B 3846

L.N. 461 of 2021

INCOME TAX ACT
(CAP. 123)

DUTY ON DOCUMENTS AND TRANSFERS ACT
(CAP. 364)

Relief from Income Tax and from Duty on Documents and Transfers on Certain Property Transfers Rules, 2021

IN EXERCISE of the powers conferred by articles 12(2) and 96 of the Income Tax Act and article 22A of the Duty on Documents and Transfers Act, the Minister for Finance and Employment has made the following rules:-

Citation.

1. The title of these rules is the Relief from Income Tax and from Duty on Documents and Transfers on Certain Property Transfers, Rules, 2021.

Interpretation.

2. In these rules, unless the context otherwise requires:

"competent authority" means a board or other entity designated or appointed by the Minister for the purpose of these rules;

Cap. 364.

"duty on documents and transfers" means duty chargeable on sales and other transfers in terms article 32 of the Duty on Documents and Transfers Act;

Cap. 123.

"income tax" means tax chargeable on property transfers in terms of article 5A of the Income Tax Act;

"property" means immovable property situated in Malta;

"transfer value" means the market value at the time of the transfer or, when property is transferred under an onerous transfer for a consideration that is higher than the market value, the consideration for that transfer.

Relief from tax and from duty on documents and transfers.

3. (1) Subject to the other provisions of these rules, no income tax and no duty on documents and transfers shall be payable on the first seven hundred and fifty thousand euro (€750,000) of the transfer value of any transfer to which rule 4 or rule 5 applies that is made on or after 12th October 2021 but not later than 31st December 2024:

Provided that relief from duty on documents and transfers shall be allowed in terms of this rule only where the transfer is made to a person who does not require a permit by the Minister for the purposes of the Immovable Property (Acquisition by Non-Residents) Act or who would not have required such permit had the property acquired not been situated in a special designated area. Cap. 246.

(2) The relief mentioned in sub-rule (1) shall be allowed only as long as the notice of the transfer referred to in article 51 of the Duty on Documents and Transfers Act is delivered to the Commissioner by not later than 31st January 2025. Cap. 364.

(3) When the transfer value of a transfer referred to in sub-rule (1) exceeds seven hundred and fifty thousand euro (€750,000), the income tax and the duty on documents and transfers on the excess shall be chargeable at the rates that apply in terms of the relevant provisions of the Income Tax Act and the Duty on Documents and Transfers Act, and for the purpose of determining the said rates that portion of the transfer value that is relieved from tax on income and from duty on documents and transfers in terms of these rules shall be deemed to constitute the first part of the transfer value. Cap. 123. Cap. 364.

4. (1) This rule applies to any transfer of property that satisfies all the following conditions: Vacant property.

(a) the property transferred is a building and its construction was completed at least twenty (20) years before the date of the transfer;

(b) the property transferred is vacant on the date of the transfer and has been vacant for a period of at least seven (7) continuous years immediately preceding that date;

(c) the transferor declares to the notary who publishes the deed of the transfer that the conditions mentioned in paragraphs (a) and (b) are both satisfied and that declaration is confirmed by an architect's report relating the date of the completion of the construction of the property and a report by ARMS Ltd (a limited liability company with registration number C46054) relating to the period for which the property has been vacant and/ or such further or alternative evidence as the Commissioner may determine by means of guidelines published for the purposes of article 96 of the Income Tax Act and article 22A of the Duty on Documents and Transfers Act and the notary makes note in the deed of the said declaration and documents; Cap. 123. Cap. 364.

(d) the reports and evidence mentioned in sub-paragraph (c) are delivered to the Commissioner on such form and in such manner as he may approve together with the notice of the transfer referred to in article 51 of the Duty on Documents and Transfers Act. Cap. 364.

Property situated within an urban conservation area.

5. (1) This rule applies to any transfer of property that satisfies all the following conditions:

(a) the property transferred is situated, at the time of the transfer, within an urban conservation area;

(b) the parties to the deed of the transfer or any of them declare that the condition mentioned in paragraph (a) is satisfied and that declaration is confirmed by a certificate issued by the Planning Authority established under the Development Planning Act and, or such further or alternative evidence as the Commissioner may determine by means of guidelines published for the purposes of article 96 of the Income Tax Act and article 22A of the Duty on Documents and Transfers Act and the notary makes a note in the deed of the said declaration and the documents; Cap. 552. Cap. 123. Cap. 364.

(c) the documents and evidence mentioned in sub-paragraph (b) are delivered to the Commissioner on such form and in such manner as the Commissioner may approve together with the notice of the transfer referred to in article 51 of the Duty on Documents and Transfers Act. Cap. 364.

Forfeiture of the relief from income tax and from duty on documents and transfers.

6. (1) The relief from income tax and from duty on documents and transfers mentioned in rule 3 on a transfer to which rule 4 or rule 5 applies shall be subject to the condition that the property transferred is not, at any date after the transfer:

(a) demolished; or

(b) subjected to structural alterations or additions as a result of which it is divided into more transferable units than the number of transferable units that comprised the property at the time of the transfer.

(2) If the condition mentioned in sub-rule (1) is in any way breached, the relief from income tax and from duty on documents and transfers granted by these rules on the said transfer shall be forfeited and the total of the amount of such income tax and duty that was so relieved shall become payable to the Commissioner forthwith.

(3) The person who acquired the property at the time that the

relief from income tax and from duty on documents and transfers was allowed and, if different, the owner at the time that the condition mentioned in this rule is in any way breached shall be jointly and severally liable for the payment of the amount mentioned in sub-rule (2).

Exemption from duty on documents and transfers.

7. (1) Subject to the other provisions of these rules, no duty on documents and transfers shall be payable the first seven hundred and fifty thousand euro (€750,000) of the transfer value of any transfer to which rule 8 applies that is made on or after 12th October 2021 but not later than 31st December 2024.

(2) The relief mentioned in sub-rule (1) shall be allowed only as long as the notice of the transfer referred to in article 51 of the Duty on Documents and Transfers Act is delivered to the Commissioner by not later than 31st January 2025.

(3) When the transfer value of a transfer referred to in sub-rule (1) exceeds seven hundred and fifty thousand euro (€750,000), the duty on documents and transfers on the excess shall be chargeable at the rates that apply in terms of the relevant provisions of the Duty on Documents and Transfers Act, and for the purpose of determining the said rates that portion of the transfer value that is relieved from duty on documents and transfers in terms of these rules shall be deemed to constitute the first part of the transfer value.

Cap. 364.

Property developed in conformity with approved criteria.

8. This rule applies to any transfer that satisfies all the following conditions:

Cap. 246.

(a) it is a transfer to a person who does not require a permit by the Minister for the purposes of the Immovable Property (Acquisition by Non-Residents) Act or who would not have required such permit had the property acquired not been situated in a special designated area;

(b) it is a transfer of property that is developed after the date of the transfer and the development is approved as provided in rule 9;

(c) evidence of the approval referred to in paragraph (b) is produced to the Commissioner by not later than three (3) months from the date on which it is issued, together with such information and further evidence as the Commissioner may require:

Provided that duty on documents and transfers on a transfer to which this rule applies shall be payable at the time of the transfer

without reference to these rules and the relief from the said duty allowable under these rules on that transfer shall be given effect to, subject to the other provisions of these rules, by means of a refund of the amount so relieved once the conditions in this rule have been satisfied.

Approval of the development.

9. (1) Approval of the development of property for the purpose of rule 8 shall be sought by the developer from the competent authority.

(2) The competent authority shall grant its approval when it is satisfied that the application has been made and the development has been completed in conformity with such guidelines as it may publish and as it may update from time to time.

(3) Subject to the terms of reference of the competent authority, guidelines published by it for the purpose of these rules may include guidelines on:

(a) the procedure relating to the application, including the information and documents to be submitted;

(b) conditions on the architectural design and other features that the development must conform with;

(c) other conditions that are considered necessary for the proper implementation of the measure announced in this respect by the Minister in the speech on the budget for 2022.

Application for refund.

10. An application for a refund of the duty on documents and transfers that was paid on a transfer to which rule 8 applies shall be made by the person who paid the said duty in such manner and on such form as the Commissioner may approve.

Forfeiture of the relief from duty and payment back of the refund.

11. (1) The relief from duty on documents and transfers on a transfer to which rule 8 applies shall be subject to the condition that, unless otherwise expressly allowed by the competent authority, the developed property is not, at any date after the approval of the development:

(a) demolished; or

(b) subjected to structural alterations or additions that result in material changes to the architectural design approved by the competent authority; or

(c) divided into more transferable units than the number of transferable units that comprised the property at the time that

the approval of the competent authority was granted.

(2) If the condition mentioned in sub-rule (1) is in any way breached, or if there is a breach of any condition imposed by the competent authority for the approval of the development, the relief from duty on documents and transfers on the said transfer shall be forfeited and the amount that was refunded in accordance with rule 8 shall be paid back to the Commissioner forthwith.

(3) The person who was the owner of the property at the time that the approval of the development was granted and, if different, the owner at the time when the relief from duty on documents and transfers is relieved as provided in this rule shall be jointly and severally liable for the payment of the amount mentioned in sub-rule (2).

Transfers to which article 32C of the Duty on Documents and Transfers Act applies. Cap. 364.

12. Notwithstanding the other provisions of these rules, when a transfer to which rule 4 or rule 5 or rule 8 applies is also a transfer to which article 32C of the Duty on Documents and Transfers Act applies, the relief from duty on documents and transfers shall not be available under these rules in conjunction with the relief available under the said article 32C but shall be available only as provided in these rules or only as provided in the said article 32C depending on the election made by the transferee by means of a declaration to the notary who publishes the deed of the transfer and recorded in that deed.

Transfer mentioned in article 32(4)(a) of the Duty on Documents and Transfers Act. S.L. 364.12.

13. (1) When a person acquires property under a transfer to which one of these rules applies and that acquisition is also an acquisition that qualifies for relief of duty on documents and transfers as provided in article 3 of the Exemption of Duty in Terms of article 23 Order, he shall submit legal evidence that no other property had been acquired by him *inter vivos* before and that evidence shall be submitted to the Commissioner together with the form or other means provided by the Commissioner for the purposes of article 51 of the Duty on Documents and Transfers Act by not later than 31 January 2025.

(2) A person who fails to comply with the provisions of sub-rule (1) shall not forfeit, solely by reason of that failure, the benefit under these rules, but that failure may be considered as a breach of a condition for the grant or other benefit that may be given under any law, rules or scheme to persons who make an acquisition mentioned in sub-rule (1).

(3) This rule is without prejudice to all the terms and conditions of any law, rules or scheme mentioned in sub-rule (2).

Verzjoni Elettronika

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