L.N. 312 of 2010

INCOME TAX ACT
(CAP. 123)

Foundations (Income Tax) Regulations, 2010

IN exercise of the powers conferred by articles 27E and 96 of the Income Tax Act, the Minister of Finance, the Economy and Investment has made the following regulations:

1. The title of these regulations is the Foundations (Income Tax) Regulations, 2010. Citation.

2. In these regulations, unless the context otherwise requires - Definitions.

"the Act" means the Income Tax Act;

"foundation" means a foundation created in terms of the Second Schedule of the Civil Code or as recognised thereunder and which has submitted evidence to the Commissioner of its registration or recognition, as the case may be, in accordance with the relevant provisions of the Civil Code; Cap. 16.

"non-profit making" shall have the same meaning as in article 2 of the Voluntary Organisations Act; Cap. 492.

"social purpose" shall have the same meaning as that found in article 2 of the Voluntary Organisations Act;

"trust" means a trust established in accordance with the Trusts and Trustees Act, or a trust which is recognised thereunder. Cap. 331.

3. (1) A foundation, shall, for the purposes of the Income Tax Acts, be treated in the same manner as a company that is ordinarily resident and domiciled in Malta and any rules pertaining to the taxation of income applicable to companies as provided for under the laws of Malta shall equally apply to foundations. Tax shall be payable on the profits of a foundation at the rate specified Foundations taxed as companies.

in article 56(6) of the Act and it shall be payable in the same manner applicable to such companies.

(2) Distributable profits shall be allocated in the same manner applicable to such companies. For the purposes of this regulation, distributable profits of a foundation shall mean the total profits which are available for distribution to the beneficiaries resulting from the income of such foundation from the sources specified in Part II of the Act.

(3) The administrator of a foundation shall be answerable for doing all matters and things required to be done under the Income Tax Acts for the purposes of the determination, assessment and payment of tax in connection with the income of the foundation. Where two or more persons act in the capacity of administrators of the same foundation, they shall be jointly and severally so answerable. In particular, the administrator of a foundation shall keep all records, submit all returns and documents and pay tax to the Commissioner as is required in the case of companies. Where the Income Tax Acts require documents which are to comply with the Companies Act, the administrator shall submit similar documents, certified by a certified public auditor, and which are either provided for under specific provisions under the Laws of Malta for foundations or, in the absence of such provisions, which comply as far as possible, with the Companies Act.

Cap. 386.

(4) Distributions of profits allocated in accordance with the provisions of regulation 3(2) to beneficiaries of a foundation shall be treated as if they were dividends distributed to shareholders of a company and any transfer of a beneficial interest in the foundation by such beneficiaries shall be deemed to be a transfer of a security for all the purposes of the Income Tax Acts.

(5) Notwithstanding the previous sub-regulations of this regulation, in the case of a foundation that is enrolled in terms of the Voluntary Organisations Act, or not being so enrolled is established for the achievement of a social purpose and is non-profit making, the provisions of this regulation shall only apply where such foundation informs the Commissioner in writing that it opts irrevocably to be so treated from a particular year of assessment onwards. Where such foundations do not exercise this option, tax shall be chargeable on the relevant profits at the rate

specified in article 56(1)(d) subject to the provisions of 56(9)(b) of the Act.

Foundations to be taxed similarly to trust.

4. (1) The administrators of a foundation may by notice in writing to the Commissioner irrevocably elect that a foundation shall be taxed under the provisions of the Act applicable to trusts.

(2) When an election as provided in this regulation has been made, the provisions of the Income Tax Acts and any regulations thereunder applicable to trusts, shall be applied to the founder, the foundation and the beneficiaries mutatis mutandis keeping in view that –

(a) reference to the settler of a trust in the Act shall be construed as reference to the founder of a foundation;

(b) references to the patrimony of the trust or the trust fund or property shall be treated as reference to the foundation;

(c) reference to the trustees of the trust shall be treated as references to the administrators of the foundation;

(d) references to the beneficiaries shall be treated to be references to beneficiaries of a foundation, or in case of a purpose foundation to those persons who personally benefit:

Provided that where the Income Tax Acts refer to a duty relative to the trust, it shall be treated as a duty of the administrator or of the foundation as the case may be.

Segregated cells of a foundation.

5. (1) When a foundation is established with segregated cells in terms of article 20 of the Second Schedule of the Civil Code, each cell of the said foundation shall be deemed to be a separate foundation and any words and expressions which are relevant to a foundation in these regulations shall be construed accordingly.

(2) The interpretation of such words and expressions insofar as applicable to a cell shall be made on the basis of the relevant provisions of article 20 of the Second Schedule to the Civil Code.

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Applicable returns.

6. (1) All the returns issued by the Commissioner with reference to trusts shall apply to foundations where an election to be treated as a trust is made, until such time as returns for foundations are prescribed.

(2) When completing and submitting a return, the administrators shall expressly state the fact that such returns are being used for a foundation under an election in terms of these regulations.

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