

## **Manual on Taxation of Rental Income**

### **Article 31D & other rental provisions of the Income Tax Act (ITA)**

**These manuals contain technical guidance for CFR staff and tax professionals as well as the general public.**

**The guidance is not comprehensive and does not provide a definitive answer in every case. It is based on the law as it stood when they were published. CFR publishes amended or supplementary guidance if there's a change in the law or in the department's interpretation of it. These manuals are not to be considered as Guidelines of the CFR and therefore are not binding by law.**

## SUMMARY

- **Option:** Taxpayers have the option to either declare rental income as final withholding tax of 15% or declare rental income in their annual tax return
- **Exemption from Capital Gains Tax:** on property previously rented at 'Affordable Rents'
- **Declarations:** may be submitted manually or online
- **Deductions:** are available against gross rental income declared by a person in their tax returns – no deductions are available against 15% FWT
- **Rent paid to non-Residents:** may opt for 15% FWT or taxed at non-resident rates after deductions
- **Special Provisions:** Apply for property leased to the Housing Authority, including capital gain exemptions
- **Spouses submitting separate tax return:** Rent, whether part of tax declaration or as FWT can be declared separately by each spouse
- **VAT:** is not charged on the letting of immovable property to individuals on a long-term basis, exceptions apply
- **Eco-Contribution:** of €0.50 cents per person per night is payable on all accommodation provided to tourists
- **Provisional Tax Payments:** also apply to rental income
- **Trading Records:** must be kept for 10 years
- **Deadline:** FWT of 15% must be paid by end April in the year following that in which the income was earned, whilst gross rental income must be declared by end of June

**If you wish to read more about Rental Income and the tax liability arising under Article 31D of the Income Tax Act (ITA) and the implications arising from other provisions related to the provision of immovable property thereof, please read the following pages which provide a more detailed explanation of the above.**

## Rental Income

Rent or other compensation for the use of tangible or intangible movable property is usually treated as arising in the country where the lessee is resident or carries on his business. Rent and other income from immovable property arises where the property is located. The rental of immovable property located in Malta is therefore taxable under the income provisions of the [Income Tax Act](#).

Rental of immovable property in Malta may be taxable as follows:

- a. Investment Income – taxable under Article 4(1)(e) of the Income Tax Act which includes rents, royalties, premiums and any other profits arising from property.
- b. Trading Income – where the lettings are conducted in such a way as to constitute the carrying of a trade, the profits are assessed under Article 4(1)(a) of the Income Tax Act.

## Investment Income (Long Lets) vs Trading (Short Lets)

The distinction between trading versus investment income is dependent upon an analysis of the badges of trade. Badges of trade include reference to:

- a. Profit seeking motive
- b. The nature of the transaction
- c. The nature of the asset
- d. Existence of similar trading transactions or interests
- e. Changes to the asset
- f. The way the sale was carried out
- g. The source of finance
- h. Interval of time between purchase and sale

However generally long lets are considered as investment in nature and are taxable under Article 4(1)(e) ITA whilst short lets are considered as trading in nature and are taxable under Article 4(1)(a) ITA.

## Tax on Rental Income

Rental income maybe taxed in two ways:

### 1. Final Withholding Tax of 15%

Taxpayers may opt to pay tax on all rental income at a final withholding tax of 15%. Final withholding taxes of 15% is applicable on both residential property (from basis year 2014) as well as commercial property (from basis year 2017). Deductions are not available against final withholding taxes.

The 15% final withholding tax rate is calculated on the gross rental income received. Furthermore, the final withholding tax of 15% applies to both residents and non-residents, both as recipients of rental income as well as occupants of leased property.

To benefit from a final withholding tax of 15%, taxpayers must complete the prescribed TA24 form either [manually](#) or [online](#) and submit it within the prescribed period.

### 2. Declared as part of Taxable Income

Taxpayers may opt to declare rental income in their tax return. Rental income declared as part of taxable income for any year of assessment will be added to other income and will be subject to tax based on the applicable tax rate, without special consideration. In the case of individuals, the applicable rate will depend on the individuals tax bracket in which the gross income (including rental income) falls. No special rate of tax will apply. Deductions, discussed further below, are available against gross rental income declared in a person's tax return.

## Further Comments

It is important to note that once taxpayers choose to pay taxes at 15% final withholding tax or declare rental income as part of their total income in their tax return, taxpayers must ensure that all rental income is declared as such in full. The choice whether to exercise the option or not is made annually. Therefore, a person may have the rental income taxed at 15% one year, and the following year decides to declare the income in the tax return and have it taxed at the normal, applicable tax rates. **However, in the same year of assessment, taxpayers cannot choose to declare part of their rental income at a final withholding tax of 15% and part of their rental income in their tax return.** Taxpayer should therefore select the most appropriate method of taxation based on their circumstances. Rental income and ground rents declared through TA24 and on which the 15% final withholding tax has been paid should not be declared in your tax return. It is important to note that adjustments may not always be possible, particularly after deadlines for submission have elapsed.

All rental income subject to tax at 15% are to be declared by companies in the Final Tax Account (FTA). No deductions are available against such declared income. Furthermore, no further tax shall be payable on distributions of the same.

The 15% final withholding tax shall not apply to rents from related parties. As per Article 16 of the Income Tax Act, a body of persons is related to an individual if it is owned or controlled, directly or indirectly, as to more than twenty-five percent by that individual; and two bodies of persons are related if they are owned or controlled, directly or indirectly, as to more than 25% by the same persons.

### When is income from Rent Assessable?

Taxpayers generally declare rents on an annual basis independently of the actual receipt of such income. Income from immovable property is assessable when it is received, irrespective of whether it is receivable in arrears or in advance.

### Deductions from Rental Income

No deductions are permitted where a taxpayer opts to tax rental income at a 15% final withholding tax. In addition, no set-off or refunds shall apply. Once the 15% final withholding tax is paid no refunds can be made, as it is considered as a final tax.

Deductions are only permitted where a taxpayer opts to declare rental income in their tax return.

The allowance of deductions from income which falls under Article 4(1)(e) of the Income Tax Act is regulated by the Deductions (Expenses in Respect of Immovable Property) Rules, 1978 (L.N. 107 of 1978), as amended by [L.N. 50 of 1983](#) and L.N. 100 of 1993.

As per [L.N. 100 of 1993](#), deductions against rental income are limited to the following:

- a) Interest: allowed, provided it relates to the asset which produces the income
- b) Rent, ground rent or similar burden
- c) License fees: provided these are paid for the purposes of Guest Houses and Holiday Furnished Premises Act
- d) Further deduction: the deduction is 20% of the net income remaining *after* deducting from the gross rent the expenditure referred to at (b) above, i.e., the rent or relative ground rent and at (c) i.e., the license. However, this further deduction is not allowed in the case of income from emphyteusis. It

is also important to note that 'further deduction' comprises all other deductions, i.e., one may not claim other deductions in respect of, say, repairs or improvements to the building.

All deductions should be rounded up to the nearest Euro.

Each immovable property is to be regarded as a separate source of income. The income from each property is therefore to be calculated separately with appropriate records kept by the taxpayer to identify individual net income streams. Where a situation arises in which allowable deductions exceed rents, the balance is to be treated as giving rise to NIL income. There is no set-off of a loss on one property against income from other properties. Losses may also not be set off against other income nor carried forward to future periods.

The same deductions are available to Maltese resident taxpayers in receipt of rental income from immovable property located abroad whether the property is commercial or residential in nature.

### Rent paid to non-resident Lessors

Where immovable property located in Malta is owned by a non-resident, all rental income received by the non-resident shall still be taxable in Malta. The non-resident may opt to apply 15% final withholding tax on gross rental income or else declare all rental income in his tax return. In the latter case the non-resident taxpayer may still benefit from the deductions found under L.N. 100 of 1993 and the net rental income after deductions shall be taxed at the applicable non-resident tax rates.

### Completing the Tax Return

It is important that all income and allowable deductions against rental income is correctly declared in the tax return. The following is a worked-out example showing deductible expenses as outlined in [L.N. 100 of 1993](#).

#### 1. Rental income arising from property held as an investment falling under Article 4(1)(e) of the Income Tax Act

The table below outlines how to declare rental income which is of a non-trading nature.

All rental income is to be declared in box 11a, and shall include total income from gross rents, premiums, key money, laudemia and any other receipts

arising from immovable property. In box 11b, enter your total income from ground rents received. Deductions against rental income are to be made in section 16 of the tax return. The 20% further deduction is not allowable against the ground rents declared in box 11b. Only the ground rents paid may be deducted. The total amount of deductions for each separate rental property in boxes 16a and 16b must not exceed the amount of rental income declared for that property in section 11.

Table 1 – Worked Out Example

	€	Tax Return Reference Box
Gross rent	400	Box 11a all gross rents received
Gross ground rent received	0	Box 11b all gross ground rent received
<i>Less: Ground rent payable</i>	<u>40</u>	Box 16a deduct ground rent payable
Total	<u>360</u>	
20% maintenance allowance	72	Box 16b deduct 20% maintenance allowance (20% of 360)
Net Income after deductions	<u>288</u>	

## 2. Rental income arising Trading activities taxable under Article 4(1)(a) of the Income Tax Act

Rental income from trading activity is to be declared in Section 2 of the tax return. This includes income from the rental of property which is carried out as a business activity. This includes short letting of holiday accommodation which is subject to MTA license requirements Expenses wholly and exclusively incurred in the production of the rental income may be deducted against rental income of a trading nature.

### Property Rented Directly to the Housing Authority

The following is a list of special cases subject to reduced rate of tax on rental income:

#### a. Property Rented Directly to the Housing Authority

As per Article 31A of the Income Tax Act, rental income received from the Housing Authority that was subject to a final withholding tax of 5% should not be declared in tax return. The property must be rented for a minimum period of not less than 10 years to the Housing Authority and the said tax will be considered as final. No set offs or refunds are available to taxpayers renting property directly to the Housing Authority. The special reduced rate of tax applies to both individuals and companies. Tax will be held at



source by the Housing Authority and shall be considered as final. No further action will be required by taxpayer in terms of tax compliance.

**b. Property Rented to Individuals receiving Rent Subsidies**

As per Article 31B of the Income Tax Act, rental income received from property rented to individuals who are in receipt of rent subsidies under any scheme of the Housing Authority is subject to 10% final withholding tax. This is subject to the property being approved by the Housing Authority. The special reduced rate of tax applies to both individuals and companies. Tax will be held at source by the Housing Authority shall be considered as final. No further action will be required by the taxpayer in terms of tax compliance.

**c. Rental Income from Restored Property**

As per Article 31C of the Income Tax Act, any person who is the owner of immovable property which has been restored according to Malta Environment and Planning Authority (MEPA) for the restoration of grade 1 and 2 scheduled property may benefit from 15% final withholding tax on gross income. MEPA shall provide an annual list to CfR of the details of those who have availed themselves of this scheme. This scheme still applies notwithstanding that the extension of the 15% final withholding tax under Art 31D of the Income Tax Act to also include commercial property from 2017 gives rise to the same outcome.

**d. Tax Rebate on Property Registered with Housing Authority taxed at 15% FWT**

In accordance with the [Residential Leases \(Tax Rebate\) Rules, S.L. 123.201](#) taxpayers may opt to pay 15% final withholding tax in terms of Article 31D of the Income Tax Act on rental income received from the Housing Authority on or after 1<sup>st</sup> January 2020. In this case gross rental income must be declared in form [TA24](#). Since the 15% tax is a final tax, no deductions are allowed against final withholding taxes.

However from basis year 2020, an exception to this rule has been made in respect of property leased to the Housing Authority where taxpayers opt to pay 15% final withholding taxes in terms of Article 31D(2) of the Income Tax Act shall be entitled to a tax rebate. Persons who derive income from a private residential lease which is registered with the Housing Authority as a long private lease for 2 years or more are eligible for a tax rebate against the tax chargeable on gross rental income. The rebate shall be granted in the form of a deduction from the tax chargeable in terms of Article 31D of the ITA on the rental income from each relevant private residential lease.

The duration of a lease shall be ascertained by reference to the original period as agreed in the relative contract and no regard shall be taken of any



period of renewal or extension of the original period. The maximum amount of tax rebate is as follows:

Table 2 – Tax Rebate on Long Lease Property

Lease Duration	Number of Bedrooms	Tax Rebate
Less than 2 years	One	€0
	Two	€0
	Three or more	€0
At least 2 but less than 3 years	One	€200
	Two	€300
	Three or more	€400
Three years of more	One	€300
	Two	€400
	Three or more	€500

In respect of the year during which a lease commences or is terminated, the rebate is to be taken pro rata, the rebate is reduced proportionately to the number of days for which the lease is carried out. The rebate for any year cannot exceed 15% of the rent derived for that same year. In addition, only one rebate per property is available even if the same property is rented more than one in a year. Where the property is owned by more than one person, the rebate will be shared based on each individual share of the said property.

The tax rebate is to be claimed through the online filing of the [TA24](#) form.

**e. Rental in excess of 7 years on a Continuous Basis**

In accordance with Article 31E of the Income Tax Act, excluding property falling within the scope of Article 31B, property rented to the same person for a period in excess of 7 years under a scheme administered by the Housing Authority, registered as such, may benefit from a reduced rate of tax on gross rental income of 5% final withholding tax. The tax shall not be available as a credit or refund against other taxable income.

More information about the Housing Authority rental agreement schemes which offer reduced rates of tax to lessors is available by clicking on the following [link](#).

### Sale of Rented Property

The sale of immovable property held for rental purposes is subject to capital gains tax as per Article 5 and Article 5A of the Income Tax Act. However, where immovable property has been classified as being leased on the basis of ‘affordable rents’ by the Housing Authority, the sale of such property to the tenants of the

same, may benefit from tax exemptions on the transfer of the said immovable property. 'Affordable rates' of rent the benefit extends to both the seller and the buyer. Tax exemptions range from 100% where property has been rented in excess of 10 years, and 50% if leased for more than 3 years. A minimum threshold of €200,000 on the property price applies, above which the normal rate of tax shall be charged and levied. Further information, including the definition of immovable property which is classified being rented at 'affordable rents' can be downloaded from the Housing Authority website by clicking on the following [link](#).

### Premiums and other Income

The "premiums" mentioned under paragraph Article 4(1)(e) of the Income Tax Act have nothing to do with the premiums mentioned in Article 4(1)(c) in the same Act. The "premiums" within Article 4(1)(e) refer to the additional consideration paid over and above the annual rent payable. Premiums received in lieu of rental income are taxable under Article 4 of the Income Tax Act and must be declared in a person's annual tax declaration. In the case where premiums are paid in the same manner as rental income to which they pertain, such premiums may be taxable at a final withholding tax of 15% in the year in which they are received or else declared as part of taxable income at the election of the taxpayer.

It is important to note also that "other profits arising from property" referred to in Article 4(1)(e) of the Income Tax Act, is a sweeping-up clause in order to encompass all other profits which arise from immovables. It may therefore include ground rent (*cens*), recognition fees (*lawdemju*) and key money (*rigal*).

### Election for Separate Return

Spouses who have elected to submit separate returns under Article 49A of the Income Tax Act may declare rental income separately. An election to submit separate returns does not hinder the applicant from benefiting from final withholding tax of 15%.

Individuals earning less than €9,100 in the case of single tax rates or €10,500 in the case of parent tax rates, must declare any rental income using the TA24 form. Individuals earning more than €9,100 in the case of single tax rates or €10,500 in the case of parent tax rates, may opt to declare their rental income using the TA24 form or else opt out of the final tax system and include all rental income in their separate tax return but the applicable tax rates will still start from 15%.

Click on the following [link](#) to read more about the provisions of Article 49A and rental income.

## Trading Records

Article 19 of [Income Tax Management Act](#) deals with the trade records which need to be kept by every person carrying on a trade, business, profession or vocation. Every such person shall keep proper and sufficient records of his income and allowable deduction to be readily ascertainable. These records shall include records of:

- a) Incomings and outgoings, sales, purchases, services rendered or any other transaction
- b) A profit and loss statement
- c) A statement of assets and liabilities as at the date of the annual accounts or a balance sheet in case of a company.

These records shall be supported by appropriate documentation and held for a period of 10 years.

## Provisional Tax

Taxpayers in receipt of rental income may fall within the obligations of the Provisional Tax Payments as per Article 42 of the Income Tax Management Act, 1994 and in the [Payment of Provisional Tax \(PT\) Rules, 2000](#). Provisional Tax payments are due every 4 months on 30<sup>th</sup> April, 31<sup>st</sup> August and 21<sup>st</sup> December for each basis year. Given that rental income varies little from one year to another, the provisional tax benchmark payments would generally reflect the correct amount of payments based on the following ratios of 20%, 30% and 50% of tax due respectively over the 3 separate payments. Should the basis upon which the estimated provisional tax is calculated change, taxpayers may request an adjustment by means of a Provisional Tax Adjustment form that may be downloaded from the following [link](#). Late payment of provisions taxes on rental income are also subject to interest on a monthly basis until payment has been made.

More information about provisional tax payments may be found by reading the [Provisional Tax and Social Security Payment](#) booklet issued by the CfR.

## VAT on Rental Income

As per 5<sup>th</sup> Schedule, Part Two of the [VAT Act](#), the transfer of immovable property as well as the letting of immovable property is considered as exempt without credit for VAT purposes. The lessor shall not charge VAT on gross rent and may also not claim VAT on any expenses incurred related to the provision of the same. The following are however excluded from this exemption and are therefore subject to VAT at the applicable rate in accordance with the provisions of the VAT Act:

- a) the letting of or the provision of accommodation before which a license is required from the [Malta Travel and Tourism Services Act](#), or equivalent
- b) the letting of premises and sites for parking of vehicles
- c) the letting of permanently installed equipment and machinery and the hire of safes
- d) the letting of property by a limited liability company to a person registered under Article 10 of the VAT Act for the purpose of the economic activity
- e) the letting of immovable property for not more than thirty days in the course of that person's economic activity, except for those mentioned in (a), (b), (c) and (d) or for artistic and cultural activities, the letting for the purposes of habitation of any premises which does not require a license in virtue of the Malta Travel and Tourism Services Act, or similar, the letting of garages, stores or similar, as well as the letting to players of rooms or other spaces lawfully designated for the playing of poker.

Where taxpayers are required to charge VAT on the letting of immovable property, taxpayers must ensure that they are correctly registered with Cfr. The letting of immovable property which is subject to VAT may result in the taxpayer having to register under Article 10 or Article 11, depending on the expected annual turnover. Where VAT is charged and claimed by Article 10 registered persons, Article 11 registered persons cannot charge or claim VAT. Where the letting of immovable property which requires a license under the Malta Travel and Tourism Services Act and taxpayers are registered under Article 10 of the VAT Act, the said letting shall be subject to VAT at 7% (8<sup>th</sup> Schedule VAT Act). All other letting is subject to VAT at 18%.

### Further Comments:

Taxpayers should be aware that if the status of immovable property changes this may alter the taxpayers VAT liability. In particular, taxpayers should be aware that a change in VAT status may alter the partial attribution ratio of deductibility of expenses on a year-by-year basis.

## Environmental Contribution on Accommodation

As per [L.N. 174](#) and [L.N. 175](#) of 2016, the provision of accommodation to tourists is subject to an eco-contribution of €0.50 cents per person per night, subject to a maximum of five euros (€5.00) per person per visit, on all individuals over the age of 18 years staying in Malta. Since 2016, this environmental contribution seeks to provide funding to upgrade and embellish infrastructure found in tourism spots around the island. Accommodation that falls within the scope of this legislation includes the provision of accommodation in hotels, hostels as well as nights spent in villas, farmhouses, and the use of time share accommodation. Similar to VAT, taxpayers are required to collect payments from individuals on behalf of the government and submit regular quarterly returns, including payments to the CfR. Further information on the obligations of taxpayers and how eco-contributions are to be paid can be found by clicking on the following [link](#).

## Deadlines

### 1. Submission and Deadline of Form TA24 – Rental income taxed at Final Withholding tax of 15%

In order to benefit from final withholding tax of 15%, taxpayers must complete and submit the TA 24 form. The TA 24 form may be downloaded from the following [link](#) or else completed [online](#).

The form (online or manually) must reach the offices of the Commissioner of Revenue by no later than 30<sup>th</sup> April of the following year for every basis year in which rental income is earned.

Where taxpayers choose to submit the form manually, cash payments can be made at any Malta Post branch. All payments are to be accompanied by a completed TA24 form. Late payments will not be accepted by Malta Post.

### 2. Declaration of Rental Income as part of Tax Declaration

Rental income declared as part of a person's self-assessment must be declared in their tax return and abide by the same deadlines for submission of all tax returns. Returns must be submitted by no later than 30<sup>th</sup> June in the year following the year in which the rental income was earned.

Any person in receipt of rental income which was not declared after submission of their return must complete an adjustment form if the said income was not included in their tax return.

## Penalties

### 1. Late Submission of TA24

If the TA24 form is not submitted on time, interest of 0.6% on the tax due is to be charged as penalty on late payments of gross rental income. Late submission of the TA24 form will not be accepted by Malta post. Payments including interests can continue to be made online after 30<sup>th</sup> April with interests calculated online and based on actual submission date.

Payments by cheque (payable to CfR) after 30<sup>th</sup> April sent to the office of the CfR will only be accepted if they include the correct interest incurred. Any cheques received after that date not including the correct interest will be returned to taxpayers. Taxpayers will be requested to resend any payments adjusted for interest and penalties due. Queries regarding interest and penalties due may be directed to the 153 customer care call center where assistance will be provided to calculate the correct amount due.

It is important to note that the non-declaration of rental income cannot benefit from 15% final withholding tax and will automatically be taxed at 35% in the case of companies, or in the case of individuals at their progressive tax rate. Non-declared income will also be subject to late penalties and interest.

### 2. Late Submission of Tax Returns

If no return is submitted by the 30<sup>th</sup> June of the year following that in which rental income is earned, late penalties and interest shall be due on gross rental income earned less allowable deductions once a return is issued by the CfR. Interest of 0.6% for every month on any outstanding tax due shall be charged and levied on tax on gross rental income due less allowable deductions.

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