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## Tax Update

# Act to implement Budget Measures for 2009

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### General

Act II of 2009 was published in the Government Gazette of the 4th March 2009. This Act implements the measures announced in the Budget Speech for the financial year 2009. It also introduces new provisions that were not announced in the Budget Speech.

This Tax Update provides a brief explanation of the changes to the tax rules brought about by this Act.

### Tax Bands

With effect from 1st January 2009, the tax bands for married couples and single persons (including married persons opting for a separate computation) have been revised as announced in the Budget Speech, as follows:

SINGLE PERSON (Including separate computation)			MARRIED COUPLE (Joint computation)		
From (€)	To (€)	Rate (%)	From (€)	To (€)	Rate (%)
0	8,500	0	0	11,900	0
8,501	14,500	15	11,901	21,200	15
14,501	19,500	25	21,201	28,700	25
19,501	+	35	28,701	+	35

### Tax Deductions for childcare fees

The tax deduction that a person may claim in respect of childcare services has now been increased to the lower of the actual fees or €1,000 (was €935). This measure is with effect from the basis year 2008.

## **Tax deduction for sports fees**

The tax deduction of the lower of the actual sports related fees or €100 in respect of every child attending sports activities organized by the Kunsill Malti għall-Isport has now been extended to sports activities organized by persons registered under the Sport Persons (Registration) Regulations of 2008, provided that such information is also confirmed through the Kunsill Malti għall-Isport in such format and content as determined by the Commissioner of Inland Revenue. This measure is with effect from the basis year 2008.

## **Income tax on persons hosting students**

Through Legal Notice 57 of 2009, the tax deduction allowable to persons deriving income from the hosting of students has been increased from €2,330 to €3,500 per year with effect from 1st January 2009. Such persons are also allowed an additional tax deduction amounting to 65% of the amount derived by deducting €3,500 from the gross revenues received.

## **Incorporation of a business or partnership into a company**

The Income Tax Act already provided for a tax exemption on the transfer of assets (normally immovable property) where a business or partnership en nom collectif is incorporated into a company that is owned, to the extent of not less than 75%, by the same person who owned the business or the partnership en nom collectif.

This tax exemption has been retained but the following conditions and clarifications have been introduced:

- (i) The tax exemption only applies where the business or partnership en nom collectif transfers the business as a going concern together with the whole or practically the whole of the assets in exchange for shares issued by the company to the person transferring the business;
- (ii) If the company subsequently sells the assets, their cost and date of acquisition will be deemed to be the cost and date of acquisition when the assets were acquired before the exempt transfer took place;
- (iii) If the shares in the company that acquired the assets are subsequently transferred, their cost of acquisition would be reduced by the gain that would have been chargeable to tax, had the transfer of the assets not been exempt from tax. This would result in an effective claw back of the gain previously exempted;
- (iv) The tax exemption does not apply if the business is disposed of or ceases to exist within a period of two years from when the business is transferred to the company.

## **Roll over tax relief**

The Income Tax Act exempts from tax, under a system commonly called 'roll over tax relief', the transfer of property that has been used by a business for at least three years and replaced within one year by a property used solely for a similar purpose in the business.

This exemption has been retained but an anti-abuse provision has been introduced by virtue of which, if the replacement property is sold by the business within two years of its acquisition, the tax exemption on the transfer of the original property would not apply.

### **Tax chargeable on companies ceasing to be members of a group of companies**

Immovable property forming part of the capital assets of a company may be transferred to another company forming part of the same group of companies without any tax consequences.

Whilst this intra-group tax exemption has been retained, an anti-abuse provision has now been introduced by virtue of which, if the company that acquired the immovable property changes its shareholding such that it does not continue to qualify as a member of the same group of companies of the transferor company, and such change takes place within five years from the exempt property transfer, tax will become payable by the company that acquired the property at the rate of 12% of the value of the property at the time of the intra-group transfer.

### **Interest rates on amounts due to or from the Inland Revenue Department**

Interest due to the Inland Revenue Department on unpaid tax or due from the Department on refunds not made within the prescribed dates will, as from 1st January 2009, be subject to an interest rate of point seven five percent (0.75%) per month or part thereof instead of one percent (1%). Moreover, the amount of interest due to or from the Department has, with effect from 1st January 2009, been capped at the amount of tax due to or from the Department.

### **Transfer duty on property inherited by persons with disabilities**

Persons with disabilities who are so registered with the National Commission for Persons with Disability (NCPD) and who inherit a dwelling house from their parent or legal guardian, where such dwelling house is both their ordinary residence as well as that of their parent or legal guardian are now exempt from the duty otherwise payable on the causa mortis transfer of the property to them. However, if an inter vivos

transfer of the property is made by the transferee within a period of ten years from the date of the causa mortis transfer, the duty which would have been payable at the time of the causa mortis transfer will become due at the time of the said inter vivos transfer. This exemption applies to transfers causa mortis happening on or after 1st January 2009.

Should you have any queries on the above, please feel free to contact me.

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