

L.N. 205 of 2017

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

Fringe Benefits (Amendment) Rules, 2017

IN exercise of the powers conferred by articles 4(1)(b) and 96 of the Income Tax Act, the Minister for Finance has made the following rules:-

1. The title of these rules is the Fringe Benefits (Amendment) Rules, 2017, and these rules shall be read and construed as one with the Fringe Benefits Rules, hereinafter referred to as "the principal rules". Citation.
S.L.123.55

2. Rule 2 of the principal rules shall be amended as follows: Amends rule 2
of the principal
rules.
 - (a) in sub-rule (1) thereof, in the definition "associated company", immediately after the word "means" there shall be added the words "a company"; and

 - (b) in paragraph (b) of sub-rule (2) thereof, immediately after the words "in that company", wherever they occur, there shall be added the words "or an associated company".

3. Immediately after rule 3 of the principal rules there shall be added the following new rule: Adds new rule
to the principal
rules.

"Benefit arising by reason of an employment or office.	3A. Where a benefit is deemed to arise by reason of an employment or office, the income represented by the value of that benefit shall be deemed to arise in the country where the services in terms of the relative contract of employment or office are wholly or principally performed: Provided that any benefit that is deemed to arise by reason of a directorship in a company shall be deemed to arise in the country where that company is managed and controlled."
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4. In rule 8 of the principal rules, the definition "vehicle" shall be amended as follows: Amends rule 8
of the principal
rules.
 - (a) for the words "including a van and any other vehicle" there shall be substituted the words "and any vehicle"; and

(b) paragraph (d) thereof shall be re-numbered as paragraph (e) and immediately after paragraph (c) thereof there shall be added the following new paragraph:

"(d) a van;"

Amends rule 9
of the principal
rules.

5. For sub-rule (3) of rule 9 of the principal rules, there shall be substituted the following:

"(3) The provisions of paragraph (c), but not of the other paragraphs, of sub-rule (2) shall not apply with respect to the use of a vehicle by an employee who is required to use that vehicle wholly in the performance of his duties as a messenger or a driver."

Amends rule 10
of the principal
rules.

6. In rule 10 of the principal rules, the words ",except when it relates to the use of a van," shall be deleted and, in the marginal note thereto, the words "excluding a van" shall be deleted.

Amends rule 14
of the principal
rules.

7. In sub-rule (2) of rule 14 of the principal rules, for the words "shall be 20%" there shall be substituted the words "shall be 0%".

Substitutes rule
16 of the
principal rules.

8. For rule 16 of the principal rules there shall be substituted the following:

"16. The private use of a mechanically propelled vehicle that is constructed or adapted as a means of land transport, and that is excluded from the definition of "vehicle" in terms of paragraph (a), (b), (c), (d) or (e) of the said definition in rule 8, shall be deemed to have no value."

Amends rule 19
of the principal
rules.

9. In paragraph (b) of rule 19, the words "increased by five times the ground rent payable" shall be deleted.

Amends rule 20
of the principal
rules.

10. In sub-rule (1) of rule 20 of the principal rules, for the words "other than a vehicle as defined in Part B hereof" there shall be substituted the words "other than a mechanically propelled vehicle that is constructed or adapted as a means of land transport, and that falls within the definition of "vehicle" in rule 8 or that is excluded from that definition in terms of paragraph (a), (b), (c), (d) or (e) thereof".

Amends rule 23
of the principal
rules.

11. In paragraph (c) of rule 23 of the principal rules, for the words "and the creditor is not a debtor of an associated company" there shall be substituted the following:

"and -

(i) the creditor is not a debtor of an associated company; or

(ii) the creditor is a bank which is a debtor of an associated company but the bank's debt in favour of that associated company is not for a long term loan and is not connected with the financing of the loan to the property owning company;"

12. For paragraph (a) of sub-rule (1) of rule 24 of the principal rules, there shall be substituted the following: Amends rule 24 of the principal rules.

"(a) where the property is owned by the provider of the benefit or by a related person, the said value shall be:

(i) in the case of immovable property, 5% of the higher of the market value and the cost of the property:

Provided that where the property is held under a title of emphyteusis, the said value shall be the higher of:

(A) 5% of the market value; and

(B) the total of:

- 5% of the cost of the property, and

- an amount equivalent to the relative annual ground rent;

(ii) in the case of movable property, 12% of the higher of the market value and the cost of the property;"

13. The proviso to sub-rule (2) of rule 26 of the principal rules shall be amended as follows: Amends rule 26 of the principal rules.

(a) in paragraph (i) thereof, for the words "the central intervention rate of the Central Bank of Malta" there shall be substituted the words "the rate on the main refinancing operations as applied by the Central Bank of Malta"; and

(b) in paragraph (ii) thereof, for the words "8.5% per annum" there shall be substituted the words "6.5% per annum".

14. In the proviso to rule 27 of the principal rules, for the words "the in-house benefit reduction.", there shall be substituted the words "the in-house benefit reduction:" and immediately thereafter there shall be added the following new proviso: Amends rule 27 of the principal rules.

"Provided also that the value of a loan by a company to a shareholder who holds more than 25% of the ordinary share capital and voting rights in that company shall be zero."

Substitutes rule 33 of the principal rules.

15. For rule 33 of the principal rules there shall be substituted the following:

"33. (1) Subject to sub-rules (2), (3) and (4), the value of a benefit referred to in rule 32 is the excess, if any, of the value of the property or service over the consideration paid by the beneficiary.

(2) When the benefit referred to in rule 32 consists in the transfer of a motor vehicle and the beneficiary had, before the transfer, made private use of that motor vehicle as provided in rule 9, the value determined in accordance with sub-rule (1) shall be reduced by the total value of the fringe benefit that was deemed in accordance with Part B to have been provided to that beneficiary as a result of the private use of that motor vehicle: provided that the value so reduced shall not be less than zero.

(3) When a benefit provided by the employer consists in the transfer of in-house property or the provision of an in-house service, the value determined in accordance with sub-rule (1) shall be reduced by the in-house benefit reduction.

(4) When in-house property or an in-house service is provided to an employee on a working day and consumed or availed of by the employee on the employer's business premises the benefit shall have no value."

Amends rule 34 of the principal rules.

16. In sub-rule (2) of rule 34 of the principal rules, for the words "to the deeming provisions of rule 4(a)" there shall be substituted the words "to the provisions of rule 4".

Substitutes rule 35 of the principal rules.

17. For rule 35 of the principal rules there shall be substituted the following:

"Applicability of the Act to transfers of property.

35. (1) The provisions of the Act shall apply without reference to these rules for the purpose of determining any tax chargeable in the hands of the provider of a benefit upon a transfer to which rule 32 applies.

(2) When property is transferred by way of a benefit to which rule 32 applies and the beneficiary subsequently transfers that property, and where the cost of acquisition of that property is relevant in terms of the Act for the purpose of determining the tax chargeable in the hands of the beneficiary upon the said subsequent transfer, the said cost shall be deemed to be an amount equivalent to the consideration actually paid by the beneficiary for the acquisition of the property increased by the value of the said benefit."

- 18.** Rule 36 of the principal rules shall be amended as follows: Amends rule 36 of the principal rules.

(a) sub-rule (2) thereof shall be substituted by the following:

"(2) When shares in a company are transferred to an employee of that company or of an associated company under a share award scheme, the transfer shall be deemed to be a benefit provided by the employer company to that employee by reason of his employment."; and

(b) immediately after sub-rule (2) thereof, as substituted, there shall be added the following:

"(3) A benefit referred to in sub-rule (1) or (2) shall be deemed to be provided on each date that shares are issued or transferred to the beneficiary in terms of the share option scheme or share award scheme in question."

- 19.** For rule 37 of the principal rules there shall be substituted the following: Substitutes rule 37 of the principal rules.

"37. (1) The value of a benefit referred to in rule 36 shall be the excess, if any, of the price which the shares in question would fetch if sold in the open market on the date when the benefit is provided over the price paid or payable by the beneficiary for those shares.

(2) The income represented by the value of the benefit shall constitute chargeable income separate and distinct from any other chargeable income of the beneficiary for the relative year of assessment and shall be subject to tax at the rate of fifteen cents for every euro."

Amends rule 39
of the principal
rules.

20. Sub-rule (2) of rule 39 of the principal rules shall be amended as follows:

(a) in paragraph (c) thereof, immediately after the words "for a business purpose" there shall be added the words ", relocation costs and costs of journeys between work shifts";

(b) for paragraph (j) thereof there shall be substituted the following:

"(j) the cost of providing insurance against expenses for medical treatment or an insurance policy under which a benefit is payable only in the event of the death or injury of the insured while in service under a scheme available generally to employees:

Provided that this paragraph shall also apply where the beneficiary is an officer of a company as long as the said scheme is available generally to the employees of that company;

Provided further that the amount of the cost that is not to be deemed to constitute a benefit provided to any beneficiary by reason of an employment or office in terms of this paragraph shall not exceed three times the cost of providing insurance as aforesaid to any other beneficiary under that scheme";

(c) in paragraph (k) thereof, immediately after the words "telephone set" there shall be added the words ", mobile phone or a facsimile machine"; and

(d) paragraph (s) thereof shall be re-numbered as paragraph (t) and immediately after paragraph (r) thereof there shall be added the following new paragraph:

"(s) the following health related costs:

(i) the cost of a medical examination, test or screening which an employee is required to undergo in order to take a new employment or to take up a new post with the same employer or to gain entry to a superannuation fund;

(ii) the cost of medical care, medicine and other medical treatment provided as a prevention against injury or illness related to an employment as part of a programme available generally to employees exposed to the same work-related health risks;

(iii) the cost of individual or group counselling relating to safe work practices, health, fitness, stress management or drug or alcohol abuse that is given as part of a programme available generally to employees exposed to the same work-related health risks;"

21. Sub-rule (1) of rule 40 of the principal rules shall be amended as follows: Amends rule 40 of the principal rules.

(a) in paragraph (c) thereof, for the words "shall be disregarded." there shall be substituted the words "shall be disregarded;"; and

(b) immediately after paragraph (c) thereof, there shall be added the following new paragraphs:

"(d) "relocation costs" means costs incurred by or reimbursed to an employee in order to settle in a country, other than his country of residence, for the purpose of taking up a new employment or posting that lasts or is expected to last for at least twelve months, or to resettle in his country of residence upon the termination of that employment or posting, including the cost of the journey of the employee and of his spouse and dependent children and the cost for the transportation of furniture and personal effects but excluding accommodation costs;

(e) "costs of journeys between work shifts" means the cost of the journey of an employee to his country of residence immediately upon the end of a work period and the cost of the journey of that employee from his country of residence to the country where he is required to report in order to resume his duties for the next work period; and for this purpose "a work period" means a recurrent period that normally lasts for not more than four weeks, during which the employee is required to report daily for work, and that is followed by a period of rest that is normally at least one third of the work period: provided that the Commissioner may, in any particular case, recognise any other period as a work period for the purpose of this paragraph."

22. In paragraph (a) of rule 41 of the principal rules, for the words "journey by sea" there shall be substituted the words "journey by sea or by air". Amends rule 41 of the principal rules.

