



# **Performance Audit**

## ***Inter Vivos Transfer of Property***

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### List of Abbreviations

|      |                                     |
|------|-------------------------------------|
| ART  | Administrative Review Tribunal      |
| BSC  | Board of Special Commissioners      |
| CTDD | Capital Transfer Duty Department    |
| MIA  | Malta Institute of Accountants      |
| MITA | Malta Information Technology Agency |
| NAO  | National Audit Office               |



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## **Executive Summary, Conclusions and Recommendations**

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## Executive Summary, Conclusions and Recommendations

### Introduction

The NAO carried out the performance audit: *Inter Vivos* Transfer of Property. This report analyses the validation and the collection of revenue due in respect of *Inter Vivos* Transfer of Property. Conclusions presented in this report are based on data up to December 2008. This report also outlines actions and initiatives taken, or which are under the consideration, of the Capital Transfers Duty Department (CTDD).

Upon the transfer of (immovable) property an *Inter Vivos* duty is due. The responsibility for the collection of such revenue pertains to the CTDD. The Department is responsible for the verification, assessments and collection of duty (known as the duty on documents and transfers). Rates are charged as applicable, depending on the circumstances of the property and transferee in question. During the period 2005 to 2008, the CTDD collected a total of €201.9 million duty through 55,976 DDT1 Application Forms (hereinafter referred to as DDT1 forms).<sup>1</sup> On average, these figures imply annual *Inter Vivos* revenue of around €50.5 million relating to around 14,000 DDT1 forms. In the latter years reviewed by this audit, the annual revenue collected decreased below the average figures quoted herein reportedly due to a slow-down in the property market.

This audit sought to evaluate the extent to which the:

- i. CTDD is equipped with the appropriate mechanisms (including policies and standards of procedures relating to the process of collection of *Inter Vivos* duty due) to ensure an effective method of collecting duties due;

- ii. validation of declared property valuations by the Internal Board and *Periti*<sup>2</sup> appointed by the CTDD are effective;
- iii. interests of transferors and transferees are appropriately safeguarded.

### Validating *Inter Vivos* Applications

All applications received by the Department are, following preliminary vetting, reviewed by a CTDD Internal Board to ensure the correctness of the property value declared. The main function of the Internal Board is to accept or question the validity of the declared value of the transferred property since this value constitutes the basis upon which the *Inter Vivos* duty is calculated. In cases where the declared value of the property is challenged, the Internal Board refers the case to a CTDD appointed *Perit* to verify the declared value through an inspection of the property. The expenditure incurred by the Internal Board for the year 2008 amounted to €26,386.

During the period 2005 to 2008, the CTDD's Internal Board accepted over 54 percent of the relative DDT1 forms reviewed as reflecting the market value of property. The acceptance rates for Malta and Gozo respectively during the period under review by this audit were 26,846 out of 46,829 and 1,549 out of 5,526. These acceptance rates amount to 57.3 and 28 percent in Malta and Gozo respectively. However, the basis of the Internal Board's decision is not documented.

Due to a number of constraints, the Internal Board's *modus operandi* is hampered. Consequently, the risk exists that

<sup>1</sup> Notice to be filed on deeds of transfers for the purpose of final withholding tax and/or provisional Capital Gains Tax in terms of the income tax acts, and for the purpose of article 51 of the Duty on Documents and Transfers Act.

<sup>2</sup> Throughout this report the term '*Periti*' refers to a person holding a warrant to practice in the profession assuming responsibility for the design and/or, construction of building works under the generic title of *Perit*.

the CTDD does not readily detect whether the value of the property - as declared by the transferors and transferees – reflects the market value through an initial filtering process of DDT1 forms submitted. Erroneous declarations of property lead to a loss of revenue to Government.

The Internal Board, composed of three members, is not guided in its duties by formal terms of reference or standard operating procedures. None of the Internal Board's members are property valuation specialists. Moreover, the Department lacks information about the market value of property. The members of this Board try to mitigate this limitation by relying on the experience accrued through working in the Department for a number of years and by boosting their knowledge of the property market.

The decision making process within the Internal Board is also weakened by the general lack of details about the property under review. Such a situation arises since the CTDD does not request additional information, such as site and floor plans, to that indicated in the DDT1 forms. Such a request is only enforced regarding DDT1 forms submitted in Gozo. Consequently, in many cases, the Internal Board was not aware of the area and the property's state of finish.

The NAO carried out a case study comprising of 38 DDT1 forms which were accepted by the Internal Board as reflecting the market value of property. This case study, carried out by the NAO's consultant *Periti*, showed that in circumstances where property details were limited, specific valuations cannot be realistically determined or validated. The case study showed that in 25 cases the NAO's consultant was able to determine a specific value of property due to the additional information provided. It transpired that in four out of these 25 cases, the declared value of property as accepted by the Internal Board was considered to be below the market price. In the remaining 13 cases, where only limited information was available, only a possible range for the property valuation could be determined. In these cases, the Internal Board was more inclined to accept declared values of property which fell closer or below the lower end of the NAO's valuation range. In two of these cases the declared property value fell by 15 per cent or more below the minimum value of the NAO's valuation range.

## Dealing with apparently erroneous value of property declarations

The CTDD appoints *Periti* to conduct on-site inspections in order to determine the market value of property. During

the period 2005 to 2008, the Internal Board referred 23,960 cases deemed as quoting an erroneous declaration of property cases to the *Periti*. A first property inspection by *Periti* is performed following the referral of the case by the Internal Board. A second inspection may be requested by the Department following the raising of an objection when taxpayers feel that the valuation of property as determined by the *Periti* is more than the actual market value.

During 2008, the CTDD expended €224,156 in respect of *Periti* inspections. This amount implies that on average, each *Periti* inspection carried out during this period cost the Department €33.68. On the basis of the 12,487 claims, whose outcome following the objection process has been determined, it is estimated that the *Periti*'s work enabled the collection of €7,364,282 in additional *Inter Vivos* and administrative duty.<sup>3</sup> This implies that for every €1 expended, the CTDD recouped €22.92.<sup>4</sup>

During 2005 to 2008, the CTDD appointed *Periti* carried out a total of 22,098 first inspections. In 13,960 of these inspections (63 percent), the *Periti*'s valuation confirmed that the declared value of property by the transferors and transferees was correct. Consequently, in these cases, there was no additional *Inter Vivos* or administrative duty due.

In the remaining 8,138 cases (37 percent) subjected to a first property inspection, *Periti* assessed that the declared value of the property was, on average, under declared by around 60 percent of the declared value of property. In these cases the aggregated declared value of property amounted to €574.7 million whereas the *Periti*'s assessment totalled €919.13 million. The *Periti*'s assessment was uncontested in 4,993 out of these cases (61 percent). Consequently, the relative *Inter Vivos* and administrative duties became due to the Department.

The Department, however, received objections regarding the remaining 3,145 cases out of the 8,138 cases (39 percent) where *Periti* have deemed the declared value of property in the DDT1 form as not reflecting the market value. The CTDD requested that a second inspection be carried out by *Periti* to confirm their initial assessment of the value of the property in 1,613 of the objection cases. These 1,613 cases involved a total of 2,381 transferors and transferees.

The second property inspection resulted in overall downward revision of the assessment of the market value of property by over 31 per cent. This implies that the same *Periti* who performed the first property inspection revised

<sup>3</sup> The term 'administrative duty' relates to the additional amount payable following a claim for the additional duty. These duties are inflicted in accordance to the 'Duty on Documents and Transfers Act'. These range from 10 percent of the additional duty due in cases which are settled within 90 days to 100 percent if settlement occurs 330 days from the issue of the claim.

<sup>4</sup> This calculation excludes any CTDD input relating to the management of the *Inter Vivos* phase involving *Periti*.

downwards their initial valuation from a total of €299.6 million to €206.1 million. The revision of property market values can be either due to the adjustments of ‘best of judgement’ cases or relate to valuation corrections by the *Periti*.

During the period under review, 675 out of the 1,613 cases referred for a second inspection by *Periti* concerned ‘best of judgment’ assessments. Such property valuations were resorted to by *Periti* in cases where a full property inspection could not be undertaken, mainly due to a lack of cooperation by the property owners involved. Overall, these cases resulted in a downward revision of the initial *Periti*’s valuation by 45 percent, that is, a total variance of over €65 million. The CTDD recommends ‘best of judgment’ assessments only as a last resort to secure taxpayers’ cooperation and compliance. However, the CTDD does not have documented criteria providing guidelines to *Periti* as to the circumstances and the methodology to be employed in drawing up these assessments.

Additionally, a significant number of initial property valuations were revised downwards by *Periti* to correct any possible oversights and/or lack of information which may have occurred during the first property inspection. Out of the remaining 938 second property inspections, *Periti* confirmed their initial valuation in 270 cases. The remaining 668 cases were, in total, revised downwards by around €28 million or an average of around €42,000. In five cases, the downward revision amounted to more than €500,000 in each case.

Despite these substantial revisions, *Periti* are not requested by the CTDD to submit the relative documentation to justify the original and revised assessments of the value of property. Such omissions constitute a critical weakness in the audit trail relating to the validation of the declared value of property. In such circumstances, internal control mechanisms are severely impaired since in-depth scrutiny of such cases would be constrained due to the lack of information.

During the period under review, in most cases (51 percent) *Periti* did not always submit their property valuations within the 90 day time-frame stipulated by the CTDD. In 26 cases, where the valuation was submitted after this time-frame, the Department could not raise the subsequent claims as these cases were rendered statute barred. It is to be noted that during 2008, the CTDD took various initiatives and actions to minimise the incidence of late submission of valuations by *Periti*.

### Dealing with taxpayers’ objections

Transferors’ and transferees’ rights of redress can be exercised when parties involved in the *Inter Vivos* transfers

wish to contest the Department’s assessment of the market value of property, as determined by the *Periti*. The objection process demands that the parties seeking redress to submit an objection letter within 30 days of the CTDD’s claim for additional duty. During the period 2005 to 2008, 4,487 transferors and transferees raised objections regarding 3,145 cases. The CTDD decided it was appropriate to follow-up 2,381 out of the 4,487 objections (53.1 percent). As indicated in the previous section of this summary, such follow-up entails a second inspection by the Department’s *Perit*.

The CTDD considered that the remaining 2,106 objections were unwarranted on the grounds of unreasonable contestation. In these cases, the aggrieved parties could still seek redress through the then Board of Special Commissioners. The unwarranted objections amounted to around 47 percent of all the objections received by the Department. Following the CTDD’s notification that their objection was not being followed-up by the Department, 1,211 cases involving claims totalling around €4.7 million were settled by the respective transferors and transferees.

During the period 2005 and 2008, around two-thirds (2,960 out of 4,487 objections) of the parties raising an objection were transferees of property. This suggests that the involved transferors and transferees may have conflicting interests within the objection process. This situation mainly occurs since the transferee is issued with a claim for the additional *Inter Vivos* and administrative duties, whereas the transferor is only invoiced for the additional administrative duty. Due to the transferors’ higher inclination to accept claims, transferees may be potentially disadvantaged throughout the objection process.

The Board of Special Commissioners, established in terms of the Duty on Documents and Transfers Act to confirm, reduce, increase or annul the CTDD’s assessment of the *Inter Vivos* duty due, has not been functioning since December 2004.

Up to 2008, transferors and transferees, relating to 595 objections, filed their cases to the Board of Special Commissioners. Since this Board has not functioned for around five years, further information relating to these cases is not readily available as the CTDD is not processing the relative objection files. In September 2009, the Board of Special Commissioners was re-constituted. This Board is now known as the Administrative Review Tribunal.

### Overall Conclusion

This audit has shown that, despite a significant return on the CTDD’s outlay to administer the collection of *Inter Vivos* duty, more could be done to ensure that Government’s and third parties’ interests are appropriately safeguarded.



The CTDD's work is hampered by a number of inherent weaknesses within the processes implemented to ensure that all *Inter Vivos* revenue due to Government is duly collected. The Department lacks documented policies and procedures to guide officials in their work, particularly with regards the validation of the declared value of properties. This situation is compounded by the incomplete data submitted by the transferors and transferees about the transacted property.

Additionally, the lack of technical expertise places the Department's Internal Board at a disadvantage when validating the declared values of properties. The effectiveness of the filtering process of whether to accept or question the validity of the declared value of property is largely dependant on the Internal Board members' experience and personal initiative to inform themselves of shifts in the value of property – which constitutes the basis upon which the duty due is calculated.

The property inspections by *Periti* constitute a deterrent against value declarations that do not reflect the true market value of property. Additionally, these inspections have enabled the CTDD to recoup a substantial amount of revenue by detecting under-declared properties. However, these inspections were subjected to substantial downward revisions of the assessed value of property between the initial and the second property inspection.

Neither the Internal Board nor the *Periti* appropriately document the basis of decisions taken relating to the validation of the declared value of property. The documentation available in this regard does not enable routine in-depth scrutiny of decisions taken. Audit trail-related shortcomings are considered as weakening the CTDD's internal control mechanisms.

The interests of transferors and transferees seeking redress at the Board of Special Commissioners were not adequately safeguarded. This Board has not met for a number of years. In the circumstances, the principle of redress within a reasonable period was not being implemented. Additionally, the non-functioning of this Board, which has now been reconstituted as the Administrative Review Tribunal, has created a backlog of cases.

In conclusion, this audit has shown that despite the inherent weaknesses, the CTDD managed to recoup substantial revenue. The opportunity exists, however, to strengthen further the mechanisms involved in the *Inter Vivos* process. This approach will ensure that Government's and third party interests are better safeguarded.

## Recommendations

In view of the foregoing, the National Audit Office proposes the following recommendations:

### General Proposals

- i. Information available about the transferred properties subject to *Inter Vivos* duty, available to the CTDD, and particularly to the Internal Board, needs to be substantially augmented. As a starting point, the CTDD is to consider obliging all taxpayers to submit the information that is currently requested by the Department with respect to DDT1 forms submitted in Gozo. Moreover, the Department is to also consider making administrative arrangements with other Government entities where specific property information could be readily made available (such as site and floor plans) for the purpose of validating declared values of properties.
- ii. Consideration is to be given to discontinue the current practice where DDT1 forms listing more than one property provide a global valuation. The validation of the declared market value of property would be facilitated and rendered more transparent in instances where the declared value is quoted for each property subject to *Inter Vivos* duty.
- iii. The basis of all decisions and assessments made throughout the *Inter Vivos* process is to be documented. This proposal particularly applies for the decisions and assessments made by *Periti* as to whether the declared value constitutes the market price of property. The Department is to formulate a template which may be used by the *Periti* to document the basis of their property valuations.
- iv. The CTDD should inform the Capital Gains Tax Section within the Inland Revenue Department of cases where the declared value of property was revised by the Department following property inspections. Such information would enable Government to recoup any potential revenue due through the Capital Gains Tax.

### The Internal Board

- v. The Internal Board is to be furnished with formal terms of reference relating to its duties. Additionally, the Internal Board is to be provided with documented guidelines in order to facilitate

its decision as to whether the declared value of properties appropriately reflects the market value. Documented terms of reference and guidelines should enhance the consistency of decisions made by the CTDD's Internal Board.

- vi. Considerations be given to strengthen the Internal Board with technical expertise. The availability of such expertise to the Internal Board is seen to lend further credibility to the Board's decisions. The technical input at this stage of the *Inter Vivos* process is also seen to mitigate the high risks associated with the initial validation of the declared value of property.

### *Property Inspections by Periti*

- vii. The CTDD is to document the Department's policies relating to the conduct of property inspections by *Periti*. Such guidelines should clearly indicate the procedures to be adopted and the reporting obligations with regards to these inspections. In particular, these policies should address best of judgement assessments and instances where there are downward revisions between initial and subsequent property inspections.
- viii. The CTDD is to maintain its efforts to ensure that *Periti* submit property valuations within the stipulated period. Such an initiative will minimise the risk that cases become rendered statute barred.

- ix. The CTDD is to reconsider the current practice whereby a *Perit* is allocated property inspections within a specific location or locations. A more frequent rotation of locations assigned to *Periti* should balance the issues relating to consistent valuations with the potential risk of conflict of interest.

- x. Considerations are to be given to introducing an administrative charge where transferees of property do not cooperate with *Periti*, and a second property inspection has to be undertaken. The administrative charge is, as a minimum, to incorporate the costs of the subsequent inspection.

### *The objections process*

- xi. When issuing claims, the CTDD is encouraged to provide taxpayers a clearer indication of the amount of additional *Inter Vivos* and administrative duties due. This should facilitate the claim's recipient understanding of the monies owed, as well as the financial and legal consequences – as indicated at law – in cases of late settlement.
- xii. The CTDD, together with the newly constituted Administrative Review Tribunal, should give consideration to process the current backlog of objections, some of which have been outstanding for over four years. Such a consideration would be consistent in offering redress to aggrieved parties within a reasonable time frame.



## Chapter 1

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### Introduction

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## Chapter 1 – Introduction

### 1.1 Introduction

The National Audit Office (NAO) carried out the performance audit: “*Inter Vivos* Transfer of Property”. This report examines the validation and the collection of revenue due in respect of *Inter Vivos* Transfer of Property, and bases its findings and conclusions on data available in the DDT1 Application Forms (hereinafter referred to as DDT1 forms)<sup>5</sup> submitted at the Capital Transfer Duty Department (CTDD) for the period 2005 to 2008.

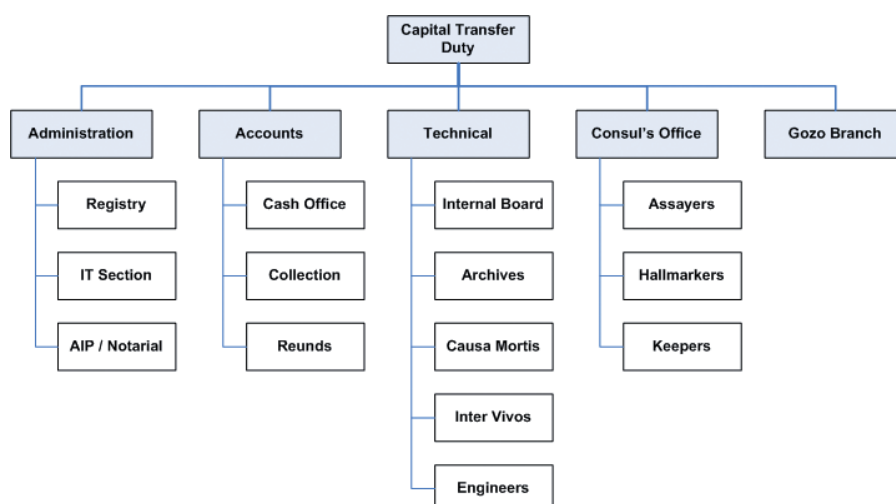
Upon the transfer of (immovable) property an *Inter Vivos* duty is due. The responsibility for the collection of such revenue pertains to the CTDD. The CTDD carries out this function as provided for in the ‘Duty on Documents and Transfers Act - Chapter 364’. Through the administration of

this Act, the Department is responsible for the verification, assessments and collection of *Inter Vivos* duty (known as the duty on documents and transfers). Rates are charged as applicable, depending on the circumstances of the property in question.

#### 1.1.1 Background

The ‘Duty on Documents and Transfers Act - Chapter 364’ provides the regulatory framework relating to the collection of the *Inter Vivos* duty due following the transfer of property. The provisions in this Act include the allocation of time periods of critical stages within the process of collection of revenue and the information that needs to be provided to the Department. The Act also refers to the rates of applicable additional administrative

**Figure 1 – The organisation structure of the Capital Transfer Duty Department**



Source : CTDD information.

<sup>5</sup> Notice to be filed on deeds of transfers for the purpose of final withholding tax and/or provisional Capital Gains Tax in terms of the income tax acts, and for the purpose of article 51 of the Duty on Documents and Transfers Act. A copy of the DDT1 form is attached in Appendix 1.

duty due should the value of the property, as assessed by the CTDD, exceed the value declared in the application form by more than 15 per cent.<sup>6</sup> In such a case both the transferor and transferee of property are to each pay an additional amount of administrative duty following a claim raised by the Department.

With every transfer of property, an Application Form, known as the DDT1 form, is presented to the Department by the Notary acting on behalf of the transferors and transferees of the transacted property. On the basis of the declared value of property, the Notary also effects the relative *Inter Vivos* duty payment due on behalf of the transferees. The cases involving a Preliminary Agreement (also known as the “Convenium” or “Promise of Sale”) requires a one percent part payment of the duty (also known as provisional duty) to Government. On the final contract, the remaining balance of duty due is paid. Duty on Documents on the transfer of the immovable property is payable at the rate of five percent of the purchase price. First time transferees have a reduced rate of 3.5 percent on the first €116,468.70 of the value of the property.<sup>7</sup> This capping was increased from the previous €69,881.20 in accordance with Legal Notice 310/2007.

Once the Notary presents the CTDD with the DDT1 form, the Department carries out a ‘first-level’ validation of *Inter Vivos* applications. This responsibility is vested in a CTDD Internal Board which validates the correctness of the declared value of property.

During the initial filtering stage the Internal Board refers valuations deemed as not reflecting the true market value of property to CTDD appointed *Periti*<sup>8</sup> to verify the declared values, through a property inspection.

In cases where the *Periti*’s valuations show that the property value was under declared, the CTDD raises a claim. Such a claim includes the chargeable duty due, based on the property valuation of the CTDD appointed *Periti*, as well as the administrative duties contemplated in Chapter 364.

If it is felt that the CTDD’s new valuation does not reflect market value of property, transferors and transferees have the right to object in writing. In cases where the CTDD rejects the objection raised, transferors and transferees do have the right to take the matter further by seeking redress through the Board of Special Commissioners, now known as the Administrative Review Tribunal.

All claims by the Department, even those being contested through the Objection process are considered as due. As at end 2008, the CTDD’s records showed that the Department was owed a balance of €29,807,353 in respect of additional *Inter Vivos* duty and accrued penalties through 4,465 claims. However, the Department estimates that only around €7.8million of this amount is due since most of the claimed revenue is under contestation or considered as a bad debt. During 2008 the CTDD collected €2,562,066 from its debtors.

There were 65 ‘objection’ cases which were in the process of being reviewed by the Board of Special Commissioners, in December 2004 when the board ceased meeting. As at end November 2009, an additional 530 ‘objection’ cases were still in the process of being referred to the newly constituted Administrative Review Tribunal. Furthermore, another four cases were under litigation and were being reviewed at the Law Courts. The total amount under contestation is €34,818.

There may be various reasons why *Inter Vivos* claims remain due for considerable periods. Such reasons include the possibility that transferors and transferees are not appropriately aware of the possible financial and legal consequences of low declarations of the value of property. Notaries are obliged to advise parties involved in transactions about their obligations to submit a valid declaration on the value of the property during the drawing up the relative contracts and the completion of DDT1 forms. Such advice also includes the potential consequences if the CTDD deems such a declaration as not reflecting the market value of property. However, notaries can only quote in the DDT1 forms the value indicated to them by the transferors and transferees. Despite the notaries’ advice, a significant number of declarations deemed as erroneous by the CTDD prevails. This situation, in part, implies a general lack of understanding of the potential consequences of erroneous declarations.

Currently, the CTDD is in the process of identifying those claims which would be rendered statute barred unless a judicial letter is issued. Moreover, the Department is reengineering the arrears of revenue collection procedures in order to enhance its effectiveness.

## 1.2 Overview

During the years 2005 to 2008 the CTDD received a total of 55,976 DDT1 forms, of which 12,190 were submitted

<sup>6</sup> The term ‘administrative duty’ relates to the additional amount payable following a claim for the additional duty. This duty is inflicted in accordance with the ‘Duty on Documents and Transfers Act’. Administrative duties inflicted range from 10 percent of the additional duty due in cases which are settled within 90 days to 100 percent if settlement occurs 330 days from the issue of the claim.

<sup>7</sup> Article 32 (4a) of Chapter 364.

<sup>8</sup> Throughout this report the term ‘*Periti*’ refers to a person holding a warrant to practice in the profession assuming responsibility for the design and/or, construction of building works under the generic title of *Perit*.

**Table 1 - Distribution of the DDT1 forms as received in Malta and Gozo (2005 – 2008)**

| Year         | Malta         |                       | Gozo         |                       | Totals        |                       |
|--------------|---------------|-----------------------|--------------|-----------------------|---------------|-----------------------|
|              | DDT1 forms    | Revenue collected (€) | DDT1 forms   | Revenue collected (€) | DDT1 forms    | Revenue collected (€) |
| 2005         | 12,938        | 43,633,439            | 1,565        | 3,732,610             | 14,503        | 47,366,049            |
| 2006         | 13,184        | 44,177,235            | 1,486        | 4,242,943             | 14,670        | 48,420,178            |
| 2007         | 12,997        | 54,552,028            | 1,616        | 5,074,414             | 14,613        | 59,626,442            |
| 2008         | 10,924        | 43,472,729            | 1,266        | 3,035,866             | 12,190        | 46,508,595            |
| <b>Total</b> | <b>50,043</b> | <b>185,835,431</b>    | <b>5,933</b> | <b>16,085,833</b>     | <b>55,976</b> | <b>201,921,264</b>    |

Source : CTDD data.

to the Department in 2008. Table 1 illustrates the DDT1 forms as received in Malta and Gozo for the respective years. On average 89.4 percent of the DDT1 forms were received in Malta, whereas 10.6 percent were received in Gozo.

Through these 55,976 DDT1 forms a total of €201,921,264 was paid in duty. In 2008, revenue collected by the CTDD in respect of *Inter Vivos* transfers totalled €46,508,595 as *Inter Vivos* duty due. For the purpose of this audit, DDT1 forms relating to Promise of Sales which were not followed up by the relevant property deed by the time the NAO received the *Inter Vivos* data from the CTDD, have been excluded from this review.

As indicated in Table 2, the CTDD's Internal Board assessed 54,529 out of the total of 55,976 DDT1 forms received by

the Department during the period under review by this audit (2005 to 2008).<sup>9</sup> It is to be noted that 2,174 (4.0 percent) of the DDT1 forms reviewed by the Internal Board related to re-assessments of previously submitted forms following corrections made by the transferors' and transferees' in the details presented therein, including corrections in the declared value of the property. Consequently, the number of forms subject to a Board decision during the period under review amounted to 52,355.

The Internal Board accepted 28,395 (54.2 percent) of valuations of property declared in the DDT1 forms. The remaining 23,960 (45.8 percent) were deemed as not reflecting the market value and sent to a CTDD appointed *Perit* to verify the declared valuations through an inspection of the property.

**Table 2 - Outcome of the CTDD's Internal Board assessments of DDT1 forms (2005 - 2008)**

| Year         | Corrective notice |              | Accepted by the Internal Board |              | Sent to <i>Perit</i> for a valuation |              | Total         |
|--------------|-------------------|--------------|--------------------------------|--------------|--------------------------------------|--------------|---------------|
|              | (Number)          | (Percentage) | (Number)                       | (Percentage) | (Number)                             | (Percentage) |               |
| 2005         | 609               | 4.2          | 7,618                          | 52.5         | 6,276                                | 43.3         | 14,503        |
| 2006         | 548               | 3.7          | 7,774                          | 53.0         | 6,348                                | 43.3         | 14,670        |
| 2007         | 564               | 3.9          | 7,692                          | 52.6         | 6,357                                | 43.5         | 14,613        |
| 2008         | 453               | 4.2          | 5,311                          | 49.4         | 4,979                                | 46.4         | 10,743        |
| <b>Total</b> | <b>2,174</b>      | <b>4.0</b>   | <b>28,395</b>                  | <b>52.1</b>  | <b>23,960</b>                        | <b>43.9</b>  | <b>54,529</b> |

Source : CTDD data.

<sup>9</sup> In 1,447 of the DDT1 forms were still pending to be assessed by the Internal Board as at 6 February 2009.

During the years 2005 to 2008 there were 94,572<sup>10</sup> identified applicants who were involved in the submission of DDT1 forms. Table 3 illustrates these applicants by type, being:

- a transferor only;
- a transferee only; and
- both a transferor and transferee.

Furthermore, Table 3 also illustrates the number of DDT1 forms related to the different applicants.

It transpired that out of a total of 94,572 identified applicants:

- 32,725 (34.6 percent) were transferors, out of which 24,382 (74.5 percent) were involved in one DDT1 form only, whereas
- 40,185 (42.5 percent) were transferees, out of which 33,404 (83.1 percent) were involved in one DDT1 form only;
- 21,662 (22.9 percent) were both a transferor and transferee, out of which 21,305 (98.4 percent) were involved in between two to 21 DDT1 forms.

Appendix 2 provides further information on the DDT1 forms received by the CTDD during the period under review, on which a decision was undertaken by the Internal Board. Such information mainly relates to whether the application form comprised single or more than one property, as well as the distributions indicating the type of property listed, the transaction type affected, the geographical regions involved and the average declared property value by region.

### 1.3 Audit Concerns

For the purpose of this audit, the National Audit Office focused on one source of revenue within the Department, namely the *Inter Vivos* Transfer of Property. This decision was based on the following:

- Concerns have been raised by the Malta Institute of Accountants (MIA)<sup>11</sup> about the lack of a prescribed method of calculation of the declared value of transferred properties. The MIA claimed that as a result the CTDD's valuation often cannot be verified and/or challenged.
- As at 31 December 2008, Duty on Documents and Transfers collected by the CTDD amounted

**Table 3 - DDT1 forms submitted by different applicants**

| DDT1 forms submitted | Different Applicants |              |               |              |                             |              | Total applicants |              |
|----------------------|----------------------|--------------|---------------|--------------|-----------------------------|--------------|------------------|--------------|
|                      | Transferors          |              | Transferees   |              | Transferors and Transferees |              |                  |              |
|                      | (Number)             | (Percentage) | (Number)      | (Percentage) | (Number)                    | (Percentage) | (Number)         | (Percentage) |
| <b>up to 1</b>       | 24,382               | 74.5         | 33,404        | 83.1         | 0                           | 0.0          | <b>57,786</b>    | <b>61.1</b>  |
| <b>2 to 21</b>       | 8,297                | 25.4         | 6,781         | 16.9         | 21,305                      | 98.4         | <b>36,383</b>    | <b>38.5</b>  |
| <b>22 to 41</b>      | 31                   | 0.1          | 0             | 0.0          | 237                         | 1.1          | <b>268</b>       | <b>0.3</b>   |
| <b>42 to 61</b>      | 10                   | 0.0          | 0             | 0.0          | 76                          | 0.4          | <b>86</b>        | <b>0.1</b>   |
| <b>62 to 81</b>      | 3                    | 0.0          | 0             | 0.0          | 24                          | 0.1          | <b>27</b>        | <b>0.0</b>   |
| <b>82 to 101</b>     | 0                    | 0.0          | 0             | 0.0          | 8                           | 0.0          | <b>8</b>         | <b>0.0</b>   |
| <b>102 to 121</b>    | 0                    | 0.0          | 0             | 0.0          | 5                           | 0.0          | <b>5</b>         | <b>0.0</b>   |
| <b>122 to 141</b>    | 0                    | 0.0          | 0             | 0.0          | 2                           | 0.0          | <b>2</b>         | <b>0.0</b>   |
| <b>142 to 161</b>    | 1                    | 0.0          | 0             | 0.0          | 3                           | 0.0          | <b>4</b>         | <b>0.0</b>   |
| <b>162 to 181</b>    | 1                    | 0.0          | 0             | 0.0          | 0                           | 0.0          | <b>1</b>         | <b>0.0</b>   |
| <b>182 and over</b>  | 0                    | 0.0          | 0             | 0.0          | 2                           | 0.0          | <b>2</b>         | <b>0.0</b>   |
| <b>Total</b>         | <b>32,725</b>        | <b>100.0</b> | <b>40,185</b> | <b>100.0</b> | <b>21,662</b>               | <b>100.0</b> | <b>94,572</b>    | <b>100.0</b> |

Source : CTDD data.

<sup>10</sup> The 55,976 DDT1 forms which were registered between 2005 to 2008 related to 94,572 different transferors and/or transferees identified by their respective ID cards number which were coded accordingly by MITA. In 15,283 of such DDT1 forms, 25,513 transferors and/or transferees could not be identified by MITA.

<sup>11</sup> Source : Malta Institute of Accountants, letter dated 30 June 2008, <http://www.budget2009.com.mt/media/constitutedbodies/20080804134233766.pdf>.

to approximately €89 million for the year 2008, out of which €50 million (56%) pertained to *Inter Vivos* transfers.<sup>12</sup> 4,979 out of a total of 10,743 (46.3 percent) DDT1 forms reviewed by the CTDD Internal Board were subjected to a verification inspection by *Periti* commissioned by the CTDD since it was deemed that the declared value of property did not reflect its market value. Over half of these inspections resulted in the upward revision of the declared value of the property.

## 1.4 Audit focus and objectives

The study sought to determine whether all revenue due in respect of *Inter Vivos* Transfer of Property is being collected in a fair and timely manner.

The study sought to also determine the appropriateness – in terms of effectiveness and efficiency - of processes related to *Inter Vivos* transfers which ultimately have a significant bearing on revenue due and collected by the CTDD.

In view of the foregoing, this audit sought to evaluate the extent to which the:

- i. Department is equipped with the appropriate mechanisms (including policies and Standard of Procedures relating to the process of collection of *Inter Vivos* duty due) so as to ensure an effective method of collecting duties due;
- ii. validation of declared valuations by the Internal Board and *Periti* appointed by the CTDD is effective;
- iii. interests of transferors and transferees are appropriately safeguarded.

## 1.5 Audit methodology

The undertaking of this study entailed interviewing key personnel at the CTDD, namely the Department's senior management and officials responsible for the processes involved in collecting the *Inter Vivos* duty. The NAO also reviewed data and information maintained in the CTDD's *Inter Vivos* database and the Department's manual files.

The NAO appointed a consultant *Perit* to advise on the extent to which the CTDD is furnished with the appropriate information to be in a position to validate the declared value of property, as well as to determine whether the declared value of property as accepted by the CTDD represents the true value of the property. Findings and conclusions

included in this report have been discussed with the auditee during the audit's 'exit' meeting. A detailed methodology of this part of the NAO's study is included in Appendix 3.

## 1.6 Audit constraints and limitations

The audit was partly constrained due to a lack of documented policies with respect to the Internal Boards' decisions on the declared values, guidelines and audit trails evident throughout the whole process of collection of *Inter Vivos* duty due. Some of the tasks could not be analysed as initially planned due to unforeseen situations that emerged during the course of this audit, such as the fact that the Board of Special Commissioners – responsible for dealing with taxpayers' objections to claims raised by the Department - had not been functioning since December 2004.

As regards the limitations of the audit, it should be pointed out that some of the analysis that was conducted was based on case studies, the results of which can only be interpreted as indicative rather than representing the whole population. Another limitation involved the way in which the Department's data was recorded. Some of the data is kept in the form of a hard copy rather than recorded on the Department's computerised system.

## 1.7 Structure of the Report

Chapter 2 of this report focuses on the assessment process carried out by the Department's Internal Board. This acts as the first filter for the verification of the validation of the declared value of property. The discussion therein also encompasses the information available to the Department for each transfer of property.

Chapter 3 examines the process of dealing with apparent under declared value of properties. This process is mainly centred around the inspection carried out by the CTDD's appointed *Periti* to determine the market value of properties. The Chapter also deals with the claiming of additional duty due following the detection of under declared valuations of property.

Chapter 4 focuses on that stage where the transferors or transferees of property may put forward their objection if they are not in agreement with the Department's assessment of the market value of the property in question.

The overall conclusion and recommendations emanating from this study are included in the Report's Executive Summary.

<sup>12</sup> Source : Statement of Payments received for year 2008 (MITA).





## Chapter 2

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### Validating *Inter Vivos* Applications

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## Chapter 2 – Validating *Inter Vivos* Applications

### 2.1 Introduction

The risk exists that the CTDD does not detect whether the value of the property - as declared by the transferors and transferees – reflects the market value through an initial filtering process of DDT1 forms submitted. The erroneous declarations of property will lead to a loss of revenue to Government. A low declaration implies that Government would be receiving less duty related to the *Inter Vivos* property transfer. On the other hand, a declaration which is higher than the current market value of property suggests that Government could potentially lose out on revenue due through the Capital Gains tax in the eventuality that the property in question is subject to another ownership transfer.

This Chapter presents the following:

- The initial filtering stage of DDT1 forms conducted by the CTDD’s Internal Board to determine whether the value declared by transferors and transferees reflects the market price of the property.
- The review undertaken by the Internal Board to validate the correctness of the declared value of property.
- The information available to the CTDD to enable a robust validation of the declared value of property.

#### 2.1.1 Background

During the period 2005 to 2008, on a yearly average, the CTDD received nearly 14,000 DDT1 forms. In 2008, however, the CTDD received 12,190 applications which constitute a decrease of 16.6 percent from the previous year. The Department attributes this situation to a slow-down in the property market.

All applications received by the Department are, following preliminary vetting, reviewed by a CTDD Internal Board to ensure the correctness of the property value declared. In cases, where the declared value of the property is challenged, the Internal Board refers the case to a CTDD appointed *Periti* to verify the declared value through an inspection of the property. The procedures and outcomes related to the work carried out by *Periti* will be discussed in detail in the next Chapter of this report.

Out of a total of 55,976 submitted during the period under review by this audit, 2,174 DDT1 forms were replacements to previously submitted applications. Such circumstances arise in order to effect corrections in the property and/or personal details presented to the Department by taxpayers. In such instances, the Internal Board ensures that changes to any of the details in the DDT1 form do not impact the declared value of the property. It is estimated that the costs incurred by the Internal Board for the year 2008 amounted to €26,386.

Up to February 2009, the Internal Board had not reviewed 1,447 DDT1 forms (around 12 percent) pertaining to 2008. Table 4 shows the incidence that the Internal Board accepted or questioned the validity of the declared value of the property.

Table 4 illustrates that during the period 2005 to 2008, the CTDD’s Internal Board accepted over 54 percent of the relative DDT1 forms reviewed as reflecting the market value of property. The acceptance rates for Malta and Gozo respectively during the period under review by this audit were 26,846 out of 46,829 and 1,549 out of 5,526. These acceptance rates amount to 57.3 for Malta properties and 28 percent for Gozo properties.

**Table 4 - Internal Board decisions for DDT1 forms (2005 - 2008)**

| Year         | DDT1 forms                     |              |                          |              | Total         |
|--------------|--------------------------------|--------------|--------------------------|--------------|---------------|
|              | Accepted by the Internal Board |              | Referred to <i>Perit</i> |              |               |
|              | (Number)                       | (Percentage) | (Number)                 | (Percentage) |               |
| 2005         | 7,618                          | 54.8         | 6,276                    | 45.2         | 13,894        |
| 2006         | 7,774                          | 55.0         | 6,348                    | 45.0         | 14,122        |
| 2007         | 7,692                          | 54.8         | 6,357                    | 45.2         | 14,049        |
| 2008         | 5,311                          | 51.6         | 4,979                    | 48.4         | 10,290        |
| <b>Total</b> | <b>28,395</b>                  | <b>54.2</b>  | <b>23,960</b>            | <b>45.8</b>  | <b>52,355</b> |

Source: CTDD data.

## 2.2 The process adopted by the Internal Board to validate the correctness of the declared value of property is not robust and consistent

The CTDD's Internal Board is composed of three officials employed by the Department and appointed by its Director. The main function of this Board is to vet all applications received by the Department to ascertain the correctness of the property value declared by the relevant transferors and transferees.

### 2.2.1 The Internal Board is not guided by documented terms of reference and operational policies, and lacks technical expertise

There are no documented terms of reference relating to the duties and responsibilities of the members. The members of the Internal Board understand that their main responsibilities relate to establishing the correctness or otherwise of the declared value of property for the purpose of *Inter Vivos* duty due.

The Internal Board's *modus operandi* is not supported by internal policies to guide its operations and decision-making. This creates a situation where the Internal Board's responsibilities, reporting and accountability are not clearly and formally defined. Consequently, in their quest to ensure consistency on their decision making, the members of the Internal Board have to rely on their experience and their personal knowledge of previous cases.

None of the Internal Board members have a technical background relating to the property market. However, this audit revealed that the members employ their personal initiative to keep abreast of developments and fluctuations in the property market. Such initiatives include reviews of property publications, articles in magazines and reference to previous declarations in DDT1 forms.

It is to be noted that such research is not conducted in a structured approach or in accordance with established methodologies, and may be open to potential distortions. This potentiality arises since most publications reviewed by the members relay the asking price of the property rather than the market value.

### 2.2.2 There is no audit trail regarding the Internal Board's decisions

When assessing the validity of the property value as declared on the DDT1 form, the Internal Board does not document the basis of its decision. Consequently, there is no audit trail recording the reasons why the declared valuation was accepted as reflecting the market price, or reasons prompting the case to be referred to *Periti* to determine the current market value of the property. The lack of an audit trail regarding the Internal Board's decision raises the following issues:

- i. The notion of accountability of the CTDD, and more specifically the Internal Board, is not ascertained when accepting or rejecting a declared value of property. A lack of audit trail implies that scrutiny into the quality of the decision, as well as the reasons leading to it, are hampered. Audit trail weaknesses in this regard tend to be more critical in the cases where the Internal Board has accepted the declared value as reflecting the market value of property.
- ii. The practice of not documenting the basis of the Internal Board's decision also leads to further administrative shortcomings. Particularly, with regard to the principle of consistency in decision making, the CTDD cannot formally apply the concept of case precedence to ensure consistency in their case review.
- iii. This circumstance may be further compounded in cases where officials are newly appointed as Internal

Board members. The lack of documentation regarding their terms of reference, standards of procedures and the basis of decision-making may hinder the operational continuity of the Internal Board and further impinge on the consistency with which cases are reviewed.

### 2.3 Various tendencies emerge relating to the Internal Board’s decision whether to accept the declared value as reflecting the market price of property

The NAO sought to identify whether the pattern in the decisions taken by the Internal Board was different in relation to a number of characteristics of the properties in question. For this purpose, the NAO analysed the CTDD’s *Inter Vivos* database to determine if different variables could be associated with such decisions. The main variables considered for this exercise included the type, value and locality of the property. Additionally, this Office also considered transferors’ and transferees’ characteristics with regards the Internal Board’s decisions. As indicated in Table 2, during the period 2005 to 2008, the Internal Board accepted 28,395 out of the 52,355 property valuations declared in the DDT1 form, that is 54.2 percent.

#### 2.3.1 Most DDT1 forms listing more than one property were mainly subjected to an inspection by *Periti*

During the period 2005 to 2008 there were 7,405 DDT1 forms listing more than one property valuation submitted

to the Department. This amounted to 14 per cent of the 52,355 *Inter Vivos* applications referred to the CTDD. The number of properties listed in these application forms ranged from two to 96. The Internal Board contends that the risk of under declaring the property value increases in such cases for the following reasons:

- In many instances the applicant submits only a global value for various properties listed in the application form. During 2008, this practice was observed in 872 out of 1,842 cases (47.3 percent). In such circumstances, the Board is not in a position to verify whether the declared global value represents the market value of each property listed in the DDT1 form.
- The selling price of multiple properties sold together in one transaction is more likely to be below the ‘properties’ market value. This is because, in ‘batch’ transactions, the price will not necessarily equate with the market value of each individual property.

Table 5 compares the Internal Board’s decisions on single property forms with those taken on multiple property application forms.

Table 5 indicates that the Internal Board was more inclined to refer to *Periti* DDT1 forms listing more than one property. During the period under review, over 52 percent of these applications were referred for a property inspection. Conversely, application forms comprising single properties were referred to *Periti* in around 45 percent of cases. The foregoing indicates that the Internal Board was attempting to mitigate the risk associated with *Inter Vivos* transfers involving more than one property.

**Table 5 - Internal Board decisions relating to DDT1 forms comprising single or more than one property (2005 - 2008)**

| Application form type          | Accepted (Number) | Referred to <i>Perit</i> (Number) | Totals <sup>13</sup> | Accepted (Percentage) | Referred to <i>Perit</i> (Percentage) |
|--------------------------------|-------------------|-----------------------------------|----------------------|-----------------------|---------------------------------------|
| Listing single properties      | 24,822            | 20,104                            | 44,926               | 55.25                 | 44.75                                 |
| Listing more than one property | 3,549             | 3,856                             | 7,405                | 47.93                 | 52.07                                 |

Source: CTDD data.

<sup>13</sup> During the period 2005 – 2008, there were 24 from the 52,355 DDT1 forms which could not be categorised within the ‘Application form type’. Consequently these were excluded from the analysis.

### 2.3.2 *There was a higher incidence that DDT1 forms pertaining to the €50,001 - €100,000 category would be referred to Periti for property inspections*

The NAO sought to determine if the Internal Board's decision to accept a declared valuation of property was either consistent throughout all the declared value categories (as subjectively determined in €50,000 intervals by the NAO) or based on a risk analysis approach. For the purpose of this exercise, a risk analysis approach assumes that the incidence that the application form is referred to *Periti* for a property inspection would increase in higher value declarations.

Table 6 indicates that there is a higher probability that an application form would be referred to a property inspection by *Periti* if its declared value falls in the €50,001 - €100,000 category. Around 72.52 percent of application forms pertaining to this category in 2008 were subjected to a property inspection. The average percentage referral was 48.39 percent.

A possible justification of such a situation is that the Internal Board members have accrued more personal knowledge relating to this category rather than higher value categories of properties. Consequently, the members are in a better position to assess the declared value of property falling within this category of values of property.

An analysis of the Internal Board decisions during 2008 shows that, generally, referrals for property inspections by *Periti* were made in the same proportion as the frequency of DDT1 forms within declared value categories. The only exception to this situation occurred, again, in the €50,001 - €100,000 category. Table 6 refers.

### 2.3.3 *Accepted declared values of garages were, on average, lower than the declared values of garages referred for Perit's inspection*

The NAO also compared the average declared value of property in the DDT1 forms with the decision to refer the case to the *Perit* or to accept the value indicated as correct. In all cases, except for the garages category, the mean value accepted by the Internal Board was higher than the average declared value relating to the cases which were referred for a property inspection by a *Perit*. Table 7 refers.

Table 7 shows that there was a 15 percent positive variance between the mean values of garages which were submitted for an inspection and those which were not. A positive variance implies that the Internal Board accepted declared values which were, on average, lower than those relating to cases referred for an inspection. Such a trend deviates from the expected norm, where it is expected that the lower values are deemed to be under-declared and consequently referred for a property inspection.

**Table 6 – Incidence that DDT1 form is accepted or referred to *Periti* by the Internal Board on the basis of its declared value (2008)**

| Range of value of property (€) | Accepted by Internal Board |              | Referred to <i>Perit</i> |              | Grand Total   |
|--------------------------------|----------------------------|--------------|--------------------------|--------------|---------------|
|                                | (Number)                   | (Percentage) | (Number)                 | (Percentage) |               |
| up to 50,000                   | 2,601                      | 55.97        | 2,046                    | 44.03        | 4,647         |
| 50,001 to 100,000              | 537                        | 27.48        | 1,417                    | 72.52        | 1,954         |
| 100,001 to 150,000             | 990                        | 60.15        | 656                      | 39.85        | 1,646         |
| 150,001 to 200,000             | 434                        | 59.62        | 294                      | 40.38        | 728           |
| 200,001 to 250,000             | 181                        | 54.35        | 152                      | 45.65        | 333           |
| 250,001 to 300,000             | 134                        | 61.19        | 85                       | 38.81        | 219           |
| 300,001 to 350,000             | 112                        | 61.20        | 71                       | 38.80        | 183           |
| 350,001 to 400,000             | 52                         | 60.47        | 34                       | 39.53        | 86            |
| 400,001 to 450,000             | 47                         | 55.95        | 37                       | 44.05        | 84            |
| 450,001 to 500,000             | 43                         | 58.90        | 30                       | 41.10        | 73            |
| 500,001 and over               | 180                        | 53.41        | 157                      | 46.59        | 337           |
| <b>Total</b>                   | <b>5,311</b>               | <b>51.61</b> | <b>4,979</b>             | <b>48.39</b> | <b>10,290</b> |

Source: CTDD data.

**Table 7 - Variance between mean values of cases referred for a property inspection by a *Perit* and those which were not (2008)**

| Property type                  | Variance between mean values of cases referred for an inspection and those which were not (Percentage) |
|--------------------------------|--------------------------------------------------------------------------------------------------------|
| Flats/Apartments               | -56                                                                                                    |
| Maisonettes                    | -44                                                                                                    |
| Houses                         | -46                                                                                                    |
| Garages                        | 15                                                                                                     |
| Plots of land                  | -59                                                                                                    |
| Multiple property declarations | -70                                                                                                    |

Source: NAO data.

Apart from the garages category, the remaining property categories show a negative variance between the mean of declared values of properties referred for an inspection and those which were not. The negative percentage variances in these cases ranged from 44 percent to 70 percent. In these cases, the negative variance indicates that the cases referred for an inspection could be deemed as quoting an under-declared value of property. This assertion is based on the fact that, in these cases, the mean was significantly lower than those which the Internal Board deemed as quoting a correct property value.

#### 2.3.4 A higher percentage of DDT1 forms submitted in Gozo were subjected to an inspection by *Periti*

The acceptance rate by the Internal Board for valuation regarding DDT1 forms submitted in Malta and Gozo amount to 57.3 percent and 28.0 percent respectively. This

implies that the Internal Board was more likely to question the declared valuation in DDT1 forms submitted in Gozo. Table 8 refers.

This difference in the acceptance rates could be attributed to the amount of information about the property available to the Internal Board. In the case of DDT1 forms submitted in Gozo, property site and floor plans are requested for all types of properties. Such a requirement is not enforced in the CTDD offices in Malta. This information enables the Internal Board to make a more informed decision whether or not to accept the declared value of the property as reflecting the market price. This procedural variance for DDT1 forms submitted in Malta and Gozo will be discussed further in the following section.

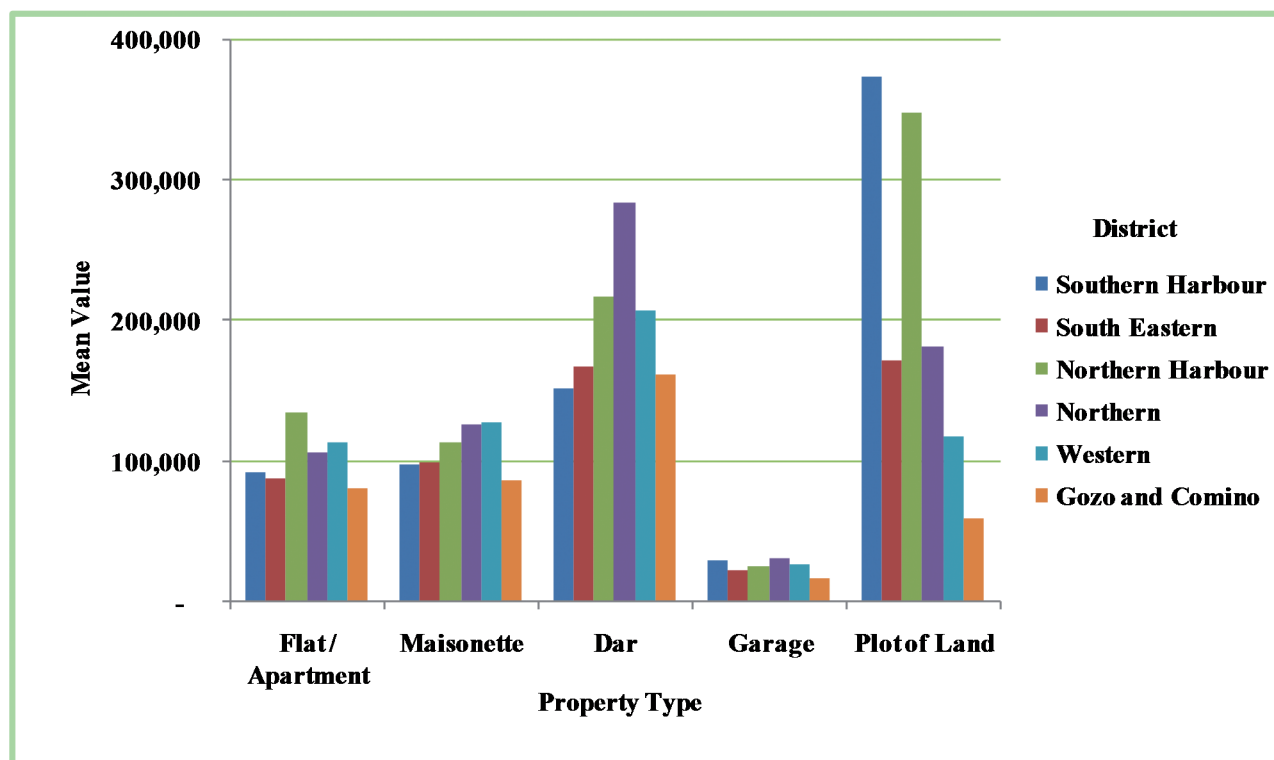
Another reason which seems to justify the higher rate of referrals to *Perit* is the fact that the average declared price for various property types was generally lower in Gozo

**Table 8 - Internal Board decisions for DDT1 forms submitted in Malta and Gozo (2005 - 2008)**

| Year         | Malta                      |                                         |                          |                                   |               | Gozo                       |                                         |                      |                                   |              |
|--------------|----------------------------|-----------------------------------------|--------------------------|-----------------------------------|---------------|----------------------------|-----------------------------------------|----------------------|-----------------------------------|--------------|
|              | Accepted by Internal Board | Accepted by Internal Board (Percentage) | Referred to <i>Perit</i> | Sent to <i>Perit</i> (Percentage) | Total         | Accepted by Internal Board | Accepted by Internal Board (Percentage) | Sent to <i>Perit</i> | Sent to <i>Perit</i> (Percentage) | Total        |
| 2005         | 7,197                      | 58.1                                    | 5,189                    | 41.9                              | 12,386        | 421                        | 27.9                                    | 1,087                | 72.1                              | 1,508        |
| 2006         | 7,364                      | 58.1                                    | 5,312                    | 41.9                              | 12,676        | 410                        | 28.4                                    | 1,036                | 71.6                              | 1,446        |
| 2007         | 7,241                      | 58.1                                    | 5,225                    | 41.9                              | 12,466        | 451                        | 28.5                                    | 1,132                | 71.5                              | 1,583        |
| 2008         | 5,044                      | 54.2                                    | 4,257                    | 45.8                              | 9,301         | 267                        | 27.0                                    | 722                  | 73.0                              | 989          |
| <b>Total</b> | <b>26,846</b>              | <b>57.3</b>                             | <b>19,983</b>            | <b>42.7</b>                       | <b>46,829</b> | <b>1,549</b>               | <b>28.0</b>                             | <b>3,977</b>         | <b>72.0</b>                       | <b>5,526</b> |

Source: CTDD data.

**Figure 2 – Comparative declared average prices for various property types in different geographical regions (2008)**



Source: CTDD data.

than those declared in the various regions of Malta. Figure 2 refers.

Figure 2 shows that with the exception of ‘dar’ (terraced house) the declared value of property in DDT1 forms pertaining to Gozo was, on average, the lowest amongst the various geographical regions. The ‘dar’ property type declared average value, was nevertheless the lowest amongst the geographical regions but one – the Southern Harbour region.

## 2.4 The information available to the CTDD does not always enable a robust validation of the declared value of property

Information about the transferred property provided by the DDT1 form is critical to the Internal Board’s decision when validating the declared value of property.

For every *Inter Vivos* Transfer of property, a DDT1 form is filled by the Notary publishing the related deed within 15 working days from the date of transfer of property. Through the DDT1 form, the Department requires

information on the transferors and transferees of property, the type of transaction taking place, as well as a description of the transferred property. The Duty on Documents and Transfers Act stipulates that, if need be, a block plan and a site plan duly signed by an architect should be annexed to the DDT1 form. However, as discussed earlier in this Chapter, this provision is only enforced for DDT1 forms submitted in Gozo.

Analysis of the depth and validity of information available to the CTDD raises the following issues:

- i. Different notaries give different levels of information when completing the DDT1 form. The close-ended element of the form (including information on the transferors and transferees as well as the transaction type) is filled in by all the notaries, as requested by the Department. However, the level of detail on the description of the property being transferred (such as information on the area and condition as well as measurements of the property) varies from one DDT1 form to another, depending on the Notary responsible for the transfer deed. Moreover, in the case of the Malta branch of the CTDD, site plans are only annexed to the DDT1 form when the type of property being

transferred is either a plot of land or field.<sup>14</sup> Extent of provided information may influence the Internal Board’s validation of the declared value of property, and thus the related amount of duty due.

- ii. There is no mechanism in place that enables the CTDD to verify the applicable rates of duty for every transfer of property, on a case by case basis (for example, the appropriateness of the applicability of a sole residence transfer duty). Such information is accepted by the Department as given by the Notary responsible for the transfer deed.

The National Audit Office appointed a consultant *Perit* to advise on the extent to which the CTDD is furnished with the appropriate information to be in a position to validate the declared value of property. A case study of 38 DDT1 forms was selected. Appendix 3 refers.

It transpired that with the level of information contained in the DDT1 form and/or available to the Department, the Internal Board, in practice, is considerably limited in accurately determining the value of a property. In many cases, given the same information as the Internal Board, the NAO’s consultant could only provide an extensive valuation range rather than a specific property value.

The range of valuation provided by the NAO consultant was significantly narrowed as more information about the relative property was made available. For the purpose of this exercise, the NAO sought to obtain site and floor plans from various governmental entities, namely the Malta Environmental and Planning Authority (MEPA) and the Land Registry. Wherever possible, the NAO also supplemented this information with photographs illustrating the external features of the properties.

The NAO’s analysis shows that, on aggregate, the range of valuations narrowed by around 54 and 89 percent for DDT1 forms listing single or more properties respectively. Table 9 refers.

The narrowing of the ‘valuation range’ exercise illustrates that the lack of information related to properties places the Internal Board at a significant disadvantage when determining whether or not the declared value in the DDT1 form constitutes the market price of the property.

This exercise also raises the question as to why the CTDD is not, as a minimum, requesting that applicants also annex site and floor plans to the DDT1 form. The Duty on Documents and Transfers Act clearly empowers the Department to request such information. Moreover, the CTDD is already invoking the relative clause to obtain such information regarding DDT1 forms submitted in Gozo.

#### *2.4.1 In some cases, the declared value of property as accepted by the Internal Board was deemed to be lower than the market value determined by the NAO’s case study*

The NAO also sought to determine the extent to which the Internal Board was accepting declared values in DDT1 forms as representing the market price of property. There were 25 instances where the NAO supplemented the information available to the Internal Board with additional details, such as floor and site plans. In the other 13 cases, the NAO was limited in determining the market value of property to utilizing the same information as that available to the Internal Board. Due to the different levels of information available, these two categories of cases were analyzed separately. A detailed methodology related to this study is included in Appendix 3.

**Table 9 - Narrowing of the valuation ranges following the utilisation of additional information**

| DDT1 form              | Aggregate of ranges of NAO valuations based on the same information as that available to the Internal Board (€) | Aggregate of ranges of NAO valuations based on additional information (€) | Narrowing of the aggregate of ranges following the utilisation of additional information (Percentage) |
|------------------------|-----------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| Single property        | 2,682,000                                                                                                       | 1,232,400                                                                 | 54.05                                                                                                 |
| More than one property | 4,407,100                                                                                                       | 480,000                                                                   | 89.11                                                                                                 |
| <b>Total</b>           | <b>7,089,100</b>                                                                                                | <b>1,712,400</b>                                                          | <b>75.84</b>                                                                                          |

Source: CTDD data.<sup>15</sup>

<sup>14</sup> The Gozo Branch also requires the provision of site plans whenever the type of property being transferred involves flats, apartments and garages.

<sup>15</sup> Further analysis can be found in Tables D and E in Appendix 4.



### 2.4.1.1 Valuations of cases with additional information

In 21 out of the 25 cases where the NAO's consultant was able to determine a specific value of property due to the additional information provided, the Internal Board's decision was deemed to be within 15 percent of the price range of property. The NAO deems that declared valuations up to 15 percent below the NAO's determination of the market value of property as correct in order to account for the subjectivity inherent in valuation processes. The NAO adopted the 15 percent threshold since this is the parameter

that the Duty and Documents on Transfers Act obliges the Department to enforce following property inspections to validate the correctness of the declared value of property. The total declared value of the properties in these 25 DDT1 forms amounted to €5,285,571. Table 10 refers.

Table 10 shows the following:

- i. In four cases, the NAO's determination of the market value of property was over 15 percent of the value declared in the DDT1 form. These four cases are shaded in Table 10. The declared value of these properties ranged from €9,317 to €168,879. In total

**Table 10 – Variance between the declared value of property and NAO valuations in cases where additional property information was sought**

| Property description                      | Value as declared on DDT1 form (€) | NAO Valuation based on additional information (€) |
|-------------------------------------------|------------------------------------|---------------------------------------------------|
| Two portions of land                      | 10,715                             | 11,475                                            |
| Maisonette and garage                     | 116,468                            | 130,000                                           |
| Flat/Apartment and garage                 | 116,468                            | 97,000                                            |
| Maisonette and garage (in same building)  | 172,000                            | 180,000                                           |
| Terraced House including adjoining garage | 232,937                            | 232,750                                           |
| Semi-detached villa and garage            | 465,874                            | 459,000                                           |
| Semi-detached villa and garage            | 465,874                            | 463,600                                           |
| Penthouse and garage                      | 465,874                            | 507,000                                           |
| Semi-detached villa and garage            | 489,168                            | 500,000                                           |
| Semi-detached villa and garage            | 692,988                            | 726,000                                           |
| Garage                                    | 9,317                              | 11,600                                            |
| Garage                                    | 16,305                             | 16,500                                            |
| Garage                                    | 18,635                             | 20,000                                            |
| Garage                                    | 20,964                             | 23,000                                            |
| Flat/Apartment                            | 88,516                             | 103,600                                           |
| Flat/Apartment                            | 88,516                             | 100,000                                           |
| Flat/Apartment                            | 97,833                             | 102,375                                           |
| Flat/Apartment                            | 104,000                            | 110,000                                           |
| Flat/Apartment                            | 116,468                            | 120,000                                           |
| Flat/Apartment                            | 116,468                            | 116,500                                           |
| Flat/Apartment                            | 116,500                            | 120,000                                           |
| Shop                                      | 139,762                            | 155,000                                           |
| Duplex Maisonette                         | 139,762                            | 170,000                                           |
| Terraced House                            | 168,879                            | 200,000                                           |
| Bungalow                                  | 815,280                            | 904,000                                           |
| <b>Total</b>                              | <b>5,285,571</b>                   | <b>5,579,400</b>                                  |

Source: CTDD and NAO data.

the declared value of these properties amounted to €406,474. The NAO's valuation exercise revealed a total negative variance of €78,726 regarding these four cases. On average, this variance amounts to over 19 percent. It is estimated that through these four cases the CTDD forfeited €3,710 in *Inter Vivos* duty due and the relative amount of administrative duty.

- ii. Although within the 15 percent parameter set for this exercise, the declared valuations accepted by the Internal Board were generally lower than the market values determined by the NAO. Further to the four cases discussed in the preceding paragraph, there were 17 more cases where the declared value was lower than that determined by the NAO. In total, the negative variance of these 21 cases ranged from 0.03 to 24.5 percent. The declared value related to these properties ranged from €9,317 to €815,280. The overall negative variance related to these 21 cases amounted to €322,632.
- iii. There was a case where the NAO's determination of the market value of property was significantly below the declared value, that is, below the 15 percent threshold adopted for the purpose of this exercise to mitigate the subjectivity inherent in property valuations. In this

case, the Internal Board accepted a declared valuation of €116,468 for the flat/apartment and garage, which the NAO's exercise valued at €97,000 – or 16.72 percent less than what was declared in the DDT1 form.

- iv. Additionally, there were three other cases where the NAO's determination of the market value of property was slightly below the declared value. The total variance in these three cases amounted to €9,335. The resultant percentage variances ranged from 0.08 to 1.48 percent.

#### 2.4.1.2 Valuations of cases with limited information

In 13 cases, the NAO was unable to supplement the information received by the CTDD through DDT1 forms. In three of these cases the NAO was furnished with more property details by MEPA and the Land Registry. However, such information was still not sufficient to enable a specific market value to be determined without performing a property inspection. It is to be noted that the NAO's mandate does not extend to the undertaking of inspections in private property. In the circumstances, the NAO consultant *Perit* could only provide a range of valuations. Table 11 refers.

**Table 11 - Variance between the declared value of property and NAO valuations based on information on the DDT1 form and limited additional information**

| Property description                     | Value as declared on DDT1 form (€) | NAO Valuations     |                     |
|------------------------------------------|------------------------------------|--------------------|---------------------|
|                                          |                                    | Lower estimate (€) | Higher estimate (€) |
| Maisonette and garage (in same building) | 114,100                            | 135,000            | 175,000             |
| Penthouse and garage                     | 202,655                            | 185,000            | 200,000             |
| Terraced house include adjoining garage  | 314,465                            | 200,000            | 600,000             |
| Garage                                   | 11,647                             | 20,000             | 30,000              |
| Garage                                   | 12,811                             | 11,600             | 20,000              |
| Flat/Apartment                           | 94,340                             | 70,000             | 128,000             |
| Maisonette                               | 139,762                            | 125,000            | 155,000             |
| Store                                    | 186,350                            | 25,000             | 350,000             |
| Villa                                    | 640,577                            | 350,000            | 1,000,000           |
| Flat/Apartment                           | 100,164                            | 105,000            | 150,000             |
| Garage                                   | 34,940                             | 24,000             | 90,000              |
| Flat/Apartment                           | 97,833                             | 110,000            | 150,000             |
| Flat/Apartment and two garages           | 139,762                            | 150,000            | 175,000             |
| <b>Total</b>                             | <b>2,089,406</b>                   | <b>1,510,600</b>   | <b>3,223,000</b>    |

Source: CTDD and NAO data.

Table 11 shows that, overall, the declared property price in the DDT1 form reviewed was higher than the lower end of the NAO’s valuation range. However, the declared valuations accepted by the Internal Board were, in total, considerably less than the higher estimate determined by the NAO’s consultant *Perit*.

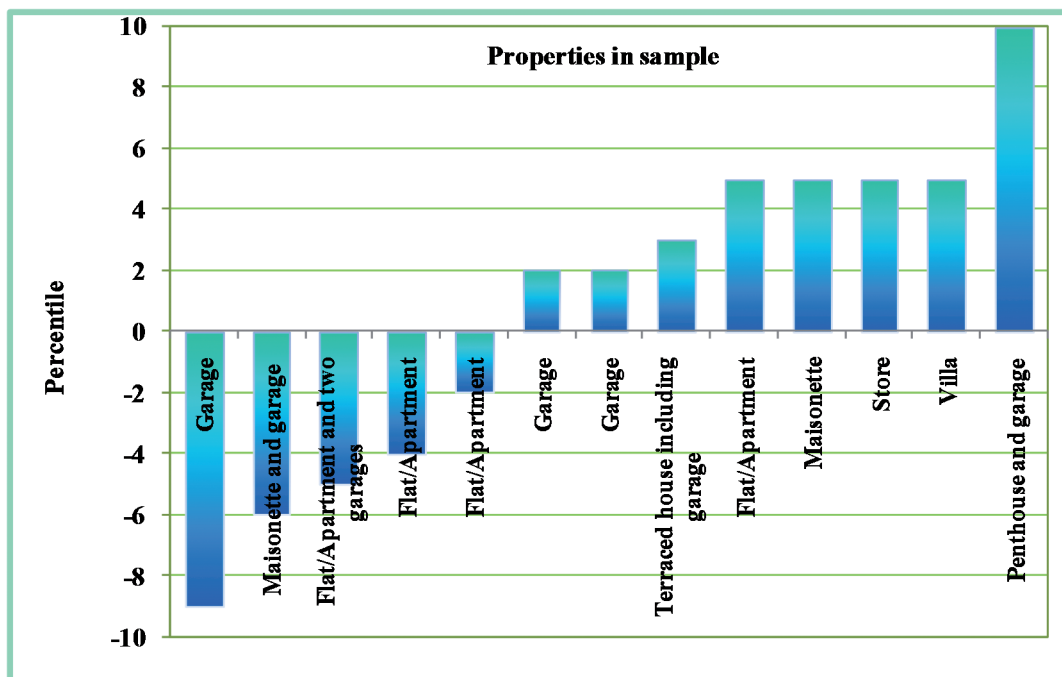
In view of this situation, this Office sought to determine the extent to which the declared value of property, as accepted by the Internal Board, positioned itself within the NAO’s valuation range. For this purpose, the NAO determined the difference between the declared value on the DDT1 form and the lower value of the NAO’s valuation range. The resultant value was plotted on an axis scaled at 10 percent intervals (deciles) based on the NAO’s valuation range. A high position on this axis would indicate that the Internal Board accepted a declared value which was closer to the higher end of the NAO’s valuation range. Conversely, a low or negative position on this axis would imply that the Internal Board accepted declared values which were closer or even lower than the NAO’s lower valuations. Figure 3 refers.

Figure 3 raises the following issues:

- The positioning of 12 of the 13 cases under discussion was within or below the 5th decile.
- In five of the 13 cases, the Internal Board accepted declared valuations in the DDT1 forms which were below the lower value of the NAO’s valuation range. In two of these cases there were negative variances amounting to €20,900 and €8,353 which amount to a negative percentage variance of around 18 and 72 percent respectively. Through the acceptance of these two declared valuations, the CTDD forfeited *Inter Vivos* duty amounting to at least €1,463.
- Out of the 13 cases under study, there was only one case where the Internal Board accepted declared valuations which placed closed to the top end of the NAO’s valuation range. This cases placed in the 10th decile.

The foregoing further illustrates that in some cases the Internal Board was accepting declared valuations which were considered by the NAO to be below their market value.

**Figure 3 - The positioning of declared valuations within the NAO’s valuation range**



Source: CTDD and NAO data.

## 2.5 Conclusions

The Internal Board's role is critical to the *Inter Vivos* process. It seeks to decide whether the declared value of property - as declared by the transferors and transferees – reflects the market value through an initial filtering process of DDT1 forms submitted. Its critical role is further emphasised by the fact that, in practice, there are no further checks and balances following an acceptance of the declared value of property by the Internal Board. Erroneous declarations of property will lead to a loss of revenue to Government.

This Chapter has shown that the Internal Board suffers a number of significant constraints, namely formal guidelines relating to its work, the lack of information about the properties listed in DDT1 forms and the non-accessibility to data relating to property values in Malta. Matters are compounded by the fact that an adequate audit trail documenting the rationale of the Internal Board's decisions is not maintained.

Despite the efforts of the members to counter the inherent disadvantages of the Internal Board by drawing on their experience and initiative, such circumstances impinged on its effectiveness. The case study comprising 38 DDT1 forms presented in this Chapter has shown that in some cases the Internal Board accepted declared property valuations which were deemed to be below the market price.

This state of affairs implies a risk to the collection of *Inter Vivos* duty due. Moreover, the lack of documented guidelines raises concerns about the transparency of the Internal Board's proceedings.

The next Chapter of this report discusses the ensuing on-site inspections and the determination of the market value by CTDD appointed *Periti* for those cases deemed by the Internal Board as submitting an erroneous declaration of the value of property.



## Chapter 3

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### Dealing with apparently erroneous values of property declarations

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## Chapter 3 – Dealing with apparently erroneous values of property declarations

### 3.1 Introduction

The CTDD appoints *Periti* to conduct on-site inspections of those cases deemed as indicating an erroneous declaration of property in the DDT1 form. This audit determined that the property inspections by *Periti* constitute value for money since they permit the Department to recover *Inter Vivos* duty due which would otherwise have been forfeited through low declarations. This audit also notes that the management of inspections needs strengthening in order to ascertain that the Department's and third party interests are better safeguarded.

The discussion within this Chapter includes the following issues:

- The cost of *Periti's* inspections.
- The outcomes of *Periti's* property inspections.
- Revision of property valuations.
- The audit trail relating to the *Periti's* property valuations.
- The time period taken by *Periti* to submit property valuations to the Department.
- Value for money considerations.

#### 3.1.1 Background

Whenever the CTDD's Internal Board deems that the declared valuation - as indicated by the transferor and transferee of property on the DDT1 form - does not reflect the market value of property, a *Perit* is engaged to inspect the property. Such an inspection enables the determination

of the market value of property. The CTDD aims to ensure valuation consistency by deploying the same *Periti* to particular areas. The Department contends that such a practice also minimises logistical problems, such as travelling for *Periti*.

The *Perit* is provided with the address of the property to be inspected and some of the details (such as the date of deed, name and address of the transferor, transferee, and Notary) presented in the DDT1 form of the property in question. The value of property as declared by the transferor and transferee of property, however, is not indicated to the *Perit* to avoid influencing the ensuing valuation.

All of the *Periti's* valuations are passed on to the Department to ascertain whether these valuations fall within the CTDD's valuation parameters determined by law.<sup>16</sup> In cases where the *Periti's* valuation exceeds the value declared in the DDT1 form by more than 15 percent, the transferees are liable to pay the additional *Inter Vivos* duty. Such parameters are employed to counter the subjectivity inherent in the valuation process. The CTDD issues a claim, calling for the difference of the *Inter Vivos* duty due in cases where the *Periti's* valuations indicate under declarations beyond the parameters indicated in this paragraph. Additionally, in these cases, the Department also imposes the relative administrative duty as stipulated by law on both transferors and transferees.

There are instances where at least one of the parties involved in the transaction disagree with the CTDD's claim and raises an objection. In these circumstances, the Department may refer the case back to the same *Perit* to conduct a second property inspection. Aggrieved parties can still seek redress to the Board of Special Commissioners in cases where the CTDD rejects the objection and does not refer the case to *Periti* for a second

<sup>16</sup> Article 10(2) of the Duty on Documents and Transfers Act.

**Table 12 - Cost of property inspections (2008)**

| Description of cost                              | Cost (€)     | Costs incurred for property inspections (€) |
|--------------------------------------------------|--------------|---------------------------------------------|
| Cost of property inspection                      | 13.74        | 91,440                                      |
| Reimbursements of travel and stationery expenses | 19.94        | 132,716                                     |
| <b>Total</b>                                     | <b>33.68</b> | <b>224,156</b>                              |

Source: CTDD and NAO data.

property inspection. Taxpayers can also refer their case to the Board of Special Commissioners if they do not agree with the *Periti's* valuation following the second inspection. Issues relating to taxpayers' redress are discussed in detail in the next Chapter of this report.

### 3.2 Each property inspection carried out by *Periti* costs €33.68

During 2005 to end 2008, the CTDD was utilising the services of 20 *Periti*, who performed property valuations in localities as indicated by the Department. The fee payable for every inspection is €13.74. The Department also reimburses *Periti* with travel and stationery expenses. These costs were estimated at an average of €19.94 per inspection.<sup>17</sup> Table 12 refers.

### 3.3 The majority of *Periti's* assessments confirm the declared property value

The first property inspection by *Periti* is performed following the referral of the case by the Internal Board. During the first property inspection, *Periti* confirmed that the declared value of property as indicated in the DDT1 form was considered as correct in 63 percent of the cases.

During the period 2005 to 2008, CTDD's Internal Board referred 23,960 DDT1 forms to *Periti* to carry out property inspections. It is to be noted that 1,862 of these application forms were still outstanding at the time of this audit. Consequently, this study was concerned with the remaining 22,098 DDT1 forms. Table 13 provides case details and outcomes following the first property inspection by *Periti*.

**Table 13 – Outcomes following the first property inspections by *Periti* (2005 – 2008)**

| Year         | Cases referred by the Internal Board | Total declared Value on DDT1 form | Outcome of the first property inspection                              |                             |                                                          |                                                                          |                             |                                                          |
|--------------|--------------------------------------|-----------------------------------|-----------------------------------------------------------------------|-----------------------------|----------------------------------------------------------|--------------------------------------------------------------------------|-----------------------------|----------------------------------------------------------|
|              |                                      |                                   | Cases accepted by <i>Perit</i> as reflecting market value of property | Declared Value on DDT1 form | Value following <i>Perit's</i> first property inspection | Cases where valuation was revised by <i>Perit</i> and a claim was issued | Declared Value on DDT1 form | Value following <i>Perit's</i> first property inspection |
|              | (Number)                             | (€)                               | (Number)                                                              | (€)                         | (€)                                                      | (Number)                                                                 | (€)                         | (€)                                                      |
| 2005         | 6,276                                | 492,970,008                       | 3,742                                                                 | 337,416,987                 | 357,545,018                                              | 2,534                                                                    | 155,553,021                 | 243,048,022                                              |
| 2006         | 6,346                                | 575,002,051                       | 3,912                                                                 | 413,580,570                 | 400,615,441                                              | 2,434                                                                    | 161,421,481                 | 261,874,944                                              |
| 2007         | 6,349                                | 683,252,500                       | 4,219                                                                 | 522,160,887                 | 527,578,052                                              | 2,130                                                                    | 161,091,613                 | 256,172,452                                              |
| 2008         | 3,127                                | 353,251,364                       | 2,087                                                                 | 256,640,706                 | 250,752,685                                              | 1,040                                                                    | 96,610,658                  | 158,276,647                                              |
| <b>Total</b> | <b>22,098</b>                        | <b>2,104,475,923</b>              | <b>13,960</b>                                                         | <b>1,529,799,150</b>        | <b>1,536,491,196</b>                                     | <b>8,138</b>                                                             | <b>574,676,773</b>          | <b>919,372,065</b>                                       |

Source: CTDD data.

<sup>17</sup> The CTDD did not maintain relative information related to general expenses incurred by *Periti* before September 2008. Consequently, the average general expenses incurred per inspection were calculated on the basis of costs incurred by the Department during the period September 2008 to August 2009. During this period, general expenses amounted to €132,716 for an estimated 6,655 inspections carried out.

Table 13 illustrates the following:

- i. In 13,960 out of the 22,098 cases (63 percent) referred for an inspection, the *Periti* determination of the market value of property was, on average, about 0.4 percent higher than the declared value in the DDT1 form. Such a value falls within the CTDD’s valuation parameters. Consequently, these declared values are considered as correct and no additional *Inter Vivos* or administrative duties are due.
- ii. On average, the declared value on each DDT1 form referred for an inspection by *Periti* amounted to €95,234.
- iii. In 8,138 out of the total cases inspected carried out during the period under review (37 percent), the *Periti*’s assessment of the market value was 60 percent higher than the declared value of property. In these 8,138 cases, the aggregated declared value of property of €574,676,773 was assessed by the *Periti* to have a market value of €919,372,065.

### 3.4 Most *Periti*’s assessments are not challenged by transferors and transferees

Table 13 shows that the first property inspection by *Periti*

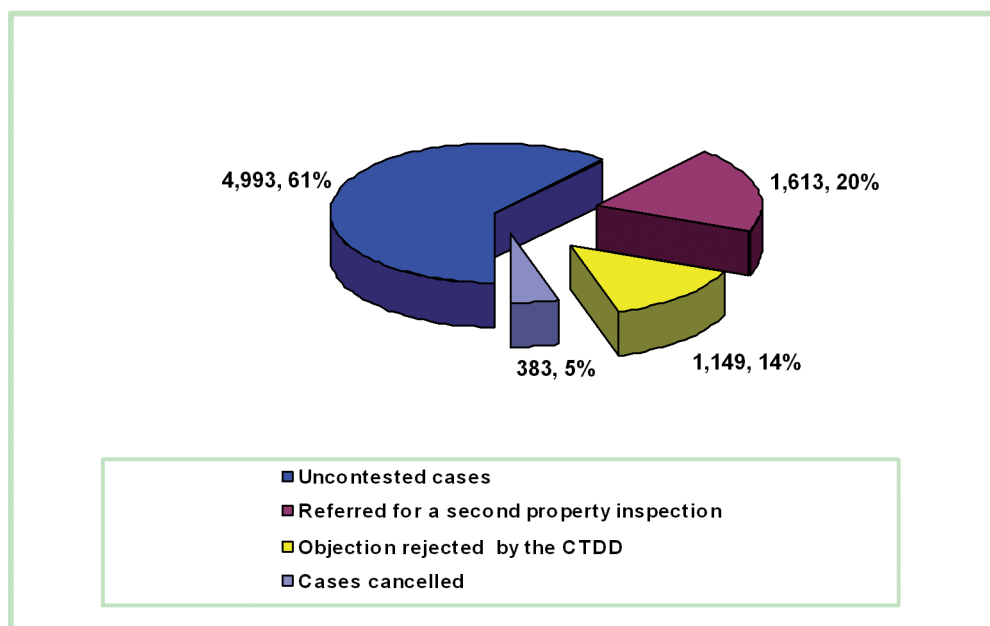
resulted in 8,138 cases for additional duty since the *Periti* deemed the value declared as below the market price of the property.

Following the receipt of a claim, transferors and/or transferees have the right to raise an objection. Such an objection is made when taxpayers feel that the valuation of property as determined by the *Perit* is more than the actual property market value. It is to be noted that additional *Inter Vivos* and administrative duties would be due based on the difference between the declared property value and the market value determined by the *Perit*.

Figure 4 shows the proportion of cases which were either uncontested by transferors and transferees, objected to but the contestation was rejected by the CTDD on account of irrelevant reason or cancelled, or objected to and the CTDD referred the case again for a second property inspection.

Figure 4 illustrates that during the period under review, 4,993 out of the 8,138 which resulted in claims (61.4 percent) following the first property inspection by *Periti* were uncontested by transferors and transferees. It is to be noted that these amount to 11,688 out of the 16,175 transferors and transferees involved in the 8,138 assessments.

**Figure 4 – Outcome of cases following the first property inspection by *Periti* (2005 – 2008)<sup>18</sup>**



Source: CTDD data.

<sup>18</sup> The outcome of cases following the first property inspection by *Periti* depicted in Figure 4 is based on the assessment of each DDT1 form. It is to be noted that DDT1 forms may comprise single or more than one property. This choice of representation is based on the fact that the CTDD issues claims for additional duty due for each DDT1 form, rather than properties transacted.



**Table 14 - Outcome of second inspection**

| Year DDT1 form submitted to CTDD | Cases referred for a second inspection (Number) | Market value determined by <i>Periti</i> following first inspection (€) | Revised market value following second inspection (€) |
|----------------------------------|-------------------------------------------------|-------------------------------------------------------------------------|------------------------------------------------------|
| 2005                             | 71                                              | 10,892,739                                                              | 7,163,314                                            |
| 2006                             | 694                                             | 115,626,776                                                             | 80,896,317                                           |
| 2007                             | 632                                             | 117,405,830                                                             | 81,372,148                                           |
| 2008                             | 216                                             | 55,725,272                                                              | 36,703,252                                           |
| <b>Total</b>                     | <b>1,613</b>                                    | <b>299,650,617</b>                                                      | <b>206,135,031</b>                                   |

Source: CTDD data.

The above figure also illustrates that the CTDD deemed fit to resubmit 1,613 assessments for a second property inspection by *Periti*.

### 3.5 The second inspection results in significant downward revision of the *Periti*'s own property valuations

The CTDD requested *Periti* to carry out a second property inspection to confirm their initial determination of the market price of property. During the period under review there were 1,613 DDT1 forms involving objections raised by a total of 2,381 transferors and transferees. Table 14 shows the aggregated case details and outcomes of the second property inspection.

The second property inspection resulted in an average downward revision in the market value of the assessed property by over 31 percent. Table 14 shows, that the total of first property inspection valuation of €299,650,617 was revised to €206,135,031.

The revision of property market values following the second inspection can be either due to the adjustments of 'best of judgement' cases or relate to valuation corrections by the *Periti*. Table 15 refers.

Issues emerging from data indicated in Table 15 relating to 'best of judgement assessments' and '*Periti* corrections' are being discussed in Sections 3.5.1 and 3.5.2 respectively.

**Table 15 – Outcome of second property inspection by *Periti* (2005 - 2008)**

| Year DDT1 form submitted to CTDD | Overall outcome of second inspection            |                                              |                                                      | Outcome 'best of judgment' cases in second inspection |                                              |                                                      | Outcome of ' <i>Periti</i> correction' cases in second inspection |                                              |                                                      |
|----------------------------------|-------------------------------------------------|----------------------------------------------|------------------------------------------------------|-------------------------------------------------------|----------------------------------------------|------------------------------------------------------|-------------------------------------------------------------------|----------------------------------------------|------------------------------------------------------|
|                                  | Second Inspections carried out by <i>Periti</i> | Variance between first and second inspection | Average variance between first and second inspection | Best of Judgment assessments                          | Variance between first and second inspection | Average variance between first and second inspection | <i>Periti</i> correction cases                                    | Variance between first and second inspection | Average variance between first and second inspection |
|                                  | (Number)                                        | (€)                                          | (€)                                                  | (Number)                                              | (€)                                          | (€)                                                  | (Number)                                                          | (€)                                          | (€)                                                  |
| 2005                             | 71                                              | (3,729,425)                                  | (52,527)                                             | 34                                                    | (2,358,368)                                  | (69,364)                                             | 37                                                                | (1,371,057)                                  | (37,056)                                             |
| 2006                             | 694                                             | (34,730,482)                                 | (50,043)                                             | 286                                                   | (23,770,912)                                 | (83,115)                                             | 408                                                               | (10,959,570)                                 | (26,861)                                             |
| 2007                             | 632                                             | (36,033,706)                                 | (57,015)                                             | 267                                                   | (24,815,522)                                 | (92,942)                                             | 365                                                               | (11,218,184)                                 | (30,734)                                             |
| 2008                             | 216                                             | (19,022,020)                                 | (88,065)                                             | 88                                                    | (14,301,328)                                 | (162,515)                                            | 128                                                               | (4,720,692)                                  | (36,880)                                             |
| <b>Total</b>                     | <b>1,613</b>                                    | <b>(93,515,633)</b>                          | <b>(57,976)</b>                                      | <b>675</b>                                            | <b>(65,246,130)</b>                          | <b>(96,660)</b>                                      | <b>938</b>                                                        | <b>(28,269,503)</b>                          | <b>(30,138)</b>                                      |

Source: CTDD data.

### 3.5.1 ‘Best of judgement cases’ attributed to around a third of the downward revision of the market value of property during the second *Periti* inspection

In 675 cases, the revision occurred to rectify ‘best of judgement’ assessments by *Periti* who could not perform a full property inspection. These assessments are issued in instances where a full property inspection fails to materialise due to the ‘no-show’ by the transferee. ‘No-shows’ materialise even after a number of attempts by the *Perit* to contact the property owner and two formal reminders.

The ‘best of judgment’ valuation comprises an over-inflated assessment of the highest possible price that may be attributable to a particular property. The Department contends that such an approach is the only method available to compel cooperation from the transferees with the *Perit*.

It is to be noted that in 51 cases a subsequent ‘best of judgment’ assessment had to be drawn up since the property inspection failed to materialise again - despite the *Periti*’s attempts to contact the transferees. As a consequence, the first and second ‘best of judgement’ assessments were identical. The remaining 624 cases were, in total, revised downwards by €65,246,130, amounting to around 46.5 percent of the initial *Periti*’s assessments of the market value of the property.

The reasons for ‘best of judgement’ assessments to compel and secure taxpayer compliance are appreciated. However, the implementation of this procedure raises the following concerns:

- The CTDD do not have documented criteria relating to when and how ‘best of judgement’ assessments are to be drawn up. The Department contends that such criteria, although undocumented, is discussed during general meetings with *Periti*.
- *Periti*, generally, do not document the basis of their original valuation or subsequent revisions. This is considered as an audit trail weakness. Furthermore, the Board of Special Commissioners on various occasions have criticised such valuations.<sup>19</sup>
- This audit observed significant variations in ‘best of judgement’ assessments and subsequent revisions. Such differences may be due to the specific circumstances of each case. However, this assertion could not be confirmed due to the audit trail issues discussed above.

### 3.5.2 A significant number of initial property valuations were adjusted downwards by *Periti* following the second inspection

During the period under review, in addition to the 675 property inspections related to ‘best of judgement’ circumstances, there were another 938 second property inspections by *Periti*. These inspections also resulted following the raising of an objection to the property market value determined by *Periti* after a previous full property inspection. These inspections provide the opportunity for any potential oversights and/or lack of information in the initial property valuation by *Periti* to be rectified. Table 17 shows the outcomes of these inspections. The following issues arise:

- i. It is pertinent to note that in 270 out of these 938 inspections the *Periti* confirmed their initial property valuation.
- ii. Overall, out of the 938 inspections carried out to re-validate the initial property assessment, 668 resulted in a downward revision. The variation in these cases between the first and second inspections totalled to €28,495,332, amounting to an average of €42,319. These figures imply that, on aggregate, the downward revision is of around 26 percent of the initial *Periti*’ assessments of the market value of the property.
- iii. This audit showed that in 527 out of the 938 cases (56 percent) under discussion in this Section, the downward revision in the *Periti*’s assessment in the value of property was by up to €50,000. Moreover, there were five cases where the downward adjustment was €500,000 or more.
- iv. The majority, 746 of these 938 cases (79.5 percent) was mostly attributed to nine of the 20 *Periti* commissioned by the Department.

## 3.6 The lack of documentation to justify *Periti*’s valuations and revisions weakens internal control mechanisms

The absence of documented reasons justifying the initial assessment and revision constitutes a critical weakness in the audit trail relating to the validation of the declared value of property by *Periti*. In such circumstances, internal control mechanisms are severely impaired since in-depth scrutiny that should be routinely undertaken can, in practice, be limited. Attached at Appendix 5 of this

<sup>19</sup> Criticism was levied at *Periti* for the lack of documentation relating to the factors taken into consideration in determining the market price of property by the Board of Special Commissioners.

report is the template devised and utilised by the NAO's consultant *Periti*.

It is to be noted that, during the latter part of this audit, the CTDD actively embarked on strengthening the audit trail with regards property valuations undertaken on its behalf by *Periti*.

### 3.7 *Periti* do not always submit property valuations on time

*Periti* do not always submit valuations of a property within the 90 day time-frame stipulated by the CTDD. The late submission of valuations increases the risk that cases are rendered statute barred, which in turn results in a loss of revenue to Government.

Table 16 illustrates the number of days taken by *Periti* to furnish the CTDD with their valuations for years 2005 to 2008.

Table 16 indicates that:

- the 90 day period policy for the submission of valuations was not adhered to by *Periti* in 11,231 out of the 22,098 assessments (around 51 percent) carried out during the period under review;
- seven out of the 20 *Periti* commissioned by the CTDD did not comply to the 90 day policy in over 81 percent of the cases allocated to them. These seven *Periti* were responsible for 6,909 out of the 11,231 (around 62 percent) late valuation submissions; and
- in 26 cases where valuations were submitted after the CTDD's 90 day policy, the Department could not raise the subsequent claims as these cases were rendered statute barred.

### 3.8 For every €1 spent on *Periti* property inspections, the CTDD recouped €22.92

The benefits reaped through the property inspections carried out on behalf of the CTDD by *Periti* include the deterrent factor. Although unquantifiable, the knowledge that declared values of property may be validated by a specialist discourages erroneous declarations.

Additionally, property inspections lead to the detection of erroneous declarations. During the period 2005 to 2008, the *Periti*'s property inspections led to an overall increase in the declared value of property from €408,291,710, to €585,042,684. Such an increase resulted in the CTDD recouping €7,364,282 in additional *Inter Vivos* and the applicable additional duties.

In order to assess the financial benefits of the *Periti*'s property inspections, the NAO considered all *Inter Vivos* cases which were concluded during the period under review. In this context, the term concluded relates to cases where the final outcome of the property inspections is known. It is being assumed that all concluded cases would have been settled within 90 days of the CTDD's claim for the outstanding duty. Thus an additional 10 percent on the *Inter Vivos* duty due was considered as a direct financial benefit emanating from these property inspections. The 10 percent rate is the minimum applicable additional duty due following an erroneous declaration, as considered by the 'Duty on Documents and Transfers Act'. This assumption is made since the settlement of claims is not dependant on the property inspection. Table 17 shows the amount of *Inter Vivos* duty due and the minimum additional duty due following *Periti*'s property inspections.

**Table 16 - Period taken by *Periti* to submit valuations (2005 - 2008)**

| Period taken by <i>Periti</i> to submit valuation | Valuations (Number) |              |              |              |               | Valuations (Percentage) |            |            |            |
|---------------------------------------------------|---------------------|--------------|--------------|--------------|---------------|-------------------------|------------|------------|------------|
|                                                   | 2005                | 2006         | 2007         | 2008         | Total         | 2005                    | 2006       | 2007       | 2008       |
| up to 90 days                                     | 2,865               | 2,510        | 3,188        | 2,304        | <b>10,867</b> | 45.6                    | 39.5       | 50.2       | 73.7       |
| 91 to 180 days                                    | 2,183               | 2,557        | 2,463        | 803          | <b>8,006</b>  | 34.8                    | 40.3       | 38.8       | 25.7       |
| 181 to 270 days                                   | 1,125               | 1,274        | 608          | 20           | <b>3,027</b>  | 17.9                    | 20.1       | 9.6        | 0.6        |
| 271 to 365 days                                   | 99                  | 4            | 85           | 0            | <b>188</b>    | 1.6                     | 0.1        | 1.3        | 0.0        |
| 366 days and over                                 | 4                   | 1            | 5            | 0            | <b>10</b>     | 0.1                     | 0.0        | 0.1        | 0.0        |
| <b>Total</b>                                      | <b>6,276</b>        | <b>6,346</b> | <b>6,349</b> | <b>3,127</b> | <b>22,098</b> | <b>100</b>              | <b>100</b> | <b>100</b> | <b>100</b> |

Source: CTDD data.

**Table 17 – Revenue generated through property inspections by *Periti* (2005 – 2008)**

| Year DDT1 form submitted to CTDD | Description of revenue due                           | Erroneous property declarations detected<br>(Number of claims) | Total <i>Inter Vivos</i> duty due<br>(€) | Minimum additional administrative duty imposed<br>(€) | Total revenue due<br>(€) |
|----------------------------------|------------------------------------------------------|----------------------------------------------------------------|------------------------------------------|-------------------------------------------------------|--------------------------|
| 2005                             | Revenue due following the first property inspection  | 4,344                                                          | 1,979,429                                | 459,646                                               | 2,439,075                |
| 2006                             |                                                      | 3,317                                                          | 1,452,678                                | 331,538                                               | 1,784,216                |
| 2007                             |                                                      | 2,671                                                          | 995,462                                  | 250,598                                               | 1,246,060                |
| 2008                             |                                                      | 1,008                                                          | 363,029                                  | 91,115                                                | 454,144                  |
| <b>Sub-totals</b>                |                                                      | <b>11,340</b>                                                  | <b>4,790,598</b>                         | <b>1,132,897</b>                                      | <b>5,923,495</b>         |
| 2005                             | Revenue due following the second property inspection | 57                                                             | 39,686                                   | 7,490                                                 | 47,176                   |
| 2006                             |                                                      | 532                                                            | 617,916                                  | 112,698                                               | 730,614                  |
| 2007                             |                                                      | 430                                                            | 462,376                                  | 72,839                                                | 535,215                  |
| 2008                             |                                                      | 128                                                            | 106,631                                  | 21,151                                                | 127,782                  |
| <b>Sub-totals</b>                |                                                      | <b>1,147</b>                                                   | <b>1,226,609</b>                         | <b>214,178</b>                                        | <b>1,440,787</b>         |
| <b>Grand Totals</b>              |                                                      | <b>12,487</b>                                                  | <b>6,017,207</b>                         | <b>1,347,075</b>                                      | <b>7,364,282</b>         |

Source: CTDD data.

Table 17 raises the following considerations:

- i. Overall 9,540 property inspections (referring to the 12,487 claims) performed by *Periti* during the period under review generated total revenue of €7,364,282.
- ii. In order to carry out these property inspections the Department incurred a cost of €33.68 per inspection. Consequently, for every €1 spent on these inspections, the CTDD generated revenue amounting to €22.92.

### 3.9 Conclusions

Perit inspections are intended to detect declarations that do not reflect the true market value of property. Undetected low declarations result in revenue losses to Government.

Moreover, property inspections by *Periti* also serve as a deterrent against abusive declarations of the market price by parties involved in the transfer of property.

This Chapter has shown that the revenue recouped by far outweighs the cost of property inspections incurred by the CTDD. However, a number of issues impair the internal control mechanisms related to *Periti's* property inspections. A general lack of documentation justifying property valuations curtails the relative audit trail. As a result the interests of Government and the parties involved in the transfer of property may not be sufficiently safeguarded.

The next Chapter discusses the objections process. In this process, parties who disagree with the CTDD's claims raised for additional *Inter Vivos* and administrative duties can seek redress.

## Chapter 4

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### Dealing with taxpayers' objections

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## Chapter 4 – Dealing with taxpayers’ objections

### 4.1 Introduction

This Chapter highlights that the transferors’ and transferees’ right of redress following the upward revision of the declared value of property by *Periti*, and the consequent additional duty due, was not adequate to fully safeguard taxpayers’ interests. The Board of Special Commissioners (BSC), which is established in terms of the ‘Duty on Documents and Transfers Act’ to judge on objections raised by taxpayers, did not function since December 2004. Consequently, this has led to a backlog of unprocessed objections at the Capital Transfer Duty Department (CTDD). Recently a new Board, which is to be known as the Administrative Review Tribunal (ART), has been constituted.

The discussion in this Chapter includes the following issues:

- Transferors and transferees are raising a number of unwarranted objections.
- Transferors and transferees have conflicting interests in the objection process.
- Delays by *Periti* to submit revised valuations following a second inspection may disadvantage the parties involved in the objection process.
- The non-functioning of the Board of Special Commissioners.

Within this Chapter, the term ‘additional duty’ refers to the difference between the duty properly chargeable following the Department’s determination of the market price of property and the duty paid on the deed. The term ‘administrative duty’ relates to the additional amount payable following a claim for the additional duty. Penalties

are inflicted in accordance to the ‘Duty on Documents and Transfers Act’. These range from 10 percent of the additional duty due in cases which are settled within 90 days to 100 percent if settlement occurs 330 days from the issue of the claim.

#### 4.1.1 Background

Transferors’ and transferees’ rights of redress are outlined in the ‘Duty on Documents and Transfers Act’. These rights can be exercised when parties involved in the *Inter Vivos* transfers wish to contest the Department’s assessment of the market value of property. The objection process demands that the parties seeking redress submit an objection letter within 30 days of the CTDD’s claim for additional duty.

Upon the receipt of the letter of objection, the CTDD may either reject or accept the reasons cited for no agreement with the Department’s valuation of the property. In ‘rejection’ cases, the CTDD sends the relative notification letter together with the Department’s claim for additional duty. In such instances, the parties involved can still seek redress through the Board of Special Commissioners.

The Department accepts and invokes the relative procedures when it deems that the letter of objection is based on constructive reasoning or is supplemented with additional information. In these cases, the CTDD refers the case for a second property inspection. Generally, the second inspection is carried out by the same *Perit* who conducted the previous one.

Table 18 shows the number of objections raised in respect of the claims issued by the Department for additional duty following the *Perit*’s first property inspection.

**Table 18 – Objections issued in respect of claims raised following the CTDD’s first revision of duty due (2005 – 2008)**

| Year         | Cases where valuation was revised by <i>Perit</i> and a claim was issued | Claims raised | Additional duty and penalties claimed following 1st property inspection | Duty Paid as per DDT1 form | Objections raised following original claim by the Department | Objections to be followed-up by CTDD | Objections refused |
|--------------|--------------------------------------------------------------------------|---------------|-------------------------------------------------------------------------|----------------------------|--------------------------------------------------------------|--------------------------------------|--------------------|
|              | (Number)                                                                 | (Number)      | (€)                                                                     | (€)                        | (Number)                                                     | (Number)                             | (Number)           |
| 2005         | 2,534                                                                    | 5,133         | 12,272,050                                                              | 5,949,463                  | 1,220                                                        | 116                                  | 1,104              |
| 2006         | 2,434                                                                    | 4,804         | 14,185,271                                                              | 6,261,737                  | 1,441                                                        | 1,010                                | 431                |
| 2007         | 2,130                                                                    | 4,181         | 14,191,421                                                              | 6,281,922                  | 1,291                                                        | 928                                  | 363                |
| 2008         | 1,040                                                                    | 2,057         | 8,954,960                                                               | 3,742,705                  | 535                                                          | 327                                  | 208                |
| <b>Total</b> | <b>8,138</b>                                                             | <b>16,175</b> | <b>49,603,702</b>                                                       | <b>22,235,827</b>          | <b>4,487</b>                                                 | <b>2,381</b>                         | <b>2,106</b>       |

Source: CTDD data.

During the period 2005 to 2008, the Department issued a total of 16,175 claims relating to the 8,138 cases where the declared valuation in the DDT1 form was revised following a property inspection by a *Perit*.

In 4,487 of the 16,175 claims the CTDD received an objection from either the transferor or the transferee, or both. The Department decided it was appropriate to follow-up 2,381 out of these 4,487 objections (53.1 percent). Consequently, the 2,381 objections were referred again to *Periti* for a second inspection of the property in question.

The remaining 2,106 objections were deemed by the CTDD as unwarranted and were not followed-up by the Department. In such cases, transferors and transferees of property were still entitled to seek redress through the Board of Special Commissioners.

Table 19 illustrates the number of objections that the CTDD deemed as warranting further investigation. Out of 2,381 objections that were followed up by the Department through a second property inspection, there was a downward revision in duty and additional duty due amounting to a total of €6,356,847.

In the eventuality that the parties still feel aggrieved following the procedure discussed in the preceding paragraph, redress can be sought through the ART.

## 4.2 Transferors and transferees are raising a number of unwarranted objections

During 2005 to 2008, the CTDD rejected 2,106 out of the 4,487 letters of objection (46.9 percent) made by transferors

**Table 19 – Objections followed-up by the CTDD (2005 – 2008)**

| Year         | Objections to be followed-up by CTDD | Total additional and administrative duty claimed following 1st property inspection | Total additional and administrative duty claimed following 2nd property inspection | Variance between original and revised claim |
|--------------|--------------------------------------|------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|---------------------------------------------|
|              | (Number)                             | (€)                                                                                | (€)                                                                                | (€)                                         |
| 2005         | 116                                  | 674,565                                                                            | 197,744                                                                            | 476,821                                     |
| 2006         | 1,010                                | 7,030,737                                                                          | 2,602,479                                                                          | 4,428,258                                   |
| 2007         | 928                                  | 7,831,888                                                                          | 2,624,651                                                                          | 5,207,237                                   |
| 2008         | 327                                  | 3,473,124                                                                          | 931,973                                                                            | 2,541,151                                   |
| <b>Total</b> | <b>2,381</b>                         | <b>19,010,314</b>                                                                  | <b>6,356,847</b>                                                                   | <b>12,653,467</b>                           |

Source: CTDD data.

**Table 20 – Unwarranted objections refused by the CTDD (2005 – 2008)**

| Year         | Objections refused by the CTDD | Duty claimed following 1st property inspection | Additional duty claimed following 1st property inspection | Total Duty and Additional duty claimed following 1st property inspection | Objections dropped by taxpayers | Objections dropped by taxpayers |
|--------------|--------------------------------|------------------------------------------------|-----------------------------------------------------------|--------------------------------------------------------------------------|---------------------------------|---------------------------------|
|              | (Number)                       | (€)                                            | (€)                                                       | (€)                                                                      | (Number)                        | (€)                             |
| 2005         | 1,104                          | 2,214,858                                      | 3,523,881                                                 | 5,738,739                                                                | 692                             | 2,949,519                       |
| 2006         | 431                            | 723,798                                        | 1,106,620                                                 | 1,830,418                                                                | 279                             | 1,110,458                       |
| 2007         | 363                            | 517,587                                        | 931,556                                                   | 1,449,143                                                                | 188                             | 538,538                         |
| 2008         | 208                            | 549,068                                        | 1,498,114                                                 | 2,047,182                                                                | 52                              | 97,507                          |
| <b>Total</b> | <b>2,106</b>                   | <b>4,005,311</b>                               | <b>7,060,171</b>                                          | <b>11,065,482</b>                                                        | <b>1,211</b>                    | <b>4,696,022</b>                |

Source: CTDD data.

and transferees. Out of the 2,106 refused applications, 1,211 (57.5 percent) opted to settle the additional amount of duty paid by the Department. Table 20 refers.

The Department contends that these objections were mainly rejected on the grounds of unreasonable contestation. The CTDD remarked that the ‘rejected’ objections are often based on the premise that the declared value of property indicated in the DDT1 form is the actual monetary value that was involved in the transaction, and consequently, no additional duty is due.

The foregoing implies that transferors and transferees are not appropriately aware that the ‘Duty on Documents and Transfers Act’ stipulates that the *Inter Vivos* duty due is based on the market value of property rather than the monies involved in the transaction. It appears that this legal provision is not being fully explained to the transferors and transferees involved in the property transfer by either the transacting parties’ notaries or the CTDD.

The number of objections withdrawn (1,211 out of 2,106) supports the CTDD’s contentions that a substantial number of objections are frivolously raised. The cases withdrawn related to claims of up to €4,696,022.

### 4.3 Transferors and transferees have conflicting interests in the objection process

Claims for additional duty are issued on both the transferor and transferee of property. The claim issued to the transferor of property comprises the administrative duty due, whereas the transferee is invoiced with both the additional *Inter Vivos* duty due and the applicable administrative duty. Table 21 illustrates the incidence of objection and the acceptance of claims by transferors and transferees.

Table 21 shows that transferees are more prone to raise objections to property valuations determined by the

**Table 21 – Objections made by transferors and transferees of property (2005 – 2008)**

| Year         | Transferors  |                                | Transferees  |                                | Total                      |            |
|--------------|--------------|--------------------------------|--------------|--------------------------------|----------------------------|------------|
|              | Objections   | Percentage of total objections | Objections   | Percentage of total objections | Total Letters of objection | Percentage |
| 2005         | 431          | 35.33                          | 789          | 64.67                          | 1,220                      | 100        |
| 2006         | 476          | 33.03                          | 965          | 66.97                          | 1,441                      | 100        |
| 2007         | 433          | 33.54                          | 858          | 66.46                          | 1,291                      | 100        |
| 2008         | 187          | 34.95                          | 348          | 65.05                          | 535                        | 100        |
| <b>Total</b> | <b>1,527</b> | <b>34.03</b>                   | <b>2,960</b> | <b>65.97</b>                   | <b>4,487</b>               | <b>100</b> |

Source: CTDD data.



Department’s CTDD and the subsequent duty due than transferors of property. During the period under review, transferees of property constituted 66 percent (2,960 out of 4,487 objections) of the parties raising an objection.

The notion that transferors are more readily inclined to accept the CTDD’s claims for the additional duty due is further supported by the claims settlement rates of transferors and transferees. Table 22 refers.

Table 22 shows that during the period under review, transferors accepted and settled 6,369 out of 7,928 claims (80.3 percent) as compared to the 6,118 out of 8,247 claims (74.2 percent) settled by transferees.

The figures quoted in Tables 21 and 22 show that transferees were less inclined than transferors to accept the claims issued by the Department, and consequently raised more objections. This is probably due to the fact that transferees are invoiced a greater amount than transferors, the former having to account for both the additional duty and administrative duties.

The foregoing illustrates that transferors and transferees have conflicting interests. In instances where only one of the parties submits an objection, the contestation is weakened since the other stakeholders involved in the transaction would have accepted the claim – an indication that an erroneous declaration of the market value of property was submitted. Consequently, due to the transferors’ higher inclination to accept claims, transferees may be potentially disadvantaged throughout the objection process.

#### 4.4 The Board of Special Commissioners has not been functioning since December 2004

The Board of Special Commissioners is established in terms of the ‘Duty on Documents and Transfers Act’. Its main function is to assess the validity of the objection raised. Consequently, the Board may confirm, reduce, increase or annul the CTDD’s assessment of the *Inter Vivos* duty due.

It is to be noted that if the CTDD’s claim for additional *Inter Vivos* duty is upheld following the objection process, any administrative duties due will be calculated as at the date of the CTDD’s claim for additional duty.

During the period 2005 to 2008, 595<sup>20</sup> out of the 4,487 objections processed by the CTDD did not lead to a settlement that claims acceptable to the taxpayers. Since the Board of Special Commissioners has not functioned for around five years, further information relating to these cases is not readily available. Such a situation resulted since the CTDD is not processing the relative objection files, and consequently the relative posting in the Department’s computerized system has not yet been carried out. In September 2009, the Board of Special Commissioners was re-constituted and is now known as the Administrative Review Tribunal [ART].<sup>21</sup>

The ART is to inherit the pending work accumulated over the years from the BSC which amounted to 595.

**Table 22 – Claim settlement rate by transferors and transferees (2005 – 2008)**

| Year         | Transferors             |              |                      |              | Transferees             |              |                      |              |
|--------------|-------------------------|--------------|----------------------|--------------|-------------------------|--------------|----------------------|--------------|
|              | Claim cancelled by CTDD | Claim paid   | Claim not fully paid | Total Claims | Claim cancelled by CTDD | Claim paid   | Claim not fully paid | Total Claims |
| 2005         | 187                     | 2,265        | 112                  | 2,564        | 287                     | 2,136        | 146                  | 2,569        |
| 2006         | 234                     | 1,926        | 180                  | 2,340        | 361                     | 1,923        | 180                  | 2,464        |
| 2007         | 214                     | 1,588        | 220                  | 2,022        | 350                     | 1,513        | 296                  | 2,159        |
| 2008         | 74                      | 590          | 338                  | 1,002        | 97                      | 546          | 412                  | 1,055        |
| <b>Total</b> | <b>709</b>              | <b>6,369</b> | <b>850</b>           | <b>7,928</b> | <b>1,095</b>            | <b>6,118</b> | <b>1,034</b>         | <b>8,247</b> |

Source: CTDD data.

<sup>20</sup> Source: IRD emails dated 3 August 2009 and 1 December 2009.

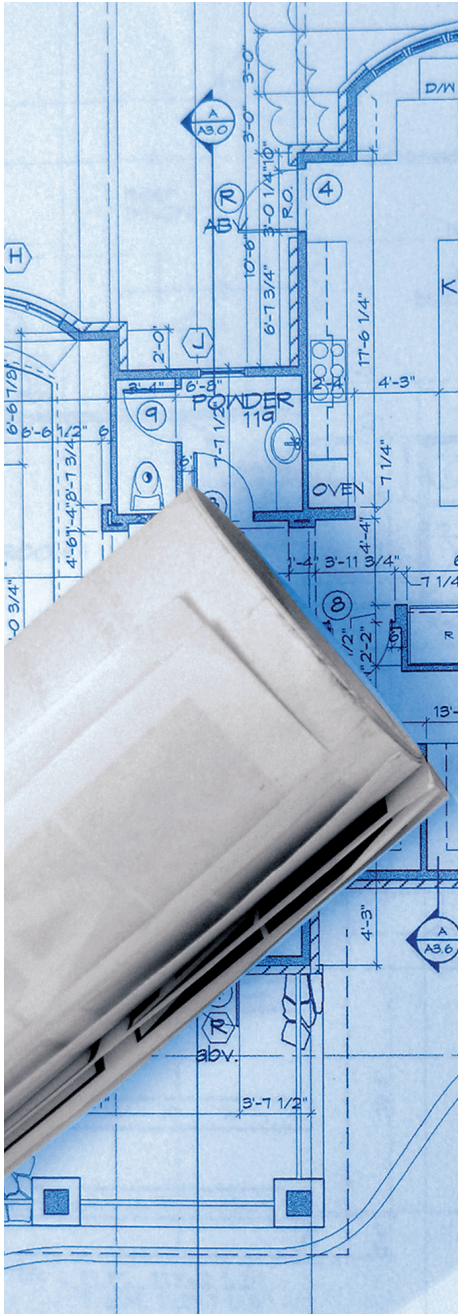
<sup>21</sup> Legal Notice 244 of 2009, Administrative Review Tribunal (Establishment of Panels) (Amendment) Regulations, 2009, regulation 3(c).

## 4.5 Conclusions

A review of the objection process showed that there were some weaknesses in the implementation of the mechanisms to safeguard transferors' and transferees' interests. The principle of justice within a reasonable time was not fully adhered to with respect to taxpayers who sought redress at the BSC since this remained inoperative for a number of years.

The objection process itself is leading to potential anomalies in the treatment of transferors and transferees. Moreover, the conflicting interests of transferors and transferees also lead to the weakening of the contestation of the aggrieved party's objection.

On the other hand, the process of redress is often taken advantage of by taxpayers through frivolous objections. The number of cases and the subsequent downward revision of the market value of property through the objection process may encourage the submission of unwarranted objections.



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## Appendices

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## Appendix 1 – DDT1 form: The notice of an *Inter Vivos* transfer of immovable property

|                                                                                                                    |                                                                                   |                                                                                                           |
|--------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|
| <b>UFFIĊĊJU TAT-TAXXI INTERNI</b><br>Dipartiment tal-“Capital Transfer Duty”<br><br>46, Triq il-Merkanti, Valletta |  | <b>OFFICE OF INLAND REVENUE</b><br>Capital Transfer Duty Department<br><br>46, Merchants Street, Valletta |
|--------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|

### SCHEDULE

***INTER VIVOS***

*Rule 2*

### "FIRST SCHEDULE

#### NOTICE OF AN INTER VIVOS TRANSFER OF IMMOVABLE PROPERTY TO BE GIVEN IN TERMS OF THE DUTY ON DOCUMENTS AND TRANSFERS ACT AND THE INCOME TAX ACTS

*This form must be completed by the Notary publishing the deed of transfer and must be filed by the Notary in triplicate within 15 working days from the date of the transfer.*

*Continuation sheets are to be added as necessary.*

| <b>SECTION A - PARTICULARS OF THE PARTIES</b>                                                                                                                                                                                                                                            |      |         |         |                                       |                            |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|---------|---------|---------------------------------------|----------------------------|
| <i>In the case of non-resident individuals who are not registered for income tax purposes, state the passport number and the country of issue. In the case of non-resident legal persons that are not registered for income tax purposes, give any available identification details.</i> |      |         |         |                                       |                            |
|                                                                                                                                                                                                                                                                                          | Name | Surname | Address | I.D. / income tax registration number | Telephone or mobile number |
| <b>Transferor/s</b>                                                                                                                                                                                                                                                                      |      |         |         |                                       |                            |
| <b>Transferee/s</b>                                                                                                                                                                                                                                                                      |      |         |         |                                       |                            |

DDT 1

| <b>SECTION B - INFORMATION ABOUT THE TRANSFER</b>                                                                                                                                                       |  |                          |  |                          |  |          |  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------|--|--------------------------|--|----------|--|
| <b>Date of deed</b>                                                                                                                                                                                     |  |                          |  |                          |  |          |  |
| <b>Description of the property</b><br><i>A full description must be given and, if need be, a "block plan" and a site plan on Land Registry stationery duly signed by an architect should be annexed</i> |  |                          |  |                          |  |          |  |
| <b>Type of transfer</b><br><i>In the case of mixed transfers, mark all applicable boxes</i>                                                                                                             |  |                          |  |                          |  |          |  |
| Sale                                                                                                                                                                                                    |  | Emphyteutical concession |  | Donation                 |  | Exchange |  |
| Assignment on Partition                                                                                                                                                                                 |  | <i>Datio in solutum</i>  |  | Other ( <i>specify</i> ) |  |          |  |
| <b>The manner in which the property was acquired</b><br><i>In the case of mixed acquisitions, mark all applicable boxes</i>                                                                             |  |                          |  |                          |  |          |  |
| Purchase                                                                                                                                                                                                |  | Emphyteutical concession |  | Donation                 |  | Exchange |  |
| Inheritance                                                                                                                                                                                             |  | Assignment on Partition  |  | Other ( <i>specify</i> ) |  |          |  |
| <b>Name of Broker</b>                                                                                                                                                                                   |  |                          |  | <b>I.D./I.T. Number</b>  |  |          |  |
| <b>SECTION C<br/>DUTY ON DOCUMENTS AND OTHER TRANSFERS (DDTA)</b>                                                                                                                                       |  |                          |  |                          |  |          |  |
| <b>Exemptions and relief</b>                                                                                                                                                                            |  |                          |  |                          |  |          |  |
| A transfer from one company to another that qualifies for the intra-group exemption under art. 43 DDTA                                                                                                  |  |                          |  |                          |  |          |  |
| An assignment that is exempt in terms of art. 32(1) DDTA                                                                                                                                                |  |                          |  |                          |  |          |  |
| A partition of inherited property that is exempt in terms of art. 32(5) DDTA                                                                                                                            |  |                          |  |                          |  |          |  |
| A transfer that is exempt from duty for reasons other than those mentioned above<br><i>Specify grounds for exemption:-</i>                                                                              |  |                          |  |                          |  |          |  |
| A transfer that qualifies for relief from duty under art. 32(4) DDTA                                                                                                                                    |  |                          |  |                          |  |          |  |
| <b>Dutiable value of property</b>                                                                                                                                                                       |  |                          |  |                          |  |          |  |
| <b>Amount of duty payable</b>                                                                                                                                                                           |  |                          |  |                          |  |          |  |
| <b>P.S. Number</b>                                                                                                                                                                                      |  |                          |  |                          |  |          |  |

| <b>SECTION D<br/>TAX PAYABLE UNDER THE INCOME TAX ACT</b> |                             |                            |                            |              |
|-----------------------------------------------------------|-----------------------------|----------------------------|----------------------------|--------------|
| <b>Name of Transferor</b>                                 | <b>Final Tax at<br/>12%</b> | <b>Final Tax at<br/>7%</b> | <b>Provisional<br/>tax</b> | <b>Total</b> |
|                                                           |                             |                            |                            |              |
|                                                           |                             |                            |                            |              |
|                                                           |                             |                            |                            |              |
|                                                           |                             |                            |                            |              |
|                                                           |                             |                            |                            |              |
|                                                           |                             |                            |                            |              |
|                                                           |                             |                            |                            |              |
|                                                           |                             |                            |                            |              |
| <b>Total</b>                                              |                             |                            |                            |              |

| <b>SECTION E<br/>BANK DRAFT/CHEQUE DETAILS</b> |             |                                 |
|------------------------------------------------|-------------|---------------------------------|
| <b>Tax/Duty payable under:-</b>                | <b>BANK</b> | <b>BANK DRAFT/CHEQUE NUMBER</b> |
| Duty on Documents and Transfers Act            |             |                                 |
| Income Tax Act                                 |             |                                 |

NAME OF NOTARY \_\_\_\_\_  
SIGNATURE OF NOTARY \_\_\_\_\_

| <b>FOR OFFICIAL USE</b> |         |                    |         |
|-------------------------|---------|--------------------|---------|
| Provisional C.G.T Paid: | € _____ | Duty on Documents: | € _____ |
| Final Withholding Tax:  | € _____ | Provisional Duty:  | € _____ |
| Receipt No/s:           | _____   | Total:             | € _____ |
|                         | _____   | Receipt No/s       | _____   |
|                         | _____   |                    | _____   |
|                         | _____   |                    | _____   |
| Date of Receipt/s:      | _____   | Date of Receipt/s  | _____   |
| Receiving Officer:      | _____   | Receiving Officer  | _____   |

## Appendix 2 – Profiles of *Inter Vivos* transfer of property

**Table A – Types of transfer of properties per range of declared value of property (2005 – 2008)**

| Range of declared value of property (€) | Counts of DDT1 forms per property type |            |               |               |
|-----------------------------------------|----------------------------------------|------------|---------------|---------------|
|                                         | Residential                            | Commercial | Miscellaneous | Total         |
| up to 50,000                            | 5,084                                  | 357        | 20,289        | 25,730        |
| 50,001 to 100,000                       | 6,947                                  | 174        | 3,983         | 11,104        |
| 100,001 to 150,000                      | 3,936                                  | 96         | 2,645         | 6,677         |
| 150,001 to 200,000                      | 1,433                                  | 55         | 1,709         | 3,197         |
| 200,001 to 250,000                      | 627                                    | 26         | 920           | 1,573         |
| 250,001 to 300,000                      | 370                                    | 29         | 504           | 903           |
| 300,001 to 350,000                      | 319                                    | 15         | 471           | 805           |
| 350,001 to 400,000                      | 155                                    | 6          | 239           | 400           |
| 400,001 to 450,000                      | 115                                    | 9          | 182           | 306           |
| 450,001 to 500,000                      | 95                                     | 11         | 171           | 277           |
| 500,001 and over                        | 418                                    | 78         | 887           | 1,383         |
| <b>Total</b>                            | <b>19,499</b>                          | <b>856</b> | <b>32,000</b> | <b>52,355</b> |

Source: CTDD data.

Residential property includes bungalows, semi-detached villas and villas, and other residential property which is high in frequency, notably ‘dar’ (terraced house), farmhouses, flats/apartments, maisonettes, ‘mezzanin’ (floor apartment), and penthouses.

Commercial property includes business premises, magazines and storerooms.

The term ‘Miscellaneous property’ includes airspace, boathouses, car spaces, fields, garages, gardens, graves, ‘others’, plots of land, redemption of groundrent, ‘terran’ (ground floor apartment), others, unclassified and various.

**Table B – Ranges of values of property per district around Malta and Gozo (2005 – 2008)**

| Range of values of properties (€) | Districts       |               |                  |              |                  |              |                                      |                         | Grand Total   |
|-----------------------------------|-----------------|---------------|------------------|--------------|------------------|--------------|--------------------------------------|-------------------------|---------------|
|                                   | Gozo and Comino | South Eastern | Southern Harbour | Northern     | Northern Harbour | Western      | More than one property per DDT1 form | Districts not available |               |
| up to 50,000                      | 2,697           | 3,429         | 3,701            | 4,571        | 6,480            | 3,170        | 1,603                                | 79                      | 25,730        |
| 50,001 to 100,000                 | 900             | 1,461         | 1,581            | 1,888        | 3,052            | 741          | 1,478                                | 3                       | 11,104        |
| 100,001 to 150,000                | 345             | 664           | 612              | 1,269        | 1,714            | 577          | 1,492                                | 4                       | 6,677         |
| 150,001 to 200,000                | 192             | 235           | 263              | 495          | 747              | 290          | 974                                  | 1                       | 3,197         |
| 200,001 to 250,000                | 137             | 92            | 110              | 238          | 330              | 154          | 512                                  | 0                       | 1,573         |
| 250,001 to 300,000                | 69              | 60            | 60               | 155          | 178              | 95           | 285                                  | 1                       | 903           |
| 300,001 to 350,000                | 77              | 46            | 34               | 140          | 183              | 66           | 259                                  | 0                       | 805           |
| 350,001 to 400,000                | 26              | 30            | 14               | 63           | 85               | 49           | 133                                  | 0                       | 400           |
| 400,001 to 450,000                | 17              | 18            | 18               | 54           | 71               | 25           | 103                                  | 0                       | 306           |
| 450,001 to 500,000                | 11              | 12            | 9                | 40           | 80               | 37           | 88                                   | 0                       | 277           |
| 500,001 and over                  | 66              | 86            | 90               | 240          | 345              | 117          | 438                                  | 1                       | 1,383         |
| <b>Grand Total</b>                | <b>4,537</b>    | <b>6,133</b>  | <b>6,492</b>     | <b>9,153</b> | <b>13,265</b>    | <b>5,321</b> | <b>7,365</b>                         | <b>89</b>               | <b>52,355</b> |

Source: CTDD data.

**Table C – Property type per district (2005 – 2008)**

| Property Type      | Districts       |               |                  |              |                  |              |                                      |                         | Grand Total   |
|--------------------|-----------------|---------------|------------------|--------------|------------------|--------------|--------------------------------------|-------------------------|---------------|
|                    | Gozo and Comino | South Eastern | Southern Harbour | Northern     | Northern Harbour | Western      | More than one property per DDT1 form | Districts not available |               |
| Residential        | 1,848           | 2,441         | 2,761            | 4,139        | 6,462            | 1,842        | 0                                    | 6                       | 19,499        |
| Commercial         | 38              | 59            | 167              | 137          | 388              | 66           | 0                                    | 1                       | 856           |
| Others             | 2,651           | 3,633         | 3,564            | 4,877        | 6,415            | 3,413        | 7,365                                | 82                      | 32,000        |
| <b>Grand Total</b> | <b>4,537</b>    | <b>6,133</b>  | <b>6,492</b>     | <b>9,153</b> | <b>13,265</b>    | <b>5,321</b> | <b>7,365</b>                         | <b>89</b>               | <b>52,355</b> |

Source: CTDD data.



## Appendix 3 – Verification of the market value of property by the NAO’s Consultant case study selection – Methodology

|            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1.0</b> | <b>Introduction</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>1.1</b> | <p><b>The valuations to be carried out are in the context of a performance audit carried out by the NAO regarding <i>Inter Vivos</i> Transfer of Property.</b></p> <p>The audit sought to evaluate the extent to which, <i>inter alia</i>;<br/> <i>The validation of the declared valuations by the Internal Board and Periti appointed by the CTDD are effective.</i></p> <p><b>Terms of reference</b></p> <p>In this context the terms of reference regarding valuation of properties are detailed below:</p> <p><i>The appointment is to advise on the extent to which the CTDD is furnished with the appropriate information to be in a position to validate the declared value of property, as well as to determine whether the declared value of property as accepted by the CTDD represents the true value of the property.</i></p> <p>Thus, the terms of reference set two main tasks:</p> <ol style="list-style-type: none"> <li>1. The extent to which information upon which the CTDD bases a decision regarding the true market value of a property is appropriate and adequate for the task.</li> <li>2. The extent to which the declared value of property as accepted by the CTDD represents the true value of the property.</li> </ol> |
| <b>1.2</b> | <p><b>The methodology devised for this exercise is based on the following factors:</b></p> <ul style="list-style-type: none"> <li>• The quantity of the data available</li> <li>• The quality of the data</li> <li>• The information contained within the available data</li> <li>• The budget available for the study</li> <li>• The procedures to be adopted to verify the data</li> <li>• The potential additional data regarding the properties</li> <li>• The quality of the additional data mustered</li> <li>• Specific requirements requested by the National Audit Office</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>1.3</b> | <p><b>Quantity of Data</b></p> <p>During the years 2005 to 2008 the CTDD received a total of 55,976 DDT1 forms, of which 12,190 were submitted to the Department in 2008.</p> <p>The Internal Board accepted 28,395 (54.2 percent) of valuations of property declared in the DDT1 forms. The remaining 23,960 (45.8 percent) were deemed as not reflecting the market value and sent to a CTDD appointed <i>Perit</i> to verify the declared valuations through an inspection of the property.</p> <p>The focus of this valuation exercise is on those cases in which the Internal Board accepted the declared value in the Schedule 1 form as being a true reflection of the market value.</p> <p>The data cited in the foregoing form the basis of the quantity of data available for this commission. Issues regarding sampling are discussed below.</p>                                                                                                                                                                                                                                                                                                                                                                                            |

|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.4 | <p><b>Quality of Data</b></p> <p>The information available for the purpose of this exercise was the information contained in the Schedule 1 form submitted by notaries to the CTDD.</p> <p>The information contained in the Schedule 1 form, which is of relevance to the terms of reference for this study, is of two forms. First, the declared price of the transaction and, second, the description of the property.</p> <p>Notaries are obliged to advise parties involved in transactions about their obligations to submit a valid declaration on the value of the property during the drawing up the relative contracts and the completion of DDT1 forms.</p> <p>Notaries quote in the DDT1 forms the value indicated to them by the transferors and transferees.</p> <p>The description of the properties in the Schedule 1 form is that which is submitted by the notaries. There is no template which prescribes the precise details of information required. Thus as could be expected the quality of data varies from case to case. Descriptions tend to focus on the location and confines of the transacted properties and to a lesser extent on the description of the accommodation provided.</p>                                                                                                                                                                                                       |
| 1.5 | <p><b>Processing of information by CTDD Internal Board</b></p> <p>Following initial work by the NAO it was established that there are no documented terms of reference relating to the duties and responsibilities of the Internal Board members. Significantly there is no documented reference to the procedures adopted and deliberations at arriving at a decision of whether the declared value corresponds to the true market value. Consequently there is little documented data upon which the task required in the first part of the terms of reference of this study can be based on.</p> <p>It is understood that the sole formally documented information to be found in the CTDD upon which the decisions are taken by the Internal Board is that contained in Schedule 1.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 1.6 | <p><b>Budget</b></p> <p>Given the budget available for this exercise it was agreed to carry out valuations of a sample of properties (38 properties) in order to ascertain that the declared value, as accepted by the Departmental Board at the Capital Transfers and Duty Department, constitutes the market value of the said property on the date of the transfer.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 1.7 | <p><b>The procedures adopted to analyse the data</b></p> <p>The first task in the terms of reference is to review the nature of the data upon which the Internal Board bases its decisions regarding whether a declared value corresponds with the true market value of a property in a transaction.</p> <p>This was tackled by reviewing the data available from the Schedule 1 form. The data reviewed was that included in the description of property section in the Schedule 1 form. The declared value of the property was not made available (blacked out) so as not to influence the valuation carried out in the context of this exercise.</p> <p>The methodology used was to attempt to establish a market value for the property based solely on the information included in Schedule 1. (i.e. the information available to the Internal Board).</p> <p>Where it was not possible to provide a precise market value because of the lack of information regarding the property, a lower and higher limit was set, between which the true market value is believed to lie. For example, if the information available was solely that the property was a flat (and naturally the location of the property), the valuation range would be based on the lowest potential market value of a flat (say 1 bed roomed flat in shell form) to the highest potential market value say 3/4 bed roomed finished flat).</p> |

|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.8 | <p><b>The potential additional data regarding the properties</b></p> <p>It was not possible to carry out an on site inspection of the property. Therefore, attempts were made to retrieve as much information as possible that is in the public domain.</p> <p>The main sources of additional information were identified as:</p> <ul style="list-style-type: none"> <li>• Inspection / photos of the property from the public street.</li> <li>• Information regarding gross floor area from Land registry records.</li> <li>• Information regarding the plan of the building from approved development permission plans (Planning Area Permits Board / Planning Authority / Malta Environment and Planning Authority) lodged with the Malta Environment and Planning Authority.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 1.9 | <p><b>The quality of the additional data mustered</b></p> <p>The sources of information listed in section 1.8 above are listed in ascending order of quality of information.</p> <p>The methodology adopted in this study was to compare the valuation made solely from the data contained in Schedule 1 forms with valuations based on the additional information obtained from the sources mentioned.</p> <p>Where a range of values for a given property had been based on the Schedule 1 information, an attempt was made to explore whether the range could be narrowed to converge on a valuation figure. Where this was possible a valuation of true market value was estimated. The convergence of this range was charted based on the individual contribution of each piece of additional data.</p> <p>As the mustering of data has an associated cost, this methodology provides a basis for an eventual cost-benefit analysis of the efficacy of requesting more information on Schedule 1 or retrieving the information independently of the data submitted on the said form.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 2.0 | <p><b>Sampling</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 2.1 | <p><b>Sample</b></p> <p>The NAO sought to determine the extent to which the declared value of property, as indicated in the DDT1 forms and accepted by the Internal Board, was correct, reflecting the market price of the property.</p> <p>For this purpose, a sample of 38 DDT1 forms was randomly selected out of <i>Inter Vivos</i> transfers registered at the CTDD during the year 2008. The selected cases comprised DDT1 forms with declared property values which were accepted by the Internal Board as representing the market value of property. Property types considered in the sampling frame included residential property, commercial property and miscellaneous property, as indicated below.</p> <p>Residential property includes bungalows, semi-detached villas and villas, and other residential property which featured frequently in <i>Inter Vivos</i> transactions, notably: ‘dar’, farmhouses, flats/apartments, maisonettes, ‘mezzanin’ and penthouses.</p> <p>Commercial property includes business premises, magazines and storerooms.</p> <p>The term ‘miscellaneous’ property includes airspace, boathouses, car spaces, fields, garages, gardens, graves, plots of land, redemption of ground rent, ‘<i>terran</i>’ as well as property types classified as ‘others’, ‘unclassified’ and ‘various’ in the CTDD’s database.</p> <p><i>Inter Vivos</i> transfers of property bought or sold by a Governmental entity were excluded from the sampling frame. Such an approach was adopted as these transactions are not subject to <i>Inter Vivos</i> duty.</p> <p>Additionally, DDT1 forms comprising of more than three property transfers were not considered for the purpose of this study. This approach was resorted to due to cost and time budget limitations.</p> |

|            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>3.0</b> | <b>Valuations methods</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>3.1</b> | <p><b>In this report the following convention is adopted:</b></p> <p><i>Price</i> is the actual observable exchange price in the open market.</p> <p><i>Value</i> is an estimate of the price that would be achieved if the property were to be sold in the market.</p> <p><i>Worth</i> is a specific investor’s perception of the capital sum, which he would prepare to pay for the stream of benefits, which he expects to be produced by the investment.</p> <p>In the language of economics <i>worth</i> can be considered as <i>value in use</i>, whereas <i>price</i> or <i>value</i> can be considered as <i>value in exchange</i>.</p> |
| <b>3.2</b> | <p>In arriving at a valuation, it may be useful to consider the thought process underlying the pricing of the asset in the market. The traditional methods of valuation rely upon a benchmark on the analysis of comparable sales, rather than an explicit model of the thought process that seeks to reflect the evaluation of the return that some investors may undertake in reaching their investment decision.</p>                                                                                                                                                                                                                         |
| <b>3.3</b> | <p>A number of factors will affect the price of a property.</p> <p>These factors may be tangible or intangible. Tangible factors are those factors that concern the physical attributes of the property, such as location, state of finish, state of repair, floor area, and layout. Intangible factors are meant to signify such factors as development potential, zoning of areas and other factors that are prescribed in planning regulations.</p> <p>Only tangible factors are taken into account in this exercise.</p>                                                                                                                    |
| <b>4.0</b> | <b>Valuation Methodology</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>4.1</b> | <p>The process of arriving at a valuation for a property based on the data available is charted for each property on a template devised for this commission.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>4.2</b> | <p>In the first instance, the location of the property and the property type is identified.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>4.3</b> | <p>The information regarding the property and which has a bearing on its value is extracted from the description contained in the Schedule 1 form. It is noted that in the majority of the cases observed the information was extracted from the contract of transfer. One notes that the main purpose for this information in the deeds is the identification of the property so transferred. Such information, however, was not always sufficient in arriving at a precise valuation.</p>                                                                                                                                                     |
| <b>4.4</b> | <p>An estimate of the market value or a range for the estimate of the market value, as the case may warrant, is based on the above information.</p> <p>The main factors that contribute to the information useful for valuation are listed under the descriptions of; floor level, plan of building (if annexed to Schedule 1 form), floor area, ground rents (and nature of any emphyteutical concession), and the state of finish.</p> <p>The factors taken into consideration are briefly explained in the valuation.</p>                                                                                                                    |
| <b>4.5</b> | <p>The following sections contain the additional information obtained outwith the Schedule 1 form.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>4.6</b> | <p>The information obtained from registration documents relating to the Land Registry procedures may provide the superficial area of the land transacted.</p> <p>The main uncertainty concerning this information may result from the proportion of built up floor area to the total land under ownership, and the state of finish of the property which is not indicated in this documentation.</p>                                                                                                                                                                                                                                            |

|      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4.7  | If the information from the registration documents does indeed provide additional information, then either (a) the valuation estimate from the preceding section is reviewed or, (b) if a range of valuation had been established, this is reviewed with the objective of narrowing the range.                                                                                                                                                                                                                                                                                                                                |
| 4.8  | The information from an examination of the exterior of the building from photographs of the property may result in further additional information. This information may be related to the state of repair or finish of the building.                                                                                                                                                                                                                                                                                                                                                                                          |
| 4.9  | If the information from the images of the exterior does indeed provide additional information, then either (a) the valuation estimate from the preceding section is reviewed or, (b) if a range of valuation had been established, this is reviewed with the objective of narrowing the range.                                                                                                                                                                                                                                                                                                                                |
| 4.10 | Perhaps the most useful additional information may be obtained from plans of the building. If these are submitted with the Schedule 1 form, these would provide a good foundation to assess declared transfer prices.<br><br>For the aims of this exercise the plans were viewed at a source that is within the public domain, i.e. Planning Area Permits Board / Planning Authority / Malta Environment and Planning Authority development permission approved plans.                                                                                                                                                        |
| 4.11 | For the purposes of this study, the method used to identify these plans was by identifying the location of the site of the transacted property by an on site measurement and recorded on a site plan. The Malta Environment and Planning Authority geographic information system freely available on the internet was referred to in order to identify the relevant planning applications and approved permit numbers. The relevant files at Malta Environment and Planning Authority contain the approved plans of the development and hence information regarding floor areas, layout etc may be obtained from this source. |
| 4.12 | If the information from the plans provides additional information, then either (a) the valuation estimate from the preceding section is reviewed or, (b) if a range of valuation had been established, this is reviewed with the objective of narrowing the range.                                                                                                                                                                                                                                                                                                                                                            |
| 4.13 | The final estimate of market value or value range draws on all the information available, i.e. the Schedule 1 form, and the additional information (Land Registry documentation, inspection of the property from the public street and plans of the building obtained from public domain sources).                                                                                                                                                                                                                                                                                                                            |
| 4.14 | The valuation presented to NAO is in the form of the filled in templates for each of the 38 properties in the sample. This presents the specific information requested by NAO.                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 4.15 | Deliberations regarding the extent to which information (upon which the CTDD bases a decision regarding the true market value of a property) is appropriate and adequate for the task may be based on the initial valuation or valuation ranges for each property, and the information upon which it was derived.                                                                                                                                                                                                                                                                                                             |
| 4.16 | Consideration regarding the extent to which the declared value of property, as accepted by the CTDD represents the true value of the property may be based on the final valuation / valuation range utilising additional information. However, such information was not necessarily available to the Internal Board at the time of the decision of whether the declared value should be accepted as a true declaration of the market value of the said property or otherwise.                                                                                                                                                 |

## Appendix 4 – Comparison between declared valuations in DDT1 forms listing single properties and NAO valuations based on different levels of information

Tables D and E depict how the NAO's valuation range narrowed as more information became available for DDT1 forms listing single and more than one property respectively.

These Tables illustrate how the range of valuations, as determined by the NAO consultant, narrowed as more information about the property under review was made available.

In the 13 cases indicated by the asterisk in Tables D and E, where the NAO was unable to obtain the relative information about the properties in question, there could not be any further improvements related to the narrowing of the valuation range. The asterisk in Tables D and E denotes cases where the NAO was unable to obtain further information, such as site and floor plans, relating to the properties indicated.

**Table D – Comparison between declared valuations in DDT1 Application Forms listing single properties and NAO valuations based on different levels of information**

| Property Description | Value as declared on DDT1 form (€) | NAO Valuations based on the same information as the Internal Board |                     | NAO Valuation based on additional information, where available |                     |
|----------------------|------------------------------------|--------------------------------------------------------------------|---------------------|----------------------------------------------------------------|---------------------|
|                      |                                    | Lower estimate (€)                                                 | Higher estimate (€) | Lower estimate (€)                                             | Higher estimate (€) |
| Garage               | 9,317                              | 11,600                                                             | 20,000              | 11,600                                                         | 11,600              |
| Garage*              | 11,647                             | 20,000                                                             | 30,000              | 20,000                                                         | 30,000              |
| Garage*              | 12,811                             | 11,600                                                             | 20,000              | 11,600                                                         | 20,000              |
| Garage               | 16,305                             | 15,000                                                             | 18,000              | 16,500                                                         | 16,500              |
| Garage               | 18,635                             | 20,000                                                             | 20,000              | 20,000                                                         | 20,000              |
| Garage               | 20,964                             | 23,000                                                             | 23,000              | 23,000                                                         | 23,000              |
| Garage*              | 34,940                             | 12,000                                                             | 230,000             | 24,000                                                         | 90,000              |
| Flat/Apartment       | 88,516                             | 70,000                                                             | 110,000             | 103,600                                                        | 103,600             |
| Flat/Apartment       | 88,516                             | 80,000                                                             | 125,000             | 100,000                                                        | 100,000             |
| Flat/Apartment*      | 94,340                             | 70,000                                                             | 128,000             | 70,000                                                         | 128,000             |
| Flat/Apartment       | 97,833                             | 70,000                                                             | 110,000             | 102,375                                                        | 102,375             |
| Flat/Apartment*      | 97,833                             | 70,000                                                             | 150,000             | 110,000                                                        | 150,000             |
| Flat/Apartment*      | 100,164                            | 70,000                                                             | 150,000             | 105,000                                                        | 150,000             |
| Flat/Apartment       | 104,000                            | 110,000                                                            | 110,000             | 110,000                                                        | 110,000             |
| Flat/Apartment       | 116,468                            | 70,000                                                             | 125,000             | 120,000                                                        | 120,000             |
| Flat/Apartment       | 116,468                            | 70,000                                                             | 150,000             | 116,500                                                        | 116,500             |
| Flat/Apartment       | 116,500                            | 70,000                                                             | 125,000             | 120,000                                                        | 120,000             |
| Shop                 | 139,762                            | 150,000                                                            | 165,000             | 155,000                                                        | 155,000             |
| Maisonette*          | 139,762                            | 125,000                                                            | 155,000             | 125,000                                                        | 155,000             |
| Duplex Maisonette    | 139,762                            | 85,000                                                             | 350,000             | 170,000                                                        | 170,000             |
| Terraced House       | 168,879                            | 75,000                                                             | 500,000             | 200,000                                                        | 200,000             |
| Store*               | 186,350                            | 25,000                                                             | 350,000             | 25,000                                                         | 350,000             |
| Villa*               | 640,577                            | 350,000                                                            | 1,000,000           | 350,000                                                        | 1,000,000           |
| Bungalow             | 815,280                            | 1,053,666                                                          | 1,252,866           | 904,000                                                        | 904,000             |
| <b>Total</b>         | <b>3,375,629</b>                   | <b>2,726,866</b>                                                   | <b>5,416,866</b>    | <b>3,113,175</b>                                               | <b>4,345,575</b>    |

Source: CTDD and NAO data.

**Table E – Comparison between declared valuations in DDT1 forms listing more than one property and NAO valuations based on different levels of information**

| Property Description                      | Value as declared on DDT1 form (€) | NAO Valuations based on the same information as the Internal Board |                     | NAO Valuation based on additional information, where available |                     |
|-------------------------------------------|------------------------------------|--------------------------------------------------------------------|---------------------|----------------------------------------------------------------|---------------------|
|                                           |                                    | Lower estimate (€)                                                 | Higher estimate (€) | Lower estimate (€)                                             | Higher estimate (€) |
| Two portions of land                      | 10,715                             | 11,475                                                             | 11,475              | 11,475                                                         | 11,475              |
| Maisonette and garage*                    | 114,100                            | 135,000                                                            | 175,000             | 135,000                                                        | 175,000             |
| Maisonette and garage                     | 116,468                            | 116,000                                                            | 190,000             | 130,000                                                        | 130,000             |
| Flat/Apartment and garage                 | 116,468                            | 70,000                                                             | 300,000             | 97,000                                                         | 97,000              |
| Flat/Apartment and two garages*           | 139,762                            | 100,000                                                            | 190,000             | 150,000                                                        | 175,000             |
| Maisonette and garage                     | 172,000                            | 135,000                                                            | 198,000             | 180,000                                                        | 180,000             |
| Penthouse and garage*                     | 202,655                            | 185,000                                                            | 200,000             | 185,000                                                        | 200,000             |
| Terraced House including adjoining garage | 232,937                            | 165,000                                                            | 600,000             | 232,750                                                        | 232,750             |
| Terraced house include adjoining garage*  | 314,465                            | 200,000                                                            | 600,000             | 200,000                                                        | 600,000             |
| Semi-detached villa and garage            | 465,874                            | 418,000                                                            | 522,600             | 459,000                                                        | 459,000             |
| Semi-detached villa and garage            | 465,874                            | 373,200                                                            | 528,700             | 463,600                                                        | 463,600             |
| Penthouse and garage                      | 465,874                            | 200,000                                                            | 2,000,000           | 507,000                                                        | 507,000             |
| Semi detached villa and garage            | 489,168                            | 250,000                                                            | 600,000             | 500,000                                                        | 500,000             |
| Semi-detached villa and garage            | 692,988                            | 350,000                                                            | 1,000,000           | 726,000                                                        | 726,000             |
| <b>Total</b>                              | <b>3,999,348</b>                   | <b>2,708,675</b>                                                   | <b>7,115,775</b>    | <b>3,976,825</b>                                               | <b>4,456,825</b>    |

Source: CTDD and NAO data.

## Appendix 5 – Template devised and utilized by the NAO’s consultant *Perit*

|                                                                         |  |
|-------------------------------------------------------------------------|--|
| <b>Property Valuation</b>                                               |  |
| <b>1.0 Property Identity</b>                                            |  |
| Ref. No.                                                                |  |
| Sample No.                                                              |  |
| Location                                                                |  |
| Number or properties in contract                                        |  |
| Property Type                                                           |  |
| Date of Contract                                                        |  |
| <b>2.0 Information from Schedule 1</b>                                  |  |
| Transfer Type                                                           |  |
| Acquisition Type                                                        |  |
| Airspace                                                                |  |
| Floor level                                                             |  |
| Servitudes                                                              |  |
| Plan of Building                                                        |  |
| Description in contract                                                 |  |
| State of finish                                                         |  |
| Ground rents t/p                                                        |  |
| <b>3.0 Valuation range based on information contained in Schedule 1</b> |  |
| Valuation Basis                                                         |  |
| Valuation Range                                                         |  |
| <b>4.0 Information from Land Registry Plan</b>                          |  |
| Plan available                                                          |  |
| Land are of property                                                    |  |



|                                                                   |  |
|-------------------------------------------------------------------|--|
| <b>5.0 Valuation based on information from Land Registry Plan</b> |  |
| Valuation basis                                                   |  |
| Valuation range                                                   |  |

|                                                     |  |
|-----------------------------------------------------|--|
| <b>6.0 Information from photographs of exterior</b> |  |
| State of finish                                     |  |
| Quality of environs                                 |  |

|                                                                   |  |
|-------------------------------------------------------------------|--|
| <b>7.0 Valuation based on information photographs of exterior</b> |  |
| Valuation basis                                                   |  |
| Valuation range                                                   |  |

|                                        |  |
|----------------------------------------|--|
| <b>8.0 Information from MEPA plans</b> |  |
| Floor Area                             |  |
| Accommodation                          |  |
| Layout                                 |  |
| Potential Development                  |  |

|                                                           |  |
|-----------------------------------------------------------|--|
| <b>9.0 Valuation based on information from MEPA plans</b> |  |
| Valuation basis                                           |  |
| Valuation range                                           |  |

|                                         |  |
|-----------------------------------------|--|
| <b>10.0 Final estimate of valuation</b> |  |
| Valuation basis                         |  |
| Valuation                               |  |

|                |  |
|----------------|--|
| <b>Remarks</b> |  |
|                |  |

## RECENT AUDIT REPORTS ISSUED BY THE NAO

| DATE           | REPORT                                                                                                                                                                       |
|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| January 2009   | Inquiry and Report on the Purchase of PCs by Enemalta Corporation                                                                                                            |
| February 2009  | Performance Audit: Water Loss Control Management by WSC                                                                                                                      |
| March 2009     | Investigation relating to the Tender issued for the Provision of Warden Services and Installation of CCTV Cameras by four Local Council Joint Committees                     |
| May 2009       | Enquiry on Direct Orders and Outsourcing at Mater Dei Hospital: Clerical/Reception, Security, Car Park and Traffic Management Services                                       |
| June 2009      | Enquiry on Control Mechanisms Deployed by the Malta Transport Authority (ADT) in Road Construction Projects partly financed through the 5th Italo-Maltese Financial Protocol |
| July 2009      | Performance Audit: Vehicle Emissions Control Schemes                                                                                                                         |
| September 2009 | Performance Audit: Renewable Energy Sources and Energy Efficiency in Malta                                                                                                   |
| September 2009 | Investigation on Alleged Irregularities regarding the Sant' Antnin Waste Plant in Marsascale                                                                                 |
| October 2009   | Performance Audit: Procurement Capability across the Public Administration                                                                                                   |
| December 2009  | Report by the Auditor General - Public Accounts 2008                                                                                                                         |

## WORKS AND ACTIVITIES REPORT

|              |                                                       |
|--------------|-------------------------------------------------------|
| January 2009 | Work and Activities of the National Audit Office 2008 |
| January 2010 | Work and Activities of the National Audit Office 2009 |

## INTERNAL NAO PUBLICATIONS

|           |                                              |
|-----------|----------------------------------------------|
| July 2009 | Data Protection Guidelines                   |
| July 2009 | Information Technology and Security Handbook |