



**Financial Support and  
Tax Exemption Proposals  
For Voluntary Organisations**

**Budget 2021**



## Financial Support and Tax Exemption Proposals for Voluntary Organisations

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## 1. Introduction

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The aim of this document is for the consideration of Political Parties with respect to the tax and other legislative amendments' necessary to assist voluntary and non-profit organisations in Malta to understand the tax implications affecting them with specific reference to income tax, value added tax (VAT), stamp duty, transfer duty and customs duty.

Voluntary and non-profit organisations play a significant role in society as they undertake a shared responsibility for the social and development needs of the country thereby relieving the financial burden, which otherwise falls on the State.

Voluntary work is voluntary, but not necessarily free. For the development of the sector, it is therefore important to ensure that the funding system is organised in such a way that the voluntary organisations are certain to operate under encouraging conditions. A funding system that, among other criteria, secures the organisations' independence and sustainability whilst at the same time ensures that government grants are used in the optimum and most cost efficient way.

Central government aid is provided from different programmes, partly as basic grants, partly as project grants. *Basic grants* are grants awarded to the organisation without being earmarked for a specific activity or a specific project. Instead, they are awarded on the basis of objective criteria such as purpose, turnover and own collected funds. The intention is to stimulate the voluntary organisation's autonomy and freedom to determine its own activities and be capable of promoting the interests of others.

## **2. Income tax exemption**

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Tax benefits are designed to assist voluntary and non-profit organisations by augmenting their financial resources and providing them with an enabling environment in which to achieve their objectives. Preferential tax treatment should be granted to voluntary/non-profit organisations established for the benefit of the general public.

However, this preferential treatment should only be available to organisations complying with the provisions of the Voluntary Organisations Act and related legislation, both on application for exemption from taxes and duties, and thereafter on a continuous basis throughout the existence of the organisation. However, one must ensure that the true intended beneficiaries are benefitting from the relevant incentives.

Approved VOs have the privilege and responsibility of spending public funds in the public interest on a tax free basis which they derive from donors including the general public and directly or indirectly the State. It is therefore important to ensure that exempt organisations utilise their funds responsibly and solely for their stated objectives, without any personal gain being enjoyed by any person including the founders and the fiduciaries. In order to achieve this there should be more accountability and the legal notice proposed by the Council with respect to the annual returns and financial statements may partially assist to achieve this. However, one should give the powers to the Commissioner for Voluntary Organisations to investigate any Compliance issues that may be brought to his attention including Money Laundering and terrorism funding and commercial activity camouflaged under a Voluntary Organisation.

The fact that an organisation has a voluntary/non-profit motive or that it is registered as a Voluntary Organisation (VO) under the Voluntary Organisations Act does not mean that it is automatically exempt from income tax. The organisation will, however, only be exempt from income and related taxes if it is specially approved by the Commissioner for Voluntary Organisations as communicated to the Commissioner of Inland Revenue and if it complies with the relevant requirements and conditions as set out in the relevant Acts.

### **2.1 Qualifying Voluntary Organisation**

#### **2.1.1 Type of organisation**

To be approved by the VO Commissioner as a VO an organisation must be registered in Malta under the Voluntary Organisations Act, 2018.

#### **2.1.2 Tax advantageous status.**

##### ***How must the VOs be managed to qualify for a tax advantageous status?***

The VOs must be carried on in a non-profit manner and with an altruistic or philanthropic intent.

No activity may directly or indirectly promote the economic self-interest of any fiduciary or employee. This does not prohibit the payment of reasonable remuneration to employees or office bearers. Such remunerations should be disclosed to the Commissioner of Voluntary Organisations who when deemed necessary may seek for further information.

## **2.2 Public benefit activities (PBA)**

The public benefit activities should be determined by the Minister of Finance in consultation with the Commissioner for Voluntary Organisations and listed in a Schedule to be annexed to the VO Act. The Minister may however, determine additional public benefit activities in consultation with the Commissioner for Voluntary Organisations from time to time by way of a notice in the *Government Gazette*, provided such activities are considered to be of a benevolent nature taking into account the needs, interests and well-being of the general public.

Public Benefit Activities may be categorised as follows:

- Welfare and Humanitarian
- Health Care
- Land and Housing
- Education and Development
- Religion, Belief or Philosophy
- Cultural
- Conservation, Environment and Animal Welfare
- Research and Consumer Rights
- Sport

A detailed list of PBAs is attached to this document as Annex 1.

## **2.3 Formal requirements to be incorporated in founding document**

The VO Commissioner may approve an organisation as a VO only if its constitution or founding document meets a number of prescribed requirements set out the VO Act. The founding document or constitution must clearly state that the activities and resources of the organisation must be exclusively applied in the furtherance of its stated objective. A clause must also be included which clearly sets out the aims and objectives of the VO, which must be to carry on one or more approved PBAs. The founding document must also provide for the requirements as set out hereafter. When considering an application for exemption, the founding document as a whole will be examined to ensure that these requirements are complied with, notwithstanding the specific wording used to give effect thereto. The administrators shall declare their interests in any businesses to the Commissioner of Voluntary Organisations who shall have the power to ascertain that the VO is not an extension or is not serving as a tax mitigation scheme for such other activities.

The following requirements must, therefore, specifically be included in the founding document:

## **2.4 Fiduciary responsibility**

A VO will be required to have at least three persons who accept fiduciary responsibility for the organisation. No single person may have the ability or authority, directly or indirectly, to control the decision-making powers of the organisation.

## **2.5 Use of funds**

### **a) Sole or principal object**

The tax exempt status of a VO should effectively entitle the VO to the utilisation of public money to achieve its objectives for the benefit of the general public. The sole or principal object of a PBO must be to carry on one or more PBAs and its funds must be utilised solely for carrying on such objectives. The word “principal” is used in conjunction with the word “sole” in light of the recognition that a VO may conduct trading activities provided such activities form a source of funding for the approved PBAs. However, this concept means that the sole, main, predominant and foremost aim or objective must remain the carrying on of one or more. It will not be acceptable for a VO to have a sole or principal object of conducting a commercial business activity in order to fund a PBA.

### **b) Prohibition from distribution**

A VO may not distribute its funds directly or indirectly to any person, unless this occurs in the undertaking of a PBA. The payment of reasonable remuneration to employees or office bearers conducting the affairs of a VO to enable it to achieve its objectives is permitted. However, funds provided to a trustee or office bearer to finance private business activities is not permitted.

### **c) Investment of surplus funds**

The Act should allow surplus funds of a VO to be invested. Fiduciaries should act with prudence, integrity and reasonable care.

## **2.6 Dissolution**

A VO which has enjoyed exemption from tax and has utilised this concession to carry on approved PBAs, may therefore not, on dissolution, distribute any of its funds to individuals or other tax-paying entities, thus enabling the recipients to share in the concession of the exemption which the VO had enjoyed.

The founding document of an approved VO must therefore state that on dissolution, the remaining assets must be transferred to one or more of the following:

- A similar VO established and registered in Malta which has also been approved by the VO Commissioner as a VO in terms of the VO Act.

## **2.7 Amendments**

A VO is obliged to submit a copy of all amendments to its founding document to the VO Commissioner. The amendments must be submitted as soon as they have been affected. It will therefore not be possible to submit a founding document which complies with the provisions of the VO Act at the time of applying for exemption and subsequent to obtaining formal exemption, amending it to include contrary provisions. This will jeopardise the exempt status of the VO.

Furthermore, the Commissioner of Voluntary organisation shall have the power to withdraw the exemption if after having investigated the operation of the organisation it is found that the organisation is not in compliance with the statute filed with the same Commissioner.

## **2.8 Participation in tax avoidance schemes**

Once an exemption is approved, it is subject to annual review upon receipt of the income tax return and financial statements of the VO. Only if it continues to comply with all the requirements relative to the approval, will the exemption be sustained and provided that the organisation is not a party to and does not permit itself to be used for any tax avoidance scheme to reduce, mitigate, postpone or avoid the liability for tax of any other person.

## **2.9 Remuneration**

Employees, office bearers, members or other persons serving a VO may receive reasonable remuneration for services actually rendered to a VO provided that -

- the remuneration is not excessive; and
- the remuneration does not benefit any person in a manner inconsistent with the objects of the VO.

Reasonable remuneration is determined based on the extent of the service rendered and what is considered fair and reasonable in the specific sector.

## **2.10 Political objectives**

The promotion of political objectives is not considered to be for the public benefit and a VO may, therefore, not use its resources directly or indirectly to support, advance or oppose any political party. Political Party is any organisation that intends to contest an EU, National or local Council election or to support another organisation that is to contest such elections.

## **2.11 Specific issues in respect of VOs**

A VO which has been approved in terms of the VO Act and which becomes liable to tax on its trading income shall be eligible to the tax credit system and the 6/7<sup>th</sup> refund shall apply when the organisation distributes funds or assets to specific projects outside the organisation or when the commissioner is satisfied that such any other distribution is towards projects that are in accordance with the specified objectives in the statute and that they are in compliance with the exemption provisions. In applying for a refund the VO shall present a certificate signed by an auditor holding a warrant issued by the Ministry of Finance, the Economy and Investment in Malta.

## **2.12 Reporting requirements - Record keeping**

Any books of account, records or other documents of an approved VO should be retained and carefully preserved for a period of at least ten years after the last date of an entry in any book. It is the responsibility of the person in control of the organisation to ensure that the necessary records are kept. Failure to keep the necessary records is an offence which may result in a fine as per tax regulations and

## **2.13 Income tax returns**

All VOs shall be obliged to render annual income tax returns, notwithstanding the approval which may result in no tax liability for the VO. The return enables the Commissioner for Inland Revenue to assess whether the VO is operating within its tax exemption status.



## **2.14 Financial statements**

Supporting documents must not be submitted together with the return. Such supporting documents should include financial statements constituting an income statement, balance sheet and any other records in accordance with the relevant legal notice.. **(With regards to Financial Statements a Legal Notice is due to be issued specifying the type of statement to be drawn up by small, medium and large Organisations).**

## **2.15 Withdrawal of approval**

a) If the VO Commissioner is satisfied that a VO has, in any year of assessment in any material respect or on a continuous or repetitive basis failed to comply with the provisions of the VO Act or its founding document, he may withdraw his approval. After due notice is given to the transgressing VO, the approval shall be withdrawn with effect from the beginning of the relevant year of assessment, unless the VO has taken corrective steps within a period specified by the VO Commissioner in the notice to the VO.

b) Once the approval of the VO Commissioner is withdrawn, the Commissioner for Income Tax is informed of the defaulting organisation who in return shall take the appropriate related measures.

c) Once an exemption has been withdrawn, an organisation may re-apply for approval in the year of assessment following the year of the withdrawal. If the VO Commissioner is satisfied that the non-compliance giving rise to the withdrawal has been rectified, the VO Commissioner may grant the approval and subsequently inform the Commissioner for Inland Revenue. However, if the Commissioner after investigation determines that the administrators have acted fraudulently by providing him with false information the Commissioner shall not grant the organisation or any other organisation who has one or more of the administrators who has acted as such for a period of 20 years..

### **3. Tax deductibility of donations**

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Government must recognise the need that VOs are often dependent upon the generosity of the public and accordingly to assist them. Donations made to approved organisations conducting certain categories of PBAs may be deducted from the taxable income of the donating taxpayer.

The Commissioner should publish a list of approved VOs for this purpose. Registered VOs shall be eligible to issue tax deductible receipts.

IT SHOULD BE ADVERTISED IN THE MEDIA THAT DONATIONS TO ALL REGISTERED VO'S ARE TAX DEDUCTABLE IN THE HANDS OF THE DONER upon the presentation of a receipt that shows the VO number as prescribed hereunder.

#### **3.1 Deduction of donations from taxable income**

A taxpayer making a *bona fide* donation in cash or of property made in kind to an approved organisation, is entitled to a deduction from his taxable income if the donation

- is supported by the official receipt issued by the organisation clearly indicating the VO Number.

##### **3.1.2 Corporate donation**

A Corporate donation is also considered as an expense and therefore deducted from taxable income. (This is already done for sports sponsorships).

#### **3.2 Donations**

A *bona fide* donation is a gratuitous cash donation or gift disposed of by the donor out of liberality or generosity, whereby the recipient of the donation (donee) is enriched and the donor impoverished. It is a voluntary gift which is freely given to the donee. There may be no reciprocal obligations and no personal benefit for the donor. The donor may not impose conditions which could enable him or any connected person in relation to himself to derive some direct or indirect benefit from the application of the donation. The donation may not be revocable by the donor.

The donation must actually be paid or transferred during the year of assessment.

***Note: We would strongly suggest a discussion on the introduction of Gift Aid whereby donations are not only tax deductible but also deducted from tax due at a rate below the maximum corporate or individual rate of 35%. In the UK this is deducted at 28%.***

#### **3.3 Value in respect of the donation of property made in kind**

A taxpayer may claim an exemption on the transfer of property for a donation of property made in kind to a registered VO which has been approved for these purposes. On its part the VO may apply for exemption on Duty on Documents for donations of property received

### **3.4 Receipt to be issued**

A taxpayer will only be allowed to claim a deduction for a donation to an approved organisation if it is supported by a receipt issued by the VO. The receipt issued by the organisation must include at least the following details:

- The reference number of the organisation issued to it by the VO Commissioner.
- The date of the receipt of the donation.
- The name and address of the organisation issuing the receipt to which enquiries may be directed.
- The name, ID and address of the donor.

## **4. VAT Exemptions**

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Certain VOs are exempt without credit given the activity they engage into. It is hereby proposed that through a system of claims the VOs may recover the VAT paid. This may take the form of refunds similar to the weddings scheme. However, one should ensure that this is a streamlined and simple system in order not to create an administrative burden and cash flow issues. The refund claim shall also serve as an anti abuse check engaged into by the Commissioner for VAT

### **4.1 Registering For Value Added Tax**

Fundraising events and activities carried out by enrolled Voluntary Organisations should be considered to be exempt from paying VAT through. A system of refunds similar to weddings should be applied. Such refunds shall only apply if the fund raising activity serves as fund generation in meeting the objective of the organisation as specified in the statute and as approved by the Commissioner for Voluntary Organisations. The commissioner of VAT shall not provide refund to entities that organise more than 3 similar events a year. A fund raising activity that may apply for such a refund may only be one of the following:

- a) Call for donations without any service provided but only public entertainment which is free of charge.
- b) Any activity that if isolated would not be considered as an economic activity

### **4.2 Voluntary organisations and VAT Exemptions**

For VAT exemption purposes a voluntary organisation is a not for profit organisation that does not privately benefit their own members. The purpose of the voluntary organisation will usually be of public not private benefit. Voluntary organisations will need to be registered with the Commissioner for Voluntary Organisations to fall under the tax exemption rules. An exhaustive list of qualifying bodies shall be provided regularly by the Commissioner for Voluntary Organisations to the Commissioner for Inland Revenue.

## **5. National Insurance contributions**

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Voluntary organisations may also have employees in full time or part time employment working with the organisation.

Government may assist by paying more than the present 50% of the total NI dues on each employee. As things are today both the VO and the employee each pay a National Insurance contribution. Government may pay half and the VO pay's half of the NI contribution of the employer's share. The employee's share remains the same as today.

## **6. Customs exemptions**

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As part of their operation Voluntary Organisations import both equipment as well as vehicles. Some of these goods include goods for cultural, educational, charitable, welfare or youth organisations. While there are concessions given to individuals who may import vehicles for personal use under special conditions, such as medical issues, unfortunately there is no concession on related to *duties* in relation voluntary organisations.

It is being recommended that VOs SHOULD BE EXEMPT FROM PAYING CUSTOMS

ON A PRACTICAL NOTE, OUR SUGGESTION IS THAT SAY ANY CUSTOMS DUTY LESS THAN SAY € 500 OR €1,000 IS AUTOMATICALLY EXEMPT. REQUESTS FOR AN AMOUNT MORE THAN THIS SHOULD BE MADE TO THE COMMISSIONER OF VOLUNTARY ORGANISATIONS, WHO AFTER MAKING THE NECESSARY VERIFICATIONS, RECOMMENDS THE AWARD OF THE EXEMPTION TO THE COMPTROLLER OF CUSTOMS.

## **7. Utility Bills**

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Many of the Voluntary Organisations have their own premises, either through ownership or lease. One of the major recurrent expenses of Voluntary Organisations is the utility bills incurred. While it is understandable that Voluntary Organisations must support this recurrent expense according to the consumption water and electricity (mainly) used, unfortunately the rates established for such utilities does not factor the third sector. In fact the utility bills are labelled either as residential or commercial. These two pillars do not contemplate the reality of the Voluntary Sector, resulting in the payment of high rates which are addressed to the commercial sector.

It is being requested that a third pillar of utility rates be introduced specifically applicable to the Voluntary Organisations. The third rate, referred to as THIRD SECTOR RATE, should fall between the 'residential' and 'commercial' rates.

## **8. Duty of documents, Capital Gains and Final Withholding Taxes.**

Registered VO's should be exempt from all duty on documents, capital gains tax and final withholding taxes.

## **Annex I – Approved Public Benefit Activities**

### **1. Welfare and Humanitarian**

- (a) The care or counselling of, or the provision of education programmes relating to, abandoned, abused, neglected, orphaned or homeless children.
- (b) The care or counselling of poor and needy persons where more than 90 per cent of those persons to whom the care or counselling are provided are over the age of 60.
- (c) The care or counselling of, or the provision of education programmes relating to, physically or mentally abused and traumatized persons.
- (d) The provision of disaster relief.
- (e) The rescue or care of persons in distress.
- (f) The provision of poverty relief.
- (g) Rehabilitative care or counselling or education of prisoners, former prisoners and convicted offenders and persons awaiting trial.
- (h) The rehabilitation, care or counselling of persons addicted to a dependence-forming substance or the provision of preventative and education programmes regarding addiction to dependence-forming substances.
- (i) Conflict resolution, the promotion of reconciliation, mutual respect and tolerance between the people coming from various culture.
- (j) The promotion or advocacy of human rights and democracy.
- (k) The protection of the safety of the general public.
- (l) The promotion or protection of family stability.
- (m) The provision of legal services for poor and needy persons.
- (n) The provision of facilities for the protection and care of children under school-going age of disadvantaged persons.
- (o) The promotion or protection of the rights and interests of, and the care of, asylum seekers and refugees.
- (p) Community development for poor and needy persons and anti-poverty initiatives, including—
  - (i) the promotion of community-based projects relating to self-help, empowerment, capacity building, skills development or anti-poverty;
  - (ii) the provision of training, support or assistance to community-based projects contemplated in item (i); or
  - (iii) the provision of training, support or assistance to emerging micro enterprises to improve capacity to start and manage businesses, which may include the granting of loans on such conditions as may be prescribed by the Minister of Finance by way of regulation.

### **2. Health Care**

- (a) The provision of health care services to disadvantaged persons.
- (b) The care or counselling of terminally ill persons or persons with a severe physical or mental disability, and the counselling of their families in this regard.
- (c) The prevention, care, counselling of HIV infection, the provision of preventative and education programmes relating to HIV/AIDS, including the care or counselling of their families in this regard.
- (d) The provision of blood transfusion, organ donor or similar services.
- (e) The provision of primary health care education, sex education or family planning.
- (f) The provision of First Aid and Emergency Assistance.

### **3. Land and Housing**

- (a) The provision of residential care for retired persons, where—
  - (i) more than 90 per cent of the persons to whom the residential care is provided are over the age of 60 and nursing services are provided by the organisation carrying on such activity; and
  - (ii) residential care for retired persons who are poor and needy is actively provided by that organisation without full recovery of cost.
- (b) Building and equipping of—
  - (i) clinics or crèches; or
  - (ii) community centres, sport facilities or other facilities of a similar nature, for the benefit of disadvantaged persons.

### **4. Education and Development**

- (a) The provision of education by a “school” as defined in the Education Act (2007).
- (b) Adult basic education and training.
- (c) Training for unemployed persons with the purpose of enabling them to obtain employment.
- (d) The training or education of persons with a severe physical or mental disability.
- (e) The provision of bridging courses to enable educationally disadvantaged persons to enter a higher education institution.
- (f) The provision of early childhood development services for pre-school children.
- (g) Career guidance and counselling services provided to persons coming from disadvantaged background.
- (h) Programmes addressing needs in education provision, learning, teaching, training, curriculum support, governance, whole school development, health and safety at schools, pre-schools or educational institutions.
- (i) Educational enrichment, academic support, supplementary tuition or outreach programmes for disadvantaged persons.

### **5. Religion, Belief or Philosophy**

- (a) The promotion or practice of religion which encompasses acts of worship, witness, teaching and community service based on a belief.
- (b) The promotion and/or practice of a belief.
- (c) The promotion of, or engaging in, philosophical activities.

### **6. Cultural**

- (a) The advancement, promotion or preservation of the arts, culture or customs.
- (b) The promotion, establishment, protection, preservation or maintenance of areas, collections or buildings of historical or cultural interest, national monuments, national heritage sites, museums, including art galleries, archives and libraries.
- (c) The provision of youth leadership or development programmes.

### **7. Conservation, Environment and Animal Welfare**

- (a) Engaging in the conservation, rehabilitation or protection of the natural environment, including flora, fauna or the biosphere.
- (b) The care of animals, including the rehabilitation, or prevention of the ill-treatment of animals.
- (c) The promotion of, and education and training programmes relating to, environmental awareness, greening, clean-up or sustainable development projects.

## **8. Research and Consumer Rights**

- (a) Research including agricultural, economic, educational, industrial, medical, political, social, scientific and technological research.
- (b) The protection and promotion of consumer rights and the improvement of control and quality with regard to products or services.

## **9. Sport**

- (a) The administration, development, co-ordination or promotion of sport or recreation in which the participants take part on a non-professional basis as a pastime.
- (b) Building and equipping of sport centres, sport facilities or other facilities of a similar nature, for the benefit of the community.



## ANNEX 2

### Tax Exemptions applicable to Voluntary Organisations (Prepared by legal advisers Ganado Advocates)

#### **Income Tax Act, Chapter 123 of the Laws of Malta**

*The form a “voluntary organisation” may take: It may take the form of a foundation, a trust, an association of persons or a temporary organisation*

The Income Tax Act (ITA) does not make any explicit reference to voluntary organisations and does not explicitly exempt voluntary organisations from the requirement to pay tax. It mentions particular forms of organisations such the “*foundation*”, the “*trust*” and the “*club*” and may exempt them from the requirement to pay tax if they satisfy certain conditions as indicated here below.

#### **Analysis of the relevant sections containing exemptions:**

##### **Article 12(1)(e)**

*The income of any institution, trust, bequest or foundation of a public character, and of any other similar organization or body of persons, also of a public character, which is engaged in **philanthropic** work may qualify for an exemption:*

- *In accordance with rules made by the Minister responsible for finance; or*
- *Because it is named by the Minister responsible for finance as engaged in philanthropic work.*

Voluntary organisations which take the form of a foundation or a charitable trust will be exempt from tax if they are of a public character, do philanthropic work and are either: (1) mentioned in Rules issued by the Minister responsible for Finance; or (2) are named by the same Minister as engaged in philanthropic work – the exemption is very dependent on Ministerial intervention.

The key elements are “*public character*” and “*philanthropic work*”. What is understood by these terms seems to be left in the hands of the Minister unless such terms are defined in subsidiary legislation or case law. In Case No: 27 of the Court of Appeal decided on 21 April 1959 it was stated that public character meant “... *whether the (Maltese) public in general would obtain a benefit ...*”. Then in Case No. 23/60 of the Board of Special Commissioners decided on 1 July 1961, public character was held to mean “... *set up for the public in general or at least a determinate section of the community.*”

The use of the word “*body of persons*” implies that an association may also qualify for an exemption under this sub-paragraph provided that it fulfils the conditions necessary to be exempt.

In Subsidiary Legislation 123.24 which is the ‘Exemption on Philanthropic Work Notice’ there is a list of institutions and organisations which are considered to exempt from income tax for the purposes of Article 12(1)(e), such as, Equal Partners Foundation and “*Fondazzjoni Patrimonju Malti.*”

### **Article 12(1)(f)**

*The income of any **political** party including the income of clubs adhering to political parties shall be exempt from tax.*

Whether or not a political party may qualify as a voluntary organisation is questionable. So far this issue has not been dealt with. It seems that if a political party fulfils the criteria stipulated in the Voluntary Organisations Act it could qualify as a voluntary organisation. The income that arises from the political party for the benefit of the party in its exercise as a party will be exempt from tax.

To what extent is one a club adhering to a political party? An “*Assocjazzjoni ta’ nisa / zghazagh*” of a political party may qualify for this exemption.

### **Article 12(1)(l)**

*The income of a club or similar institution which the Commissioner of Inland Revenue is satisfied is organised and operated exclusively for:*

Social welfare,

Civic improvement,

Pleasure or recreation, or

For any other purpose except profit,

No part of the income of the club or similar institution is payable to, or otherwise available for the personal benefit of, any proprietor, member or shareholder, so long as it does not carry on a business in accordance with Article 4(4).

Voluntary organisations which are associations may qualify for an exemption under subparagraph (l) if they satisfy the Commissioner of Inland Revenue in the manner stipulated in the paragraph above.

### **Article 4(4) states that:**

*“Where a body of persons carries on a club or similar institution and receives from its members not less than one half of its gross receipts on revenue account (including entrance fees and subscriptions), it shall not be deemed to carry on a business; but where less than one half of its gross receipts are received from members, the whole of the income from transactions both with members and others (including entrance fees and subscriptions) shall be deemed to be receipts from a business, and the body of persons shall be chargeable either in respect of the profits therefrom or in respect of the income which would be assessable if it were not deemed to carry on a business whichever is greater.”*

Which means that:

- A club (or similar institution) receiving 50% or more of its gross income from members (subscription fees, entrance fees etc) is deemed not to carry on a business. E.g. a club receiving 75% of its income from members. The club is not deemed to carry on a business so the remaining 25% from non members would not be taxable.
- A club (or similar institution) receiving less than 50% of its gross income from members, all income (including that of members and non members) shall be deemed as arising from a business and will be chargeable to tax as such.

### **Article 12(1)(n)**

*The income of a philharmonic society which the Commissioner of Inland Revenue is satisfied constitutes a bona fide **band club**, provided that such society has regular premises registered with the Police as a club and that such premises are in daily use as a place of resort by its members will be exempt from tax.*

A voluntary organisation which is a band club may qualify for the above exemption if the Commissioner of Inland Revenue is satisfied that it qualifies for such exemption. The need to obtain a Police permit and the condition that such premises must be in daily use as a place of resort by the members of the Band Club may affect the exemption being granted.

### **Article 12(1)(o)**

*The income of a club or similar institution which the Commissioner of Inland Revenue is satisfied constitutes a bona fide **sports club**, provided that no part of the income of which is payable to, or is otherwise available for the benefit of, any proprietor, member or shareholder, and provided also on winding up of such club or institution, no funds are distributed or available to such proprietor, member or shareholder.*

This means that a voluntary organisation which is a sports club may be exempt from tax if the Commissioner of Inland Revenue is satisfied that it constitutes a bona fide sports club. It must also satisfy two other conditions to be exempt, that is:

- None of the income must be payable to or made available for the benefit of any of the proprietors, members or shareholders of the Sports Club.
  
- When the sports club is wound up none of the funds can be distributed or made available to such proprietor, member or shareholder.

### **Other exemptions voluntary organisations may benefit from:**

The Youth Centres (Exemption) Order (Subsidiary Legislation 123.56) lays down that:

*“2. (1) The income of a **youth club or youth centre**, which is organised and operated exclusively **for pastoral purposes**, shall, upon approval of the Minister of Finance, be exempt from tax, provided no part of its income is available for the personal benefit of any proprietor or member thereof.*

*(2) The provisions of subarticle (1) do not exempt such youth club or youth centre from the filling of income tax returns.”*

A voluntary organisation which is a youth club or youth centre could be exempt from tax under the above Order if it satisfies the criteria mentioned.