Verzjoni Elettronika

L.N. 419 of 2021

INCOME TAX ACT
(CAP. 123)

Exemption from Tax on Property Transfers (Set-off of Tax Arrears) Rules, 2021

IN EXERCISE of the powers conferred by articles 12(2) and 96 of the Income Tax Act, the Minister for Finance and Employment has made the following rules: -

1. The title of these rules is Exemption from Tax on Property Transfers (Set-off of Tax Arrears) Rules, 2021. Citation.

2. In these rules, unless the context otherwise requires – Interpretation.

"gross tax" means the tax chargeable on a transfer in accordance with article 5A of the Income Tax Act before the exemption allowed under these rules;

"gross transfer value" means the transfer value determined in accordance with article 5A of the Income Tax Act; and when a person, by means of the same deed, makes more than one transfer of property to which these rules apply, it means the total transfer value, determined as aforesaid, of those transfers; Cap. 123.

"net transfer value" means the gross transfer value reduced by the gross tax;

"qualifying payment" means a payment that satisfies the conditions of sub-rule (1) of rule 5 but not exceeding the amount that is to be taken into account for the purpose of these rules in accordance with sub-rules (2) and (3) of that rule;

"relevant tax arrears" means any unpaid amount of:

(a) income tax and tax on capital gains due and payable in terms of articles 4 and 5 of the Income Tax Act for the year of assessment 2020 or any previous year of assessment; Cap. 123.

(b) tax deducted at source or that should have been deducted at source in accordance with article 23 of the Income Tax Management Act that was due to be remitted to the Commissioner on or before 31 January 2021; Cap. 372.

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(c) social security contributions due and payable by an employer in respect of employed persons in accordance with article 9 of the Social Security Act that was due to be remitted to the Commissioner on or before 31 January 2021;

Cap. 318.

(d) value added tax due and payable in terms of article 21(1) of the Value Added Tax Act in respect of any tax period, as defined in that Act, that ended on or before the 31 December 2020 and value added tax due and payable in terms of article 21(2) or (3) of that Act that became chargeable on or before the said date;

Cap. 406.

(e) interest, additional tax and administrative penalties due and payable in terms of the provisions of the Income Tax Acts, the Social Security Act and the Value Added Tax Act in respect of any arrears mentioned in the preceding paragraphs.

Cap. 318.
Cap. 406.

Applicability.
Cap. 123.

3. These rules apply to any transfer on which tax is chargeable in terms of article 5A of the Income Tax Act that is made by means of a public deed not later than 31 December 2022 by a person who had acquired that property on or before the 31 March 2021 and who owes relevant tax arrears.

The relevant tax arrears of the person who makes a transfer.

4. (1) The relevant tax arrears of a person who makes a transfer to which these rules apply are those relevant tax arrears that are shown in the records of the Commissioner for the purposes of the law in terms of which they became due as a liability incurred directly by that person and outstanding as on the date on which a qualifying payment is made and shall not include any amount of tax arrears of another person even though the first-mentioned person may be liable for the payment of that amount by reason of his being a director, manager or other principal officer, or a shareholder, partner, member, agent or a representative in whatever capacity of that other person.

(2) Notwithstanding the provisions of sub-rule (1), relevant tax arrears incurred by a deceased person shall be treated as relevant tax arrears of the heirs in proportion to their respective share of the inheritance.

Eligibility to tax exemption.

5. (1) Subject to the other provisions of these rules, a person who makes a transfer to which these rules apply shall be entitled to an exemption from tax in accordance with these rules if a payment is made against his relevant tax arrears when all the following conditions are satisfied:

(a) that person has submitted all returns that he was required to submit in terms of article 10 of the Income Tax Management Act, rules 20, 21 and 22 of the Final Settlement

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Cap. 406.

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System (FSS) Rules and articles 27 and 30 of the Value Added Tax Act;

(b) the gross tax and the duty on documents and transfers chargeable in respect of that transfer have been remitted to the Commissioner as required by the Income Tax Act and the Duty on Documents and Transfers Act; Cap. 123. Cap. 364.

(c) that person gives notice to the Commissioner of his claim for an exemption under these rules, which notice:

(i) shall be given to the Commissioner by not later than three months after the date of that transfer;

(ii) shall be given on such form and in such manner as the Commissioner may approve and contain all the information and particulars required by that form;

(d) that person provides such further information and produces such documents and evidence as the Commissioner may consider necessary for the proper application of these rules;

(e) the payment against relevant tax arrears is made on or after the date of that transfer and, when the Commissioner issues a request for payment for the purpose of these rules, not later than the time allowed in that request:

Provided that the time for payment that may be allowed in such a request shall not be less than thirty days.

(2) The payment that shall be taken into account for the purpose of these rules shall not exceed the net transfer value.

(3) When the gross transfer value exceeds the relevant tax arrears of the transferor, the payment that shall be taken into account for the purpose of these rules shall not exceed that part of the net transfer value which, when added to the amount of the exemption allowed under these rules, is equivalent to the relevant tax arrears, which part shall be calculated as follows:

net transfer value x relevant tax arrears/gross transfer value.

Calculation of tax exemption.

6. The exemption from income tax allowed under these rules shall be an exemption from the gross tax, or part thereof, in an amount corresponding to the qualifying payment and shall be calculated as follows:

gross tax x qualifying payment/net transfer value.

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Set off against arrears.

7. (1) The total of a qualifying payment and of the amount of the respective exemption allowed under these rules shall constitute a payment by the person who makes the transfer in question which shall be set off against the relevant tax arrears of that person.

(2) When the amount to be set off in accordance with sub-rule (1) is less than the relevant tax arrears, it shall be set off against such categories of the relevant tax arrears as the Commissioner may, in his discretion, decide, and the set-off shall be without prejudice to the powers of the Commissioner to take action in accordance with the relevant provisions of the Income Tax Acts, the Social Security Act and the Value Added Tax Act for the collection of the balance of the relevant tax arrears still outstanding after the said set-off.

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(3) An exemption allowed under these rules shall not give rise to any refund, credit or other right except for the set-off mentioned in this rule.

(4) Notwithstanding anything to the contrary contained in the Income Tax Acts, the Social Security Act and the Value Added Tax Act , a payment by means of a set-off in accordance with this rule shall extinguish any dispute that may be outstanding in respect of the amount of the arrears that is so paid, and no objection or other challenge shall be admissible in respect of that amount after the set-off has been made.

Cap. 318.
Cap. 406.

Tax avoidance.
Cap. 123.
S.L. 123.187.

8. These rules are without prejudice to the provisions of article 51 of the Income Tax Act and of regulation 6 of the European Union Anti-Tax Avoidance Directives Implementation Regulations.

Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — ***Published by the Department of Information (doi.gov.mt) — Valletta***
Mitbugħ fl-Istamperija tal-Gvern fuq karta riċiklata — ***Printed at the Government Printing Press on recycled paper***

Prezz/*Price*
€0.36