

SUBSIDIARY LEGISLATION 123.175

**VOLUNTARY OCCUPATIONAL PENSION
SCHEME RULES**

12th September, 2017

*LEGAL NOTICE 228 of 2017, as amended by Legal Notice 114 of 2019
and 3 of 2021.*

1. (1) The title of these rules is the Voluntary Occupational Pension Scheme Rules. Citation and commencement.

(2) These rules shall be deemed to have come into force on 1st January, 2017.

2. For the purposes of these rules:

Interpretation.
Amended by:
L.N. 114 of 2019.

"an association representing employers" shall also include an association representing self-occupied persons;

"the Act" means the Income Tax Act;

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"the Commissioner" means the Commissioner for Revenue;

"competent authority" means the Malta Financial Services Authority established by means of the Malta Financial Services Authority Act;

Cap. 330

"European right" means the entitlement of an insurance undertaking to establish a branch, or provide services, in a Member State or an EEA State other than that in which it has its head office -

(a) in accordance with the Treaty as applied in a Member State or an EEA State; and

(b) subject to the requirements of the Single Market Directive and subject to any regulations made under the Insurance Business Act, or insurance rules issued by the competent authority pursuant to the Insurance Business Act, implementing such requirements;

Cap. 403

"licence holder" means:

(a) in the case of an occupational voluntary retirement scheme or a personal retirement scheme, a company registered, licensed or authorised to administer retirement schemes under the Retirement Pensions Act, or any other law substituting the said Act, or,

Cap. 514

(b) in the case of a long term contract of insurance, a company registered, licensed or authorized to carry on long term business under the Insurance Business Act and includes a European

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Insurance Undertaking carrying on long term business of insurance in Malta in exercise of a European right;

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"long term business" means business of insurance of any of the classes specified in the Second Schedule to the Insurance Business Act;

"notice" means notice in writing and "notify" shall be construed accordingly;

"occupational retirement scheme" means a retirement scheme established on a voluntary basis for, or by, an employer or a number of employers, or an association representing employers, jointly or separately, for the benefit of qualifying employees;

S.L. 372.14

"payer" shall have the same meaning as assigned to it under the Final Settlement System (FSS) Rules;

"personal retirement scheme" means a retirement scheme which is not a voluntary occupational retirement scheme and to which contributions are made for the benefit of an individual;

"qualifying contribution" means a contribution or payment made to a qualifying scheme in respect of which the provisions of these rules shall apply;

S.L. 372.14

"qualifying employer" means any person, whether corporate or unincorporate, and whether vested with legal personality or not, which employs individuals to carry out the economic activity for which it is established and which is registered as a payer for the purposes of the Final Settlement System (FSS) Rules:

Provided that for the avoidance of doubt, a qualifying employer shall also include a self-occupied person;

"qualifying employee" means an individual on whose behalf or by whom contributions or payments to a qualifying scheme are made and who fulfils the requirements of rule 4;

"qualifying scheme" means a retirement scheme or a long term contract of insurance that fulfils the requirements of these rules and which is approved by the Commissioner;

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"self-occupied person" shall have the same meaning as is assigned to it under the Social Security Act;

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"social security contributions" means a contribution payable under the Social Security Act or which was payable under the provisions of the National Insurance Act before the date of its repeal;

"year" means the year immediately preceding a year of

assessment unless the context otherwise requires; and

unless otherwise defined, terms and expressions used in these rules shall have the meaning assigned to them in the Act, the Insurance Business Act, or the Retirement Pensions Act or any other law or laws substituting it or them, as the case may be.

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3. These rules relate to contributions paid to a qualifying scheme or schemes established in the context of an employment relationship for the purposes of providing retirement benefits to qualifying employees as prescribed in these rules.

Introductory.

4. These rules shall apply only in respect of qualifying contributions made to a qualifying scheme by or on behalf of any individual who:

General conditions for qualifying employees.

(i) derives chargeable income in terms of article 4(1)(b) of the Act and who is duly registered for Maltese income tax purposes;

(ii) is employed by the qualifying employer; and

(iii) does not benefit under the Highly Qualified Persons Rules.

S.L. 123.126

5. (1) A qualifying employer making qualifying contributions to a qualifying scheme for the benefit of one or more qualifying employees shall, in respect of each such qualifying employee and subject to the provisions of these rules, be entitled to a tax credit amounting to the lower of 25% of the amount of qualifying contribution paid during any year and seven hundred and fifty euro (€750) or such other amount as may be prescribed by the Minister from time to time.

Contributions by a qualifying employer.
Amended by:
L.N. 114 of 2019;
L.N. 3 of 2021.

(2) The credit referred to in this rule shall be available as a deduction from the amount of income tax which is due on the qualifying employer's chargeable income for the year during which the contribution or payment to the qualifying scheme or schemes is made, and any amount thereof which is not so utilised shall be added to the tax credit for the following year and deemed to be part of that tax credit, or if there is no such tax credit for that year, be deemed to be the tax credit for that year and so on for subsequent years.

(3) In the case of a qualifying employer which is a company, the tax credit utilised in a year shall be deemed to have relieved from tax so much of the company's chargeable income which, when multiplied by the rates of tax at which it was chargeable in that year, is equal to the tax credit.

(4) For the purposes of the Tax Accounts (Income Tax) Rules, the amount of chargeable income which is deemed to have

S.L. 123.101

been relieved from tax in accordance with sub-rule (3) shall be allocated to the company's Final Tax Account.

S.L. 123.55

*Added by:
L.N. 114 of 2019.*

S.L. 372.14.

*Tax credit for a
qualifying
employee.
Amended by:
L.N. 114 of 2019;
L.N. 3 of 2021.*

(5) Any contributions or payments referred to in sub-rule (1) made by a qualifying employer for the benefit of a qualifying employee shall not be deemed to be a benefit provided by the qualifying employer to the qualifying employee by reason of employment or office for the purposes of the Fringe Benefits Rules.

(6) The qualifying contributions referred in sub-rule (1) shall be disclosed in the Payee Statement of Earnings (FS3) that the payer is required to prepare in terms of rule 21 of the Final Settlement System (FSS) Rules.

6. (1) A qualifying employee who also makes qualifying contributions into the qualifying scheme referred to in rule 5(1) shall, subject to the provisions of these rules, be eligible for a tax credit amounting to 25% of the aggregate amount of the qualifying contributions made during any year, up to a maximum of seven hundred and fifty euro (€750) or such other amount as may be prescribed by the Minister from time to time.

(2) The tax credit referred to in sub-rule (1) shall be available as a deduction from the amount of tax chargeable on the income derived by the qualifying employee in the year during which the qualifying contribution to the qualifying scheme or schemes is made and shall not exceed the said amount:

Provided that in the case of a qualifying employee who is married and is chargeable to tax jointly with his or her spouse in terms of article 49 of the Act, the said deduction may be availed of against the amount of tax chargeable on the total income of the married couple and may not exceed the said amount.

*General conditions
for a qualifying
scheme.
Substituted by:
L.N. 114 of 2019.*

Cap. 514.

7. A qualifying scheme shall be one which satisfies the following conditions:

- (a) in the case of an occupational retirement scheme, it is a scheme that is registered under the Retirement Pensions Act or any other law substituting that Act and, in the case of a long term contract of insurance issued by a licence holder, it provides for programmed withdrawal of arrangements as provided for in pension rules issued under the said Act or law; and
- (b) it provides for the commencement of payment benefits to a qualifying individual on a date that is

not earlier than the date on which the individual attains the age of sixty-one (61) and not later than the date when the individual attains the age of seventy (70), except in those cases where the scheme provides that the payment is made by reason of the permanent disability or death of the beneficiary; and

- (c) it satisfies such further conditions as the Commissioner may deem appropriate to impose.

8. (1) Except for payments referred to in sub-rule (3), all payments received from a qualifying scheme, including for the avoidance of doubt long term contracts of insurance mentioned in rule 7, shall constitute pension income for the purposes of article 4(1)(d) of the Act.

Payments received from a qualifying scheme.
Amended by:
L.N. 114 of 2019;
L.N. 3 of 2021.

(2) The transfer of accumulated pension benefits of a qualifying employee from an occupational or personal retirement scheme to a qualifying scheme, shall not constitute a payment that is chargeable to tax under the provisions of the Act.

(3) The provisions of this rule shall not apply to:

(i) any capital sum which may be exempt from taxation in accordance with the provisions of article 12(1)(h) of the Act; and

(ii) any sum paid to a qualifying employee before attaining the age specified in terms of the Retirement Pensions Act, including where in such case the said individual is no longer employed by the qualifying employer.

9. (1) A qualifying contribution made to a qualifying scheme which is reported to the Commissioner in accordance with the provisions of rule 11(2) shall be considered as approved by the Commissioner for the purposes of article 14(1) (e) of the Act.

Tax deductibility for the qualifying employer.

(2) Provided that, for any year of assessment, the total deductions that can be claimed by the qualifying employer in terms of the provisions of article 14(1)(e) of the Act in respect of qualifying contributions, shall in respect of each qualifying employee amount to the lower of the qualifying contribution actually paid and two thousand euro (€2,000).

10. (1) Each licence holder shall notify the Commissioner in writing prior to accepting qualifying contributions or payments from a qualifying employer.

Notification to the Commissioner by the licence holder.
Amended by:
L.N. 114 of 2019.

(2) Where the qualifying scheme is a long term contract of insurance, the notification referred to in sub-rule (1) shall include:

(a) a declaration by the licence holder that the long term contract of insurance satisfies the conditions referred to in rule 7; and

(b) an undertaking by the licence holder that he shall inform the Commissioner within fourteen days of any subsequent change which would result in the long term contract of insurance no longer satisfying any of the conditions referred to in rule 7.

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(3) A licence holder who shall cease to be a licence holder in terms of the Retirement Pensions Act or the Insurance Business Act, or ceases to carry on long term business in Malta in exercise of a European right, shall notify the Commissioner promptly, and in any case not later than fourteen days from the date when the licence holder ceases to hold a licence in terms of Retirement Pensions Act or the Insurance Business Act, or from when it ceases to exercise such European right.

(4) A licence holder shall at all times keep sufficient records in respect of qualifying employers and qualifying employees to enable the requirements of these rules to be satisfied, including full name, address, and legally valid identification document (or income tax registration) number of each individual, and details of both spouses in the case of a married couple.

Information
provided to the
Commissioner.

11. (1) The Commissioner may, after giving due notice, require any person who is or who has been a licence holder who administers or who administered a qualifying scheme, or a qualifying employer, or a qualifying employee to furnish him within such time (not being less than fourteen days) as may be provided by the notice, such information about any qualifying scheme (including copies of or extracts from any books or other records) or any payments or contributions thereto as the Commissioner may reasonably require for the purposes of these rules or to make available for inspection, at a place within Malta, all relevant documents which are in the possession or under the control of a licence holder, a qualifying employer, or a qualifying employee.

(2) Every licence holder shall, by the end of January of the year following that in which the qualifying contributions to the qualifying scheme were made, submit to the Commissioner a statement in electronic format as approved by the Commissioner showing particulars concerning the qualifying employer and qualifying employee's identity, and other information as may be required for income tax purposes, including but not limited to the amount contributed or paid by the qualifying employer and, or qualifying employee to the qualifying scheme and tax deducted and paid to the Commissioner in accordance with the provisions of rule 8.

(3) Without prejudice to the provisions of rule 8, every licence holder shall be subject to the provisions of the Final Settlement System (FSS) Rules in respect of payments made from a qualifying scheme to a qualifying employee which constitute pension income for the purposes of article 4(1)(d) of the Act. S.L. 372.14

12. Without prejudice to the provisions set out in the Social Security Act, for the purposes of determining the weekly rates of contributions payable under the provisions of that Act, no account shall be taken of any qualifying contributions paid under the provisions of these rules. Social Security contributions. Cap. 318.

13. (1) Where the Commissioner is of the opinion that any qualifying contributions made into a qualifying scheme was so made solely or mainly for the purpose of postponing or reducing liability to tax chargeable under the provisions of article 4(1)(b) of the Act or of obtaining a tax credit under these rules, he shall, by order in writing, determine the liability to tax or the entitlement to a tax credit of the qualifying employee and, or qualifying employer, or of any other person, for any year of assessment, in such manner and in such amount as the Commissioner may in his discretion deem necessary in the circumstances of the case, to nullify or modify the said advantage. Tax avoidance.

(2) A person who disagrees with an order served upon him as aforesaid shall have the same rights to object to that order and to appeal from a decision of the Commissioner refusing that objection as if that order were an assessment issued under the Income Tax Management Act and the relevant provisions of that Act relating to objections and appeals shall apply *mutatis mutandis*. Cap. 372
