L.N. 55 of 2001

INCOME TAX ACT (CAP. 123)

Collective Investment Schemes (Investment Income) Regulations, 2001

IN EXERCISE of the powers conferred by articles 41B and 96 of the Income Tax Act, hereinafter referred to as "the Act", the Minister of Finance has made the following regulations:-

Title and commencement.

1. The title of these regulations is the Collective Investment Schemes (Investment Income) Regulations, 2001 and shall be deemed to have come into force on the 1st March, 2001.

Definitions.

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

"fund" means a collective investment scheme or, in the case of a collective investment scheme divided into sub-funds, a sub-fund of that scheme;

"Malta based scheme" means a collective investment scheme formed in accordance with the laws of Malta;

"overseas based scheme" means a collective investment scheme that is not a Malta based scheme;

and other terms shall have the meaning assigned to them in articles 33 to 42, both inclusive, of the Act or, when not defined in the said articles, the meaning assigned to them under the other provisions of the Act.

Meaning of prescribed fund.

3. For the purpose of the definition of "prescribed fund" in paragraph (b) of article 41A of the Act, and subject to the provisions of that paragraph and to the other provisions of these regulations, a fund shall be treated as a prescribed fund if it has been so classified by the Commissioner by means of a notice in writing.

Classification of a prescribed fund.

4. The Commissioner shall classify a fund as a prescribed fund if it is a fund of a Malta based scheme that has declared in the manner provided for in these regulations that -

(a) the value of the assets situated in Malta allocated to that fund is on the 1st March 2001 at least eighty-five percent of the value of the total assets so allocated; or

(b) in the case of a fund that has been granted a collective investment scheme licence on or after the 1st March 2001 the value of the assets situated in Malta that will be allocated to that fund for the purpose of its operations is expected to be at least eighty-five percent of the value of the total assets that will be so allocated.

Non-prescribed fund.

5. (1) A fund in an overseas-based scheme shall be treated as a non-prescribed fund.

(2) When a Malta based scheme declares in the manner provided for in these regulations that a fund does not satisfy the conditions set out in paragraph (a) or (b), as the case may be, of regulation 4 of these regulations the Commissioner shall classify that fund as a non-prescribed fund.

Value of assets.

6. For the purposes of these regulations the value of assets allocated to a fund on any given day shall be the value determined on the close of business of the last preceding working day and the basis of valuation of such assets shall comply in all relevant respects with that adopted in any reports or statements submitted by or with respect to that fund for any of the purposes of the Investment Services Act.

Change of status of fund.

7. (1) When a collective investment scheme declares in the manner provided for in these regulations that the average daily value of the assets situated in Malta allocated to a prescribed fund has been, throughout any period of thirty consecutive days, less than eighty-five percent of the average daily value of the total assets so allocated the Commissioner may, in his discretion, classify that fund as a non-prescribed fund and that fund shall as from the date of such new classification be treated as a non-prescribed fund.

(2) When a Malta based scheme declares in the manner provided for in these regulations that the average daily value of the assets situated in Malta allocated to a non-prescribed fund has been, throughout any period of thirty consecutive days, at least eighty-five percent of the average daily value of the total assets so allocated the Commissioner may, in his discretion, classify that fund as a prescribed fund and that fund shall, subject to the provisions of regulation 8 of these regulations, be treated as a prescribed fund with effect from the date specified in the said classification.

(3) For the purpose of these regulations the average daily value of assets allocated to a fund on any day (hereinafter in this paragraph referred to as "the particular day") shall be determined by reference to the value of assets situated in Malta and the value of the total assets allocated to that fund on each day over a period of ninety days ending on the particular day:

Provided that if that fund had been classified as a prescribed or a non-prescribed fund less than ninety days before the particular day the said period shall be a period commencing on the date of the last classification and ending on the particular day.

(4) The Commissioner may, as a condition for a classification in terms of subregulation (1) or (2) of this regulation, impose such conditions as he may deem appropriate in the circumstances to ensure the proper application of the investment income provisions and of these regulations.

Securities in a non-prescribed fund that is subsequently classified as a prescribed fund.

8. (1) When a fund is classified as a prescribed fund in terms of subregulation (2) of regulation 7 of these regulations any securities held in that fund on the date of that classification shall continue to be treated as securities in a non-prescribed fund: provided that when such securities are disposed of they shall, if they are listed on the Malta Stock Exchange, be deemed to be disposed of for the price last quoted on the Malta Stock Exchange before the date of the said classification.

(2) When a person holds securities that are treated as securities in a non-prescribed fund in terms of subregulation (1) of this regulation and other securities in the same fund that are not so treated, any disposals of securities in that fund by that person shall be treated as disposals of securities in a non-prescribed fund until all the securities which that person held on the date on which that fund was classified as a prescribed fund have been disposed of.

Switching of securities.

9. Any transaction whereby securities in a non-prescribed fund are switched to, or otherwise transferred to or re-invested in, another fund shall be deemed to be a disposal of those securities howsoever that transaction is executed or described.

Calculation of cost of acquisition of listed securities.

10. For the purpose of determining the capital gains derived by a person from the disposal of securities that are listed on the Malta Stock Exchange and held in a non-prescribed fund the cost of acquisition of each unit or share of the same class as those disposed of shall be deemed to be the average cost obtained by dividing the total cost of acquisition of all such units or shares held by that person on the date of the disposal by the total number of the said units or shares:

Provided that

(a) if the disposal is the first disposal of such units or shares by that person after the 28th February 2001 the units or shares held by him, if any, on the 1st March 2001 shall be deemed to have been acquired at the price at which they were last quoted on the Malta Stock Exchange before the 1st March 2001; and

(b) when the average cost of units or shares has been determined on the occasion of a disposal, the units or shares of the same class that are not disposed of on that occasion shall be deemed to have been acquired at the average cost determined on that occasion.

Calculation of capital gains on the surrender or maturity of unit linked investments.

11. For the purpose of determining the capital gains arising on the surrender or maturity of units and such like instruments relating to linked long term business of insurance where the relative contract of insurance was concluded before the 1st March 2001 and where the benefits are wholly determined by reference to the value of units or shares held in a collective investment scheme, the cost of acquisition of the said linked units or such like instruments shall, to the extent that they correspond to units or shares in a non-prescribed fund that were listed on the Malta Stock Exchange on the said date, be deemed to be equal to the price of the said units or shares as last quoted on the Malta Stock Exchange before that date.

Rate of withholding tax.

12. A payor shall withhold tax on investment income paid to a collective investment scheme at the following rates:

(a) when the investment income in question is income to which sub-paragraph (i) of paragraph (a) of article 41 of the Act refers, at the rate of fifteen cents on every lira of such payment;

(b) in every other case, at the rate of ten cents on every lira of such payment.

Declarations to the Commissioner.

13. (1) Every Malta based scheme that holds a collective investment scheme licence issued before the 1st March 2001 shall make a declaration to the Commissioner stating if the value of the assets situated in Malta allocated to each of its funds on that date is at least eighty five percent of the value of the total assets so allocated.

(2) When a collective investment scheme licence is issued on or after the 1st March 2001 to a fund in a Malta based scheme that scheme shall make a declaration to the Commissioner stating if the value of the assets situated in Malta that will be allocated to that fund for the purpose of its operations is expected to be at least equal to eighty-five percent of the value of the total assets that will be so allocated.

(3) When the average daily value of the assets situated in Malta allocated to a prescribed fund of a collective investment scheme has been, throughout any period of thirty consecutive days, less than eighty-five percent of the average daily value of the total assets so allocated that collective investment scheme shall make a declaration to that effect to the Commissioner.

(4) When the average daily value of the assets situated in Malta allocated to a non-prescribed fund of a Malta based scheme has been, throughout any period of thirty consecutive days, at least eighty-five percent of the average daily value of the total assets so allocated that collective investment scheme shall make a declaration to that effect to the Commissioner.

(5) Any declaration required in accordance with the foregoing provisions of this regulation shall be given without delay and without the need of any request being made therefor by the Commissioner.

(6) Every collective investment scheme shall make such other declarations and give such other details as the Commissioner may reasonably require for any of the purposes of these regulations within such time as the Commissioner may specify.

Notification to payor.

14. (1) When the Commissioner classifies a fund in a Malta based scheme as a prescribed or a non-prescribed fund, that scheme shall as soon as may be notify that status to any person who is liable to pay any income referred to in paragraph (a) of article 41 of the Act that falls to be allocated to that fund.

(2) When any person who makes a payment of income referred in subregulation (1) of this regulation to a Malta based scheme has not been notified, before that payment is made, that that income falls to be allocated to a non-prescribed fund that payment shall be deemed for all the purposes of the Act to be a payment of investment income that falls to be allocated to a prescribed fund and that person shall accordingly withhold tax and comply with the provisions of the Act relating to payors.

Authorised financial intermediary.

15. (1) An authorised financial intermediary is a person resident in Malta who has been registered as such by the Commissioner.

(2) A person shall not be eligible for registration as an authorised financial intermediary unless he applies for registration to the Commissioner for the purposes of these regulations and is, at the time of such application -

(a) a person who holds a Category 2 or Category 3 investment services licence issued in terms of the Investment Services Act, or

(b) a person who holds a Category 1 investment services licence issued in terms of the Investment Services Act provided he

declares to the Commissioner that he has given a commitment to the Malta Financial Services Centre that he will apply for a licence referred to in paragraph (a) of this subregulation and provided moreover that such person shall not remain an authorised financial intermediary after the 28th February 2002 unless he holds, on that date, a licence referred to in the said paragraph.

(3) When any payment of investment income is made through the services of an authorised financial intermediary he shall deduct tax at the rate of fifteen cents on every lira of such payment and shall be bound by all the obligations imposed on payors under the investment income provisions.

(4) When an authorised financial intermediary makes a payment of investment income he shall furnish the recipient with a certificate in accordance with sub-article (3) of article 33 of the Act, which certificate shall bear a sequential number in a series applied to all certificates issued by that intermediary for payments of investment income and shall contain the information specified in Part One of the schedule to these regulations.

(5) An authorised financial intermediary shall every month render an account to the Commissioner in accordance with sub-article (2) of article 33 of the Act which shall include the information specified in Part Two of the schedule to these regulations: provided that for any month in which he does not make any payment of investment income he shall furnish a nil return.

SCHEDULE

(Regulation 15(4))

PART ONE

Information to be supplied by authorised financial intermediaries on every payment certificate

1) Sequential number of certificate
2) Name and address of the authorised financial intermediary
3) Description of the fund
4) Name and identity card number of the investor
5) In the case of a disposal of units or shares:
   a) The date of the disposal
   b) The number of units or shares disposed of
   c) The price for which the units or shares were disposed of
   d) The amount subject to tax
   e) The net amount paid or reinvested
6) In the case of a distribution of profits
   a) The profits distributed before withholding tax
   b) The tax withheld
   c) The net payment
7) Date of the certificate
8) Signature of the authorised financial intermediary

PART TWO

Monthly account to be rendered to the Commissioner by financial intermediaries

1) Name and address of the authorised financial intermediary
2) Period covered
3) Total tax withheld
4) First and last sequential numbers of the corresponding payment certificates
5) A breakdown giving
   a) The description of each fund
   b) The tax withheld on the payments from each fund
   c) The total number of payment certificates corresponding to payments from each fund
6) The date of the return
7) Signature of the authorised financial intermediary

For a period during which no tax was withheld a nil return must be submitted.