INCOME TAX ACTS
DECISIONS OF THE BOARD OF SPECIAL COMMISSIONERS ON POINTS OF LAW/PRINCIPLE

SUMMARIES PREPARED BY THE MALTA INSTITUTE OF TAXATION

NOTE: These summaries are of selected cases in which points of law or of principle were decided. Repetition of essentially similar decisions has been avoided, while cases which were taken to the Court of Appeal are not reported as the final definitive decisions are available elsewhere. Also omitted are most decisions where the law has been substantially changed since they were delivered, or where the Board's decision was eventually overruled by subsequent decisions of the Court of Appeal in other cases.

The number assigned to each summary indicates the case number as published in the relative volumes published by the Inland Revenue Department in collaboration with the Malta Institute of Taxation.

B.S.C. CASE NO: 2/50 **SUMMARY NO: 1**

Decided on 29 May 1950

INTERPRETATION OF FISCAL LEGISLATION.

The case concerned medical expenses incurred in 1947 but paid in 1948. (Note: All the substantive issues concerned are now irrelevant, but in this very early case the Board gave certain guidelines regarding interpretation which have remained useful to date, even if further elaboration on the concepts involved, particularly by the Court of Appeal, has removed some of the rough edges in the Board's decision).

Interalia, the Board held that:
"…..it is an established rule of legal interpretation that not only the bare meaning of the words but their logical meaning as well has to be taken into consideration. In other words, whoever has to apply a Law must always keep in mind the text and spirit thereof in order that a logical and not simply a literal decision may result. Furthermore, in the case of fiscal laws, the correct interpretation is that which tends to close all possible loopholes by which an assessable person may try to avoid paying the full tax due".

B.S.C. CASE NO: 4/50 **SUMMARY NO: 2**

Decided on 14 June 1950

PERSONAL DEDUCTIONS FOR THE YEAR OF ASSESSMENT 1949 HAD TO BE GRANTED IN RESPECT OF THE CIRCUMSTANCES HOLDING GOOD IN 1948.

The taxpayer was married during the calendar year 1949. He claimed that he should, therefore, be allowed a personal deduction as a married person for the year of assessment 1949. The more so as the Minister of Finance had given to understand that there would be some adjustment to the rule regarding the basis year being the year immediately preceding the year of assessment. At the time this was important as 1949 was the first year of assessment, while during 1948 the law was not yet in force.

The basic issue was decided in other cases in connection with the tax liability of income earned in 1948, but this case dealt with personal deductions. The Board rejected the claim. The law was perfectly clear that entitlement to personal deductions had to be determined with reference to the basis year. The same principles as in the case of income applied.

What the Minister might have promised was not relevant (even if he had actually done so), since no amendment had been carried to the law.

B.S.C. CASE NO: 7/50 **SUMMARY NO: 3**

Decided on 17 July 1950

WHETHER A DECLARATION HAD BEEN OBTAINED BY "MORAL" VIOLENCE. DECLARATION SIGNED BECAUSE OF AN ERROR AT LAW. IMPLIED RENUNCIATION BY COMMISSIONER OF INLAND REVENUE.

In this case, the Revenue was claiming that no valid appeal could be filed to the Board, since the taxpayer had signed a declaration at the assessment stage indicating his acceptance of a higher income than that declared. Before the Board he challenged the declaration saying that it had been extorted from him by "moral" violence, in that he was threatened that he would be taken to the Board if he did not accept to sign. The Board disallowed that plea, saying that he had manifestly misunderstood the procedure and that, in any case, he had gone to the Board.

The Board, however, accepted another plea by the taxpayer that he did not know that he might have been jeopardizing his right of eventual appeal by signing the declaration. This constituted an error at law which vitiated his consent. The declaration signed was therefore not binding and the relative appeal could be heard.

The Board also noted that the Commissioner had, during the objection stage, reopened discussions with the taxpayer regarding the amount of his income. This effectively implied that the Commissioner had renounced to the binding nature of the declaration made by the taxpayer during the assessment stage (if it actually was binding), so that on these grounds also, the taxpayer could file a valid appeal.

B.S.C. CASE NO: 8/50 **SUMMARY NO: 4**

Decided on 17 January 1953

EXISTENCE OF A PARTNERSHIP

The Income Tax Act contemplates cases where a trade or business is “carried on jointly” by two or more persons. The only exceptions to the rules made are companies and certain “en commandite” partnerships. Before the enactment of the Commercial Partnerships Ordinance, and later the Companies Act, several situations arose where claims were made that partnerships existed in circumstances where the Revenue held that none in fact existed. Following the enactment of these laws, such problems seem to have disappeared, as persons going into partnership did so under the formalities set out in the law.

In this case, the Board held that a trade could be carried on jointly, even if no formal deed of partnership existed. When however the existence of the partnership was challenged by the Revenue, it was up to the parties concerned to prove its existence. The Board made a close examination of the books of the partnership, and concluded that they had been retrospectively tampered with to indicate that there existed a partnership. It was also apparent that the so-called partner did not have any of the powers of a partner, and the appealing taxpayer acted as, and retained all the powers of a sole owner. The existence of the partnership was therefore rejected.

B.S.C. CASE NO: 9/50 **SUMMARY NO: 5**

Decided on 18 September 1950

DEDUCTION OF EXPENSES INCURRED ON A POST GRADUATE COURSE. EXPENSES ON SCIENTIFIC RESEARCH. INTERPRETATION OF FISCAL LEGISLATION.

The taxpayer attended a post graduate course in UK and claimed a deduction for his out of pocket expenses in so doing. This claim was rejected by the Board:-

(a) It could not qualify as having been incurred on scientific research for which provision was made in the Income Tax Act. Obtaining of new and further qualifications was something completely different. In fact, experiments with new drugs were only carried out when taxpayer returned to Malta.

(b) The expenses were not "wholly and exclusively incurred in the production of the income". There was no link between expenses and income: taxpayer was only increasing his general qualifications. (Note: The Board did not specifically say so, but it clearly intended to say that the expense was capital in character).

(c) The taxpayer referred to the exemption granted by the Income Tax Act to certain scholarships, but the Board pointed out that none existed in this case.

(d) Finally the Board pointed out that it was not authorized to extend the clear provisions of the Act and that interpretation of fiscal legislation had to be restrictive rather than extensive. (Note: it also made what may be considered to be rather antiquated comments to the effect that in such issues the "common good" had to prevail over the individual's benefit).

B.S.C. CASE NO: 10/50 **SUMMARY NO: 6**

Decided on 14 September 1950

ONUS OF PROOF. TAXPAYERS DECLINING TO GIVE EVIDENCE.

In this case, the two appealing taxpayers refused to give evidence when asked to do so by the Board. One said that he had moral reservations about so doing, while the other said that he could not give evidence on what he thought he remembered.

The appellants claimed that the assessing officer had taken into account wrong factors, but they failed to prove their point by any sort of trade records.

In the circumstances, the Board held that appellants had failed to discharge the onus laid upon them by the law of proving that the assessment complained of was excessive, and confirmed the assessment.

B.S.C. CASE NO: 11/50 **SUMMARY NO: 7**

Decided on 9 September 1950

ONUS OF PROOF THAT THE ASSESSMENT IS EXCESSIVE. STANDARD OF PROOF.

The taxpayer was an illiterate hawker on whom an estimated assessment was raised for the year of assessment 1949. He had kept no trade records for basis year 1948, but the Board held that all proof that was admissible in Court in normal cases was also acceptable for tax purposes.

In the circumstances of the case, and seeing that the law was only enacted in December 1948, the Board accepted taxpayer's explanations and remitted the assessment.

B.S.C. CASE No: 13/50 **SUMMARY NO: 8**

Decided on 18 September 1950

OVERSEAS SERVICE ALLOWANCE AND COST OF LIVING ALLOWANCE.

The taxpayer was required by his employer to do service overseas, and he was granted overseas service and cost of living allowances. He claimed exemption on both amounts.

The Board refused the exemption. No deduction could be given for the related expenses as these were not incurred in the production of the income, but were of a domestic and private character. As such, they were specifically prohibited by the law. Moreover, the income in question fell to be considered as forming part of the taxpayer's emoluments chargeable to tax under the wide provisions of the relative charging section.

UK practice was on the same lines, and the only exemption granted in this respect was given by a special provision of the law to servants of the Crown. Not even this exemption was available in Malta.

The Board also commented on the very wide scope of the charging section of the law of Malta relating to gains or profits of employees.
(Note: the law was subsequently changed).

B.S.C. CASE NO: 19/50 **SUMMARY NO: 9**

Decided on 23 December 1950

LATE FILING OF APPEAL.

The taxpayer sent his appeal forms by post to the Department. He proved by evidence that he had done so within the time limit imposed by law. The Commissioner, however, proved that the forms were received at the Department outside this time limit.

Various arguments were raised before the Board by the parties. These were mostly held to be irrelevant by the Board which, however, held that the filing of the appeal was done when the relative forms were received, not when they were sent.

In the circumstances, the appeal was declared to be null and void.

B.S.C. CASE NO: 1/51 **SUMMARY NO: 10**

Decided on 17 February 1951

TERMS USED BY THE INCOME TAX ACT HAVE THE MEANING ASSIGNED TO THEM IN THE BASIC CIVIL LAW OF MALTA. ISSUES WHICH DID NOT FORM PART OF THE PRECISE GROUNDS OF OBJECTION TO AN ASSESSMENT CANNOT BE TAKEN TO THE BOARD.

The first issue was whether an “adopted child” had to be so adopted in accordance with the Civil Code as it then stood, or whether the term could be extended to cover cases which were informally acknowledged as adoption in Malta. The Board held that once the term was known to Maltese Law, no other definition could be given to it except that contained in the Civil Code. Practice in Malta and elsewhere was irrelevant. Furthermore, the I.T.A. itself stipulated that where terms used were not known to Maltese law, reference had to be made to the UK law. This proved that where terms were known to Maltese law, no other interpretation was licit.

As regards the second point, the taxpayer had not objected against the assessment on the grounds that no dependent's allowance had been granted in respect of his incapacitated sister. The Board held that once the law required that "precise grounds of objection" were to be filed against assessments and that appeals could only be made to the Board where no agreement was reached on the taxpayer's objections, there could be no valid appeal on issues which had not been raised by way of objection.

B.S.C. CASE NO: 10/51 **SUMMARY NO: 11**

Decided on 9 July 1951

DEFECTIVE APPEAL. ANNUITY PAYMENTS ARE CAPITAL IN CHARACTER AND NOT DEDUCTIBLE.

In an unusual move, the Board first held that the appeal filed was null and void, but then proceeded to determine the merits of the case, also rejecting the appeal on its merits.

The appeal was null and void because the taxpayer had not filled up the appeal forms properly and had not attached thereto a copy of the Commissioner's decision as required by the appeal forms. This rendered the appeal null and void within the terms of the Court of Appeal's decision in Appeal Case No: 4.

As regards the merits of the appeal, the taxpayer had bought a share of an immovable property against the payment of an annuity. The recipient of the annuity had (correctly) declared the annuity as income and had been taxed upon it. The Board, however, stated that the case only required its decision regarding the deduction claimed. This it refused to grant on the grounds that the expenditure was clearly capital in character, being the purchase price of the immovable which thereafter belonged to the appellant. The Board quoted UK case law, and stated that it made no difference that in an out and out purchase, the price of the thing bought was fixed while in acquisition by way of an annuity, the actual amount paid by the purchaser depended on how long the seller lived. Both outlays were capital in character and not deductible.

B.S.C. CASE NO: 13/51 **SUMMARY NO: 12**

Decided on 18 August 1951

APPEAL FILED LATE. COMPUTATION OF TIME LIMIT. ACCEPTANCE OF APPEAL BY THE SECRETARY TO THE BOARD.

The Board re-affirmed the principle that the time limit for the filing of appeals was preremptory, that is to say it was in no way extendable. The appeal in this case had been filed late and it was therefore null and void. The Board also ruled that:-

(a) acceptance of the appeal forms by the Secretary to the Board, who functions as its Registrar, could not convalidate a faulty appeal: the Secretary had no power to determine what was valid and what was not, this matter being reserved for the Board: the Secretary had to accept what was filed with him;

(b) Sundays and Public Holidays do not suspend the running of time limits, except that if the last day of any time limit fell on one or the other, the time limit was automatically extended to the next following day not being a Sunday or a Public Holiday.

B.S.C. CASE NO: 14/51 **SUMMARIES NO: 13/14**

Decided Preliminary on 8 January 1952
Final on 7 April 1952.

EXTENT OF THE BOARD'S JURISDICTION. CLOSING HOURS OF THE BOARD'S REGISTRY.

On a preliminary point, the appellant contended that the Rules governing appeals to the Board had been issued ultra vires the powers granted under the law to the issuing authority (at that time the Governor-in-Council). The Board had first to decide whether it had powers to decide such points. After a review of the issues involved, the Board concluded that, as a specialized tribunal, it was strictly limited to the functions assigned to it by the Income Tax Act. Matters such as the present issue fell under the all-encompassing powers of the normal courts, upon which the Board was not authorized to trespass. The appellant was therefore set a time limit within which he could institute proceedings before the Civil Court.

(Note: the appellant did not apparently file a court case and the issue was consequently dropped so that the Board proceeded to deliver its final decision below. This question of the extent of the jurisdiction of the Board has been repeatedly considered by the Board, so however that while in general the above line of thought was adhered to, in many cases the

Board considered that it was competent to tackle the point of law raised. See also the judgment delivered by the Court of Appeal on the 29 April 1973 in Appeal Case no 76).

In its final decision, the Board had to consider whether the appeal had been filed late or not. The appeal was filed on the last day of the appropriate time limit, but it was filed at 1.45 p.m. when Government offices, in terms of a legal notice published in the Government Gazette, closed at 1.30 p.m. Filing was done by being posted in the department's letter-box. The Revenue tried to suggest that filing should have been done in accordance with the rules regulating such matters in the Court Registry. The Board ruled that those hours were irrelevant to the case, and that the time limits had to be established in accordance with the hours during which Government offices were open. Unfortunately for the taxpayer he had left matters fifteen minutes too late, and his appeal was consequently declared to be null and void.

B.S.C. CASE NO: 16/51 **SUMMARY NO: 15**

Decided on 20 October 1951

ANNUITY PAYMENTS ARISING FROM A SCHEME OF ARRANGEMENT.

The taxpayer and his wife entered into a complex arrangement with the wife's brother whereby in consideration of the payment of an annuity to the said brother, the parties settled differences between them so that the taxpayer and his wife:-

(a) gave up the right to accounting by the brother in respect of his administration of the family estate in the past;

(b) gave up the right for any arrears which might result from the said accounting;

(c) gave up the wife's usufruct on half of certain property;

(d) acquired half of certain immovable property of which the wife already owned the other half.

The Board held that, shorn of all complications, the transaction resulted in the taxpayer and his wife acquiring capital assets against the payment of an annuity. The payment was therefore also capital in nature and not deductible.

B.S.C. CASE NO: 18/51 **SUMMARY NO: 16**

Decided on 19 May 1953

ADDITIONAL ASSESSMENT INCORPORATED IN A NOTICE OF REFUSAL.

The appellant had filed an objection against an assessment. The Commissioner issued a notice of refusal of the objection and, at the same time, added back to the assessed income certain deductions which had originally been allowed in the assessment.

The taxpayer appealed to the Board, but later restricted his appeal to the increase in the assessment effected at the refusal stage.

The Board held that the Commissioner had no right of increasing the assessment during the refusal stage. In so doing, he was effectively denying the taxpayer his rights of objection against the additions made to the assessment. The correct procedure would have been to raise an additional assessment to cover the deductions now being denied, wait for an objection to be filed there against, deal with the objection and, if agreement could still not be reached, issue a refusal to cover all objections.

The assessment appealed against was therefore reduced to the amount originally assessed.

B.S.C. CASE NO: 19/51 **SUMMARY NO: 17**

Decided on 17 January 1953

EXISTENCE OF A PARTNERSHIP.

The Commissioner refused to accept the existence of a genuine partnership between the taxpayer and his son. No partnership deed had been drawn up and this was only done when problems arose with the Revenue. The premises where the trade was carried on were also rented in the name of the father. Furthermore, there seemed to be no actual distribution of profits, but whenever the son asked for money this was given to him by the father.

The Board held that the lack of a deed of partnership was no obstacle, as no law required it. Both father and son had put a “thing” into the business (certain machinery), and both were working full time. The letterheads of the business were entitled “A.B & Son”, and although bank accounts were operated by the father alone, the Board held that this was to be expected in Malta.

All in all the Board was satisfied that a partnership existed, even though it pointed out that the deed of partnership which was eventually drawn up between father and son could not have retroactive effect.

B.S.C. CASE NO: 27/51 **SUMMARY NO: 18**

Decided on 2 April 1953

EXPENSES TO ACQUIRE PROFESSIONAL QUALIFICATIONS. DATE ON WHICH EXPENDITURE WAS INCURRED. INTEREST PAID.

Appellant, in pre-income tax years, took up a course abroad which led to his obtaining professional qualifications. This enabled him to take up employment with a firm which had funded his studies. Part of the expenditure, however, had to be reimbursed by the appellant by instalments, spread over a number of years, some of which fell in the income tax years. Appellant claimed a deduction for one of the instalments, and also for interest at ½% per annum on the outstanding balance which his employer was charging him.

The Board held:-

(a) it was well established that expenditure on the acquisition of further qualifications was capital in character and not deductible;

(b) the expenditure had, in any case, not been incurred in the year immediately preceding the year of assessment: only instalments were then being paid;

(c) (Note: perhaps wrongly) the interest claimed as a deduction was allowable because, in the circumstances, the appellant could be said to have borrowed money to constitute his personal capital for income earning purposes.

B.S.C. CASE NO: 28/51 **SUMMARY NO: 19**

Decided on 23 February 1952

OVERSEAS ALLOWANCE RECEIVED IN MALTA. EXPENSES INCURRED IN THE PRODUCTION OF THE INCOME. DOMESTIC EXPENSES.

The taxpayer, a foreigner, received an overseas allowance from his foreign employers on being assigned to perform his duties in Malta. He contended that the allowance was not a part of his income, and that it was merely a re-

imbursement of his expenses, so that any income element was automatically cancelled out. The Board refused both contentions, pointing out that certain other territories (whose tax laws was also based on the Model Income Tax Ordinance) had entered a specific provision in their law to exempt these allowance – something which had not been done in Malta. Nor could the expenses allegedly covered by the allowance be held to have been incurred in the production of the income.

The Board could find no difference between the allowance received and taxpayer's normal income. It also quoted U.K. case law in this regards. Moreover, if at all, the expenses would have been expenses of a domestic nature whose deduction was prohibited by law.

B.S.C. CASE NO: 3/52 SUMMARY NO: 20

Decided on 28 May 1953

JUDGES' SALARIES ARE NOT EXEMPT FROM TAX BECAUSE THE CONSTITUTION LAYS DOWN THAT THEIR SALARIES COULD NOT BE REDUCED DURING THEIR TENURE Of OFFICE. THE "LAUDEMIUM" RECEIVABLE ON CERTAIN TRANSFERS OF IMMOVABLES IS TAXABLE. WHETHER A CERTAIN IMPOSITION IN A WILL WAS DEDUCTIBLE.

On the above issues referred for its decision, the Board held that:

1. The claim for exemption on a judge's honorarium was not acceptable. What the Constitution wanted to do was to safeguard the judges' position, and not to give them tax privileges. Where the Income tax Act wanted to grant exemptions, it did so e.g. the Governor, the Bishops etc. Although only Income Tax levied a tax on salaries, other taxes also reduced one's disposable income, and if the claim was correct, no new tax would be leviable where a judge was concerned.

2. The appellant maintained that once a "laudemium" was an occasional receipt, it was not income in nature. The Board countered by quoting UK case law whereby "annual" was held not to mean having to recur year after year, but only income earned during a particular year. The Board rejected arguments concerning the capital nature of emphyteutical grants, and stated that even Civil Law recognized their income character by allocating any such receipts to the usufructuary in cases where the immovable concerned was subject to usufruct. The provisions of the Act making subject to tax "…rents, royalties, premiums and other profits arising from property……", were wide enough to cover such receipts.

3. As regards the inheritance, the testator required the heirs and legatees to earmark the first Lm300 rents from the inheritance, after the payment of all relative expenses, for the saying of masses. The Board held that these provisions did not constitute a charge on the inherited immovables, and that therefore the appellant's share of the inherited rents could not be reduced for tax purposes on this account.

B.S.C. CASE NO: 14/52 **SUMMARY NO 21**

Decided on 14 February 1953

RECEIPTS BY A "VARIETY ARTISTE"

The taxpayer was effectively a prostitute, even though she was employed as a variety artiste (now usually called a night club singer).

The Revenue had identified certain lump sum receipts by appellant which were brought to charge to tax. Taxpayer claimed that these were personal gifts made to her by friends to whom she had provided companionship, and nothing more.

The Board agreed with a U.K. decision which stated that "… a man may employ himself so as to earn profits in many ways…the word "vocation" is analogous to "calling", a word of wide significance, meaning the way in which a man passes his life".

The Board was not satisfied that the appellant had been given money by her male friends solely for altruistic purposes, and held the amounts in question evidently constituted ordinary items of the gains or profits from the appellant's vocation. The assessment was therefore confirmed.

B.S.C. CASE NO: 15/52 **SUMMARY NO: 22**

Decided on 30 June 1953

ANNUITY RECEIVED ON SALE OF PROERTY AND BUSINESS HELD TO BE TAXABLE. DISTINCTION BETWEEN ANNUITY AND PAYMENT BY INSTALMENTS.

Taxpayer sold his share in a business, together with certain other property, for a lump sum and annuity for his and his wife's lifetime. Taxpayer claimed that the annuity was not taxable, being capital in character as it represented the value of what he had sold. The Board disagreed. It was true that it had several times

refused a deduction for annuities paid on the grounds that such payments were capital in character, but none the less, the Act specifically brought an annuity received to charge. The Board could go no further than to apply the law. The institute of annuity was of long standing in Maltese legislation, and if the Income Tax act did not make specific provisions in its respect, the Board was authorised to do so.

Had the payments been instalments of a pre-determined amount, then no annuity would have been created and the instalments received would not have been taxable. But the taxpayer had not taken this road. The Board went into this distinction with reference to certain well known U.K. cases which it felt obliged to follow.

B.S.C. CASE NO: 21/52 **SUMMARY NO: 23**

Decided on 19 May 1953

TAXABILITY OF "KEY MONEY" RECEIVED.

The taxpayer as landlord, granted his consent for the transfer of tenancy rights in certain commercial immovable property from the sitting tenants to other tenants. He received various sums called key-money for granting his consent.

The taxpayer first claimed that these payments were exempt because they represented the value of fixtures and fittings in the premises, but the Board pointed out that these always remained his property, and had eventually to be returned to him at the end of the lease.

It was also claimed that the payments were capital in character, being a one-off occasion. The Board also rejected this plea since one-off transactions were in no way exempt from tax. It was finally claimed that the payments were neither rents nor premiums, but the Board pointed out that the charging section levied tax on "rents, royalties, premiums and any other profits arising from property". Since the payments in question did not involve the transfer by the appellant of any part of the capital which he owned, they fell squarely within "any other profits arising from property" and were taxable as such.

B.S.C. CASE NO: 9/53 **SUMMARY NO: 24**

Decided on 3 November 1953

DEDUCTION FOR REPAIR OF PREMISES.

The taxpayer claimed a deduction for the repair of a boundary wall of what he stated was a field adjacent to the garden of his house. The deduction was refused by the Revenue on the grounds that it was capital in character.

The Board made an inspection of the premises in question and came to the conclusion that the so-called field was in fact the lower part of the garden of the house. In consequence, there was no need to examine whether the expenditure was a capital expense: the repairs were covered by the Repair and Maintenance of Premises Rules, and no further deduction could be allowed.

B.S.C CASE NO: 12/53 **SUMMARY NO: 25**

Decided on 9 July 1953

EXPENSES ON BUSINESS TRAVEL.

The taxpayer was employed with an insurance agency in Malta. The foreign principals desired to open a fresh branch in their business which they wanted to allocate to the taxpayer personally. To settle matters, the appellant had to make a trip to London, where he successfully concluded negotiations and obtained the new agency. The Commissioner did not grant a deduction in respect of the relative expenditure.

The Board agreed “It is not enough that the disbursement is made in the course of, or arises out of, or is connected with the trade”. There had to be a link with the earning of the income brought to charge to tax. No income arose to the taxpayer out of the agency so acquired in the year in question. The agency would render income to the appellant in future and, as such, the expenditure was capital in character and not allowable.

B.S.C. CASE NO: 27/53 **SUMMARY NO: 26**

Decided on 13 January 1954

LEGAL EXPENSES.

The appellant had a drapery business in Sliema. He entered into negotiations for the purpose of acquiring a shop in the same line in Valletta. For various reasons the deal fell through, and the appellant incurred legal expenses in a related Court case which he lost.

A claim was made for a deduction of the legal expenses. This was refused by the Commissioner and the Board agreed. The Board quoted the Atherton principle: "Although expenditure may have been incurred wholly and exclusively for the purposes of the trade, it is not deductible when it is made not only once and for all, but with a view to bringing into existence an asset or advantage for the enduring benefit of the trade… there is very good reason (in the absence of special circumstances leading to an opposite conclusion) for treating such expenditure as properly attributable not to revenue but to capital".

Although the new Valletta shop was to have been in the same line as the Sliema shop, the Board held that this would have been a new asset of the business, and all expenditure incurred in its regards were therefore capital in character.

B.S.C. CASE NO: 29/53 **SUMMARY NO: 27**

Decided on 9 March 1954

BAD DEBTS CLAIMED IN RESPECT OF PERSONAL LOANS.

The taxpayer was a civil engineering contractor and a company director. He claimed as a deduction bad debts in respect of various loans which he had made.

The Revenue raised various objections to the claim, but the Board went straight to the issue whether appellant was a money lender by profession. A deduction for bad debts could only be granted, in terms of law, where they had been incurred in a trade, business or profession. The Board quoted U.K. case law which distinguished between cases where the bad debts were allowed as a deduction, and where they were not. The rule was that they had to be part of the taxpayer's trade or profession in the sense that the taxpayer, alone or in conjunction with his other activities, had to be a moneylender.

The Board held that, in the present case, the taxpayer was not a moneylender, even though he had made several loans and usually charged interest. The Board held that the loans had been made out of generosity, and were not linked with taxpayer's work as contractor and company director. The bad debts claimed could not, therefore, irrespective of all other considerations, be allowed as a deduction.

B.S.C. CASE NO: 1/54 **SUMMARY NO: 28**

Decided on 22 May 1954

TRAVELLING EXPENSES: APPORTIONMENT.

Appellant was an importer who made a longish trip abroad, mixing business with pleasure. He claimed as a deduction a proportion of his total expenses, calculated in the ratio of the number of days spent on business in relation to the duration of the trip. The Commissioner did not allow any deduction on the grounds that the expenditure could not be said to have been "wholly and exclusively incurred in the production of the income".

The Board decided that the expenses "… to the extent to which they were wholly and exclusively referable…" to the business, were deductible. In so doing the Board relied on an Australian case. (Note: the Australian law allowed such apportionment, but our ITA did not. Yet the practice of apportionment became so established that many years later the I.T.A. was amended to bring law and practice into line).

The Board also adopted the following principles emerging from U.K. case law (Note: again perhaps somewhat loosely as the U.K. law in this regards is less rigid than that of Malta):-.

a) For an expense to be deductible: "it is sufficient that it should be justified by commercial expediency and in order to facilitate the carrying on of the trade".

b) Expenses must have been incurred "for the purposes of the trade", which was held to mean "for the purpose of enabling a person to carry on and earn profits in the trade, or in other words for the purpose of earning the profits".

c) Expenditure which is incurred on other than business grounds…. is not wholly and exclusively expended for the purpose of the carrying on the trade".

The Board held that no part of the business trip could be held to be capital in character in that it had not been made for the purpose of acquiring new agencies.

Finally, the Board made a rough and ready calculation of the deductible expenses and allowed an amount nearly equal to what had been claimed.

B.S.C. CASE NO: 4/54 **SUMMARY NO: 29**

Decided on 31 March 1954

ADMINISTRATION FEES RENOUNCED TO.

Appellant was nominated administrator of certain family property by the Custodian of Enemy Property for the duration of the war. In the administration accounts he transferred his rights to the usual 4% per annum administration fees to a suspense account, but never withdrew any amount. Eventually, he distributed the accumulated amounts to the members of the family.

He was brought to charge to tax on the relative amounts, and the distribution to members of the family was held by the Commissioner to be a voluntary payment.

The Board disagreed and allowed the appeal. The mere creation of a suspense account did not give rise to any income to the taxpayer. Nothing had yet come into his ownership at that stage. Eventually nothing ever did so come because he never took any fees. Consequently, there could not be a case of a voluntary payment when he distributed everything to the family.

A suspense account was held by the Board not to create any definitive right, but only to indicate that no decision had yet been taken on the matter. Presumably if he had credited the administration fees to an account in his name, the Board would have been ready to consider the Revenue's contentions further.

B.S.C. CASE NO: 11/54 **SUMMARIES NO: 30/31**

Decided on 28 April 1954 (preliminary)
1 April 1955 (final)

PRECISE GROUNDS OF OBJECTION. PREMIUMS PAID TO ACQUIRE LEASES. EXPENSES ON NEWLY ACQUIRED PREMISES. DEPRECIATION ON CERTAIN WATERCRAFT.

In his appeal to the Board, the taxpayer raised points which were not set out in the notice of objection. This notice was detailed and not generic. The Board held that a notice could be either generic against the entire assessment, or it could be limited to certain points which are specifically detailed in the objection, as was

the present case. Where the issues are detailed, the taxpayer had himself circumscribed the points which could be considered on appeal, since the right of appeal was limited to what was under objection. The appellant argued that apart from his written objection, he had raised other points viva voce during discussions with the Revenue. The Board held that this was irrelevant and delivered a preliminary decision accordingly.

Following the lapse of the time limit for appeal, the Board decided on the remaining issues, confirming the Commissioner's decision on all points. The premium (rigal) paid to obtain the lease of property was not rent paid in advance, but a capital payment which acquired an asset (i.e. the tenancy) for the enduring benefit of the trade. The expenses on newly acquired premises were also capital and could not be considered as normal, deductible, repairs. The water-craft were obviously used for personal pleasure and had nothing to do with the business.

B.S.C. CASE NO: 18/54 **SUMMARY NO: 32**

Decided on 28 July 1954

EXPENSES FOR DIVISION OF ESTATE. WHETHER DEDUCTION RULES FOR IMMOVABLE PROPERTY WERE INTRA VIRES.

Appellant incurred expenditure for the division of inherited property. No deduction had been allowed him and the Board agreed. The expenses were wholly connected with the ownership of the capital constituted by the estate, and were in no way incurred in the production of the income arising therefrom. This principle held good even if, as appellant contended, he would be able to increase his income following division.

The Board also rejected a claim for a deduction in respect of expenses incurred in repairing immovable property that was in excess of the amounts allowed by the deduction rules then in force. Appellant claimed that the rules were ultra vires the law, the proper procedure for their enactment had not been followed, and that they did not have retrospective effect to the years in question. The Board found no merit in any of these submissions: the law clearly contemplated the issue of such rules, taxpayer had in no way proved that the proper procedure had not been followed, while the rules had built-in retrospective effect to the date of commencement of the Act.

B.S.C. CASE NO: 21/54 **SUMMARY NO: 33**

Decided on 13 November 1954

LIVING EXPENSES INCURRED WHILE ON DUTY ABROAD. RELIEF FOR FOREIGN TAX.

Taxpayer was sent to work in Libya. He was given allowances, as well as free board and lodging. He was not satisfied with the food provided him and incurred extra expenses in this regard. No deduction was allowed by the Board as such expenses were purely domestic in character and disallowed as a deduction by the law. The Board also quoted with approval UK case law to the effect that: "…. a man does not eat and sleep in the course of performing his duties……". The taxpayer before the Board also claimed travelling expenses, but the Board refused to consider the claim on the grounds that there had been no claim in this respect in the notice of objection, or in his appeal.

The taxpayer also claimed relief for what he considered was Libyan income tax paid. The Board refused the claim as appellant had not proved anything in this respect and, in any case, income tax in Libya seemed to have been introduced after the year concerned.

(Note: the Board failed to mention that at the time there was actually no mechanism in the ITA for allowing such relief).

B.S.C. CASE NO: 22/54 **SUMMARY NO: 34**

Decided on 24 August 1954

DEDUCTION OF AN ANNUITY PAYABLE WHEN THE ANNUITY HAD A PARTICULAR CONDITION ATTACHED.

Long before income tax was introduced, appellant had bought from his father a business against the payment of an annuity. As a condition of the transaction, it was stipulated that if the annuity was not paid for a certain period, the father would have the right to recover the business. This provision ran counter to the Civil Code which laid down that failure to pay an annuity would not give the right to the original owner to claim back the assets transferred on the constitution of the annuity. In consequence, appellant claimed that what he was paying was not actually an annuity, but a charge on his business income which should be allowed as a deduction.

The Board disagreed. The said stipulation did not render the transaction one which was not an annuity. If anything, the right of recovery reserved by the father

could not in fact be exercised by him, but the annuity remained an annuity and could not be allowed as a deduction since it was a capital payment.

B.S.C. CASE NO: 29/54 **SUMMARY NO: 35**

Decided on 25 October 1954

PAYMENT FOR GOODWILL CALCULATED ON FUTURE TURNOVER IN BUSINESS.

Appellant had acquired a business in Valletta on condition, inter alia, that he paid the former owner as consideration an amount equal to 5% on gross sales for the next nine years: so however that payment was to stop in case the original owner died before. Appellant claimed the payments being made as a deduction.

The Board held that the yearly amounts paid were effectively the purchase price of the business and as such were capital in character and not deductible. It made no difference that the purchase price was not fixed but depended on future events. The Board quoted in support UK case law, including also a decision of the Privy Council from an Indian case. Another Privy Council decision in an Indian case was also quoted to the effect that the payments made were actually an application of the profits after these had been earned. (Note: this was the first time that this important principle was referred to by Malta's tribunals, though perhaps it was not strictly relevant to the point at issue).

The Board also dismissed as irrelevant a claim that appellant had in fact acquired no capital asset as in terms of the lease agreement of the premises where the business was located he had no right of sub-leasing, and could not therefore readily dispose of the business.

B.S.C. CASE NO: 30/54 **SUMMARY NO: 36**

Decided on 17 November 1954

ANNUITY RECEIVED FOR THE TRANSFER OF IMMOVABLE PROPERTY PART OF WHICH HAD ONLY BEEN HELD IN USUFRUCT.

This was yet another case where the Board held that although an annuity received in these circumstances was clearly capital in character it was nonetheless still taxable under the existing provisions of the law.

The only difference in this case was that the immovables had been partly held in usufruct and not in full ownership. This was held to make no practical difference, actually income of one sort was being exchanged for income of another. The right to usufruct is a capital right.

B.S.C. CASE NO: 35/54 **SUMMARY NO: 37**

Decided on 24 January 1955

LEVIES CHARGED BY THE CUSTODIAN OF ENEMY PROPERTY.

The Custodian of Enemy Property was entitled to a one time payment "in respect of his general administrative expenses" amounting to three per cent of monies paid to him and of the value of any property vested in him. The Custodian had the right to retain the charge out of any income accruing to him, as well as out of the proceeds of any property that was sold.

The Revenue refused to allow any deduction except the usual three per cent administration fee on monies received. The Board agreed. The one-time charge levied by the Custodian was in the nature of a capital levy and went beyond normal administrative charges. The fact that the Custodian could retain his one time charge out of income, did not mean that this became an expenditure incurred in the production of the income.

B.S.C. CASE NO: 38/54 **SUMMARY NO: 38**

Decided on 25 January 1955

EXHAUSTION OF CAPITAL: DEDUCTIONS AGAINST INCOME FROM A QUARRY.

The appellant acquired from his father a piece of land which he turned into a quarry. At the same time, appellant sold to his father and family a field at a price which he held was much lower than its true value. He claimed a deduction against his income from the sale of stones in the quarry, both on the general principle that the quarry constituted his capital which was disappearing as he cut and sold stones, and also since, to acquire the quarry, he had sold a field at a lower price than what its true value.

The Board confirmed the Commissioner's refusal to grant any deduction. The Act specifically prohibited any deduction in respect of the exhaustion of capital and this was in conformity with principles enunciated in the U.K. This applied to both

branches of the arguments brought forward by appellant. The Board also quoted Maltese civil case law to the effect that the concession of land for the purpose of establishing a quarry constituted the sale of the stones which would be extracted, and not a lease, irrespective of how the transaction was described.

The Board agreed that this was rather hard, but that was the law.

B.S.C. CASE NO: 5/55 **SUMMARY NO: 39**

Decided on 7 June 1955

ONE TIME REMUNERATION FOR SERVICES RENDERED NOT IN THE APPELLANT'S USUAL LINE OF ACTIVITIES.

The Appellant had been secretary of a company for some 35 years. When the company was liquidated he was chosen as liquidator and given as remuneration three thousand pounds (a fairly large sum in those days). He claimed that this receipt was not taxable:

(a) it was capital in nature being a one-time payment for work entirely unconnected with his usual activities;

(b) it was a payment made to him in recognition of the faithful services rendered over 35 years and, if a profit, should be spread over those years, most of which lay outside the income tax years.

The Board confirmed the assessment. The law brought to charge "…..gains or profits arising from ….. profession or vocation …. for whatever period of time such …. profession or vocation may have been carried on or exercised". This disposed of the first ground of objection. There was evidently nothing capital in the payment, and any arguments regarding isolation had long been disposed of in U.K. Moreover: "….. if an officer is willing to do something outside the duties of his office, and his employer gives him something in that respect, that is profit, it becomes a profit of his office which is enlarged a little so as to receive it". The Board rejected the second branch of the objection. The appellant was being remunerated for work done. The fact that he had been such a faithful servant of the company may have been a factor leading to his choice, but nothing more. The Board consequently had no need to examine the claim that if the receipts were income they should be spread over the years during which he was company secretary.

B.S.C. CASES NO: 30 AND 15/55 SUMMARY NO: 40

Decided on 12 May 1955

RE-OPENING OF ACCOUNTS. GENUINE ERROR CORRECTED. REFERENCE TO POSSIBILITY OF CLAIMING A REFUND OF TAX WHEN EXCESS PAYMENT RESULTS TO HAVE BEEN MADE.

The taxpayer, a company, set up a partnership with an individual for the importation of beer. It is not known what sort of partnership was set up. This venture was not entered into the company's accounts as the clerk in charge of its accounts had not been advised about the matter. A loss had actually been incurred, but this did not appear in the accounts and its tax return, which showed a profit. The company later filed amended accounts and returns, and claimed the loss as a deduction. This was not accepted by the Revenue and the company appealed. The Board felt that a genuine mistake had been made, and that there was nothing in the law to prevent a correction. The Board also referred to the provisions of the law which allowed refunds where it eventually results that tax would have been paid in excess of that properly due. The appeal was therefore allowed.

B.S.C. CASES NO: 30 AND 31/55 SUMMARY NO: 41

Decided on 21 February 1956

SOURCE OF EMPLOYMENT INCOME.

The two cases were decided together as appellants were both expatriates serving with the same company, a subsidiary of a foreign multi-national company.

The two were employed with the parent company on condition that they could be sent to do service with any of its foreign subsidiaries. As they were admittedly not domiciled in Malta:-

(a) their entire salary was to be considered to be taxable in Malta if it was deemed to arise in Malta;

(b) the salary would be taxable in Malta on the remittance basis, that is to say in so far as it was remitted to Malta, if it was held to arise abroad.

In both cases, the salaries were paid abroad, and only partially remitted to Malta. The Commissioner and the Board departed from U.K. practice, as sanctioned by case law, to the effect that the source of employment income is not related to the

place where the services are rendered, but to where the contract of employment is located (i.e. where finalized) and where payment is made. The Board stated that after all the contract of service was known to Maltese law, and the duties of the appellants were related solely to the Maltese company. The source was therefore held to be in Malta.

(Note: some twenty years later the Board, differently constituted, reversed this decision following further case law on the point at issue in the U.K.)

B.S.C. CASES NO: 35 AND 36/55 **SUMMARY NO: 42**

Decided on 9 February 1956

DEPRECIATION OF GOODWILL. AMORTISATION. TEMPORARY LEASES.

These two appeals were heard together as they related to the same transactions carried out in partnership.

The appellants had acquired two theatres on leases which were due to lapse after 12 and 16 years, respectively. In the relative contracts they paid large amounts for the theatres' goodwill, in respect of which they claimed depreciation or amortisation over the period of the lease. This was refused by the Commissioner on the grounds that the relative expense had been incurred well before income tax years, and as it was capital in character.

The Board pointed but that there could be no question of depreciation, as this was restricted by law to plant and machinery and certain industrial premises. The appellants claimed that the expenditure was not capital because goodwill had only been acquired for a definite period of time, and they had therefore made no permanent acquisition. The payments made were a sort of anticipated rent. The Board countered that the payments had nothing to do with rent as they were not paid to the landlord, but to the persons who were formerly operating the theatres. The Board also pointed out that (Note: in virtue of the rent laws of Malta) they would not lose their tenancy rights once the leases expired.

The Board held that the expense was capital in character, as the appellants had acquired an asset for the enduring benefit of the trade. It reiterated that the fact that, at least theoretically, they could lose the tenancy of the theatres after 12 and 16 years, respectively, did not render the payments less of a capital nature. This principle had already been well established. The deduction claimed was therefore refused.

B.S.C. CASE NO: 38/55 **SUMMARY NO: 43**

Decided on 23 January 1956

TRANSPORT AND ENTERTAINMENT EXPENSES INCURRED BY A SENIOR PUBLIC OFFICIAL.

Appellant, as a consequence of the high public office which he occupied, had to incur certain expenses on transport and entertainment. It does not appear that he was in receipt of any allowances, and he claimed a deduction against his salary on this account.

The Board examined the claim from the angle as to whether the expenses had been "wholly and exclusively incurred in the production of the income" within the terms of the general deduction formula contained in the Act. The Board stated that expenses had to be inherent to the earning of the income. There was no question that the appellant could not have earned his income without incurring these expenses: they were not incurred by the taxpayer in the actual performance of his duties. The Board also held that the expenses were of a private or domestic character, whose deduction was specifically disallowed by law.

(Note: The Board relied heavily on U.K. case law, and its arguments anticipated the eventual addition to the law, many years later, whereby expenses had to be not only wholly and exclusively incurred in the production of the income, by employees, but also "necessarily" so incurred).

B.S.C. CASE NO: 45/55 **SUMMARIES NO: 44/45/46**

Decided on 26 January 1956 : first preliminary decision.
18 September 1956 : second preliminary decision.
25 May 1957 : final decision.

BAD DEBTS RE PRE-1948 TRANSACTIONS. DISCRETIONARY POWERS OF THE COMMISSIONER OF INLAND REVENUE. PROFITS MADE FROM THE SALE OF FOREIGN CURRENCY AFTER THE DEVALUATION OF STERLING.

Appellant was a financial institution of long standing. It claimed deductions for years of assessment 1949 and 1950 in respect of bad debts arising from transactions that had been entered into well before the income tax years. The Revenue refused any deduction on the grounds that once the transactions had

taken place before income tax years, no profit thereon had been brought to charge to tax. No contrary allowance could therefore be given during tax years. Moreover, bad debts which were deductible could only be those which had become bad during the year preceding the year of assessment. The date of writing off by the taxpayer was irrelevant. The Board decided to deliver a first preliminary decision on the points raised by the Revenue.

The Board delivered judgment on these points as follows:-

(a) the law imposed no restriction to the allowance of bad debts incurred in respect of pre-income tax years: where it wanted to exclude pre-income tax matters, it specifically did so;

(b) bad debts, however, could only be allowed as a deduction if they actually became bad after 1st January 1948;

(c) the relevant date was not when the taxpayer wrote off the bad debt, but when this actually became bad.

In the second preliminary decision, the Board had to deal with a fresh plea brought forward by the Revenue. For the first time, the Revenue submitted that when the Commissioner was vested with discretionary powers, as he was in the matter of bad debts, the Board could not substitute its own decision for that of the Commissioner. The Board agreed, subject to the usual condition that discretion must have been properly exercised, and that the rules of natural justice will have been respected. The Board quoted in support foreign text books and local jurisprudence. Moreover, the Board made an extensive review of the law's provisions and listed the cases where the discretion of the Commissioner was specifically made subject to appeal. Where this was not done, no appeal lay. The Board, as well as appellant, agreed that the Commissioner had exercised his discretion properly, and the matter had to end there.

The final decision was restricted to profits made on the sale of foreign currency following the devaluation of sterling. At that time the Maltese currency was pegged to sterling. The Board held that as appellants were a financial institution, money was their stock in trade. The appellants had made several profits and losses in the past due to currency fluctuations when effecting their transactions, even though these were strictly controlled under the Exchange Control Laws then in force. The appellants argued, however, that the particular profit made on devaluation of sterling should be considered to be of a capital nature as it had resulted not from market forces but from a decision of the U.K. Government.

It was agreed that this matter referred to realized profits as the currency had actually been sold.

Appellants quoted fairly old U.K. case law on the subject in their favour, but the Board pointed out that more recent case law had established that: "the determining factor in these exchange cases is the intention with which the foreign currency is originally bought: if it is intended to carry out an intended commercial transaction such as the purchase of consumable stock, then any profit, however arising, made on the disposal of any surplus foreign currency is of a revenue nature and trade". This principle was clearly even more applicable when the currency was itself the appellant's stock in trade. Taxability of the profits made was therefore confirmed.

B.S.C. CASE NO: 7/56 **SUMMARY NO: 47**

Decided on 24 March 1956

WHETHER TAXPAYER CARRIED ON A BUSINESS IN BUYING AND SELLING SHOPS. EXPENSES OF A CAPITAL NATURE. PRESUMED ERROR IN ACCOUNTING FIGURES.

Appellant claimed that he was a dealer in shops and businesses, working up these assets until he could dispose of them at a profit. He therefore claimed a deduction in respect of certain expenditure incurred on a shop which he had acquired for this purpose. This was refused by the Board on the grounds that he had not proved that he was a dealer in the line set out above, and that, in any case, the expenditure was of a capital nature. (Note; the Board seems to have somewhat mixed up the two issues, in that it held that the expenditure would be clearly deductible if and when the shop was sold).
The taxpayer also asked for an adjustment in his accounting figures which he himself had reported. He maintained that there must have been wrongly computed as the resulting profit was excessive. The Board refused to consider the point as taxpayer could give no indication where the 'mistake' had been incurred.

B.S.C. CASE NO: 10/56 **SUMMARY NO: 48**

Decided on 12 June 1956

LEGAL EXPENSES AND DAMAGES REFUSED AS A DEDUCTION IN CASE CONCERNING THE LEASE AND OPERATION OF CINEMAS.

The taxpayer participated in a pooling between operators of three cinemas. Long running legal battles were entered into with the owners of the premises who wanted to terminate the leases. These cases ended up before the Privy Council.

The taxpayer and her co-participants lost all their cases and also suffered legal damages as awarded by the Courts.

A claim for the deduction of this expenditure was rejected by the Board on the strength of opinions expressed in a well-known text book. This was the effect that: "….if an action is unsuccessful, it is agreed that the right being claimed cannot have existed, and that the action must have been in respect of a new right.". Although this was not a clear cut and binding opinion, the Board held that it should be applied in this case seeing that the taxpayers had lost all their cases before each and every Court to which they had appealed.

Other claims made the taxpayer were refused by the Board either because they were not related to the earning of the income, or they were of a capital nature, or because they had been incurred before the relative basis year.

B.S.C. CASE No: 16/56 **SUMMARY NO: 49**

Decided on 29 May 1956

EARLY CASE REGARDING "BOARD AND LODGING" CHARGEABLE IN TERMS OF THE ACT.

Appellant was a Customs Officer who was required to do duty at the airport for extremely long hours. He could not go out of the airport for his meals, and it was therefore arranged that he would be catered for at the airport canteen, and that the relative bills would be settled by his employer, the Government.

The Board held that his did not constitute part of his taxable emoluments, notwithstanding the specific provisions of the Income Tax Act in this regards.

B.S.C. CASE NO: 24/56 **SUMMARY NO: 50**

Decided on 15 April 1957

DATE ON WHICH PROFITS ARISING FROM HIRE PURCHASE AGREEMENTS ARE TO BE BROUGHT TO CHARGE TO TAX.

The taxpayer was in the business of selling cars. As is normal in this line, most of the sales were effected on hire-purchase. The Commissioner held that the relative profits were earned on the date that each sale was made, while the taxpayer maintained that the profit was to be spread over the period of the hire-purchase payments.

The Board examined at length the principles involved, and reviewed various cases decided by the Commercial Court relative to the matter. The Board also made reference to various U.K. text books. No hard and fast ruling emerged from this exercise, and the Board finally decided that, as a matter of principle, the resulting profits were to be spread over the period during which the hire purchase instalments were to be paid. The precise computation as to how this was to be done was left to the Commissioner to decide.

The case concerned the first year of assessment (1949), and the Board ruled that, as a consequence of its decision, profits relating to hire purchase instalments from sales made prior to the introduction of Income Tax, now became taxable if the instalments were paid after the introduction of the law.

B.S.C. CASE NO: 26/56 SUMMARY NO: 51

Decided on 8 November 1956

DEFALCATIONS BY PARTNER. WHETHER THE TAXPAYER SHOULD NONETHELESS BE BROUGHT TO CHARGE ON HIS SHARE OF THE PROFIT.

The taxpayer was in partnership with an established firm. The arrangements were that taxpayer's son sent goods to Malta from Libya, and these were paid for by the taxpayer. By arrangement with the firm (the precise nature of which is not clear), the firm then undertook their marketing in Malta. The firm defaulted on payments due to the taxpayer who consequently claimed that he should be granted a deduction for the sums due to him but remaining unpaid. Furthermore, half of the profits which he had lost really belonged to his son and should not, in any case, be brought to charge in his hands.

The Board accepted the second submission as a proved point of fact but it maintained that taxpayer's proper share of profits was still taxable in his hands even if not actually pocketed by him.

(To note that, several years later, the Board -- differently constituted – accepted a similar claim. The matter was taken to appeal by the Revenue where the Court reversed the decision on the grounds that what was section 49 of the Act applied. In essence, this meant that the present case had been rightly decided by the Board: see Court of Appeal Case no. 56).

B.S.C. CASE NO: 28/56 **SUMMARY NO: 52**

Decided on 23 August 1957

PAYMENT BY INSTALMENTS OVER A LONG PERIOD OF TIME. DEDUCTIBILITY OF THE INSTALMENTS REFUSED.

By means of a fairly complicated contract, the appellant bought the goodwill, stock and occupancy rights of a shop in Valletta. Payment was to be made over a long period of time, and various safeguards (including the extended period) were entered into the relative contract in favour of appellant because of the possibility that he would be evicted from the premises due to the reconstruction of Valletta after the 1939-1945 war.
Various arguments were brought forward by appellant as to why he should be granted a deduction in respect of the annual payments, mostly based on the various safeguards in his favour. These were all rejected by the Board, as the contract was clearly one of purchase: it made no difference that the bulk of the payments were to be made by instalments stretching over a long period of time and that there were unusual provisions made necessary by the facts of the case.

B.S.C. CASE NO: 33/56 **SUMMARY NO: 53**

Decided on 25 October 1957

WHETHER THERE WAS AN ARITHMETICAL ERROR IN THE BOARD'S DECISION. ERROR INCURRED BECAUSE OF FAULTY DOCUMENTATION PRESENTED TO THE BOARD.

In this case, the original decision of the Board had been worked out on the basis of a capital accretion.

Following the decision, the taxpayer asked for a review, alleging that there had been an arithmetical error in the Board's computations. Such a review is admitted by the law, but the Board, while accepting that the computation was erroneous, did not agree that there had been an arithmetical error. What had happened was that the taxpayer had failed to show that he owned certain bank deposits at the commencement of the period in question. This obviously increased his capital accretion.

This omission was partially due to a faulty bank statement, but it could not be accepted that there was an arithmetical error in the Board's decision. The appellant's request could not, therefore, be accepted.

(Note: it is now known whether some measure of relief was eventually granted by way of administrative action).

B.S.C. CASE NO: 34/56 **SUMMARY NO: 54**

Decided on 16 March 1957

EARNINGS FROM GAMBLING AND BETTING. WHEN TAXABLE. U.K. CASE LAW FOLLOWED.

In a minor capital accretions case, the Board accepted that part of the accretion was the result of taxpayer's gambling and playing at cards.

The Revenue sought to have these earnings brought to charge to tax as profits made from a vocation, but this attempt was rejected by the Board which quoted with approval the well known U.K. case of Graham v Green. In that case, it was held that while a bookmaker and other organisers of betting were clearly carrying on a trade, and were taxable as such, the individual gambler simply effects a series of bets which remain just that: separate, isolated events, but not a trade or vocation.

B.S.C. CASES NO: 7 and 8/57 **SUMMARY NO: 55**

Decided on 23 July 2006

PRE-ASSESSMENT AGREEMENT BETWEEN THE TAXPAYER AND THE REVENUE UPHELD BY THE BOARD.

The two taxpayers were in business in partnership. One of them, who was also authorised to appear on behalf of the other, had signed a declaration at the assessment stage (prepared by the Revenue)), accepting an increase over the declared profits.

On appeal to the Board, an attempt was made to have the agreement revoked on the usual grounds of error and misconception. These was rejected by the Board which was satisfied that the taxpayer knew very well what he was doing when he signed the declaration before the assessments were raised.

In the circumstances, the Board decided that there was a binding agreement between the taxpayer and the Revenue, and rejected the appeal.

B.S.C. CASE NO: 9/57 **SUMMARY NO: 56**

Decided on 25 March 1957

TAXABILITY OR OTHERWISE OF A LAUDEMIUM RECEIVED.

It was contended that a laudemium received was not subject to tax under the Income Tax Act (presumably because it was of a capital character).

The Board made a review of the authorities on the nature or a laudemium, as well as the provisions of the Civil Code thereon.

The Board held that the receipt was in the nature of income, and correctly taxable as '….any other profits arising from property…'. On its receipt, the landlord did not lose anything which he had owned before. There was nothing capital in nature in a laudemium, irrespective of the circumstances in which received.

B.S.C. CASE NO:12/57 **SUMMARY NO: 57**

Decided on 19 August 1957

PAYMENT OF ANNNUITIES TO ACQUIRE SHARES IN A COMPANY AND TO CANCEL A DEBT, HELD TO BE OF A CAPITAL NATURE AND HENCE NOT DEDUCTIBLE.

The taxpayer bought shares in a limited liability company, and extinguished a debt due by her through the payment of two annuities. She claimed a deduction in respect thereof, but this was refused by the Board as both annuities were capital in character. Their effect was to obtain a capital asset in the first case, and to relieve herself of a capital liability in the second. The consequence that she could thereafter expect to receive dividends from the company, and would no longer have to pay interest on the loan, was irrelevant.

B.S.C. CASE NO: 13/57 **SUMMARY NO: 58**

Decided on 21April 1959

ALLEGED PARTNERSHIP BETWEEN TAXPAYER AND HIS SISTERS. VALUATION OF STOCKS, INCLUDING STOCK HELD ON 1st JANUARY 1948.

In 1931, taxpayer took over a business which had been run by his father. The business ceased during the 1939-1945 war, but was restarted by taxpayer at the end of the war. In his books, he entered that his two unmarried sisters (they all lived together) each had Lm2,000 of the capital of the business, but thereafter they never meddled with its running and had no knowledge of what was happening in actual fact. They confirmed to the Board that they never held themselves liable for any loss which could have been incurred. In 1956, a formal liquidation took place between the family whereby each sister was assigned Lm5,000 in respect of any interest they might have had in the business. During all this time, the taxpayer took care of all his sisters' requirements and their maintenance.

The Board held that, in the circumstances, it could not be accepted that there was a partnership, formal or otherwise, between taxpayer and his sisters.

The taxpayer also claimed that the valuation of his stock at cost price by the Commissioner was erroneous. He had made a detailed valuation of its current market price and claimed that this was the correct procedure. The Board agreed, but pointed out that valuation at market price was also to be made as at 1 January 1948, the operative date on which income tax had commenced in Malta, and the first 'opening stock'.

B.S.C. CASE No: 14/57 **SUMMARY No: 59**

Decided on 22 July 1957

NON-DEDUCTIBILITY OF LIVING EXPENSES MADE NECESSARY BY TRANSFER OF EMPLOYEE TO GOZO.

The taxpayer, a teacher, was posted to do duty at Gozo. He incurred expenditure on board and lodging in a hotel as he could not find adequate premises to rent. A deduction was claimed for the expenditure incurred.

The Board, quoting swell-known U.K. cases, refused the deduction on the grounds that the expenses were personal expenses and not incurred in the

production of the income. The fact that the expenses were incurred due to taxpayer's posting to Gozo did not render them deductible: the deduction of private personal expenditure was prohibited by the law and, in any case, the fact that taxpayer incurred unusual or additional expenses on his board and lodging had nothing to do with the earning of his income which came from the teaching profession.

B.S.C. CASE NO: 15/57 **SUMMARY NO: 60**

Decided on November 1957

WHETHER A TAXPAYER WHO WAS ABSENT FROM MALTA FOR AN ENTIRE YEAR FOR HEALTH REASONS WAS STILL TO BE CONSIDERED RESIDENT IN MALTA FOR TAX PURPOSES FOR THAT YEAR.

An early case regarding 'residence' for tax purposes.
Taxpayer required medical treatment abroad and he was absent from Malta during an entire basis year. No personal deductions were granted to him by the Commissioner for the relevant year of assessment as he was consequently held not to have been resident in Malta for that year.

The Board disagreed and, while making a somewhat dubious distinction between the Commissioner's discretionary powers granted to him by various sections of the law, elected to follow U.K. precedents which held that prolonged absence from one's country did not necessarily mean a loss of residence therein for tax purposes. In this case, Malta had always remained taxpayer's usual and settled place of abode. The Board, moreover, found as a matter of fact that, for the purpose of the definition given in the Act to the term, taxpayer's absence from Malta was only temporary and not inconsistent with his claim to be resident therein.

B.S.C. CASE NO: 17/57 **SUMMARY NO: 61**

Decided on 26 November 1957

DEDUCTIBILITY OF TRAVELLING EXPENSES. WHETHER OF AN INCOME OR CAPITAL NATURE. FAMILY MEMBERS ACCOMPANYING TAXPAYER.

The Board in this case set out the principles to be followed in considering deductions for foreign travel.

Where the travelling was to keep up contacts with existing trading partners, the expenses were, as a matter of principle, deductible. Where the expenses were made to try to open up new lines of business, they were of a capital nature and not allowable.

The fact that members of the family accompanied taxpayer did not automatically rule out the deductions, but the expenses incurred on their account had to be carefully scrutinised.

The expenses allowable were the minimum which could be considered to have been actually incurred in the production of the income, and the Board slashed expenditure which it deemed to be excessive.

B.S.C. CASE NO: 25/57 **SUMMARY NO: 62**

Decided on 8 June 1958

REFERENCE TO THE CIVIL COURT FOR A PRELIMINARY RULING REGARDING THE VALIDITY OF A CONTRACT.

The appellant contended that certain property which he had bought several years before had, in fact, been bought on behalf of his parents. These had later died, so that the properties were then owned by appellant and his brothers and sisters. The rent from the properties should, therefore, not have been all charged in his hands.

The Board took the view that once taxpayer was seeking to change a contract which had prima facie been correctly made several years before, he should have recourse to the Civil Court to obtain its sanction for this purpose. Appellant did so and obtained the desired declaration. The Board, therefore, could not but accept appellant's appeal. The Board, however, made it clear that it would not be automatically prepared to apply all such court decisions, and expressed some surprise that the Commissioner had not sought to intervene in the Court case.

This was an early case where a point arising in an appeal to the Board was referred to the Civil Court for a preliminary ruling.

B.S.C. CASE NO: 1/58 **SUMMARY NO: 63**

Decided on 25 February 1958

TAXABILITY OF UNIFORM ALLOWANCE RECEIVED. POINTS NOT BROUGHT UP IN NOTICE OF OBJECTION.

The Taxpayer, a Government employee, was entitled to, and received a uniform allowance. In the year in question he did not spend anything on uniforms, but did buy other clothing which he presumably used also while carrying out the duties of his office. The Board confirmed an assessment raised on the allowance as this was considered to be a benefit arising to taxpayer from his employment.

The taxpayer also tried to bring up before the Board another benefit received through his employment, namely rent free premises, but the Board declined to take cognisance of this issue as it had not been raised in the notice of objection.

B.S.C. CASE NO: 4/58 **SUMMARY NO: 64**

Decided on 26 April 1958

TRAVELLING EXPENSES OF A DIRECTOR

The taxpayer was a director in a company which had shares in another company. The trade carried on was diverse, and the taxpayer was entrusted with the cattle importing part of the business. It was agreed between the participants that directors would not be reimbursed travelling expenses incurred on the business of the companies. The taxpayer bought personally a car which he could show was only used in connection with the cattle importing trade. The Board accepted that the relative expenditure incurred by the taxpayer had been incurred in the production of the income and proceeded to determine the amount allowable as a deduction.

B.S.C. CASE NO: 9/58 **SUMMARY NO: 65**

Decided on 19 October 1958

WHETHER A PURE ENDOWMENT INSURANCE POLICY CONSTITUTED INSURA\NCE ON LIFE OR WAS SIMPLY A SAVINGS DEVICE.

The taxpayer contended that a pure endowment policy, where no fixed sum was payable on death, was still insurance on life. The taxpayer was entitled to a fixed payment on the maturity of the policy, but on earlier death he would only receive either the premiums paid, or the surrender value of the policy, whichever was the higher. The Board accepted that once there was an element of risk involved for both parties, namely the date of death of the taxpayer, the arrangements qualified as insurance on life despite the savings factor inherent in the policy.

B.S.C. CASE NO: 11/58 **SUMMARY NO: 66**

Decided on 30 May 1958

TA\XABILITY OF BONUS PAYABLE TO A NATIONAL LOTTERY AGENT WHEN ONE OF THE TICKETS SOLD BY HIM WON A PRIZE.

In terms of the National Lottery Regulations, agents – who actually did the selling of the tickets – were entitled to a bonus when one of the tickets sold by them won certain prizes. The taxpayer became entitled to such a bonus, and contended that this was not taxable as it originated from gaming. The Board confirmed that gaming wins were not taxable, but pointed out that the bonus received by taxpayer was not paid to him because he had participated in the National Lottery game, but from his activity as salesman, and in terms of the Regulations. The bonus was therefore correctly taxable.

B.S.C. CASE N0: 14/58 **SUMMARY NO: 67**

Decided on 26 April 1958

DEDUCTIBILITY OF EXPENDITURE INCURRED TO ACQUIRE THE REGISTERS OF A DECEASED NOTARY, TOGETHER WITH THE TENANCY RFIGHTS TO HIS OFFICE.

A notary acquired the items in question from the widow of the deceased notary. A fixed consideration was agreed upon, payable by instalments over ten years. The full amount had to be paid, irrespective of the death of either party. No allowance could be granted for the instalments paid as there had thereby come into existence an asset for the enduring benefit of the trade, within the well-known 'Atherton' principle. The fact that the assets could be deemed to be wasting assets did not alter the situation.

B.S.C. CASE NO: 21/58 **SUMMARY NO: 68**

Decided on 11 November 1958

DEDUCTIBILITY OF SALARIES PAYABLE TO CHILDREN EMPLOYED IN THEIR FATHER'S BUSINESS.

The taxpayer's two children, both unmarried, worked full time for their father in his business, but did not have the status of partners. Between salary and commission, the children received rather large amounts by way of remuneration. The Board held that the amount deductible had to be determined on the basis that it was expenditure incurred wholly and exclusively in the production of the income. Following U.K. case law, the expenses deductible had to be proportionate to the value of the services rendered. The Board examined in detail the circumstances of the case, and fixed the amounts which were to be allowed as a deduction.

B.S.C. CASE NO: 34/58 **SUMMARY NO: 69**

Decided on 25 November 1958

RESIDENCE FOR TAX PURPOSES

The Board had determine, for the purpose of granting personal deductions which were only available to persons resident in Malta, whether the taxpayer was still resident in Malta after moving permanently to the U.K. following her marriage.

Taking into account the fact that taxpayer had only made two short visits to Malta during eight years, the Board held that she obviously could not bed considered to be resident in Malta, and no deductions were consequently due.

(Note: this case properly constitutes a point of fact, but it is being reported as it indicates the early doubts on this issue).

B.S.C. CASE NO: 25/58 **SUMMARY NO: 70**

Decided on 18 October 1958

EXPERT (EX-PARTE) EVIDENCE NOT ADMISSABLE AT MALTESE LAW.

The Commissioner sought to exhibit before the Board correspondence between him and foreign tax authorities whose tax legislation on the point at issue was essentially identical to that of Malta. This was refused by the Board in a preliminary decision, as Maltese law did not admit expert opinion except where the expert is Court appointed. On the other hand, a summary of a decision delivered by a foreign appellate tribunal was accepted by the Board to form part of the records of the case.

B.S.C. CASE NO: 36/58 **SUMMARY NO: 71**

Decided on 26 February 1959

DATE WHEN A DIVIDEND DECLARED, BUT NOT PAID, BECOMES TAXABLE IN THE SHAREHOLDER'S HANDS.

The company declared a dividend in general meeting, but resolved that only half thereof be paid immediately, with the remaining half being credited to the shareholders' in its books. This was to be paid to the shareholders when the managing director felt that there was sufficient liquidity in the company for this to be done. The Revenue maintained that once a dividend had been declared it was taxable in its entirety, but the Board agreed with the taxpayer that a dividend was taxable in a shareholder's hands when it was due to be paid.

NOTE: The Board did not link its decision with the principle that 'receivability without receipt 'constitutes no income for tax purposes'. Nor did it seem to give relevance to the fact that the unpaid portion of the dividend had been credited to the shareholders in the company's books.

B.S.C. CASE NO: 43/58 **SUMMARY NO: 72**

Decided on 17 January 1959

TAXABILITY OF A PROFIT MADE ON AN IMMOVABLE ACQUIRED IN PARTICULAR CIRCUMSTANCES.

The taxpayer owned property which was subject to pre-emption proceedings by another person. The taxpayer therefore persuaded (and financed) a third party to exercise her superior rights of pre-emption, in virtue of which the taxpayer not only safeguarded his property but also ended up owning another villa. Later he sold the villa to the Bank in satisfaction of a loan acquired for the purpose of his own business, which was in no way connected with immovable property. The resulting profit was bought to charge by the Revenue, but was declared not

taxable by the Board as the transaction did not meet the provisions of the charging section of the Act, and the taxpayer could not be considered a dealer in immovables.

B.S.C. CASE NO: 44/58 **SUMMARY NO: 73**

Decided on 14 February 1959

SPORTS STADIUM. WHETHER STANDS AND STEEL TERRACING CONSTITUTED 'PLANT' OR 'PREMISES' FOR THE PURPOSES OF WEAR AND TEAR ALLOWANCES.

The rate of depreciation for premises was fixed ar 1% per annum on a fixed rate basis, while that for plant and machinery could go much higher, but on a reducing balance method. The Department originally accepted that stands and steel terracing constituted plant, but the taxpayer wanted a higher rate of depreciation than that allowed in assessment. On review, the Department cancelled the allowance given and reverted to the lower allowance available for premises. The Board agreed, on the basis of the provisions of the Civil Code, which tended to render the items in question immovables, and quoting U.K. case law.

B.S.C. CASE NO: 46/58 **SUMMARY NO: 74**

Decided on 21 April 1959

PROFIT ON THE SALE OF OWN RESIDENCE BY AN ARCHITECT WHO WAS ALSO A DEALER IN IMMOVABLES.

The taxpayer, an architect, and civil engineer by profession, was recognized by the Board to be a dealer in immovable property. He then bought a war damaged site which he reconstructed in a totally different way from what it had been originally. Later he occupied this house as his family reasons, but subsequently vacated it for what the Board accepted as relevant personal reasons, and sold out at a profit. The Board held that a dealer in immovables could, occasionally, prove that a transaction carried out by him did not fall within the trade. On the facts of this case, the Board held that the taxpayer had successfully proved that the transaction fell to be so considered and discharged the assessment.

B.S.C. CASE NO: 47/58 **SUMMARY NO: 75**

Decided on 31 March 1959

CLAIM FOR REFUND OF TAX RESULTING TO HAVE BEEN OVERPAID FOLLOWING A DECISION BY THE RENT REGULATION BOARD.

The taxpayer's wife had to refund amounts of rent which the Rent Regulation Board decided had been overpaid in past years. The taxpayer claimed a refund of tax that had therefore also been overpaid for those years. The Revenue refused on the grounds that the relative assessments had been properly raised and no objection had been made there against. The Department also seemed inclined to grant the taxpayer a deduction for the rent repaid as a loss against the current year's rent. The taxpayer rejected this possibility and appealed to the Board. The Board held that the offer put forward by the Revenue was not, in fact, in line with the provisions of the Income Tax Act which allowed a deduction for a 'loss' only in the case of a trade or business. The decision of the Rent Regulation Board had retroactive effect and the tax overpaid should be refunded under the provisions of the Act regulating refunds as it had resulted that the taxpayer had paid tax in excess of what was properly due.

B.S.C. CASE NO: 8/59 **SUMMARY NO: 76**

Decided on 2 December 1959

SALARIES PAYABLE TO CHILDREN. DEDUCTION FOR GROUND RENTS. LANDS HELD AS TRADING STOCK. EXPENSES OF CELEBRATIONS ON THE INAUGURATION OF A NEW BUSINESS VENTURE.

The taxpayer was a dealer in property. He then opened one of the first modern car service stations, and also became a car dealer/agent. The case concerned various expenses claimed as deductions which the Board dealt with as follows:-

(a) Salaries paid to children. The Board confirmed the practice that when salaries are paid to one's own children, all the circumstances of the deductions claimed have to be examined to ascertain what amounts can rightly be deemed to have been incurred in the production of the income.
(b) Where ground rents are paid on unproductive land held for investment, these are not deductible, but when the land can be considered as trading stock, the ground rents paid have to be considered as part of the normal expenses of the trade. All other expenses connected with such land are likewise deductible.

(c) The service station was a new business venture. Taxpayer claimed that when he held a lavish reception on its opening, this was just ordinary advertising. The Board, however, agreed with the Revenue that expenses for launching a new venture, including the relative advertising, was of a capital nature and not deductible.

B.S.C. CASE NO: 14/59 **SUMMARY NO: 77**

Decided on 17 July 1959

DEDUCTIONS IN RESPECT OF PREMIUMS PAID ON A POLICY OF INSURANCE ON LIFE OF EMPLOYEE. EXPLANATION OF SYSTEM REGULATATING DEDUCTIONS. PRINCIPLES OF LEGAL INTERPRETATION.

This case is important, but not for the refusal to allow a deduction in respect of the premiums paid on the insurance taken out on the life of the employee. That issue has been overtaken by events, but the Board also explained the significance of the 'positive' deductions for expenditure incurred in the production of the income as listed in the Act. These both expanded what was deductible in terms of the general deduction formula, but also restricted deductibility to the expenses which satisfied the precise provisions of the law. The Board also laid out principles which have to be followed in legal interpretation.

B.S.C. CASE NO: 19/59 **SUMMARY NO: 78**

Decided on 20 June 1962

BOARD CONFIRMS CASE NO 31 BEFORE THE COURT OF APPEAL REGARDING DEDUCTIONS DUE. DISCRETIONARY POWERS OF THE COMMISSIONER REGARDING INTEREST DUE.

In this case, the Board essentially confirmed the judgment delivered by the Court of Appeal in Case no 31. No deductions such as ground rent and interest can be allowed as a deduction before the relative assets have started to produce income. Moreover, though in this case part of the assets did start to produce income, the Board felt that it could not overturn the discretionary powers vested in the Commissioner regarding the deduction of interest, because the taxpayer could not prove what interest had been paid in respect of the assets which were producing income.

B.S.C. CASE NO: 20/59 **SUMMARY NO: 79**

Decided on 1 July 1961

EXPENSES REGARDING SURVEY AND MAINTENANCE OF A NEWLY ACQUIRED SHIP ARE CAPITAL IN CHARACTER. DEPRECIATION CANNOT MOVE FROM ONE SOURCE OF INCOME TO ANOTHER, NOR BETWEEN COMPANIES.

The taxpayer, a general trading company, bought a twenty year old ship whose four yearly inspection and related survey work was long overdue. This was essentially work of a repair and maintenance nature, but having been incurred mostly during the period of prior ownership, they fell to be considered as being of a capital nature. The bad state of the ship on acquisition obviously lowered its purchase price, and the repairs effected by the taxpayer were meant to bring its news acquisition up to scratch. U.K. case law showed clearly that, in such cases, the expenditure incurred fell to be considered part of the capital outlay in buying the new ship. The taxpayer also claimed that unutilised depreciation from one source should go against other sources of income. This claim was likewise rejected as the ship was a source on its own, and the transfer of unabsorbed depreciation from one source to another was prohibited by the law.

The company also owned shares in another shipping company. In the case of one of the ships of this second company, there was likewise unabsorbed depreciation which the taxpayer company wanted to avail itself of. This was rejected due to the separate juridical personality of the two companies.

B.S.C. CASE NO: 22/59 **SUMMARY NO: 80**

Decided on 26 October 1960

JEWELLER'S TRADE RECORDS. BOARD INSISTS THAT ALL BUSINESSMEN MUST KEEP RECORDS IN A RECOGNISED AND UNDERSTANDABLE MANNER.

The jeweller in this case kept his trade records in a complicated way which led the Board to describe them as being understandable only by him. It is known that jewelers often have their own way of keeping accounts, but the Board pointed out that the Income Tax Act required that proper accounts be kept to enable the income and allowable deductions of the taxpayer to be readily ascertained. This was impossible to do from the records kept, and the Board therefore confirmed the Commissioner's estimated assessments, making only

minor changes because of certain facts which may have been overlooked in assessment.