

L.N. 191 of 2020

**INCOME TAX ACT
(CAP. 123)**

**Assignments of Rights Acquired under a Promise of
Sale Agreement Rules, 2020**

IN EXERCISE of the powers conferred by articles 5A (13) and 96 of the Income Tax Act, the Minister for Finance and Financial Services, has made the following rules:-

1. (1) The title of these rules is Assignments of Rights Acquired under a Promise of Sale Agreement Rules, 2020. Citation and scope.

(2) These rules shall apply to any assignment that is made on or after 1 January 2020 of rights acquired in terms of a promise of sale of immovable property situated in Malta as referred to in article 5A(2)(d) of the Act.

2. In these rules, unless the subject or context otherwise requires: Interpretation.

"the Act" means the Income Tax Act; Cap. 123.

"the final tax portion" and "the excess portion" mean that they are portions of the consideration for an assignment as described in rule 6;

"notice of the assignment" means the notice that is required to be given in terms of rule 3(1)(b).

3. (1) An assignment to which these rules apply shall not be valid for the purposes of any law unless: Validity of assignment.

(a) it is made by means of a written agreement signed by the assignor and the assignee and authenticated by a notary or an advocate;

(b) notice of the assignment thereof, is given to the Commissioner in accordance with sub-rules (2) and (3);

(c) payment of the tax is made in accordance with these rules.

(2) The notice of the assignment shall be signed by the assignor and the assignee and authenticated by the notary or the advocate who authenticates the relative written agreement and shall be in such form and contain such information as the Commissioner may

require or approve.

(3) The notice of the assignment shall be furnished to the Commissioner in three (3) copies within twenty-one (21) days from the date of the relative written agreement.

Allowable
deductions.

4. (1) In the computation of the income derived from an assignment to which these rules apply, deductions shall only be allowable in respect of the following expenses, to the extent that they are incurred by the assignor and are not reimbursed or reimbursable by any other person:

(a) brokerage fees in respect of the said assignment;

(b) where the assignor was not a party to the promise of sale in question but had acquired his rights from another person in terms of a previous valid assignment, the consideration, if any, which he may have paid to that other person for the acquisition of those rights in terms of that previous assignment.

(2) The expenses mentioned in sub-rule (1) shall not be allowable as a deduction unless:

(a) the assignor produces to the notary or advocate who authenticates the written agreement a signed receipt that shows the date of the payment, the name, identification document number and address of the person to whom the payment was made and the amount paid;

(b) as regards the payment of a consideration for a previous assignment as mentioned in sub-rule (1)(b), the assignor of the subsequent assignment also produces to the said notary or advocate a copy of the agreement under which the previous assignment had been made;

(c) the said notary or advocate records the details mentioned in paragraph (a) in the notice of the assignment and produces to the Commissioner, together with that notice, a certified copy of the receipt mentioned in paragraph (a) as well as, where applicable, a certified copy of the previous assignment mentioned in paragraph (b).

Tax on
assignments
where the
consideration
does not exceed
one-hundred
thousand euro
(€100,000).

5. (1) When the consideration for an assignment to which these rules apply does not exceed one-hundred thousand euro (€100,000), the income derived from that assignment, computed in accordance with rule 4, shall be subject to tax at the rate of fifteen euro cents (€0.15) for every euro or part thereof.

(2) The tax mentioned in sub-rule (1) shall be final and shall be separate and distinct from that paid or payable under any other provisions of the Act or of the Income Tax Management Act. It shall not be available as a credit against the tax liability of any other person or as a refund. Cap. 372.

(3) The income derived from an assignment mentioned in sub-rule (1) shall not form part of the total income of the person deriving that income. Any loss that may be incurred in any such assignment shall not be available by way of deduction from or set off against income derived from any other assignment or from any other source. When the assignor is an individual, he shall not be required to disclose that income in any return made pursuant to article 10 of the Income Tax Management Act. When the assignor is a company resident in Malta, it shall allocate the distributable profits derived from the assignment to its final tax account. Cap. 372.

(4) The tax chargeable on the income derived from an assignment mentioned in sub-rule (1) shall be due by the assignor and shall be paid to the notary or advocate who authenticates the relative written agreement. The said notary or advocate shall remit the tax to the Commissioner within twenty-one (21) days of the relative assignment and, in default, shall be liable for the tax jointly and severally with the assignor:

Provided that the liability of the said notary or advocate in terms of this rule shall be limited to the amount of tax payable by reference to the information provided by the parties as recorded in the notice of the assignment.

6. When the consideration for an assignment to which these rules apply exceeds one-hundred thousand euro (€100,000), the first one-hundred thousand euro (€100,000) shall constitute the final tax portion and the amount by which the consideration exceeds one-hundred thousand euro (€100,000) shall constitute the excess portion. The deductions allowable in terms of rule 4 shall be apportioned and tax shall be chargeable separately on each of the two (2) portions as provided for in rules 7 and 8. Tax on assignments when the consideration exceeds one-hundred thousand euro (€100,000).

7. (1) The deduction allowable against the final tax portion is the amount obtained by multiplying the total deductions allowable in terms of rule 4 by one-hundred thousand (100,000) and dividing the result by the full consideration. The tax on the income that corresponds to the final tax portion.

(2) The tax on the final tax portion, after the deduction mentioned in sub-rule(1), shall be charged at the rate of fifteen euro cents (€0.15) for every euro or part thereof.

(3) The provisions of sub-rules (2), (3) and (4) of rule 5 shall apply to the tax chargeable under this rule in the same manner as they apply to the tax on an assignment mentioned in rule 5(1).

The tax on the excess.

8. (1) The deduction allowable against the excess portion is an amount equivalent to the difference between the total deductions allowable in respect of the assignment in question in terms of rule 4 and the deduction allowable in accordance with rule 7(1).

Cap. 372.

(2) The excess portion, after the deduction mentioned in sub-rule (1), shall form part of the assignor's chargeable income for the year of assessment in question and shall be subject to tax at the appropriate rate or rates in terms of article 56 of the Act. It shall represent income to which article 4(1)(a) of the Act applies and shall be disclosed as such by the assignor in a return filed in accordance with the provisions of the Income Tax Management Act together with his other income.

(3) An amount equivalent to seven percent (7%) of the excess portion after the deduction mentioned in sub-rule (1) shall be payable by the assignor by way of provisional tax on account of the tax chargeable in accordance with this rule. The said provisional tax shall be paid to the notary or advocate who authenticates the relative agreement in writing in addition to the tax payable on the final tax portion.

(4) The said notary or advocate shall remit the provisional tax collected in accordance with sub-rule (3) to the Commissioner within twenty-one (21) days of the relative assignment together with the tax collected in accordance with rule 5 and, in default, shall be liable for the tax jointly and severally with the assignor:

Provided that the liability of the said notary or advocate in terms of this rule shall be limited to the amount of tax chargeable by reference to the information provided by the parties as recorded in the notice of the assignment.

Cap. 372.

(5) The provisions of article 43(4)(b) of the Income Tax Management Act shall apply to provisional tax paid in accordance with this rule.

Value of the consideration.

9. (1) For the purpose of rule 6, in determining if the consideration for the assignment exceeds one-hundred thousand euro (€100,000):

(a) when rights are assigned to two (2) or more persons conjointly or in undivided parts, the value of the consideration shall be deemed to be the total consideration paid or payable by

all those persons;

(b) when rights are assigned by two (2) or more persons conjointly or in undivided parts, the value of the consideration shall be deemed to be the total consideration paid or payable to all those persons;

(c) when rights acquired under a promise of sale are assigned by means of more than one (1) transaction entered into between the same parties, the said rights shall be deemed to have been assigned by means of one (1) assignment for the total consideration paid or payable in terms of all the transactions in questions.

(2) This rule is without prejudice to article 51 of the Act.

10. The provisions of article 19 of the Income Tax Management Act shall apply to a person who makes an assignment to which these rules apply in the same manner as they apply to any other person carrying on a trade, business, profession or vocation.

Records to be kept.
Cap. 372.

11. (1) Notwithstanding the provisions of the foregoing rules, when income derived from an assignment to which these rules apply, including income derived from a transaction intended to be an assignment of rights acquired under a promise of sale of immovable property situated in Malta as referred to in article 5A(2)(d) of the Act but which, in terms of rule 3, is not a valid assignment, has not been reported or has not been reported fully and correctly in a notice of the assignment furnished to the Commissioner, the full amount of that income shall be charged to tax at the rate of thirty-five euro cents (€0.35) on every euro of that income.

When income is not reported fully and correctly.

(2) The tax chargeable in accordance with sub-rule (1), reduced by the amount of the tax that may have been paid in connection with the assignment in question in accordance with the other provisions of these rules, shall be payable upon demand with interest as provided in article 44(2A) of the Income Tax Management Act, which interest shall be deemed to have commenced running from the date of the assignment. The provisions of rule 5(2) shall apply to any tax chargeable in accordance with this rule.

Cap. 372.

(3) A person who is served with a demand for payment of tax determined in accordance with this rule shall have the rights of objection and appeal in the same manner as a person served with a notice of an assessment made under article 31 of the Income Tax Management Act.

Cap. 372.

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Consequentially
amends rule 9 of
the Capital
Gains Rules.
S.L. 123.27.

12. Immediately after sub-rule (4) of rule 9 of the Capital Gains Rules, there shall be added the following new sub-rule:

"(5) This rule shall not apply to any transfer made on or after the 1 January 2020."

Consequentially
amends rule 24
of the Tax on
Property
Transfers Rules.
S.L. 123.92.

13. Sub-rule (1) of rule 24 of the Tax on Property Transfers Rules shall be deleted and sub-rule (2) thereof, shall be renumbered as rule 24.
