

Recent amendments to the tax framework concerning powers of the Commissioner for Revenue

Act No. VIII of 2021 - Various Revenue Acts (Amendment) Act



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Various Revenue Acts (Amendment) Act

The Various Revenue Acts (Amendment) Act came into force on **12th March 2021** and the main aim of the amendments to the Revenue Acts, particularly to the Income Tax Management Act, were introduced in order to strengthen the powers of the Commissioner for Revenue in the fight against tax evasion by giving him more powers of investigation and allowing for the sharing of information between entities fighting financial crime in line with recommendations made by the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism.

Art.4 of ITMA; Art.56 of VATA; Art.19 of DDTA

Official Secrecy Provisions:

- Waiving of official secrecy will now be vested in the Commissioner for Revenue not the Prime Minister. This amendment was made with the aim to remove any perceived political involvement and should facilitate the sharing of information with other entities fighting financial crime.

Relevant Provisions

- This amendment also introduced the concept of a ‘relevant offence’ which is defined as being: *‘an offence not being one of an involuntary nature, consisting of any act or omission which if committed in Malta, or in corresponding circumstances, would constitute an offence liable to the punishment of imprisonment or of detention for a term of one (1) year or more.’*;
- Following the said amendment any information requested in the course of an investigation and / or prosecution of a relevant offence is to be forwarded by this Office without the need to waive official secrecy.

Article 14 of ITMA

- Where there is reasonable suspicion that tax has been or may have been evaded the Commissioner may request information directly from designated persons (banks / trusts / notaries / advocates etc.) and the obligation to inform taxpayers when designated persons are contacted has been removed;
- The period to submit information by third parties has been reduced from 30 days to 15 days;
- The aim of this amendment is to enable this Office to carry out a preliminary investigation and be in a better position to determine (based on information received) whether a particular case should be investigated at an administrative level or forwarded to the police for criminal investigation.

Article 20 of ITMA

- A new proviso to Article 20(5) of ITMA was introduced and CfR may now, in the exercise of his powers in terms of Article 20 of ITMA, request the assistance of the police who may exercise any powers vested in them at law.

Article 54 of ITMA

- This amendment strengthened the existing provision in that once criminal proceedings are concluded, the tax due would automatically constitute an executive title in terms of Article 40 of the ITMA and the Commissioner may proceed with the collection of such dues;
- Any evaded tax remains due and collectable;

Article 56 of ITMA

- Any offences in terms of the Revenue Acts may be prosecuted only with the sanction of the Commissioner for Revenue. Through the new amendment, the Commissioner will retain the same power but he may not withhold such sanction unless there are reasonable grounds to do so.

Other Amendments:

Article 33 of ITA

- An amendment to the provision dealing with withholding of tax by payors (banks, stockbrokers, financial intermediaries) under the investment income provisions and the remission of the said tax to the Commissioner, together with the relevant details of the investor.
- Through the new amendment, a penalty up to a maximum of €23,000 may be imposed by a Court of law upon conviction of said offence;

Article 34 of ITA

- A similar amendment to the preceding one. Where a payor is not obliged to withhold tax but is obliged to furnish the investor's details to the Commissioner for verification of the investor's declaration in the tax return.
- When the payor fails to submit the information in terms of law a penalty up to the maximum of €23,000 may be imposed by a Court of law on conviction of said offence;

Article 17 of ITMA

- Article 17 of the ITMA dealing with ‘Professional Secrecy’ was deleted through the Budget Measures Implementation Act, 2021 [Act XVIII of 2021].
- The said article prohibited CfR from requesting information about third parties from banks; insurance companies in respect of life assurance; persons licensed to carry out investment business; collective investment schemes and stockbrokers licensed under the MSE.

Questions?

Thank you.

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