L.N. 334 of 2005

INCOME TAX ACT
(CAP. 123)

Reinvestment Tax Credit (Income Tax) Rules, 2005

IN exercise of the powers conferred by articles 14(2) and 96 of the Income Tax Act, hereinafter referred to as "the Act", the Prime Minister and Minister of Finance has made the following rules:-

Title.

1. (1) The title of these rules is the Reinvestment Tax Credit (Income Tax) Rules, 2005.

(2) The equivalent of the benefits under the scheme shall be an amount specifically appropriated in Government's financial estimates for a particular financial year.

Interpretation.

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

"base year" means the year during which the profit eligible to be reinvested has been earned and subsequently declared in the tax return for the relative year of assessment;

"the Commissioner" means the Commissioner of Inland Revenue;

"the Corporation" means the Malta Enterprise Corporation;

"eligible person" means a person resident in Malta deriving eligible profits that are reinvested in an eligible reinvestment project approved by the Corporation and conforming with the requirements of rule 3;

"eligible profits" means income deriving from any activity carried out in Malta chargeable under the provisions of article 4(1)(a) of the Act and computed in accordance with the provisions of the Act, and set-aside for the exclusive purpose of financing an approved reinvestment project;

"eligible reinvestment project" means a project approved by the Corporation under these rules, in respect of which qualifying expenditure has been incurred and which is retained within the business for at least two years or such other shorter period as the Corporation may deem appropriate in view of the nature of the project:

Provided that a project shall not be treated as an eligible reinvestment project if it is linked to:-

(i) the production, processing or marketing of agricultural and fisheries products;

(ii) export-related activities;

(iii) activities contingent upon the use of domestic over imported goods;

"qualifying expenditure" means expenditure of a capital nature exclusively financed by eligible profits, incurred as part of an eligible reinvestment project as approved by the Corporation in:

(a) acquiring an industrial building or structure;

(b) carrying out any extension or improvement to an existing industrial building or structure, including the cost of land forming an integral part of such extension;

(c) acquiring brand new or second-hand plant and machinery excluding:

(i) motor vehicles unless these are, to the satisfaction of the Corporation, specialised commercial vehicles that are essential to the implementation of the project; and

(ii) works of art, antiques, any assets whose use is wholly or mainly of a decorative nature and any assets whose cost is related to their intrinsic value rather than to their specific usefulness for a qualifying project;

(d) acquiring intellectual property rights that are essential to the implementation of the project;

(e) labour costs which may be capitalized as part of the cost of any of the assets, extensions or improvements referred to above:

Provided that such expenditure is incurred on assets:

(a) which are first used in Malta; and

(b) in respect of which no income tax benefit or incentive has previously been obtained under any other legislation;

"qualifying profits" means income deriving from the same activity in which eligible profits have been earned, computed in accordance with the provisions of the Act, that is relieved by a reinvestment tax credit.

Application and eligibility.

3. (1) These rules shall apply to eligible persons deriving eligible profits in the year immediately preceding any of the years of assessment 2006 to 2010 and reinvested in an eligible reinvestment project by not later than three years from the beginning of the respective base year:

(2) In order to qualify for the benefits under these rules, a person shall, in the base year:

(i) have had a turnover of not more than Lm250,000, and

(ii) have had a minimum of three but not more than ten employees of whom at least three were full time employees:

Provided that persons engaged as apprentices and students shall not be treated as employees for the purpose of this item; and

(iii) have been registered as an FSS payor under the Final Settlement System (FSS) Rules:

Provided that in the case of a company which prepares its financial statements in a currency other than in Maltese liri, the turnover shall be converted into Maltese liri by reference to the middle rate of exchange as determined by the Central Bank of Malta.

(3) A person intending to benefit from the incentive provided by these rules, shall, by not later than three months before the relative tax return date, notify the Corporation of such intention for each base year by means of a letter of application specifying such intention and providing the following details:

(i) the person's name, address, income tax registration number and employer number;

(ii) the profit declared for the base year;

(iii) the amount of eligible profits to be set-aside for reinvestment;

(iv) the turnover for the base year;

(v) the number of employees engaged during that year, distinguishing between part-time and full-time employees as well as the number of apprentices and students, if any, engaged by that person;

(vi) the period during which the reinvestment is to be made;

(vii) the details of the reinvestment project, with a breakdown of the major expense headings;

(viii) a certificate issued by a Certified Public Accountant and Auditor confirming that the reinvestment project is viable, that the expenses involved are reasonable and fair according to market values, and that the reinvestment has the capacity to expand the business:

Provided that any person who fails to notify the Corporation in writing about the intention to apply for the incentive provided by this rule, shall forfeit the right to be eligible for the benefit.

(4) The Corporation, on being satisfied with the application referred to in this rule, shall issue a letter, copied to the Commissioner, indicating the amount of the eligible profits approved for reinvestment and setting out therein any conditions that it may deem fit to impose.

Reinvestment tax credit.

4. (1) Where eligible profits derived by an eligible person have been set aside for the exclusive purpose of financing an eligible reinvestment project as shall have been approved by the Corporation, and the eligible profits or part thereof have in fact been used for such purpose, that person shall be entitled to the benefit under sub-rule (2) hereof.

(2) The benefit available under these rules shall be in the form of a reinvestment tax credit equivalent to the tax chargeable on that part of the eligible profits that is reinvested in an approved project on the basis of the following formula:

tax on total income for the base year

less

tax on total income after excluding that part of the eligible profits for the same base year that is being reinvested, calculated at the rates applicable for the base year.

(3) A person entitled to a reinvestment tax credit in respect of a year of assessment shall be entitled to deduct from the amount of tax which is due on qualifying profits for that year of assessment the amount of the reinvestment tax credit, calculated as a proportion of the qualifying expenditure to the eligible profits that are deemed reinvested and multiplied by the maximum tax credit entitlement derived by applying the formula in sub-rule (2):

Provided that the amount of reinvestment tax credit allowable in terms of this sub-rule shall not exceed fifty thousand liri for any particular year of assessment:

Provided further that the tax credit due to a company in respect of an approved reinvestment project shall not exceed, in the aggregate, fifty percent of the total cost of the project in question, in conformity with Article 4 of Commission Regulation (EC) No 70/2001 on the application of Articles 87 and 88 of the EC Treaty to State Aid to small and medium-sized enterprises (OJ L 10/33, 13.1.2001), as subsequently amended.

(4) (a) Where the reinvestment tax credit for any year of assessment exceeds the tax payable by such person for that year, the excess shall be added to the reinvestment tax credit, if any, for the following year:

Provided that so much of the reinvestment tax credit which is not so utilised at the end of any year is carried forward up to the year of assessment 2015 and may not be set off against the tax due on any other source of income or to generate a refund of tax.

(b) The reinvestment tax credit shall only be deducted from the tax due on qualifying profits from the same source of the eligible profits and for the purpose of this sub-rule qualifying profits are deemed to be the last part of the total income.

(c) The reinvestment tax credit granted under these rules shall not be allowed if the eligible profits have not been reinvested, even if such profits had been set aside for reinvestment under an eligible reinvestment project.

(5) Where a person has benefited from the provisions of this rule, the reinvestment tax credit for any year of assessment shall be deemed to have relieved from tax so much of the qualifying profits for the year which when multiplied by the rate or rates of tax at which it was chargeable in that year, is equal to the reinvestment tax credit.

(6) The chargeable income which is deemed to have been relieved from tax in accordance with sub-rule (4) hereof, shall, for the purposes of the Act, be retained in the business for at least until the end of year of assessment 2014, and:

(a) in the case of an individual it shall be included in the capital account and the movements in such account shall be disclosed by way of a note to the audited financial statements;

(b) in the case of a limited liability company it shall be disclosed separately in the audited financial statements in a reserve entitled "Reinvestment Reserve".

(7) (a) In the case of a limited liability company the qualifying income which is deemed to have been relieved from tax is allocated to the Maltese Taxed Account and, upon distribution, shall be exempt from tax in the hands of the shareholders up to the ultimate shareholder.

(b) The company shall state in the dividend warrant pertaining to any such distribution that such income has been relieved by a reinvestment tax credit in accordance with these rules, and the tax which has so been relieved shall not be available for refund for any purpose of the Act.

(8) Where the benefit provided by these rules is due to a partnership, any such benefit shall be due to the partners of any such partnership:

Provided that the reinvestment tax credit is calculated separately for each partner on the share of qualifying profit attributable to such partner in the manner set out in sub-rule (4).

Certificate of compliance.

5. (1) A person wishing to claim a reinvestment tax credit for any year of assessment, shall submit to the Corporation, by not later than three months before the relative tax return date, a written application supported by audited financial statements and any other documentary evidence requested by the Corporation.

(2) Any application required to be submitted to the Corporation in order to benefit from these rules shall be in such form and contain such particulars as the Corporation may require.

(3) The Corporation, on being satisfied with the submissions referred to in this rule and within sixty days from the receipt of all relevant information it may request, shall issue a Certificate of

Compliance confirming that all the provisions of these rules have been complied with.

(4) On granting its approval for any purpose under these rules, the Corporation shall confirm its approval in writing setting out the conditions to be satisfied by the person, and the person's entitlement to the benefit provided by these rules shall be conditional on the production of such written approval.

(5) The Corporation shall forward to the Commissioner copies of certificates and approvals issued under the provisions of these rules.

Certification of completion.

6. (1) On completion of each approved eligible reinvestment project the company shall deliver, within ninety days of completion of the project, a written certificate by a competent technical person to the Corporation, copied to the Commissioner, showing:

(a) the date of completion of the project;

(b) the amount of qualifying expenditure incurred and claimed for each year of assessment, supported by a breakdown of the major expense headings;

(c) whether, where applicable, the conditions, that may have been made applicable to the project in terms of rule 3(4) have been observed.

(2) Where the approved project includes qualifying expenditure listed under paragraphs (a) or (b) to the definition of "qualifying expenditure", the certificate referred to in sub-rule (1) hereof shall be accompanied by a deed of purchase in the case of acquisition of an industrial building or structure or a statement written by the architect under whose direction or supervision the works under paragraph (b) were carried out, confirming that the expenditure was incurred in the carrying out of the project as approved.

Examination of Records.

7. (1) Where, in terms of rule 3 hereof, the Corporation issues a letter of approval to an applicant, it may, from time to time, make such reviews of books and documents, hold on-site inspections on premises of that applicant and make such other monitoring as it may consider necessary for the purposes of these rules and for any matter relevant to an approved application.

(2) In addition to the database kept under the provisions of the Business Promotion Rules, the Corporation shall also keep a database

of all assistance provided to, or claimed by, applicant companies under these Rules for 10 years from the date on which the last individual aid was granted under the aforementioned Rules, in order to enable it to –

(a) provide the State Aid Monitoring Board with such information as it may require; and

(b) inform the Commissioner whether the credits claimed in terms of these rules have been properly calculated.

(3) Applicant persons that have received a letter of approval in terms of rule 3 hereof, shall submit to the Corporation, by not later than two months after the relative tax return date a copy of the tax return for each year of assessment starting from the base year and all subsequent consecutive years of assessment during which a deduction and tax credit is available under these rules, irrespective of whether it is utilised or not.

(4) Where the Corporation is not satisfied that an eligible person is employing the benefit for the purpose it is intended for or has failed to fulfil any condition under these rules, such person shall immediately forfeit the right for the benefit.

Further conditions.

8. The following further conditions must also be fulfilled for eligibility to the benefit under these rules:

(a) the tax return together with audited financial statements incorporating the TIFD codes as stipulated in the Tax Index of Financial Data Rules, 2002, are to be submitted to the Commissioner by the relative tax return date for each year of assessment starting from the base year and all subsequent consecutive years during which a reinvestment tax credit is available irrespective of whether it is utilised or not;

(b) no other benefits are being claimed or may subsequently be claimed by a person on the same activity or project under any other legislation granting fiscal incentive schemes;

(c) all tax liabilities including amounts due in respect of FSS tax as well as Social Security contributions due up to the time of the application, except for any tax still in dispute, must have been settled or is being settled in accordance with a formal agreement drawn up with the Commissioner.

Commission Regulation (EC) No 70/2001.

9. These rules are established and shall be applied in accordance with Commission Regulation (EC) No 70/2001 on the application of Articles 87 and 88 of the EC Treaty to State Aid to small and medium-sized enterprises (OJ L10/33, 13.1.2001), as subsequently amended.

Power of the Commissioner.

10. Notwithstanding the other provisions of these rules, the Commissioner shall have the right not to allow any reinvestment tax credits if any default is committed by the applicant in respect of any provision of the Act or of the Social Security Act.

Electronic tax return.

11. Except where the Commissioner otherwise approves, no tax credit shall be due to a company under these rules for a year of assessment unless it is claimed in the appropriate section of a tax return submitted by electronic means.

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