

L.N. 241 of 2020**INCOME TAX ACT
(CAP. 123)****Exemption from Tax on Certain Property Transfers Rules, 2020**

IN EXERCISE of the powers conferred by articles 12(2) and 96 of the Income Tax Act, the Minister for Finance and Financial Services has made the following rules:-

Citation and
commencement.

1. (1) The title of these rules is the Exemption from Tax on Certain Property Transfers Rules, 2020.

(2) These rules shall be deemed to have come into force on the 9 June 2020.

Interpretation.

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

Cap. 123.

"Act" means the Income Tax Act;

"property" means immovable property situated in Malta and any real right over such property.

Applicability.

3. (1) These rules apply to any transfer of property that satisfies all the following conditions:-

(a) the transfer is made on or after 9 June 2020 but before 1 April 2021;

(b) in terms of article 5A of the Act, and were it not for the provisions of these rules, the transfer would be subject to tax at the rate of eight percent (8%) or ten percent (10%) of the transfer value;

S.L. 123. 92.

(c) the notice of the transfer that is required to be given in terms of rule 22(2) of the Tax on Property Transfers Rules is delivered to the Commissioner by not later than 30 April 2021.

Exemption.

4. Subject to the provisions of rule 6, a person who makes a transfer to which these rules apply shall be exempt from the tax otherwise chargeable on that transfer in terms of article 5A of the Act to the extent that it exceeds the tax calculated for the purpose of these rules in accordance with rule 5 on condition that the tax so calculated is paid in accordance with the provisions of sub-article (11) of the said article 5A.

5. For the purpose of these rules, in the case of a transfer to which these rules apply, the tax on the first four hundred thousand euro (€400,000) of the transfer value shall be calculated at the rate of five percent (5%) and the tax on the remainder of the transfer value shall be calculated at the rate of eight percent (8%) or ten percent (10%) according to the applicable provisions of article 5A of the Act:

Calculation of the tax.

Provided that in the case of a transfer of an undivided share of property, the rate of five percent (5%) shall apply only to such portion of four hundred thousand euro (€400,000) as corresponds pro rata to the share that is transferred.

6. (1) When the Commissioner is of the opinion that two or more transfers form part of a structured arrangement, he may order, within five (5) years from the date of the last of the said transfers, that the exemption granted under these rules shall not apply to any of those transfers and in such a case the tax shall be chargeable on each of those transfers in accordance with the provisions of article 5A without reference to these rules.

Structured arrangements.

(2) The tax chargeable as provided in sub-rule (1), net of any tax that would have already been paid on the transfers in question, shall become payable by not later than the last day of the month following that in which a notice of the said order is served on the transferor.

(3) A person served with a notice of an order made under sub-rule (1) shall have the same rights of objection and appeal in accordance with the provisions of the Income Tax Management Act as if that order were an assessment made under article 31 of that Act.

Cap. 372.

(4) For the purpose of this rule, "structured arrangement" means a series of two or more transfers of portions of the same property made between the same parties within a period of six (6) months which are executed by two or more deeds, rather than by one single deed, solely or mainly for the purpose of inflating the benefit of the exemption that would otherwise be available in terms of these rules.

(5) For the purpose of sub-rule (4):

(a) "portions of the same property" includes:

(i) adjacent parcels of land;

(ii) portions of developed property or of property under construction that are not identifiable as separate units;

(iii) the airspace and the property beneath it;

(iv) portions of the airspace overlying the same property.

(b) transfers made by two persons shall be deemed to be transfers made by the same person if one of them had acquired the property that he or it transfers from the other on or after 9 June 2020 in terms of a transfer that qualified for a fiscal exemption or benefit in terms of any provision of the Act or of any other law;

(c) transfers made to companies or other bodies of persons that are directly or indirectly as to more than fifty percent (50%) controlled and beneficially owned by the same persons shall be deemed to be transfers to the same person.
