L.N. 244 of 2001

INCOME TAX ACT
(CAP. 123)

DUTY ON DOCUMENTS AND TRANSFERS ACT
(CAP. 364)

Tax on Transfers of Dwelling Houses by Commercial Partnerships (Income Tax and Duty on Documents and Transfers) Exemption Order, 2001

BY virtue of the powers vested in him by sub-article (2) of article 12 of the Income Tax Act, and by sub-article (1) of article 23 of the Duty on Documents and Transfers Act, the Minister of Finance has made the following order -

Title and application.

1. (1) The title of this order is Tax on Transfers of Dwelling Houses by Commercial Partnerships (Income Tax and Duty on Documents and Transfers) Exemption Order, 2001.

(2) This order applies to any transfer of a dwelling house made by a commercial partnership constituted under the laws of Malta to an individual by means of a deed published not earlier than the 21st November, 2000 and not later than 31st October, 2001 and which satisfies all the following conditions:

(a) the transferee is on the date of the transfer a partner in the said partnership and has been a partner of that partnership without interruption since at least the 20th November, 2000 up to the date of the transfer;

(b) on the 20th November, 2000 and up to the date of the transfer, the transferee alone or together with a member or members of his family held directly or indirectly an aggregate of at least twenty percent of the interests or of the voting rights in that partnership;

(c) on the 20th November 2000 and up to the time of the transfer, the transferee or a member of his family occupied without interruption the dwelling house as his sole ordinary residence.

Interpretation.

2. In this Order:

(a) a member of the family of the transferee means his spouse, ascendant, descendant, brother or sister, or a descendant of his brother or sister;

(b) "dwelling house" includes a garage attached to or underlying that house or a garage of not more than 30 square meters situated within 500 meters of that house and transferred by the said partnership to the transferee by means of the same deed with that house.

Exemptions.

3. Upon a transfer to which this Order applies -

(a) if the use of the dwelling house by the occupier or occupiers up to the date of the transfer is deemed to constitute a benefit by reason of an employment or office in terms of paragraph (b) of sub-article (1) of article 4 of the Income Tax Act, no tax shall be chargeable under that Act on the value of the said benefit;

(b) if the transfer constitutes a benefit by reason of an employment or office in terms of the said paragraph (b) of sub-article (1) of article 4 of the Income Tax Act, no tax shall be chargeable under that Act on the value of the said benefit;

(c) no gain shall be deemed to arise from the said transfer for the purposes of article 5 of the Income Tax Act;

(d) no duty shall be chargeable in terms of article 32 of the Duty on Documents and Transfers Act in excess of Lm2.50 for every Lm100 or part thereof of the deemed transfer value determined in accordance with article 4(a) of this Order.

Exemptions subject to conditions.

4. The exemptions granted by this Order shall be subject to the following conditions:

(a) the deemed transfer value referred to in article 3(d) of this Order shall be the cost at which the partnership had acquired the dwelling house increased by the cost of improvements incurred by the partnership before the 21st November, 2000 as shown in the records which that partnership is required to keep in accordance with article 19 of the Income Tax Management Act disregarding any revaluation that may have been made by the partnership of the value of the said property;

(b) if the actual consideration for the transfer is less than the deemed transfer value determined as aforesaid the shortfall shall not be treated as a loss for any of the purposes of the Income Tax Act;

(c) for the purpose of determining the capital gains in terms of the Income Tax Act arising upon a subsequent transfer of the dwelling house in full or in part by the transferee, the cost of acquisition of the dwelling house shall be deemed to be the deemed transfer value as determined in accordance with paragraph (a) hereof, and notwithstanding the provisions of paragraphs (b) and (c) of sub-article (10) of article 5 of the said Act, no capital loss resulting from, or bad debt incurred in relation to any other transfer shall be set off against any capital gains determined as aforesaid;

(d) when the parties to the transfer wish to avail themselves of the exemptions granted by this order, they shall give in a form supplied by the Commissioner as set out in the Schedule to this order, all the information specified in that form. The declarations in the said form shall be signed on behalf of the partnership by an individual who is duly authorised for that purpose, by the transferee, by a certified public auditor and by a notary public as specified in the said Schedule and the form shall be delivered to the Commissioner of Inland Revenue together with the notice relative to the deed required in terms of article 51 of the Duty on Documents and Transfers Act and the Duty on Documents and Transfer Rules, 1973 within the time limit prescribed for the delivery of that notice:

Provided that in the case of a transfer made before the date of this order, the said form shall be delivered to the Commissioner at the Capital Transfer Division of the Inland Revenue Department, Valletta, by not later than the 31 October 2001;

(e) the parties to the deed shall furnish to the Commissioner such further information and documents as he may at any time reasonably require for ascertaining the eligibility to the exemptions granted by this order;

(f) in the event that any condition set out in this article is not fulfilled, or that any information or declaration given or made for the purposes of this Order results to be incorrect in any material respect, the exemptions shall be forfeited;

(g) this order shall have such retroactive effect as may be necessary to give effect to the exemptions granted herein with respect to any transfer to which this order applies made before the date of this order.

Exemptions may not be availed of only in part.

5. The exemptions granted by this order may not be availed of in part, and when they have been validly availed of all the parties to the transfer shall be deemed to have accepted the conditions set out in article 4 hereof notwithstanding any renunciation or reservation made by any person.

SCHEDULE

Information and Declarations for the purposes of the Tax on Transfers of Dwelling Houses by Commercial Partnerships (Income Tax and Duty on Documents and Transfers) Exemption Order, 2001

Part A
Description of the dwelling house and the transfer value
Information to be supplied and declaration to be made and signed on behalf of the partnership by an individual who is duly authorised for this purpose

1. Address _____
2. Date when acquired by the partnership:

_____

3. Cost at which the property was acquired by the partnership as recorded in the partnership's records:

_____

4. Cost of improvements as recorded in the partnership's records:

_____

5. Deemed transfer value (3 + 4):

_____

6. Value of consideration payable by the transferee for the transfer:

_____

7. Excess (if any) of the deemed transfer value (as in 5) over the consideration (as in 6):

_____

I declare that the above information is correct and that I am authorised by the partnership to sign this declaration.
Signed for and on behalf of the partnership by (name of individual):

_____

Designation:

_____

Address:

_____

Identity document number:

_____

Signature:

_____

Date:

_____

Part B
Declaration by Certified Public Auditor

I declare that the information given in Part A corresponds to the relevant records of _____for the financial years ending _____ .

Signed by (name of Certified Public Auditor)

Address:

Signature:

Official Stamp

Date:

Part C
Description of the interests and voting rights in the partnership Declaration to be made and signed on behalf of the partnership by an individual who is duly authorised for this purpose and by the transferee

Name of partner	Description of interests held	Voting rights held (as a percentage of total voting rights)	Relationship to transferee (if any)

Signed for and on behalf of the partnership by (name of individual):

_____

Signature:

_____

Name of transferee

_____

Address:

_____

Identity document number:

_____

Signature:

_____

Date:

_____

Part D
Declaration relating to the residence

Declaration to be made and signed on behalf of the partnership by an individual who is duly authorised for this purpose and by the transferee

We declare that on 20 November 2000 and up to today _____ occupied the dwelling house in question as his / their sole ordinary residence and that the said occupier/s is / are related to the transferee as follows:

_____

_____ .

Signed for and on behalf of the partnership by (name of individual):

_____

Signature:

_____

Name of transferee

_____

Signature:

_____

Date:

_____

Part E
Declaration by Notary Public

I declare that the declarations in Parts A, C and D have been signed in my presence after that I, Notary, explained to the signatories the purport thereof and of the Tax on Transfers of Dwelling Houses by Commercial Partnerships (Income Tax and Duty on Documents and Transfers) Exemption Order, 2001.

Signed by (name of Notary Public)

_____

Address: _____

Signature:

_____

Official Stamp

Date:

_____