

Legislation Regulating Employment in Malta



PREFACE

These notes contain a summary of statutory provisions relevant to employment in Malta, and are meant to provide an easy access to rules contained in various laws and regulations as in force in September 2000.

They are primarily addressed to employers, and include general information on the main compliance requirements and on industrial relations. They are not a technical manual and advice should be sought before definite actions are taken in specific situations.

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Contents

| | |
|--|----|
| Introduction..... | 1 |
| I The Contract of Service..... | 2 |
| II The Conditions of Employment..... | 3 |
| III Statutory Conditions of General Application | 4 |
| IV Statutory Conditions of Specific Application..... | 8 |
| V Industrial Relations | 9 |
| VI Income Tax..... | 10 |
| VII Taxation of Spouses' Employment Income | 11 |
| VIII Taxation of Income from Overseas Employment | 12 |
| IX Taxation of Income from Part-time Work..... | 13 |
| X The Final Settlement System | 14 |
| XI Employment of Expatriates | 18 |
| XII Social Security | 20 |

Introduction

Rules regulating, directly or indirectly, employment in Malta are contained in various laws.

The Conditions of Employment (Regulation) Act (Chap. 135) lays down the minimum rights that must be granted to employees in their contract of service. It also enables Wages Councils to lay down, through subsidiary legislation, minimum conditions regulating employment in various specific categories.

The Industrial Relations Act (Chap. 266) protects trade union membership and activities, including strike action. It also sets up an Industrial Tribunal with jurisdiction to deliver awards in industrial disputes referred to it and in cases of unfair dismissals.

The Employment and Training Services Act (Chap. 343) regulates, principally, the registration of persons in employment and of persons seeking employment, and the monitoring of employment opportunities and of training programmes. These functions are performed by the Employment and Training Corporation, which acts as an agent of the Director of Labour.

The Social Security Act (Chap. 318), the Income Tax Acts, the Constitution and other laws and subsidiary legislation, also contain provisions relevant to employment.

These notes outline the more important rules with a view to giving a guide to the various aspects of labour law in Malta as in force on 30 September 2000.

I The Contract of Service

- 101 A contract of employment may be oral or written. A written contract must, as a minimum, contain:-
- the particulars of the employer and of the employee;
 - the normal and overtime rates of pay, and the intervals at which the payment of wages falls due;
 - the normal hours of work and the paid holidays, vacation and sick leave, and other leave entitlements;
 - the conditions under which fines may be imposed by the employer;
 - any other special conditions.
- In the case of outworkers, however, it is sufficient for the contract to indicate the particulars of the employer and of the employee and the rate of pay.
- 102 If the contract is not drawn up in writing, the above details must nonetheless be given in writing by the employer to the employee within 6 days from the commencement of the employment. This particular rule does not apply to senior employees, viz. those engaged in technical, executive, administrative or managerial posts. Nor does it apply to private domestic workers.
- 103 A person may be engaged for a definite or for an indefinite period of time.
- 104 The date of the commencement of a contract of employment and the date of an eventual termination of the employment must be notified by the employer to the Employment and Training Corporation on the engagement form and the termination form respectively. The employer must submit to the Corporation a list of all his employees as on the 31st December of each year by not later than the end of the following January.
- 105 Every person in gainful occupation, whether in employment or self-employment, or seeking gainful occupation, must have an Employment Card issued by the Corporation and must carry it on his person at all times during working hours.
- 106 A work permit is required in terms of the Immigration Act (Chap. 217) for the employment of individuals who are not citizens of Malta. An application for a work permit must be made by the employer to the Expatriates Division of the Office of the Prime Minister before the commencement of the employment. The employer may be required to show that the services required cannot be performed by available Maltese citizens.
- 107 The employment of a foreigner will entail certain responsibilities under the Income Tax Act which are mentioned in Part VI below.

II The Conditions of Employment

- 201 The law prescribes a number of "recognised" minimum conditions of employment. There is a set of statutory conditions which is of general application. There are other statutory conditions which are applicable to employees within specified industrial categories. Unless the contract of employment entitles the employee to better conditions, the statutory conditions will form part of his contractual relations with the employer. The statutory conditions are not binding if the employee is the employer's spouse or the employer's unmarried child.
- 202 The statutory conditions of general application are laid down in the Conditions of Employment (Regulation) Act (Chap. 135) (CERA) and in rules made under that law in the form of National Standard Orders.
- 203 The statutory conditions applicable to employees engaged in specified industry sectors are prescribed by means of Wage Regulation Orders which are drawn up by Wage Regulation Councils and published in the Government Gazette. Specific conditions may also be contained in an industrial agreement, or determined by a joint industrial council or in an award or settlement made in conformity with the Industrial Relations Act.

III Statutory Conditions of General Application

Minimum Wage

- 301 The minimum wage for whole time employees, exclusive of bonuses and any other allowances, is (as on January 1 2000) Lm48.38 per week for persons aged 18 and over, Lm45.47 per week for persons aged 17, and Lm44.25 per week for persons under 17 years. Part-time employees are entitled to an hourly rate not below 1/40 of the minimum weekly wage.

Cost of Living Increases

- 302 Cost of living increases are determined each year by means of a National Standard Order generally applicable to all employees.

Bonuses

- 303 Every whole-time employee who is employed with the same employer for more than 30 days in a particular year is entitled to bonuses amounting to Lm220 per annum. Where the employee is not employed for a full year the amount due is reduced proportionately.

- 304 The bonuses are payable as follows: Lm58 in June and in December; Lm52 in March and in September.

Payment of Wages

- 305 Wages must be paid in cash or by means of a cheque drawn on a bank in Malta. They must be paid at regular intervals of one week or one fortnight or one month, unless otherwise agreed.

- 306 Except with the concurrence of the employee, or in virtue of a court order, wages must be paid directly to the employee. The employer may not impose any conditions on how the wages are to be employed. Nor may he make any deductions from wages except where allowed by statute, or in accordance with a court order or with an industrial agreement. Fines may only be imposed in terms of a written contract of service approved by the Director of Labour and constantly kept to the notice of the employees concerned.

- 307 Wages may be attached by the employee's creditors only up to a maximum of Lm100 per month. This maximum may be increased in actions for maintenance. Employees have a privileged claim against their employer for wages due which ranks above all other debts, but this privilege is limited to Lm200 per employee.

Vacation Leave and Paid Holidays

- 308 The minimum annual vacation leave with full pay of every whole-time employee is four working weeks and four days each year.
- 309 Whole-time employees are entitled to the prescribed national holidays and public holidays with full pay. There are 5 national holidays and 9 public holidays (1st January, 10th February, 19th March, 31st March, 1st May, 7th June, 29th June, 15th August, 8th September, 21st September, 8th December, 13th December, 25th December and Good Friday). If, in a particular year, one or more national or public holidays fall on a Saturday or a Sunday, the vacation leave entitlement for that year is increased accordingly.

Maximum Hours of Work

- 310 Every whole-time employee must have at least one day of rest in every week.

Maternity Leave

- 311 Every whole-time female employee is entitled to maternity leave. If a three weeks' notice is given, maternity leave commences not earlier than the eighth month of pregnancy. In the absence of such a notice, it commences on the day of confinement. It ends on the expiration of five weeks after confinement. Full pay is due during maternity leave for a maximum of 13 weeks.
- 312 A further 5 weeks absence may be availed of on medical grounds. This further period is, to the extent that it cannot be covered by sick leave entitlement, leave without pay.
- 313 The employee is bound to resume work after such leave and absence and to continue in employment for at least 6 months. Otherwise, wages received during maternity leave will be refundable.

Probationary Period

- 314 The first 3 months of every employment is considered as a probationary period. A longer period may be agreed upon only in terms of an industrial agreement, in which case it cannot exceed 6 months, or in the employment of a senior employee (viz. in a technical, executive, administrative or managerial post), in which case it cannot exceed 12 months.

Termination of Employment

- 315 During the probationary period the contract may be terminated by either party without any reason being assigned, but if the employee has been in employment for more than one month, a one week's notice must be given by the party terminating the contract.
- 316 After the expiration of the probationary period, a contract of employment for an indefinite period may be terminated as follows:

By the Employer:

- (a) on grounds of redundancy, in which case he must give a notice of termination; or
- (b) upon receiving a notice of termination from the employee; or
- (c) for a good and sufficient cause.

By the Employee:

- (a) without assigning any reason, in which case he must give a notice of termination to the employer; or
- (b) upon receiving a notice of termination from the employer; or
- (c) for a good and sufficient cause.

317 An employer may not dismiss an employee during her maternity leave or any subsequent certified 5 weeks absence. Nor may he dismiss the employee during any period in which the employee is unable to attend work because of an industrial injury or an occupational disease. If such incapacity lasts for more than 12 months the employer may terminate the contract but the employee will be entitled to reinstatement when he is again fit for work.

318 A dismissal on grounds of redundancy must, except in the case of relatives of the employer, be made on a last-in-first-out basis with respect to the class of employment affected by the redundancy. An employee who is made redundant is entitled to re-employment if his former post becomes available again within one year.

Notice of termination

319 When a notice of termination is due to be given by either party the notice period depends on the time for which the employee has been employed with the employer as follows :-

| | Notice period |
|--------------------|----------------------|
| 1 month to 1 year | 1 week |
| 1 year to 2 years | 2 weeks |
| 2 years to 5 years | 4 weeks |
| over 5 years | 8 weeks |

320 An employee who receives a notice of termination may terminate the contract during the notice period and demand the payment of one half the wages otherwise due for the unexpired period. An employer who receives a notice of termination from the employee may terminate the contract during the notice period but he must pay the full wages due for the unexpired period.

321 A party who terminates the contract without giving a notice or before the expiration of the notice period must, if he was bound to give a notice, pay to the other party compensation for the unexpired period. When compensation is due by the employee the amount payable is one half the wages otherwise due to him for the unexpired period, while compensation due by the employer is the whole sum otherwise due as wages for the unexpired period.

Good and Sufficient Cause

322 A contract of employment may be terminated without notice if there exists a good and sufficient cause. Certain events may not be set up by the employer as warranting the termination of the contract, namely:

- the membership of the employee in a trade union;
- the marriage or pregnancy of the employee;
- inability of the employee to attend work due to a prescribed contagious disease;
- loss of confidence in the employee (except in the case of a private domestic worker).
- on grounds which would render the dismissal "unfair" in terms of the Industrial Relations Act (para. 503).

323 Otherwise, what constitutes a good and sufficient cause is a matter to be decided by the court or tribunal. In a case brought forward by a dismissed employee and based on a claim of "unfair dismissal" , the Industrial Tribunal established under the Industrial Relations Act has exclusive jurisdiction. The Tribunal would take into account all the circumstances of the case including the particular duties and degree of responsibility attached to the employment in question. It would usually accept a cause as justifying dismissal only if it is of exceptional gravity and would examine whether the employee had been adequately forewarned.

324 Where the Tribunal finds for the employee it has the discretion to order his reinstatement or to award compensation. In the case of an unfair dismissal from a managerial or executive post to which special trust was attached, the Tribunal may only award compensation.

Contracts for a Specified Time

- 325 A party who terminates prematurely a contract for a specified time is bound, unless the termination is made for a good and sufficient cause, to pay to the other party an amount equivalent to one half the remuneration otherwise payable for the unexpired period.
- 326 When an employee is retained in employment after the expiration of the specified time, or is re-employed within 1 year, the conditions must not be less favourable than those which would have been applicable had the original contract been one for an indefinite time.

IV Statutory Conditions of Specific Application

Wage Regulation Orders

401 Minimum conditions of employment may be laid down, in addition to the conditions of general application, by means of Wage Regulation Orders published in the Government Gazette in respect of personnel employed in specified categories of industry. An Order is made following recommendations of the respective Wage Regulation Council, a body representing the interests of the employers and of the employees in that particular industry. There are at present twenty-seven Orders in force.

402 A Wage Regulation Order would normally lay down the rates of pay, overtime rates, shift and other allowances, number of working hours per week, hours of daily rest, holidays, vacation leave, sick and injury leave, special leave and other minimum entitlements. The following are some of the more typical conditions:

Overtime rates: one and a half times the normal rate on working days; twice the normal rate on Sundays and holidays.

Hours per week: forty; in the case of watchmen, fifty-two.

Certified sick leave (after a minimum period of service): twelve days per annum on full pay, and a further twelve days per annum on half pay, subject to the condition that any sickness benefit under the Social Security Act will be deducted.

Leave for injury on duty: one year on full pay, subject, again, to the condition that any injury benefit under the Social Security Act will be deducted.

Collective Agreements, Voluntary Settlements and Awards

403 Specific conditions may be agreed upon in a collective agreement or in a voluntary settlement of an industrial dispute. If the agreement or settlement is made in terms of the Industrial Relations Act, the conditions will have the force of law.

404 Where a dispute is referred to and decided by the Industrial Tribunal, the award may lay down specific conditions and these will constitute recognised conditions of employment for the category of employees involved.

V Industrial Relations

- 501 The Industrial Relations Act regulates the formation and registration of trade unions and employers' associations, and grants immunities from actions in tort and quasi-tort in respect of acts done in contemplation or furtherance of a trade dispute. Certain immunities from criminal prosecution are also granted provided no violence is used or threatened. The right of association in a trade union or an employers' association is also protected by the Constitution.
- 502 A trade dispute is defined as a dispute between employers and employees, or among employees, which is connected with the contractual or physical conditions of employment, the engagement of employees or the termination of an employment, discipline, the recognition of trade union representation and other related matters.
- 503 The Industrial Relations Act defines a dismissal of an employee as unfair if it is discriminatory. A dismissal would also be considered unfair if the cause of the dismissal is an act done by the employee in pursuance of a directive issued by a trade union in contemplation or in furtherance of a trade dispute. This, however, does not apply to employees under a contract of service for a definite time or during the probationary period of any employment. Nor does it apply to acts in breach of an agreement or award which is still binding.
- 504 The Industrial Relations Act, moreover, lays down rules for the voluntary settlement of disputes through mediation or conciliation and for the compulsory settlement through a reference to the Industrial Tribunal. A reference to the Industrial Tribunal may be made either at the request of one of the parties following the breakdown of negotiations for an amicable settlement or at the joint request of both parties.
- 505 An amicable settlement of a dispute or an award of the Tribunal, as well as a collective agreement, will form an implied term in the relative contracts of employment. No party may unilaterally seek to revoke or amend the terms of such a settlement, award or agreement before the expiration of one year.

VI Income Tax

601 Income tax in Malta is charged on income and on capital gains. Persons who are ordinarily resident and domiciled in Malta are taxable on a world-wide basis. Persons who are either not ordinarily resident or not domiciled in Malta are subject to tax on income and capital gains arising in Malta and, if they are resident in Malta, on income (but not capital gains) arising outside Malta and received in Malta. Non-residents are taxable only on income arising in Malta, saving certain exemptions envisaged in the Income Tax Acts and the provisions of double taxation relief agreements.

602 A person is treated as a resident for any year if he is present in Malta with the intention of establishing his residence there or if he stays in Malta for more than six months during that year. A person who is ordinarily resident in Malta will be treated as resident even for any year during which he may be temporarily absent from Malta. A company is resident in Malta if it is constituted under Maltese law or if it is managed and controlled in Malta.

603 Employment income is deemed to arise in Malta if it is paid for services performed in Malta. Employment income includes the value of free board and lodging and of any other benefits received by the employee in consideration for his services. Where the employer undertakes to pay the employee's tax and pays the remuneration net of tax, the tax is computed not by reference to the net wages but by reference to the grossed up amount.

604 The standard rates of tax for individuals are:

| | Resident individuals | | | | Non-resident individuals | |
|---------------|----------------------|----|---------|----|--------------------------|----|
| | Married | | Single | | Lm | % |
| | Lm | % | Lm | % | | |
| First | 4000.00 | 0 | 3000.00 | 0 | 300.00 | 0 |
| Next | 1500.00 | 15 | 1000.00 | 15 | 1500.00 | 20 |
| Next | 2000.00 | 25 | 2000.00 | 25 | 1500.00 | 30 |
| Excess | | 35 | | 35 | | 35 |

605 The 'single' rates apply to unmarried individuals, widows and widowers, separated couples and couples who opt for the separate computation of the tax on their income.

VII Taxation of Spouses' Employment Income

- 701 Married couples living together have one registration number and their income must be declared jointly in one return. The spouses may decide who of them is the "responsible spouse" for income tax purposes. A return signed by the responsible spouse is deemed to be signed on behalf of both spouses. When the spouses do not elect the responsible spouse, the Commissioner of Inland Revenue will make the election in his discretion. The tax on the spouses' income is assessed in one assessment and the total tax becomes a joint and several liability of both spouses.
- 702 Married couples may opt for a separate tax computation in which case the single rates of tax will apply to each spouse's income. But even in such a case their income will still be reported in the same return under one registration number and their tax liability will still be assessed in one assessment as a total amount. They remain jointly and severally liable for the tax due on their income.
- 703 In a separate computation earned income is treated as the income of the spouse actually receiving it whereas all other income and capital gains are treated as belonging to the spouse having the higher earned income. "Earned income" is here used to denote income from a trade, business, profession or vocation, income from an employment or office (but excluding directors' fees) and a pension for past employment.
- 704 The tax on income derived before marriage is a liability of the spouses separately. For the year during which the spouses get married two returns have to be filed. One return will contain the income derived by the spouses during marriage as well as the income derived by the responsible spouse before marriage. The income reported in this return will be subject to the rules referred to above. The other return will contain the income derived by the other spouse prior to the date of marriage - this income is taxed separately under that spouse's registration number at the single rates.

VIII Taxation of Income from Overseas Employment

801 Emoluments derived by a resident of Malta under a contract of employment requiring the performance of work wholly or mainly outside Malta qualify for special rates of tax as follows:

| In the case of | Tax per annum |
|---|----------------------|
| an unskilled worker | Lm300 |
| a skilled worker | Lm450 |
| a technician | Lm500 |
| an individual rendering managerial or professional services | Lm1,000 |

802 When a person is employed overseas for only a part of the year the tax payable is reduced proportionately. The tax computed at these special rates is further reduced by the amount of Social Security contributions paid in Malta during the period of the foreign employment. If the individual has other income, the emoluments derived from the overseas employment are deemed to constitute the last part of the total income while the other income is taxed at the normal rates. An individual has the option to have his overseas employment income added to his other income and taxed at the normal rates.

803 These special rules do not apply to service on board a ship, aircraft or road vehicle owned, chartered or leased by a Maltese company and any service for the Government of Malta.

IX Taxation of Income from Part-time Work

- 901 Individuals who work part time may qualify for a flat 15% rate of tax on the income from their part time work in accordance with section 90A of the Income Tax Act and the Part-time Work Rules of 1996 published by legal notices 157, 158 and 167 of 1996.
- 902 Qualifying part time work is work registered as such with the Employment and Training Corporation and which is performed in employment or in a self employment by an individual who is also a full time employee, a pensioner, a full-time student or serving an apprenticeship. The office of a company director and certain government appointments do not qualify as part-time work. Similarly, an employment with the same employer with whom the individual has a full time employment, or with a company that is in the same group as the company with which the individual is employed full time, is not a part-time employment for the purposes of this scheme. A part-time self-employment qualifies under this scheme if the part-timer has registered his part-time work for VAT purposes, does not employ any persons in his part-time self-employment and keeps proper books of account.
- 903 Only up to 30 hours of part-time employment per week qualify for the special tax rate of 15%. The maximum amount from part-time self employment that qualifies for the reduced rate is Lm3,000 in any year.
- 904 In the case of a part-time employment, the 15% tax is deducted by the employer under the final settlement system (see Part XI below). A qualifying part-time employee may, when his total estimated income for the year is not expected to exceed the tax free bracket, request his employer to pay part-time income without deduction. If the circumstances change and the employee has reason to believe that he will be liable to tax he must inform his part-time employer so that the appropriate rate of deduction could be made. The appropriate rate of deduction in such a case would be 15% increased by a further rate to cover the tax on the income from which no deduction had been made. If the employee settles the tax on his previous income by a direct payment the rate of deduction will be 15%.
- 905 Tax on part-time self-employment is payable in three instalments falling due in May and September of the year in which the work is performed and in February of the subsequent year. The amount payable is 15% of part-time income derived in the corresponding period as follows:

15% of part-time income derived during:

January - April
May - August
January - December less tax paid in the previous instalments

This last payment is to be accompanied by a profit and loss account for the part-time self employment for the whole year.

Payable on:

31 May
30 September
15 February

- 906 If the 15% tax has been regularly deducted or paid, a part-time worker has the option to disclose or not to disclose his part-time income in his income tax return. If the option is taken not to disclose the income, the 15% tax becomes a final tax. If, on the other hand, the income is reported, it will be added to the other income and taxed at the normal rates, and the 15% tax is then credited to the taxpayer against the tax liability on his total income.

X The Final Settlement System

- 1001 The Final Settlement System (FSS) replaces PAYE as from the year of assessment 1998. Like PAYE it provides for the payment of tax on employment income and on pensions by means of deductions from the emoluments. The deductions are remitted to the Inland Revenue Department by the employer. When an employee's tax liability on his employment income is determined in assessment, the deductions will be set off against the resulting tax liability. Any excess credit is refunded to the employee while any shortfall becomes due by the employee. The FSS is considered an improvement on PAYE as the methods of tax deduction are designed to produce rates that will more closely reflect the correct tax liability on the employment income of each employee, as it takes into account the current salary and the personal circumstances of the payee. It thus reduces the incidence of refunds and of accumulation of tax arrears.
- 1002 The FSS rules were published by legal notice 88 of 1998 prescribed under the enabling provisions of section 23 of the Income Tax Management Act, 1974 as amended by Act V of 1998.
- 1003 The FSS envisages three different methods of deduction:
- the main deduction method
 - the part-time deduction method
 - the other emoluments deduction method
- 1004 The employer will apply the appropriate method depending on the information supplied to him by the employee on the Payee Status Declaration - Form FS4. This form must be completed by every employee within 7 days from the commencement of any full or part-time employment or other engagement from which emoluments are derived. If any employee fails to complete this form his emoluments will be subject to a rate of deduction of 35%.

The main deduction method

- 1005 The main deduction method applies when the employee indicates the employment income in question as his main emolument income. It also applies in the case of a local pension other than a pension payable under the Social Security Act. Under this method, the rate of deduction is determined in accordance with the Main Cumulative Tax Deduction Formula Part I of Schedule B attached to the FSS Rules. When, however, the employer employs less than 10 employees covered by the main deduction method, he may, instead, use the Tables given in Part II of that schedule.
- 1006 The Main Cumulative Tax Deduction Formula is $D - X$ where D is the estimated tax liability of the employee on his employment income up to the current pay period and X is the total tax deducted in the previous pay periods for the year in question. Part I of Schedule B to the FSS Rules sets down the manner in which D can be calculated.
- 1007 Part II of Schedule B to the FSS Rules contains tables of different levels of income, distinguishing between weekly, fortnightly, 4-weekly and monthly payments, and between single and married employees, and gives the applicable rate of deduction in each case. In cases where the rate of deduction is based on these tables, the deduction from the last payment of each year will be subject to year-end adjustment, which is worked out by applying a formula similar to that laid down in Part I of the Schedule.

The part-time deduction method

- 1008 The part-time deduction method applies to income indicated by the employee on the Payee Status Form (FS4) as income that qualifies as part-time work under section 90A of the Income Tax Act and the Part-time Work Rules, 1996 (See Chapter IX). The normal rate of deduction under this method is 15% but when a part-time employee declares on Form FS4 that his total income for a year will not exceed the tax-free bracket the rate will be reduced to 0%.

The other emoluments deduction method

- 1009 The other emoluments deduction method applies to emoluments not covered by the other two methods of deduction. Emoluments here means compensation for services rendered **excluding**:
- services for domestic or private purposes
 - services rendered in the course of a trade, business, profession or vocation
 - services in respect of which the taxpayer is otherwise required to be registered under the provisions of the Customs and Excise Tax Act
- 1010 The standard rate of deduction under the other emoluments deduction method is 20% but variations are allowed as follows:
- any payee may, at any time, direct the employer to deduct tax at a higher rate
 - when the payee is a pensioner or a full-time student or apprentice, he may, at any time, direct the employer to deduct tax at a lower rate or at a nil rate
 - any payee who obtains a written approval of the Commissioner of Inland Revenue may direct the employer to deduct tax at a lower rate or at a nil rate

Other methods of deduction

- 1011 The methods of deduction mentioned above are meant to cover the tax liability of the employee on the emoluments out of which the deduction is made. When an employee has an outstanding tax liability on other income the Commissioner may instruct the employer to make a further deduction for a stated period to cover the arrears. The Commissioner may also, in any particular case and for any reason he deems proper, give instructions in writing to a payer on the method or rate or amount of deduction and such instructions will prevail over the rules that would otherwise be applicable.
- 1012 The deduction from any payment of emoluments, including any additional deduction made on the instructions of the Commissioner, can never exceed 50% of the emoluments except with the consent of the employee.

Remittances, returns and records

- 1013 Upon every payment of emoluments the employer must give each employee a statement of the gross emoluments and the tax deductions, showing separately the deductions made under the applicable deduction method and any further deductions made on the instructions of the Commissioner.
- 1014 Deductions from emoluments are to be remitted by the payer to the Inland Revenue Department on a monthly basis. Remittances are to reach the department by the end of the month immediately following that in which the deductions have been made.
- 1015 Each monthly payment must be accompanied by a payment advice showing the total emoluments paid and the total tax deducted, distinguishing between emoluments for part-time work and other emoluments. This advice does not give details of the payments to the individual employees. Payers who have not paid emoluments or who have not deducted any tax in any particular month are still bound to file a nil return.
- 1016 Payers must also prepare annual returns. These consist of a Payee Statement of Earnings for each employee and a Payer's Annual reconciliation Statement.

- 1017 The Payee Statement of Earnings shows the emoluments paid to the respective employee, with different totals for emoluments for part-time work and other emoluments, and the deductions made under the different methods. Two copies must be sent to the Inland Revenue Department by not later than 31 January, together with the monthly remittance advice for the preceding December, while another copy must be given to the employee.
- 1018 When a contract of employment is terminated, the employer must give a statement of earnings to the ex-employee (or to his heirs) within seven days from the date of the termination of the employment. Terminal payments are subject to the deductions mentioned, including any further deduction requested by the Commissioner in respect of the payee's tax arrears. The total deduction to be made in such cases is not subject to the limitation otherwise applicable and can therefore exceed 50% of the terminal payment.
- 1019 The Payer's Annual Reconciliation Statement shows the emoluments paid by the employer during the relative year, with separate totals for part-time work and other emoluments, and the deductions under the various methods. It also states the number of Payee Statements of Earnings issued by the employer. The amounts in the reconciliation statement must agree with the totals shown in the monthly returns. The Payer's Annual Reconciliation Statement must be delivered to the Inland Revenue Department each year together with the Payee Statement of Earnings.
- 1020 All monthly and annual returns must be drawn up on the official forms, which may be obtained free of charge from the Inland Revenue Department or on forms approved by the Commissioner of Inland Revenue.

Other obligations of employers and penalties

- 1021 Every person who employs any person in Malta must be registered as a payer with the Inland Revenue Department. For this purpose he must, as soon as he first engages any personnel or acquires a business concerns that already employs individuals, supply to the Commissioner of Inland Revenue the particulars of his business, his own personal particulars and the particulars of his first employees. He is then supplied with an employer number which must be quoted on all forms and correspondence which he sends to the Commissioner under the Final Settlement System. An employer must inform the Commissioner of any substantial changes affecting the information given on registration.
- 1022 A person who ceases to employ any employees should have his employer number cancelled. He must, moreover, send all outstanding tax deductions with the relative monthly payment advice and draw up and file a Payee Statement of Earnings and an Employer's Annual Reconciliation Statement by not later than the end of the month following that in which he does not remain an employer.
- 1023 Every employer must at all times keep records showing particulars of his employees and of all emoluments paid and tax deductions, showing separately monthly and cumulative totals. The Commissioner may require employers to keep further records and to deliver additional returns or to produce records or copies of records kept by them. Records have to be kept for a minimum of nine years.
- 1024 Payers who are in default of their obligations are liable to the penalties envisaged in Schedule C to the rules. Penalties are imposed in the form of additional tax.
- 1025 The penalties are as follows, and are subject to a maximum of Lm200 for each specific default:
- failure to send to the Inland Revenue Department the tax deducted or that should have been deducted from his employee's wages - 1% per month or part thereof with a minimum fine of Lm5. The employer also remains liable to pay the tax deducted or which should have been deducted. The amount of the tax that should have been deducted may be determined by the Commissioner on a best judgment basis
 - failure to deliver the monthly payment advice - Lm10 for every month or part thereof
 - failure to file the annual returns - 1% per month or part thereof calculated on the total amount of tax
 - deductible for the whole year, with a minimum of Lm20

- failure to register as an employer - Lm50
 - failure to deliver the Payee Status Declaration relating to each employee - Lm1 for every form not submitted subject to a minimum of Lm10.
- 1026 When a penalty is imposed, the payer is advised in writing and has a right to contest within ten days from the date he is notified of the advice. The contestation is to be made in writing to the Commissioner.
- 1027 If the Commissioner is satisfied that a default was not due to any fault or neglect on the part of the employer he will remit the penalty. In any other case he has the discretion to waive or not to waive any part of or all the penalty.
- 1028 If the Commissioner refuses the contestation, or if no contestation is made, the Commissioner may serve a demand note to the employer, who can then contest the penalty in court within fifteen days. In default, the demand note becomes an executive title and the penalty may be enforced on that basis. The Commissioner's claim is privileged.
- 1029 If an employer fails to pay the penalty imposed or to rectify the relative default notwithstanding action taken by the Commissioner under the powers and procedures mentioned above, the Commissioner may serve further default notices and impose further additional tax. The additional penalties in such cases would be imposed at twice the rates or amounts mentioned above, subject always to a maximum penalty of Lm200 for each specific default.
- 1039 When the employer is a company or another body of persons, the obligations fall on the manager or any other principal officer, or, where the body of persons is in liquidation, on the liquidator.
- 1039 In addition to the administrative penalties mentioned above, a defaulting employer may also be liable to criminal proceedings. A person who contravenes his obligations as employer may be sentenced to a fine of not less than Lm50 and not exceeding Lm500 or to imprisonment for a term not exceeding six months or to both the fine and imprisonment, and to a further fine of not less than Lm2 but not exceeding Lm10 for every day during which the offence continues after conviction.

XI Employment of Expatriates

Working permit and obligations of employer

- 1101 Saving certain exemptions, such as in the case of diplomatic missions, it is not lawful to employ a person who is not a citizen of Malta unless a working permit has first been obtained. The approval or otherwise of an application for a working permit lies within the discretion of the immigration authorities. One of the considerations usually taken into account is whether the post designated for the expatriate could be readily filled by citizens of Malta. Working permits are sometimes issued on condition that a Maltese citizen would be trained to eventually take the expatriate's post.
- 1102 When an employer employs a person who is not ordinarily resident, or not domiciled, in Malta he must give advance notice to the Commissioner of the date of employment and of the termination of the employment. On the termination of such an employment, or where the employer knows that the employment is about to be terminated, no further payments may be made to the employee without the clearance of the Commissioner.
- 1103 The employer may also be appointed a representative taxpayer. This entails the additional duty to file returns and to pay the tax on behalf of the employee. It is the practice for the Revenue to make such an appointment whenever a working permit is issued. The employer's responsibility for the payment of tax in such cases is limited to the amount of funds held by him which are payable to the employee, but it could become a personal liability of the employer if he fails to use such funds for the payment of the tax.

Employees of IDA companies

- 1104 The Industrial Development Act facilitates the employment of expatriates by companies qualifying for benefits under that Act. A person who owns at least 40% of the shares of a qualifying company has the right to name one expatriate as a prospective employee. Subject to the endorsement of the Malta Development Corporation, the Act binds the authorities to issue a working permit in respect of that expatriate.
- 1105 A qualifying company can also ask the Malta Development Corporation to certify that a prospective expatriate employee would, if granted a permit to work in Malta, contribute towards the industrial development of Malta through his technical or managerial knowledge and expertise. Applications for work permits supported by such as certification are not likely to be refused.
- 1106 The maximum rate of tax on the income of an expatriate employed by a qualifying company is 30% but when for any year the tax limited by this maximum rate is less than Lm1,000 the employee has the option to either be taxed at normal rates (that is, up to a maximum of 35%) or to pay Lm1,000.

Investment service and Insurance expatriates

- 1107 Certain benefits are also allowed under the Income Tax Act for expatriate employees employed with or who render services to a company that is licensed to provide investment services under the Investment Services Act or to an insurance company (including an Insurance Manager and an Insurance Broker) authorised to provide services in terms of Maltese insurance business legislation. The benefits are granted when the expatriate is not ordinarily resident and not domiciled in Malta, or where he had been absent from Malta before taking up the employment for at least 3 years and had during that period been engaged in a similar position.
- 1108 The benefits consist in the right of the investment service expatriate to deduct from his income for a period of ten years expenses relating to various fringe benefits paid by the company, including expenses for accommodation, travel, car expenses and a subvention of Lm250 per month. The expatriate will, moreover, qualify for the exemption allowed to non-residents from tax on interest and from tax on capital gains derived from the disposal of shares in Maltese non-property companies and of units in collective investment schemes.

Resident permit holders and returned migrants

- 1109 A person who is not a citizen of Malta and who was not born in Malta may apply for a residence permit under section 7 of the Immigration Act. Under criteria that have been adopted by the immigration authorities since 1988, an expatriate becomes eligible for a residence permit if he owns at least Lm150,000 of assets outside Malta or is entitled to an annual income of not less than Lm10,000. The permit is given on condition that the holder remits to Malta at least Lm6,000 per annum, plus Lm1,000 per annum per dependent covered by the permit. The permit holder will be required to acquire or rent a residence in Malta for a minimum consideration of:

| | | |
|---------------------|-----------------|----------|
| Purchased property: | apartment: | Lm35,000 |
| | other property: | Lm50,000 |

Rented property: Lm1,800 per annum

A residence permit holder is taxed on his chargeable income at a flat 15% rate, subject to a tax free bracket of Lm2,500 (married) or Lm1,800 (single) and to a minimum annual tax liability of Lm1,000 (after double taxation relief).

- 1110 Another usual condition is that the residence permit holder undertakes to refrain from engaging in gainful occupation in Malta unless expressly authorised. In those instances where a residence permit holder derives income from an employment or other gainful occupation exercised in Malta, that income will not qualify for the 15% rate. It will be taxed separately at the normal rates applicable to other resident individuals but without a tax free bracket. The other income remains taxable at 15%.
- 1111 The benefit of the 15% rate of tax is extended, on an optional basis, to returned migrants under very similar conditions to those applicable to residence permit holders. If a returned migrant who has opted for the 15% rate scheme is employed or otherwise engaged in a gainful occupation in Malta, his income from that activity will not qualify for this special rate but will be taxed separately at the normal rates without a tax free bracket.

Double taxation treaties

- 1112 If the employee is a resident of a country with which Malta has a double taxation relief agreement, he may be exempt from tax in Malta if the relative treaty conditions are satisfied. The usual conditions are that the employee's presence in Malta is less than six months in the calendar year in question, that the employer is not resident in Malta, and that the remuneration is not charged to a permanent establishment which the employer may have in Malta. Certain treaties contain different or additional rules. If the relative treaty conditions are not satisfied, the employment income arising in Malta would be subject to Malta tax but the employee would be entitled to treaty relief in the country of his residence.

Social security contributions

- 1113 Any employment in Malta is as a rule governed by the provisions of the Social Security Act (see next chapter). However, no social security contributions will be payable with respect to the employment of a person who is not ordinarily resident in Malta by an employer who is not resident and has no place of business in Malta, or by an employer who pays contributions outside Malta in respect of such an employee.
- 1114 Certain international agreements concluded by Malta allow the possibility of contributions paid in one country to be credited for social security purposes in the other country.

XII Social Security

Insurable Employment

- 1201 Class I contributions are payable by and in respect of every person in insurable employment. An insurable employment means any employment in Malta under a contract of service or apprenticeship. It also includes an employment outside Malta of a person who is ordinarily resident in Malta by an employer who has a place of business in Malta.
- 1202 The following do not constitute an insurable employment:
- (a) casual employment otherwise than for the purposes of the employer's trade or business;
 - (b) employment for less than 8 hours in any week;
 - (c) employment of a person who is not ordinarily resident in Malta if the employer is not resident and has no place of business in Malta;
 - (d) employment of a person who is not ordinarily resident in Malta if the employer pays contributions outside Malta in respect of such an employee;
 - (e) employment by a company of certain of its directors or of a majority shareholder.

Directors and shareholders

- 1203 The employment by a company of a person who is also its director is not an insurable employment if the company's shareholders are family members, that is, they are related up to and including cousins and their spouses, and the employee is one of the family shareholders or the spouse of one them.
- 1204 Similarly, the employment by a company of a majority shareholder, a shareholder, that is, who owns more than 50% of the shares of the company or of the aggregate value or powers attached to the shares of the company, is also not an insurable employment.
- 1205 A person who is not in an insurable employment is, by elimination, considered as self-employed for the purposes of the Social Security Act, 1987 (though not necessarily for the purposes of the Income Tax Act and other laws) and is liable to pay Class II contributions.

Contributions

- 1206 Class I contributions are payable in respect of each employee and are payable both by the employee and by his employer. The amount payable by each is one-tenth of the basic wage (i.e. excluding overtime, bonuses, extra allowances, benefits in kind and commissions) subject to a minimum of Lm4.84 per week, which is linked to the minimum wage, and to a maximum of Lm12.43 per week.
- 1207 The employee's contributions are to be deducted from his wages by the employer and remitted, together with the employer's share, to the Commissioner of Inland Revenue. The remittance is to be made monthly in arrears with the FSS monthly payment advice.
- 1208 Employers defaulting in their obligations to deduct and remit contributions are liable to criminal prosecution. Directors and other principal officers of companies may be held personally liable for their company's obligations.
- 1209 The rates of contributions (Class II) of self-employed and self-occupied persons is 15% with a minimum of Lm8.77 per week and a maximum of Lm18.64 per week, depending on the net annual income. Class II contributions are payable every four months in arrears.

Social Security benefits linked to employment

- 1210 Sickness benefit is payable under the Social Security Act to an employee as from the fourth day of each spell of certified incapacity subject to a maximum of 156 days in aggregate for any calendar year. The rate depends on the employee's contribution record and is subject to a statutory maximum. If the employee is also entitled to payment from his employer, the employer may retain the right to reimbursement up to the amount of the social security benefit.
- 1211 Injury benefit is payable under the Social Security Act to an employee who is incapable of attending work because of an industrial injury or prescribed disease. The benefit is payable as from the fourth day. If the incapacity is permanent the employee becomes entitled to a disablement gratuity, or to a disablement, invalidity or national minimum pension.
- 1212 On retirement an insured person becomes entitled to a two-thirds pension (or, where more advantageous, to a retirement or National Minimum Pension). The full rate of a two thirds pension is two thirds of the retiree's pensionable income subject to a maximum as may be prescribed from time to time by an order of the Minister responsible for social security published in the Government Gazette.
- 1213 The pensionable income of a retiring employee is determined by reference to his income from employment during the last ten years, taking the annual average of the best three years. In the case of a self-employed person, however, the pensionable income is determined by reference to his average annual earnings from all sources during the ten years preceding retirement.
- 1214 The pension is awarded at the full two thirds rate where the insured person has a full contribution record. Otherwise it is reduced proportionately.
- 1215 The social security pension is moreover reduced where the pensioner receives another pension, whether commuted or not, from his former employer.
- 1216 Retirement age for social security purposes is 61 for males and 60 for females but this is postponed to 65 where the insured person derives income exceeding the minimum wage from a gainful occupation.