

L.N. 324 of 2011

**INCOME TAX ACT
(CAP. 123)**

Securitisation Transactions (Deductions) Rules, 2011

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

1. The title of these rules is the Securitisation Transactions (Deductions) Rules, 2011. Citation.

2. Words and expressions used in these rules, shall, in so far as their meanings are not defined by the Income Tax Acts, or unless the context otherwise requires, have the meaning assigned to them in the Securitisation Act and in any rules and regulations made thereunder. Interpretation.
Cap. 484.

3. For the purposes of determining the total income of a securitisation vehicle or for the purpose of ascertaining the income attributable to a trust where such securitisation vehicle is constituted as a trust created by a written instrument, as the case may be, income or gains shall be deemed to arise or to have become realised during the year in which such income or gains fall to be recognised for accounting purposes. The deductions referred to in rule 4 shall be deducted in the year in which they fall to be recognised for accounting purposes. Time when
income of
securitisation
vehicle becomes
taxable.

4. (1) For the purpose of ascertaining the total income of a securitisation vehicle, or for the purpose of ascertaining the income attributable to a trust where such securitisation vehicle is constituted as a trust created by a written instrument, as the case may be, there shall be deducted, in addition to any relevant outgoings and expenses which may be deducted under the provisions of article 14 of the Act, the following outgoings and expenses: Allowable
deductions.
 - (a) sums payable by the securitisation vehicle to the originator or assignor -
 - (i) for the transfer of securitisation assets to the said securitisation vehicle; or
 - (ii) as a result of any risks of the said originator

assumed by the said securitisation vehicle;

(b) premiums, interest or discounts in relation to financial instruments issued, or funds borrowed, by the securitisation vehicle to finance the acquisition of securitisation assets or the assumption of risks; and

(c) any expenditure incurred by the securitisation vehicle in respect of the day to day administration of the securitisation vehicle itself, including expenditure relating to statutory requirements, and of its assets and risks, including the collection of any relevant claims. Where the securitisation vehicle opts to delegate such administration, or part thereof, to another person, the amount of expenditure incurred for the services received from such other person for the performance of the said administration may be deducted.

(2) (a) Where, after taking into account the relevant deductions contemplated in article 14 of the Act and in sub-rule (1)(a), (b) and (c), tax is chargeable on any remaining total income of the securitisation vehicle, a further deduction of an amount equal to the said remaining total income may be claimed.

(b) Such further deduction may be claimed at the option of the securitisation vehicle:

Provided that the Commissioner is satisfied that the relevant originator or assignor, or their assigns or successors in title, has given his irrevocable written consent to the exercise of such option in relation to the relevant contract. For this purpose, the securitisation vehicle needs to provide proof of such written consent giving details of identity of the originator or assignor, including the tax registration number for Maltese income tax purposes where applicable, and the place where the control and management of its business is exercised.

Deduction only to be allowed once.

5. Where it may be considered that a deduction under rule 4 is already provided for under the provisions of article 14 of the Act, for the avoidance of doubt, the provisions of rules 3 and 4 shall not be construed to mean that a relevant outgoing or expense may be deducted more than once.

Amounts deemed to be income in the hands of the originator or assignor.

6. (1) An amount equal to -

(a) such sums payable that are referred to in rule 4(1)(a), and

(b) such further deduction, together with any amount of loss incurred in the same year or brought forward from previous

years under a different contract and allowed as deduction in arriving at the total income before the said further deduction, in case where the option referred to in rule 4(2)(b) is exercised,

shall be deemed to be income in the hands of the relevant originator or assignor, as the case may be, which for the purposes of the Income Tax Acts, shall be characterised as income falling under the provisions of article 4(1)(a) of the Act.

(2) (a) In the case of income referred to in rule 4(1)(a), it shall be deemed that such income has arisen during the year in which any relevant securitisation asset was transferred or the relevant risk was assumed.

(b) In the case where the option referred to in rule 4(2)(b) was exercised, it shall be deemed that the relevant income has arisen during the same year that the deduction was claimed.

(3) The income in the hands of the originator or assignor referred to in this rule shall be considered to arise in Malta except where the control and management of the business of the said originator or assignor is not exercised in Malta.

7. (1) Securitisation vehicles shall account separately for different securitisation contracts such that they may determine the chargeable income for each contract. Accounting issues.

(2) Notwithstanding anything contained in the Income Tax Acts or in rules or regulations made thereunder, where a securitisation vehicle is constituted as a company an amount equivalent to the additional deduction available in terms of rule 4(2)(b) shall be allocated to the final tax account of the securitisation vehicle.

8. A securitisation vehicle shall be deemed not to constitute part of a group of companies for the purposes of articles 16 to 22 of the Act and no entity may benefit from a deduction of losses made by such a vehicle once it does not remain a securitisation vehicle. Restriction of group relief.

9. Where in relation to a transaction, or to a series of transactions, involving at some point a securitisation contract, sums are determined such that the originator or assignor, or any person which is controlled and beneficially owned directly or indirectly to the extent of more than 50% by the same shareholders, is in a position to obtain an undue advantage which has the effect of reducing their liability to tax in a manner which is not reconcilable with the object and purpose of these rules, the Commissioner shall consider any such transaction, or series thereof, to be a profit-making scheme for the purposes of the provisions of article 4(1)(a) of the Act and shall Anti-abuse.

determine the relevant liability to tax in such manner and in such amount as may be necessary so as to nullify the said advantage.

