

## **Nru. 94**

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21. 2. 94

### **MALTA**

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#### **KAMRA TAD-DEPUTATI**

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**ABBOZZ** ta' Ligi mressaq mill-Onorevoli John Dalli, M.P., Ministru tal-Finanzi, u moqri għall-Ewwel darba fis-Seduta ta' l-14 ta' Frar, 1994.

**ATT** biex jemenda l-Att ta' l-1993 dwar it-Taxxa fuq Dokumenti u Trasferimenti.

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**RICHARD J. CAUCHI**  
*Skrivan tal-Kamra tad-Deputati*

#### **HOUSE OF REPRESENTATIVES**

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A **BILL** introduced by the Honourable John Dalli, M.P., Minister of Finance, and read the First time at the Sitting of the 14th February, 1994.

**AN ACT** to amend the Duty on Documents and Transfers Act, 1993.

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**RICHARD J. CAUCHI**  
*Clerk to the House of Representatives*

## ABBOZZ TA' LIĠI msejjah

*ATT biex jemenda l-Att ta' l-1993 dwar it-Taxxa fuq Dokumenti u Trasferimenti.*

Il-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorita' ta' l-istess, hareġ b'ligi dan li ġej:-

1. (1) Dan l-Att jista' jissejjah l-Att ta' l-1994 li jemenda l-Att dwar it-Taxxa fuq Dokumenti u Trasferimenti u għandu jinqara u jinftehem haga waħda ma' l-Att ta' l-1993 dwar it-Taxxa fuq Dokumenti u Trasferimenti, hawnhekk iżjed 'il quddiem imsejjah "l-Att prinċipali".

Titolu fil-qosor  
u bidu fis-sehh.

(2) Dan l-Att għandu jibda jsehh f'dik id-data li l-Ministru responsabbli għall-finanzi jista' jistabbilixx b'avviż fil-Gazzetta.

2. Fis-subartikolu (3) ta l-artikolu 1 fit-test Ingliż ta' l-Att prinċipali, minflok il-kliem "*in any public deed shall be deemed*" għandu jidhol il-kliem "*in any public deed be deemed*".

Emenda ta'  
l-artikolu 1 ta'  
l-Att prinċipali.

3. Fl-artikolu 2 ta' l-Att prinċipali minnufih wara t-tifsira ta' "qorti" għandha tidhol din it-tifsira ġdida li ġejja:

Emenda ta'  
l-artikolu 2 ta' l-  
Att prinċipali.  
*Kap.123.*

"residenti f'Malta" għandha l-istess tifsira lilha mogħtija fl-artikolu 2 ta' l-Att dwar it-Taxxa fuq l-*Income*.

4. Minflok is-subartikolu (2) ta' l-artikolu 6 ta' l-Att prinċipali għandu jidhol dan li ġej:

Emenda ta'  
l-artikolu 6  
ta' l-Att prinċipali.

"(2) Għall-finijiet ta' dan l-artikolu, dokument magħmul barra minn Malta jitqies li sar użu minnu f'Malta meta jingiebu quddiem qorti, arbitru jew perit legali bħala prova jew sabiex jiġi eżegwit".

5. Minflok l-artikolu 19 ta' l-Att prinċipali għandu jidhol dan li ġej:

Sostituzzjoni ta'  
l-artikolu  
19 ta' l-Att prinċipali.

"Setgħat ta'  
uffiċjali  
pubbliċi  
awtorizzati  
biex  
jeżaminaw  
dokumenti, eċċ.

19. (1) Meta l-Kummissarju, jew uffiċjal minnu awtorizzat bil-miktub, jissuspetta li dan l-Att ma jkunx qed jiġi segwit dwar xi dokument, huwa jkollu l-jedd li jehtieg lil kull min ikollu dak id-dokument li jgħibu bil-ghan li jiġi verifikat li dan l-Att ikun qed jiġi segwit dwar dak id-dokument, u huwa jista' jeleva d-dokument jekk ikun hemm raġuni għaliex jidhirlu li d-dispożizzjonijiet ta' dan l-Att ma jkunux ġew segwiti għar-rigward ta' dak id-dokument.

(2) Meta l-Kummissarju, jew uffiċjal minnu awtorizzat bil-miktub, jissuspetta li l-attiv ikun gie sottovalutat għall-finijiet ta' kif jiġi applikat dan l-Att, sew huwa jew perit jew *surveyor* minnu awtorizzat ikollu l-jedd kollu ta' aċċess liberu f'kull bini jew imkien sakemm dak id-dhul ikun jista' jgħinu sabiex jistabbilixxi l-valur ta' l-attiv imsemmi, iżda ma jkollux setgħa jeleva xi oġġett jew iġorru 'l barra min dak il-fond.

(3) Jekk l-aċċess fxi fond imsemmi fis-subartikolu ta' qabel dan ikun jehtieg id-dhul ġewwa fond li jkun kollu kemm hu jew f'parti minnu okkupat għall-finijiet ta' abitazzjoni, dak id-dhul ma għandux isir bejn is-sebgha ta' fil-ghaxija u d-disgħa ta' filgħodu.

(4) L-eżami ta' atti nutarili għandu jsir mill-Viżitaturi li jiffurmaw il-Qorti ta' Reviżjoni ta' l-Atti Nutarili li għandhom jagħmlu rapport lill-Kummissarju dwar kull reat kontra dan l-Att li jistgħu jsibu waqt dak l-eżami:

Izda d-dispożizzjonijiet ta' dan l-artikolu ma għandhomx iwaqqfu lil kull uffiċjal bhalma hu msemmi fis-subartikolu (1) milli jispezzjona l-atti *inter vivos* fil-fond jew band'ohra ta' nutar bil-għan li jiżgura li wiehed qed jikkonforma ruhu mal-liġi.

(5) Fit-twettiq tas-setgħat mogħtija b'dan l-artikolu, kull perit jew *surveyor* imsemmi fis-subartikolu (2) ta' dan l-artikolu ma jistax jispezzjona dokument jew dokumentazzjoni ohra li tkun, u l-Kummissarju, jew kull persuna ohra minnu awtorizzata kif imsemmi qabel, ma jistax jispezzjona xi dokument jew dokumentazzjoni ohra li tkun protetta bid-dmir ta' segretezza professjonali, jew jisma' xi taħdita jew mezz ta' reġistrazzjoni li jkunu protetti bl-istess dmir. Il-Kummissarju jew dak l-uffiċjal li jiġi debitament awtorizzat minnu jista' jitlob lid-detener ta' dokument protett bis-segretezza professjonali li jikkommunikalu sommarju tad-dokument b'mod li jitnehhew referenzi għal kull tagħrif protett bis-segretezza professjonali. Jekk dak is-sommarju ma jkunx suffiċjenti biex il-Kummissarju jew l-uffiċjal li jkun gie debitament awtorizzat minnu jiddeċiedu jekk ikunux ġew segwiti d-dispożizzjonijiet kollha ta' dan l-Att għar-rigward ta' dak id-dokument, il-kwestjoni għandha tiġi riferita lill-Qorti ta' Ġurisdizzjoni Volontarja li għandha tagħmel rapport lill-Kummissarju dwar kull nuqqas li jiġi segwit dan l-Att skond ma l-Qorti tinduna bih matul dak l-eżami.

(6) Il-Kummissarju u, skond il-każ, min jiġi minnu awtorizzat, ikun marbut bid-dmir ta' segretezza professjonali dwar kull haġa li jista' jsir jaf biha waqt it-twettieq tas-setgħat tiegħu taht dan l-Att u m'għandux jikxef ir-riżultat ta' dak li jsir jaf hlief lil xi awtorita' kompetenti li jkollha x'taqsam mil-ġbir ta' xi taxxa bis-saħħa ta' dan l-Att. Dak l-uffiċjal li jikxef dak ir-riżultat ikun hati ta' reat u jehel, meta jinsab hati, multa ta' mhux inqas minn mitt lira u mhux iżjed minn elf lira, jew prigunerija għal żmien ta' mhux iżjed minn sitt xhur, jew dik il-multa u prigunerija flimkien.

*Kap 9*

(7) Bla ħsara għal kull dispożizzjoni tal-Kodiċi Kriminali, meta l-fatt jikkostitwixxi delitt sugġett għal piena oghla, kull persuna li ma thallix jew tfixxkel lill-imsemmi uffiċjal, perit jew *surveyor* fil-qadi ta' dmirijietu taht is-subartikolu (2) ta' dan l-artikolu, jew tonqos li tobdi l-ordnijiet magħmula minn dak l-uffiċjal skond id-dispożizzjonijiet ta' dan l-artikolu, tehel, meta tinsab hatja, multa ta' mhux iktar minn hamsin lira jew prigunerija għal żmien ta' mhux iżjed minn sitt xhur jew dik il-multa u prigunerija flimkien."

Emenda ta'  
l-artikolu 32  
ta' l-Att prinċipali.

6. Fis-subparagrafu (ii) tal-paragrafu (b) tas-subartikolu (4) ta' l-artikolu 32 ta' l-Att prinċipali, minflok il-kliem "għandha l-ewwel tinhadem taxxa għar-rigward taċ-ċens kapitalizzat bil-hamsin fil-mija" għandu jidhol il-kliem "għandha l-ewwel tinhadem taxxa għar-rigward taċ-ċens bil-hamsin fil-mija".

Emenda ta'  
l-artikolu 33  
ta' l-Att  
prinċipali.

7. Fis-subartikolu (1) ta' l-artikolu 33 fit-test Malti ta' l-Att prinċipali, minflok il-kliem "lilu trasferita proprjeta' *causa mortis*" għandu jidhol il-kliem "lilu trasferita proprjeta' immobbli *causa mortis*".

Emenda ta'  
l-artikolu 35  
ta' l-Att  
prinċipali.

8. L-artikolu 35 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subparagrafu (i) tas-subartikolu (2) tiegħu, minflok il-kliem "trasferit lil kull min jirċievi *causa mortis* kif ikun jirrapreżenta" għandu jidhol il-kliem "trasferit lil kull min jirċievi *causa mortis* u jkun jokkupa dik id-dar ta' abitazzjoni kif ikun jirrapreżenta";

(b) fis-subparagrafu (ii) tas-sub-artikolu (2) tiegħu, minflok il-kliem "mitt lira jew sehem minnhom ta' l-ewwel Lm20,000" għandu jidhol il-kliem "mitt lira jew parti minnhom ta' dak is-sehem trasferit lil kull min jirċievi *causa mortis* u jkun jokkupa dik id-dar ta' abitazzjoni kif ikun jirrapreżenta l-ewwel Lm20,000"; u

(ċ) fit-test Inġliż tas-subartikolu (5) tiegħu, minflok il-kliem "*which is not merely protestative*" għandu jidhol il-kliem "*which is not merely potestative*".

Emenda ta'  
l-artikolu  
42 ta' l-Att  
prinċipali

9. Minflok il-paragrafi (a) u (b) tas-subartikolu (1) ta' l-artikolu 42 ta' l-Att prinċipali għandu jidhol dan li ġej:

"(a) fuq kull dokument li bih residenti f'Malta jittrasferixxi *inter vivos* valur negozjabbli barrani:

iżda ma tithallas ebda taxxa meta dak it-trasferiment isir permezz ta' bank lokali;

(b) fuq kull dokument li bih valur negozjabbli, barra minn dawk imsemmija fil-paragrafu (a) ta' dan is-subartikolu, ikun trasferit lil jew minn persuna f'Malta:

Iżda mar-ristrutturazzjoni ta' kull kontroll li jsir b'*mergers*, *demergers*, amalgamazzjonijiet u rijorganizzazzjonijiet fil-kuntast ta' grupp ta' kumpanniji ma għandha tithallas ebda taxxa fuq:

(i) it-trasferiment li jsir minn individwu ta' azzjonijiet, li huwa jkollu f'ismu, li jagħmlu sehem minn grupp ta' kumpanniji fi skambju ta' ishma f'kumpannija jew kumpanniji li jagħmlu sehem mill-istess grupp;

(ii) l-iskambju ta' ishma minn kumpannija għall-oħra meta dawk l-ishma jkunu f'kumpanniji li jagħmlu sehem mill-istess grupp ta' kumpanniji;

(iii) it-trasferiment ta' ishma b'kumpens minn kumpanija għall-oħra, meta daww il-kumpaniji jagħmlu sehem mill-istess grupp ta' kumpaniji, u".

10. Minflok l-artikolu 45 ta' l-Att prinċipali għandu jidhol dan li ġej:

Emenda ta' l-artikolu 45 ta' l-Att prinċipali.

"Nuqqas li jkunu preżentati kitbiet, eċċ.

45. Meta xi persuna tonqos li tippreżenta lill-Kummissarju jew lill-uffiċjal imsemmi fl-artikolu 19, xi dokument sugġett għat-taxxa, jew, meta d-dokument ikun protett b'segretezza professjonali, is-sommarju tad-dokument imsemmi fis-subartikolu (4) ta' l-imsemmi artikolu 19, jitqies li t-taxxa fuq dak id-dokument ma thallsitx u l-Kummissarju jkun jista' jipproċedi għall-ġbir tat-taxxa u l-penali skond id-dispożizzjonijiet ta' dan l-Att."

11. Fit-test Inġliż ta' l-artikolu 47 ta' l-Att prinċipali, minflok il-kliem "*to which section 45 refers*" għandu jidhol il-kliem "*to which section 42 refers*".

Emenda ta' l-artikolu 47 ta' l-Att prinċipali.

12. Minnufih wara l-artikolu 47 ta' l-Att prinċipali għandu jiddid dan l-artikolu 47A ġdid li ġej:

Zieda ta' l-artikolu 47A ġdid ma' l-Att prinċipali.

"Eżenzjonijiet għal ċerti valuri negozjabbli.

47A.(1) Kull akkwist jew tnehhija għal kull raġuni li tkun ta' valuri negozjabbli mill-persuni msemmija fis-subartikoli (3) u (4) ta' dan l-artikolu għandhom ikunu eżenti mid-dispożizzjonijiet ta' dan l-Att.

(2) Kull akkwist jew tnehhija għal kull raġuni li tkun ta' valuri negozjabbli mahruġa mill-persuni msemmija fis-subartikoli (3) u (4) ta' dan l-artikolu għandhom ikunu eżenti mid-dispożizzjonijiet ta' dan l-Att.

(3) Il-persuni msemmija fis-subartikoli (1) u (2) ta' dan l-artikolu huma:

(a) skemi ta' investiment kollettiv li jkollhom liċenza ta' investiment kollettiv taht l-Att ta' l-1993 dwar Servizzi ta' Investiment;

(b) persuni li jkollhom liċenza għal servizzi ta' investiment mahruġa taht l-Att ta' l-1993 dwar Servizzi ta' Investiment, u li l-attivitajiet tagħhom jinkludu l-ghoti ta' pariri dwar it-tmexxija, amministrazzjoni, salvagwardjar jew investiment lil skemi ta' investiment kollettiv kif imfisser fl-Att imsemmi qabel;

*Kap. 123*

(c) kumpanniji internazzjonali ta' kummerċ kif imfisser fis-subartikolu (1) ta' l-artikolu 2 ta' l-Att dwar it-Taxxa fuq l-*Income*;

(d) Kumpanniji li jidhlu fl-iskop tas-subartikolu (4) ta' dan l-artikolu.

(4) Kumpannija tkun kumpannija li tidhol fil-paragrafu (d) tas-subartikolu (3) ta' dan l-artikolu jekk iktar minn nofs il-kapital azzjonarju ordinarju, jeddijiet ta' votazzjoni u jeddijiet għal profitti jinżammu minn persuni li:

(a) ma jkunux residenti f'Malta;

u

(b) ma jkollhomx bhala sidien tagħhom jew ma jkunux kontrollati direttament jew indirettament minn persuni residenti f'Malta,

u dik il-kumpannija tkun għet determinata mill-Kummissarju bhala li għandha l-biċċa l-kbira ta' l-interessi kummerċjali tagħha barra minn Malta.

(5) Għall-finijiet tas-subartikolu (4) ta' dan l-artikolu kumpannija li jkollha bhala s-sidien kollha tagħha u li tkun kontrollata direttament minn persuni li ma jkunux ordinarjament residenti jew domiciljati f'Malta għandha titqies li ma tkunx residenti f'Malta.

(6) Kumpannija tista' tapplika lill-Kummissarju, fuq dik il-formula li l-Kummissarju jipprovdi, għal determinazzjoni li tohrög mis-subartikolu (7) jew mis-subartikolu (8) ta' dan l-artikolu.

(7) Il-Kummissarju jiddetermina li kumpannija tkun tidhol fil-paragrafu (d) tas-subartikolu (3) ta' dan l-artikolu jekk, b'zieda mat-twettieq tal-htiegijiet tal-paragrafi (a) u (b) tas-subartikolu (4) ta' dan l-artikolu jew:

(a) iktar minn nofs il-profitti tal-kumpanija li jinqasmu kienu allokati fil-kont ta' qliegh barrani (fil-kuntest tat-tifsir ta' l-Att dwar it-Taxxa fuq l-*Income*) fl-ahhar sena finanzjarja shiha tal-kumpanija; jew

(b) Kull attiv miżmum mill-kumpanija jkun jinsab barra minn Malta. Ghal dan l-ghan, l-espressjoni "attiv" m'ghandhiex tinkludi attiv li jkun jinsab f'Malta li jkun qed jinżamm mill-kumpanija għall-finijiet li tiġġestixxi n-negozju tagħha.

(8) Il-Kummissarju jista', fid-diskrezzjoni tiegħu, jagħmel determinazzjoni li kumpanija tkun tidhol fil-paragrafu (d) tas-subartikolu (3) ta' dan l-artikolu jekk ikun probabbli li iktar minn nofs il-profitti tal-kumpanija li jinqasmu jigu allokati fil-kont ta' qliegh barrani fl-ewwel sena finanzjarja tal-kumpanija.

(9) Il-Kummissarju jista', għall-futur, iħassar determinazzjoni taht is-subartikolu (7) jew is-subartikolu (8) ta' dan l-Att jekk huwa jkun jidhirlu li l-kumpanija tieqaf milli tissodisfa d-dispożizzjonijiet ta' dawk is-subartikoli jew tas-subartikolu (4) ta' dan l-Att, kemm-il darba dak it-thassir ma jkollux seħħ retroattiv."

13. Dan il-proviso li ġej għandu jiżdied minnufih fi tmiem is-subartikolu (5) ta' l-artikolu 57 ta' l-Att prinċipali:

Emenda ta' l-artikolu 57 ta' l-Att prinċipali.

"Iżda hadd ma għandu, bis-saħħa ta' dan is-subartikolu, jkun obligat jikxef xi tagħrif li dwaru wiehed ikun marbut bis-sigriet professjonali."

### Għanijiet u Raġunijiet

L-ghan ta' dan l-Abbozz huwa sabiex jipprovdi għall-protezzjoni tas-sigriet professjonali għar-rigward tat-twettieq ta' ċertu setgħat ta' investigazzjoni taht l-Att ta' l-1993 dwar it-Taxxa fuq Dokumenti u Trasferimenti, biex jeżenta mit-taxxa ċertu transazzjonijiet ta' valuri, u sabiex jagħmel xi emendi oħra mixxellanji.

**A BILL  
Entitled**

*AN ACT to amend the Duty on Documents and Transfers Act, 1993.*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:

Short title and commencement

1. (1) This Act may be cited as the Duty on Documents and Transfers (Amendment) Act, 1994, and shall be read and construed as one with the Duty on Documents and Transfers Act, 1993, hereinafter referred to as "the Principal Act".

(2) This Act shall come into force on such date as the Minister responsible for finance may by notice in the Gazette appoint.

Amendment of section 1 of the Principal Act.

2. In subsection (3) of section 1 of the English text of the Principal Act, for the words "in any public deed shall be deemed" there shall be substituted the words "in any public deed be deemed".

Amendment of section 2 of the Principal Act

3. In section 2 of the Principal Act immediately after the definition of "prescribed" and before the definition of "signature" there shall be inserted the following new definition:

*Cap 123*

"Resident in Malta' has the same meaning assigned to it in section 2 of the Income Tax Act."

Substitution of sub-section (2) of section 6 of the Principal Act.

4. For sub-section (2) of section 6 of the Principal Act there shall be substituted the following :

"(2) For the purposes of this section, a document executed outside Malta is deemed to be made use of in Malta, where it is produced before a court, arbitrator or referee as evidence or for its enforcement."

5. For section 19 of the Principal Act there shall be substituted the following:

"(1) Where the Commissioner, or any officer authorised by him in writing, suspects that this Act has not been complied with in respect of a document, he shall have the power to require any person holding such document to produce it for the purposes of verifying that this Act has been complied with in respect of such document, and may seize the document if there are reasonable grounds for it to appear to him that the provisions of this Act have not been complied with in respect of that document.

(2) Where the Commissioner, or any officer authorised by him in writing, suspects that assets have been undervalued for the purposes of the application of this Act, he or any architect or surveyor authorised by him shall have full and free access to all buildings or places to the extent that such access is likely to assist him in determining the value of the said assets, but shall not have any power to seize any item or remove it from the premises.

(3) If access to any of the premises referred to in the previous subsection requires access to premises occupied in whole or in part for the purposes of habitation, such access shall not take place between seven o'clock in the evening and nine o'clock in the morning.

(4) The examination of notarial acts shall be carried out by the visitors constituting the Court of Revision of Notarial Acts who shall make a report to the Commissioner of any offence against this Act which may come to their notice during such examination;

Provided that the provisions of this subsection shall not preclude any such officer as is referred to in subsection (1) from inspecting acts *intervivos* at the premises or elsewhere of a notary for the purpose of ascertaining compliance with this Act.

(5) In the exercise of the powers under this section, any architect or surveyor referred to in subsection (2) of this section may not inspect any document or other record whatsoever, and the Commissioner, or any person authorised by him as aforesaid, may not inspect any document, or other record which is protected by the duty of professional secrecy, or listen to any conversation or recording device which is protected by the same duty. The Commissioner or his duly authorised officer may require the holder of a document protected by professional secrecy to communicate to him an abstract of the document so as to remove references to any information protected by professional secrecy. If such abstract does not enable the Commissioner or his duly authorised officer to decide whether all the provisions of this Act have been complied with in respect of such document, the matter shall be referred to the competent Court of Voluntary Jurisdiction which shall make a report to the Commissioner of any failure to comply with this Act which comes to its notice during such examination.

(6) The Commissioner and, as the case may be, the person authorised by him, shall be bound by the duty of professional secrecy in respect of anything which may come to his knowledge in the course of the exercise of his powers under this Act and shall not disclose the result thereof except to any authority competent in relation to the collection of duty under this Act. Any such officer who otherwise discloses such result shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not less than one hundred liri and not more than one thousand liri, or to imprisonment for a period not exceeding six months, or to both such fine (*multa*) and imprisonment".

*Cap 9*

(7) Saving any provision of the Criminal Code, where the fact constitutes a crime liable to a higher punishment, any person who prevents or obstructs the said officer, architect or surveyor in the execution of his duties under subsection (2) of this section, or refuses to comply with any request made by such officer in accordance with the provisions of this section, shall, on conviction be liable to a fine (*multa*) not exceeding Lm50 (fifty Maltese liri) or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Amendment of section 32  
of the Principal Act.

6. In subparagraph (ii) of paragraph (b) of subsection (4) of section 32 of the Principal Act, for the words "there shall be first calculated a duty in respect of the ground-rent capitalised at fifty per centum" there shall be substituted the words "there shall be first calculated a duty in respect of the ground-rent at fifty per centum".

7. In subsection (1) of section 33 of the Maltese text of the Principal Act, for the words "lilu trasferita proprjeta' *causa mortis*" there shall be substituted the words "lilu trasferita proprjeta' *immobbli causa mortis*".

Amendment of section 33 of the Principal Act.

8. Section 35 of the principle Act shall be amended as follows:

Amendment of section 35 of the Principal Act

(a) in subparagraph (i) of subsection (2) thereof, for the words "transferred to each transferee *causa mortis* as represents" there shall be substituted the words "transferred to each transferee *causa mortis* occupying such dwelling house as represents";

(b) in subparagraph (ii) of subsection (2) thereof, for the words "one hundred liri or part thereof of the first Lm20,000", there shall be substituted the words "one hundred liri or part thereof in respect of such share transferred to each transferee *causa mortis* occupying such dwelling house as represents the first Lm20,000": and

(c) in the English text of subsection (5) thereof, for the words "which is not merely protestative" there shall be substituted the words "which is not merely potestative".

9. For paragraphs (a) and (b) of sub-section (1) of section 42 of the Principal Act there shall be substituted the following:

Amendment of section 42 of the Principal Act

"(a) on every document whereby a resident of Malta transfers *inter vivos* a foreign marketable security:

Provided that no duty shall be chargeable where such transfer is effected through a local bank.

(b) on every document whereby a marketable security other than those mentioned in paragraph (a) hereof is transferred to or by any person in Malta:

Provided that upon any restructuring of holdings through mergers, demergers, amalgamations and reorganisations within a group of companies, no duty shall be chargeable on:

(i) the transfer by an individual of any shares, held in his own name, forming part of a group of companies in exchange of shares in a company or companies forming part of the same group;

(ii) the exchange of shares from one company to another where such shares are in companies forming part of the same group of companies;

(iii) the transfer of shares for consideration from one company to another, where such companies form part of the same group of companies."

Amendment of section 45 of the Principal Act

**10.** For section 45 of the Principal Act there shall be substituted the following:

"Where any person fails to produce to the Commissioner, or to the officer referred to in section 19 of this Act, any document chargeable with duty, or, where the document is protected by professional secrecy, the abstract of the document referred to in subsection (4) of the said section 19, it shall be presumed that duty on such document has not been paid and it shall then be lawful for the Commissioner to proceed with the collection of duty and penalty in accordance with this Act."

Amendment of section 47 of the Principal Act

**11.** "In the English text of section 47 of the Principal Act, for the words "to which section 45 refers" there shall be substituted the words "to which section 42 refers."

Insertion of new section 47A in the Principal Act

**12.** After section 47 and before section 48 of the Principal Act a new section 47A shall be inserted as follows:

"Exemptions for certain marketable securities.

47A (1) Acquisitions or disposals for any reason whatsoever of marketable securities by the persons defined in subsections (3) and (4) of this section shall be exempt from the provisions of this Act.

(2) Acquisitions or disposals for any reason whatsoever of marketable securities issued by the persons defined in subsections (3) and (4) of this section shall be exempt from the provisions of this Act.

(3) The persons referred to in subsections (1) and (2) of this section are:

(a) collective investment schemes holding a collective investment scheme licence under the Investment Services Act, 1993;

(b) persons holding an investment services licence issued under the Investment Services Act, 1993, and whose activities comprise the provision of management, administration, safekeeping, or investment advice to collective investment schemes as defined in the aforesaid Act;

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(c) international trading companies as defined in subsection (1) of section 2 of the Income Tax Act,

(d) companies falling within the scope of subsection (4) of this section.

(4) A company is a company falling within paragraph (d) of subsection (3) of this section if more than half the ordinary share capital, voting rights and rights to profits are held by persons who:

(a) are not resident in Malta; and

(b) are not owned or controlled directly or indirectly by persons resident in Malta,

and such company has been determined by the Commissioner as having the majority of its business interests outside Malta.

(5) For the purposes of subsection (4) of this section, a company which is wholly owned and controlled directly by persons who are not ordinarily resident or domiciled in Malta shall be deemed to be not resident in Malta.

(6) A company may apply to the Commissioner, on such form as the Commissioner shall provide, for a determination pursuant to subsection (7) or subsection (8) of this section.

(7) The Commissioner shall determine that a company falls within paragraph (d) of subsection (3) of this section if, in addition to satisfying the requirements of paragraphs (a) and (b) of subsection (4) of this section either:

(a) more than half of the distributable profits of the company were allocated to the foreign income account (within the meaning of the Income Tax Act) in the last complete financial year of the company; or

(b) all of the assets held by the company are situated outside Malta. For this purpose, the term "assets" shall not include any assets in Malta held by the company for the purposes of carrying on its business.

(8) The Commissioner may, in his discretion, make a determination that a company falls within paragraph (d) of subsection (3) of this section if it is likely that more than half of the distributable profits of the company will be allocated to the foreign income account in the first financial year of the company.

(9) The Commissioner may, for the future, cancel a determination under subsection (7) or subsection (8) of this Act if it appears to him that the company ceases to satisfy the provisions of those subsections or of subsection (4) of this Act, provided that such cancellation shall not have retroactive effect".

Amendment of  
section 57 of  
the Principal Act

**13.** The following proviso shall be added at the end of subsection (5) of section 57 of the Principal Act

"Provided that no person shall, by virtue of this subsection, be obliged to disclose information in respect of which the first person is under the duty of professional secrecy."

### **Objects and Reasons**

The object of this Bill is to make provision for the protection of professional secrecy in relation to the exercise of certain powers of investigation under the Duty on Documents and Transfers Act, 1993, to exempt from duty certain transactions in securities, and to make other miscellaneous amendments.