of professional services or other activities of an independent character shall be taxable only in that Party unless he has a fixed base regularly available to him in the other Party for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Party but only so much of it as is attributable to that fixed base.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

## **ARTICLE 15**

### **INCOME FROM EMPLOYMENT**

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Party in respect of an employment shall be taxable only in that Party unless the employment is exercised in the other Party. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Party.
  
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Party in respect of an employment exercised in the other Party shall be taxable only in the first-mentioned Party if:
  - (a) the recipient is present in the other Party for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned, and
  - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Party, and
  - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Party.
  
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Party may be taxed in that Party.

**ARTICLE 16**  
**DIRECTORS' FEES**

Directors' fees and other similar payments derived by a resident of a Party in his capacity as a member of the board of directors of a company which is a resident of the other Party may be taxed in that other Party.

**ARTICLE 17**  
**ARTISTES AND SPORTSMEN**

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Party as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Party, may be taxed in that other Party.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Party in which the activities of the entertainer or sportsman are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities exercised in a Party by an entertainer or a sportsman if the visit to that Party is wholly or mainly supported by public funds of one or both of the Parties or local authorities thereof. In such case, the income shall be taxable only in the Party of which the entertainer or a sportsman is a resident.

**ARTICLE 18**  
**PENSIONS AND SOCIAL SECURITY PAYMENTS**

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Party in consideration of past employment shall be taxable only in that Party.

2. Notwithstanding the provisions of paragraph 1, payments made and pensions paid under the social security legislation of a Party shall be taxable only in that Party.



**ARTICLE 19**  
**GOVERNMENT SERVICE**

1. (a) Salaries, wages and other similar remuneration paid by a Party or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Party or subdivision or authority shall be taxable only in that Party.  
  
(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Party if the services are rendered in that Party and the individual is a resident of that Party who:
  - (i) is a national of that Party; or
  - (ii) did not become a resident of that Party solely for the purpose of rendering the services.
  
2. (a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Party or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Party or subdivision or authority shall be taxable only in that Party.  
  
(b) However, such pensions and similar remuneration shall be taxable only in the other Party if the individual is a resident of, and a national of, that Party.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages, pensions and other similar remuneration in respect of services rendered in connection with a business carried on by a Party or a political subdivision or a local authority thereof.

**ARTICLE 20**  
**STUDENTS AND BUSINESS APPRENTICES**

Payments which a student or business apprentice who is or was immediately before visiting a Party a resident of the other Party and who is present in the first-mentioned Party solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that Party, provided that such payments arise from sources outside that Party.

**ARTICLE 21**  
**OTHER INCOME**

1. Items of income of a resident of a Party, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Party.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Party, carries on business in the other Party through a permanent establishment situated therein, or performs in that other Party independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

**ARTICLE 22**  
**ELIMINATION OF DOUBLE TAXATION**

1. In the case of the Isle of Man, double taxation shall be eliminated as follows:

a) When imposing tax on its residents the Isle of Man may include in the basis upon which such taxes are imposed the items of income, which, according to the provisions of this Agreement, may be taxed in Malta.

b) Where a resident of the Isle of Man derives income which, in accordance with the provisions of this Agreement, may be taxed in Malta the Isle of Man shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Malta. Such deduction in either case shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Malta.

c) Notwithstanding the provisions of subparagraph b), where a company which is a resident of the Isle of Man has held at least 25 percent of the capital of a company which is a resident of Malta paying dividends for at least 12 months prior to the decision to distribute the dividends, the Isle of Man shall exempt from tax the dividends paid to the company which is a resident of the Isle of Man by the company which is a resident of Malta.

2. In the case of Malta, double taxation shall be eliminated as follows:

Subject to the provisions of the law of Malta regarding the allowance of a credit against Malta tax in respect of foreign tax, where, in accordance with the provisions of this Agreement, there is included in a Malta assessment income from sources within the Isle of Man, the Manx tax on such income shall be allowed as a credit against the relative Malta tax payable thereon.

**ARTICLE 23**  
**NON-DISCRIMINATION**

1. Nationals of a Party shall not be subjected in the other Party to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other Party in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Parties.

2. The taxation on a permanent establishment which an enterprise of a Party has in the other Party shall not be less favourably levied in that other Party than the taxation levied on enterprises of that other Party carrying on the same activities. This provision shall not be construed as obliging a Party to grant to residents of the other Party any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 4 of Article 11, or paragraph 4 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Party to a resident of the other Party shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Party.

4. Enterprises of a Party, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Party, shall not be subjected in the first-mentioned Party to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned Party are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.



**ARTICLE 24**  
**MUTUAL AGREEMENT PROCEDURE**

1. Where a person considers that the actions of one or both of the Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those Parties, present his case to the competent authority of the Party of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Party of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Party, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Parties.

3. The competent authorities of the Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Parties may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

**ARTICLE 25**  
**EXCHANGE OF INFORMATION**

1. The competent authorities of the Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes covered by this Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1.

2. Any information received under paragraph 1 by a Party shall be treated as secret in the same manner as information obtained under the domestic laws of that Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Party the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Party;

- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Party;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Party in accordance with this Article, the other Party shall use its information gathering measures to obtain the requested information, even though that other Party may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Party to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Party to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

**ARTICLE 26**  
**MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS**

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

**ARTICLE 27**  
**ENTRY INTO FORCE**

1. The Parties shall notify each other that the legal requirements for the entry into force of this Agreement have been complied with.

2. This Agreement shall enter into force thirty days after the date of the later of the notifications referred to in paragraph 1 and its provisions shall have effect in respect of taxes on income derived during any taxable period or accounting period, as the case may be, beginning on or after the first day of January immediately following the date on which the Agreement enters into force.

**ARTICLE 28**  
**TERMINATION**

This Agreement shall remain in force until terminated by a Party. Either Party may terminate the Agreement by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of a period of five years from the date of its entry into force. In such event, the Agreement shall cease to have effect in respect of taxes on income derived during any taxable period or accounting period, as the case may be, beginning on or after the first day of January immediately following the date on which the notice of termination is given.

**IN WITNESS WHEREOF** the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

**DONE** at London, United Kingdom this twenty third day of October, 2009 in duplicate in the English language.

For the Government of  
the Isle of Man



For the Government of  
Malta



## PROTOCOL

At the moment of signing the Agreement between the Isle of Man and Malta for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed upon the following provisions which shall form an integral part of the Agreement.

It is understood that the provisions of the Agreement shall not prevent the application of the Agreement in the form of an exchange of letters signed by Malta on the 5 May, 2004 and by the Isle of Man on the 19 November, 2004 providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments.

**IN WITNESS WHEREOF** the undersigned, being duly authorised thereto by their respective Governments, have signed this Protocol.

**DONE** at London, United Kingdom this twenty third day of October, 2009 in duplicate in the English language.

For the Government of  
the Isle of Man



For the Government of  
Malta





## SECTIONS 105C TO 105O OF THE INCOME TAX ACT 1970 AS MODIFIED

(Modifications are shown in bold italic text)

**105C Power to call for documents, etc. of taxpayer**

- (1) Subject to this section, the Assessor may by notice in writing require a person-
- (a) to deliver to him such documents as are in the person's possession or power and as (in the Assessor's reasonable opinion) contain, or may contain, information relevant to-
    - (i) any liability to income tax to which the person is or may be subject, or
    - (ii) the amount of any such liability;
  - (b) to furnish to him such particulars as the Assessor may reasonably require as being relevant to, or to the amount of, any such liability; or
  - (c) to furnish to him such evidence as the Assessor may reasonably require as being relevant to the person's residence status for the purposes of this Act.
- (2) Before a notice is given to a person by the Assessor under this section, the person must have been given a reasonable opportunity to deliver the documents in question, or to furnish the particulars in question.
- (3) When the Assessor gives a notice under subsection (1), he shall also give to the person to whom the notice applies a written summary of his reasons for the giving of the notice.
- (4) Subsection (3) does not require the disclosure of any information which would, or might, identify any person who has provided the Assessor with any information which he took into account in deciding whether to give the notice.
- (5) A notice under subsection (1) does not oblige a person to deliver documents or furnish particulars relating to the conduct of any pending appeal *either in the Island or in Malta* by him in respect of tax.
- (6) To comply with a notice under subsection (1), copies of documents may be delivered instead of the originals; but-
- (a) the copies must be in such form as the Assessor may reasonably require; and
  - (b) if so required by the Assessor in the case of any documents specified in the requirement, the originals must be made available for inspection by the Assessor in accordance with the requirement,

and failure to comply with a requirement under this subsection counts as failure to comply with the notice.

**105D Power to call for documents relating to taxpayer**

- (1) The powers conferred by this section may be used for the purpose of enquiring into the liability to income tax of any person ('the taxpayer') in any case in which the Assessor *believes it to be necessary for the purpose of responding to a request made by Malta in accordance with the applicable arrangements*.
- (2) Subject to this section and section 105E, the Assessor may by notice in writing require any person other than the taxpayer to deliver to the Assessor or, if so required by the Assessor, to make available for inspection by the Assessor, such documents as are in his possession or power and as (in the Assessor's reasonable opinion) contain, or may contain, information relevant to-
- (a) any liability to income tax to which the taxpayer is or may be subject;
  - (b) the amount of any such liability;
  - (c) the taxpayer's residence status for the purposes of this Act.
- (3) Before a notice is given to a person by the Assessor under this section, that person must have been given a reasonable opportunity to deliver or make available the documents in question.
- (4) Subject to section 105E(8) when the Assessor gives a notice under subsection (2), he shall also give to the taxpayer concerned-

- (a) a copy of the notice; and
- (b) a written summary of his reasons for the giving of the notice.

(5) Subsection (4) does not require the disclosure of any information which would, or might, identify any person who has provided the Assessor with any information which he took into account in deciding whether to give the notice.

(6) As an alternative to delivering documents to comply with a notice under subsection (2), copies of documents may be delivered instead of the originals; but-

- (a) the copies must be in such form *and authenticated in such manner* as the Assessor may reasonably require; and
- (b) if so required by the Assessor in the case of any documents specified in the requirement, the originals must be made available for inspection by the Assessor in accordance with the requirement,

and failure to comply with a requirement under this subsection counts as failure to comply with the notice.

#### **105E Notices under s 105D: further provisions**

(1) A notice under section 105D(2) shall name the taxpayer with whose liability the Assessor is concerned unless the Assessor is satisfied-

- (a) that the notice relates to a taxpayer whose identity is not known to the Assessor or to a class of taxpayers whose individual identities are not so known;
- (b) that there are reasonable grounds for believing that the taxpayer or any of the class of taxpayers to whom the notice relates may have failed or may fail to comply with any provision of the Income Tax Acts;
- (c) that any such failure is likely to have led or to lead to serious prejudice to the proper assessment or collection of tax; and
- (d) that the information which is likely to be contained in the documents to which the notice relates is not readily available from another source.

(2) A person to whom a notice under section 105D(2) is given may, if, in accordance with subsection (1), the notice does not name the taxpayer concerned, by notice in writing given to the Assessor within 30 days after the date of the notice under that section, object to that notice on the ground that it would be onerous for him to comply with it, and if the matter is not resolved by agreement, it shall be referred to the Commissioners, who may confirm, vary or cancel that notice.

*(2A) In determining a reference under subsection (2), the Commissioners shall take account of the requirements of the applicable arrangements.*

(3) The Treasury may by order declare that information of a particular description is not to be subject to the obligation imposed by section 105C(3) or 105D(4) if it is satisfied that there are reasonable grounds for suspecting the taxpayer of fraud or disclosure of information of that description would prejudice the assessment or collection of tax.

(4) An order under subsection (3) shall not come into operation unless it is approved by Tynwald.

(5) A notice under section 105D(2), does not oblige a person to deliver or make available any document the whole of which originates more than 6 years before the date of the notice.

(6) Subsection (5) does not apply where-

- (a) the Assessor is satisfied that there is reasonable ground for believing that tax has, or may have been, lost to *the Revenue of the Island or Malta* owing to the fraud of the taxpayer; and
- (b) the notice is so expressed as to exclude the restrictions of that subsection.

(7) A notice under section 105D(2) in relation to a taxpayer who has died cannot be given if more than 6 years have elapsed since the death.

(8) Subject to subsection (9), if, on the application of the Assessor, 2 members of the Income Tax Commissioners panel give their written consent, the copy and summary under section 105D(4) need not be given to the taxpayer to whom they relate.

(9) Consent shall not be given under subsection (8) unless both Commissioners are satisfied that the Assessor has reasonable grounds for suspecting the taxpayer of fraud.

(10) A Commissioner who gives a consent under subsection (8) shall not be liable in damages for, or in respect of, the consent nor any act or matter done or omitted to be done in relation to the consent unless the act or matter done or omitted to be done is shown to have been in bad faith.

(11) Subsection (10) does not apply so as to prevent the award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 2001 .

(12) Where a consent has been given by the Commissioners under subsection (8), the person to whom the notice is given under section 105D(2) shall not—

- (a) inform the taxpayer, or cause or permit the taxpayer to be informed, that the notice has been given, or
- (b) disclose to any person, or cause or permit to be disclosed to any person (including the taxpayer), any information or matter which is likely to prejudice the inquiry to which the notice relates or the performance of the Assessor's functions.

(13) Subject to the defences in subsection (16), a person who fails to comply with subsection (12) is guilty of an offence and liable on summary conviction to fine not exceeding £5,000 or to custody for a term of 6 months, or to both.

(14) If an offence under subsection (13) is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in such a capacity, that person, as well as the body corporate, is guilty of the same offence and liable to be proceeded against and punished accordingly.

(15) Where the affairs of a body corporate are managed by its members or by agents, subsection (14) applies in relation to the acts and defaults of a member or an agent in connection with the functions of management as if that person were a director of the body corporate.

(16) It is a defence in proceedings for an offence under subsection (13) for the person concerned to satisfy the court —

- (a) that all reasonable precautions were taken and all due diligence was exercised to avoid the commission of the offence by the person concerned and by any person under his control, or
- (b) in the case of an offence in respect of an alleged contravention of subsection (12)(b), that the person concerned did not know or suspect that the disclosure was likely to be prejudicial to the inquiry or to the performance of the Assessor's functions.

#### **105F S 105D: auditors and tax advisers**

(1) Subject to subsection (3), a notice under section 105D(2)—

- (a) does not oblige a person who has been appointed as an auditor for the purposes of any enactment to deliver or make available documents which are his property and were created by him or on his behalf for or in connection with the performance of his functions under that enactment, and
- (b) does not oblige a tax adviser to deliver or make available documents which are his property and consist of relevant communications.

(2) In subsection (1)—

'relevant communications' means communications between the tax adviser and—

- (a) a person in relation to whose tax affairs he has been appointed, or
- (b) any other tax adviser of such a person,

the purpose of which is the giving or obtaining of advice about any of those tax affairs.

(3) Subject to subsection (4), if, in accordance with section 105E(1), a notice does not name the taxpayer concerned, subsection (1) shall not have effect in relation to any document which contains

information giving the identity or address of any taxpayer to whom the notice relates or of any person who has acted on behalf of any such person.

- (4) Subsection (1) is not disapplied by subsection (3) in the case of any document if
  - (a) the information within subsection (3) is contained in some other document, and
  - (b) either-
    - (i) that other document, or a copy of it, has been delivered to the Assessor, or
    - (ii) that other document has been inspected by the Assessor.

(5) Where subsection (1) is disapplied by subsection (3) in the case of a document, the person to whom the notice is given either shall deliver the document to the Assessor or make it available for inspection by the Assessor or shall-

- (a) deliver to the Assessor a copy (in such form *and authenticated in such manner* as the Assessor may reasonably require) of any parts of the document which contain the information within subsection (3), and
- (b) if so required by the Assessor, make available such parts of the document as contain that information for inspection by the Assessor in accordance with the requirement;

and failure to comply with any requirement under paragraph (b) above shall constitute a failure to comply with the notice.

#### **105G Ss 105C - 105F : supplementary**

(1) The persons who may be treated as 'the taxpayer' for the purposes of sections 105C to 105E include a company which has ceased to exist and an individual who has died.

- (2) In sections 105C to 105E references to documents do not include-
  - (a) personal records, or
  - (b) journalistic material, or
  - (c) items subject to legal privilege,

and references to particulars do not include particulars contained in such personal records, journalistic material or items.

(3) Subject to subsection (2), references in sections 105C to 105F to documents and particulars are to those specified or described in the notice in question; and-

- (a) the notice shall require documents to be delivered (or delivered or made available), or particulars to be furnished, within such time (which shall not be less than 30 days after the date of the notice) as may be specified in the notice; and
- (b) the person to whom they are delivered, made available or furnished may take copies of them or of extracts from them.

#### *Court orders to deliver documents, etc.*

#### **105H Orders for the delivery of taxpayer's documents**

(1) The High Court may make an order under this section if satisfied on information on oath given by the Assessor-

- (a) that a notice under section 105C(1) has not been complied with; or
- (b) that there is reasonable ground for suspecting that such a notice will not be complied with.

(2) An order under this section is an order requiring the person to whom the notice is given to-

- (a) deliver to the Assessor such documents as are in the person's possession or power and as (in the Court's opinion) contain, or may contain, information relevant to-
  - (i) any liability to income tax which the person is or may be subject, or
  - (ii) the amount of any such liability;
- (b) furnish to the Assessor such particulars as the Court may specify as being relevant to, or to the amount of, any such liability; or
- (c) furnish to the Assessor such evidence of residence as the Court may specify.

### **105I Orders for the delivery of documents relating to taxpayer**

(1) The High Court may make an order under this section if satisfied on information on oath given by the Assessor-

- (a) that a notice under section 105D(2) has not been complied with; or
- (b) that there is reasonable ground for suspecting that such a notice will not be complied with; or
- (c) that the taxpayer concerned may have failed or may fail to comply with any provision of the Income Tax Acts, and that any such failure is likely to have led or to lead to serious prejudice to the proper assessment or collection of tax.

(2) An order under this section is an order requiring the person who appears to the Court to have in his possession or power the documents specified or described in the order to deliver them to the Assessor.

### **105J Ss 105H and 105I : supplementary**

(1) An order under section 105H or 105I shall require compliance within-

- (a) 7 days after the day on which notice of the order is served on him, or
- (b) such shorter or longer period as may be specified in the order.

(2) If a person fails to comply with an order made under section 105H or 105I, he may be dealt with as if he had committed a contempt of the court.

(3) Where an order under section 105H or 105I applies to a document in electronic or magnetic form, the order shall be taken to require the person to deliver the information recorded in the document in a form in which it is visible and legible.

(4) Sections 105H or 105I do not apply to-

- (a) personal records, or
- (b) journalistic material, or
- (c) items subject to legal privilege.

### **105K Ss 105H and 105I : notices and procedures**

(1) A person is entitled-

- (a) to at least 14 days notice of the intention to apply for an order against him under section 105H or 105I, and
- (b) to appear and be heard at the hearing of the application,

unless the High Court is satisfied that this would seriously prejudice the investigation of the offence.

(2) A person who has been given notice of intention to apply for an order under section 105H or 105I shall not-

- (a) conceal, destroy, alter or dispose of any document to which the application relates, or
- (b) disclose to any person (other than his professional legal adviser or tax adviser) information or any other matter likely to prejudice the investigation of the offence to which the application relates.

(3) Subsection (2)(a) does not prevent anything being done-

- (a) with the leave of the Court,
- (b) with the written permission of the Assessor authorised for the purpose,
- (c) after the application has been dismissed or abandoned, or
- (d) after any order made on the application has been complied with.

(4) Subsection (2)(b) does not prevent a professional legal adviser from disclosing any information or other matter-

- (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or
- (b) to any person-

- (i) in contemplation of, or in connection with, legal proceedings; and
- (ii) for the purpose of those proceedings.

(5) Subsection (2)(b) does not prevent a tax adviser from disclosing any information or other matter to, or to a representative of, a client of his in connection with the giving by the adviser of tax advice to the client

(6) Subsections (4) and (5) do not apply in relation to any information or other matter which is disclosed with a view to furthering a criminal purpose.

(7) A person who fails to comply with the obligation in subsection (2)(a) or (b) may be dealt with as if he had failed to comply with an order under section 105H or 105I as the case requires.

#### **105L Falsification etc. of documents**

(1) Subject to subsections (2) to (4), a person is guilty of an offence if he intentionally falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, a document which-

- (a) he has been required by a notice under section 105C or 105D or an order under section 105H or 105I, or
- (b) he has been given an opportunity in accordance with section 105C(2) or 105D(3),

to deliver, or to deliver or make available for inspection.

(2) A person does not commit an offence under subsection (1) if he acts-

- (a) with the written permission of the Assessor authorised for the purpose; or
- (b) after the document has been delivered or, in a case within section 105C, inspected, or
- (c) after a copy has been delivered in accordance with section 105C(1) or 105D(2) and the original has been inspected.

(3) A person does not commit an offence under subsection (1)(a) if he acts after the end of the period of 2 years beginning with the date on which the notice is given or the order is made, unless before the end of that period the Assessor has notified the person in writing that the notice or order has not been complied with to his satisfaction.

(4) A person does not commit an offence under subsection (1)(b) if he acts after an application for consent to a notice being given in relation to the document has been refused.

(5) A person guilty of an offence under subsection (1) shall be liable-

- (a) on summary conviction, to a fine not exceeding £5,000;
- (b) on conviction on indictment, to custody for a term not exceeding 2 years or to a fine or to both.

#### **105M Entry with warrant to obtain material**

(1) If a Deemster is satisfied on information on oath given by the Assessor that there is reasonable ground for suspecting that-

- (a) an offence involving fraud in connection with, or in relation to, income tax is being, has been or is about to be committed; and
- (b) that evidence of it is to be found on premises specified in the information,

the Deemster may issue a warrant in writing authorising the Assessor to enter the premises, if necessary by force, at any time within 14 days from the time of issue of the warrant, and search them.

(2) An application for a warrant under this section shall not be approved under subsection (1)(b) unless there are reasonable grounds for believing that use of the procedure under section 105H or 105I (order for production of documents) might seriously prejudice the investigation.

(3) The powers conferred by a warrant under this section shall not be exercisable-

- (a) outside such times of day as may be so specified;
- (b) if the warrant so provides, otherwise than in the presence of a constable in uniform.

(4) When entering the premises under the authority of a warrant under this section the Assessor may-

- (a) take with him such other persons as appear to him to be necessary;
- (b) seize and remove any thing whatsoever found there which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of such an offence as is mentioned in subsection (1); and
- (c) search or cause to be searched any person found on the premises whom he has reasonable cause to believe to be in possession of any such things;

but no person shall be searched except by a person of the same sex.

(5) In the case of any information contained in a computer stored in any electronic form which is information that-

- (a) the Assessor has reasonable cause to believe may be required as evidence for the purposes mentioned in subsection (4)(b); and
- (b) is accessible from the premises,

the power of seizure under that subsection includes a power to require the information to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(6) Nothing in subsection (4) authorises the seizure and removal of items subject to legal privilege.

(7) Items held with the intention of furthering a criminal purpose are not subject to legal privilege.

(8) A person seeking to exercise the powers conferred by a warrant under this section or, if there is more than one person, that one of them who is in charge of the search-

- (a) if the occupier of the premises concerned is present at the time the search is to begin, shall supply a copy of the warrant endorsed with his name to the occupier;
- (b) if at that time the occupier is not present but a person who appears to the Assessor to be in charge of the premises is present, shall supply such a copy to that person; and
- (c) if neither paragraph (a) nor paragraph (b) applies, shall leave such a copy in a prominent place on the premises.

(9) Where entry to premises has been made with a warrant under this section, and the person making the entry has seized any things under the authority of the warrant, he shall endorse on or attach to the warrant a list of the things seized.

#### **105N Procedure where documents etc. are removed**

(1) A person who removes anything in the exercise of the power conferred by section 105M shall, if so requested by a person showing himself-

- (a) to be the occupier of premises from which it was removed, or
- (b) to have had custody or control of it immediately before the removal,

provide that person with a record of what has been removed.

(2) The record shall be provided within a reasonable time from the making of the request for it.

(3) Where anything that has been removed by the Assessor as mentioned in subsection (1) is of such a nature that a photograph or copy of it would be sufficient-

- (a) for use as evidence at a trial for an offence, or
- (b) for forensic examination or for investigation in connection with an offence,

it shall not be retained longer than is necessary to establish that fact and to obtain the photograph or copy.

(4) Subject to subsection (8), if a request for permission to be granted access to anything which-

- (a) has been removed, and
- (b) is retained for the purpose of investigating an offence,

is made to the Assessor by a person who had custody or control of the thing immediately before it was so removed, or by someone acting on behalf of any such person, the Assessor shall allow the person who made the request access to it under the supervision of the Assessor.

(5) Subject to subsection (8), if a request for a photograph or copy of any such thing is made to the Assessor by a person who had custody or control of the thing immediately before it was so removed, or by someone acting on behalf of any such person, the Assessor shall-

- (a) allow the person who made the request access to it under the supervision of the Assessor for the purpose of photographing it or copying it, or
- (b) photograph or copy it, or cause it to be photographed or copied.

(6) Where anything is photographed or copied under subsection (5)(b) the photograph or copy shall be supplied to the person who made the request.

(7) The photograph or copy shall be supplied within a reasonable time from the making of the request.

(8) There is no duty under this section to grant access to, or to supply a photograph or copy of, anything if the Assessor has reasonable grounds for believing that to do so would prejudice-

- (a) the investigation of an offence for the purposes of which the thing was removed;
- (b) the investigation of another offence; or
- (c) any criminal proceedings which may be brought as a result of any investigation mentioned in paragraph (a) or (b).

#### 105O Interpretation of ss 105C to 105N

In sections 105C to 105N-

*'applicable arrangements' means the arrangements for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income contained in an agreement between the Government and the Government of Malta signed in London on 23 October 2009;*

'document' means anything in which information of any description is recorded but without prejudice to the definition of that word in the Interpretation Act 1976;

*'income tax' includes any tax of Malta to which the applicable arrangements relate, and 'tax', 'liability to income tax' and 'liability' shall be construed accordingly;*

*'income tax Acts' includes the laws of Malta that relate to any tax to which the applicable arrangements relate, and 'this Act' shall be construed accordingly;*

'items subject to legal privilege' has the same meaning as in the Police Powers and Procedures Act 1998;

'journalistic material' has the same meaning as in the Police Powers and Procedures Act 1998;

*'Malta' shall be construed in accordance with the applicable arrangements;*

'personal records' has the same meaning as in the Police Powers and Procedures Act 1998;

'tax adviser' means a person who-

- (a) in the ordinary course of his business, gives, and holds himself out as giving, advice to others about their tax affairs; and
- (b) has been appointed to give such advice either by the person in relation to whose tax affairs he has been appointed or by another tax adviser of that person;

*'taxpayer' includes a person who is or may be liable to any tax to which the applicable arrangements relate.*



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**EXPLANATORY NOTE**  
*(This note is not part of the Order)*

This Order is made under section 54 of the Income Tax Act 1970. It implements arrangements negotiated between the Government of the Isle of Man and the Government of Malta for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.