B 2658

L.N. 356 of 2022

INCOME TAX ACT
(CAP. 123)
Seed Investment Scheme (Income Tax) Rules, 2022

IN EXERCISE of the powers conferred by articles 14(2)(b) and 96 of the Income Tax Act, the Minister responsible for Finance has made the following rules:-

Citation, scope and commencement.

1. (1) The title of these rules is the Seed Investment Scheme (Income Tax) Rules, 2022.

(2) The scope of these rules is to grant tax relief to natural persons resident in or operating in Malta investing in start-up businesses, as further regulated herein.

(3) These rules shall be deemed to have come into force on the 1st January, 2022 in respect of investments made as from basis year 2022 and thereafter, and shall have effect until the 31st December, 2023 or upon such later date as may be determined by the Minister responsible for finance by order published in the Gazette.

Interpretation.

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

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"Act" means the Income Tax Act;

"Commissioner" means the Commissioner for Revenue; "competent entity" means the Malta Investment Management Company Limited;

"connected to the qualifying company" means being:

(a) the investor's spouse, descendants and ascendants in the direct line and their relative spouses, his brothers or sisters, and their descendants;

(b) a partner in a commercial or civil partnership of the qualifying investor;

(c) a shareholder of the qualifying company in which it invests, including business angels and financial institutions, irrespective of their ownership;

(d) an investor, or any of the persons mentioned in paragraph (a), who is an employee of the qualifying

company;

(e) an investor who, prior to the qualifying investment, already holds shares, whether directly or indirectly, in the qualifying company;

(f) an investor who is, upon winding up of the qualifying company, entitled to any of its assets, where such right existed in favour of the said investor prior to the company being granted the status of qualifying company in terms of these rules;

(g) an investor who has advanced to the qualifying company, funds by way of loan the terms of which establish the right of conversion into shares or other similar equity rights in the qualifying company;

"equity shares" shall have the same meaning as assigned to it in the Act sohowever that any such shares shall in all cases not be redeemable;

"excluded activities" means any one of the following activities:

(a) dealing in immovable property, shares, securities and, or other financial instruments;

(b) dealing in goods other than in the normal course of business;

(c) carrying on banking, insurance or any other activity covered by the Investment Services Act, the Banking Act, and the Financial Institutions Act; Cap. 370. Cap. 371. Cap. 376.

(d) providing legal, accounting or other professional services;

(e) activities relating to the development of immovable property;

(f) receiving royalties or licence fees;

(g) operating or managing hotels, hostels, guest houses or residential care homes;

(h) carrying on activities in connection with the generation of electricity and other energy sources;

(i) the holding of shares, whether directly or indirectly, in any company which carries out any of the activities listed in any one or more of paragraphs (a) to (h);

"first commercial sale" shall have the same meaning as is assigned to it in the Regulation, as amended and as may be amended from time to time;

"investment" means the subscription to a fresh issue of fully paid up, non-redeemable equity shares in a qualifying company by a qualifying investor and the term "invest" shall be construed accordingly;

"natural person" means a person, other than a legal entity, who is not an undertaking for the purposes of Article 107(1) of the Treaty on the Functioning of the European Union;

"qualifying activities" means any activity the income derived from which is chargeable under the provisions of article 4(1)(a) of the Act, other than the carrying out of any one of the excluded activities;

"qualifying company" means an SME that satisfies the following cumulative conditions:

(a) is incorporated in Malta or controlled and managed from Malta or has a place of business in Malta;

(b) has been in existence and engaged in carrying out qualifying activities for a period not exceeding three (3) years following its first commercial sale;

(c) is not listed on any recognised stock exchange;

(d) has a maximum of ten (10) employees;

(e) has gross assets of not more than two hundred and fifty thousand euro (€250,000) immediately preceding the issue of equity shares to the qualifying investor,

and that has been duly issued with the relative compliance certificate by the competent entity in terms of these rules:

Provided that undertakings in difficulty, undertakings which are subject to an outstanding recovery order, other undertakings which are expressly excluded from receiving such aid in terms of the Regulation, as well as undertakings which, directly or indirectly, hold shares in any

company which carries out any excluded activities, do not fall within the scope of this definition;

"qualifying investor" means any natural person who is resident in Malta or who falls within the scope of sub-paragraphs (i) and (ii) to article 56(1)(c) of the Act to the extent that he bears the full risk in respect of his investment, and who has been duly issued with the relative compliance certificate by the competent entity in relation to an investment in a qualifying company in terms of these rules:

Provided that undertakings in difficulty, undertakings which are subject to an outstanding recovery order as well as other undertakings expressly excluded from receiving such aid in terms of the Regulation are excluded from this definition;

"Regulation" means Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty as amended and as may be amended from time to time;

"small and, or medium sized enterprise/s" and its abbreviation "SME" shall have the same meaning as is assigned to it in Annex I of the Regulation, as amended and as may be amended from time to time;

"undertakings in difficulty" shall have the same meaning as is assigned to it in the Regulation, as amended and as may be amended from time to time.

Application and eligibility.

3. (1) These rules shall apply to qualifying investors who subscribe to fully paid up equity shares at par in a qualifying company on their own behalf:

Provided that this investment shall leverage other investment in the qualifying company involving the sharing of risks and rewards in proportion to the investment.

(2) Any company wishing to obtain the status of a "qualifying company" shall submit an application to the competent entity for a formal determination and for issue of the relative compliance certificate in terms of these rules, which application shall be made on such form or in such manner as the competent entity may require and shall contain the information and documents therein requested:

Provided that investments made in a qualifying company

and qualifying in terms of these rules shall, in aggregate, not exceed seven hundred and fifty thousand euro (€750,000) per qualifying company.

(3) Any natural person wishing to obtain the status of a "qualifying investor" in relation to an investment in a qualifying company shall lodge an application to the competent entity for a formal determination and for issue of the relative compliance certificate in terms of these rules, which application shall be made on such form or in such manner as the competent entity may require and shall contain the information and documents therein requested:

Provided that in order to qualify as being eligible for benefits under these rules, and subject to the satisfaction of the competent entity in this respect, a qualifying investor shall:

(a) continue to hold the investment in the qualifying company for a period of not less than three (3) years subsequent to the subscription by the qualifying investor to such equity shares;

(b) not be connected to the qualifying company prior to the subscription to the equity shares.

(4) A qualifying investor shall invest in the qualifying company within a period of two (2) years from when the qualifying company is first issued with a compliance certificate for the status of a 'qualifying company' by the competent entity. Any subscription of shares made in a qualifying company subsequent to this date shall not entitle the investor for benefits in terms of these rules:

Provided that nothing in these rules shall prohibit an investment in a qualifying company from being made in instalments over a period of more than one (1) year, as long as the commitment to invest, subject to the achievement of defined targets or criteria, is made within the two (2) year period referred to above. In such instance, the qualifying investor shall avail of the tax benefits under these rules as the investment, or part thereof, is made.

Tax credit.

4. (1) Any qualifying investor to whom rule 3 applies shall benefit from a tax credit equivalent to a sum amounting to thirty-five per cent (35%) of the aggregate value of the investments made by such investor in one or more qualifying companies, so however that the total tax credit applicable to any such investor shall not exceed two hundred and fifty thousand euro (€250,000) per annum. Such tax credit shall be set off against the tax due by the qualifying investor in respect of any income or gains brought to charge to tax in the year of

assessment immediately following the basis year during which the investment is made.

(2) Any part of the tax credit that is not absorbed in the year of assessment referred to in sub-rule (1) may be carried forward by the qualifying investor and set off against tax due for any subsequent year of assessment until it is fully absorbed.

(3) Without prejudice to the provisions of article 48 of the Income Tax Management Act, any tax credit available in terms of these Rules shall not give rise to a right for any tax refund. Cap. 372.

5. Any loss incurred in any year of assessment by the qualifying investor from the disposal of an investment made by him in a qualifying company or from the liquidation of such qualifying company shall not be allowed as a deduction in respect of income or gains chargeable under articles 4 and, or 5 of the Act. Losses.

6. (1) Where the investment in a qualifying company is disposed of within three (3) years from the date of subscription to the equity shares by the qualifying investor, and where the qualifying investor qualified for benefits in terms of these rules relative to such investment, the tax due in respect of the income derived from such disposal shall be calculated on the basis of the higher of the market value of such investment and the consideration received by the qualifying investor and shall be charged to tax at the applicable rates as set out in article 56 of the Act. For the avoidance of doubt, the amount on which tax is chargeable in terms of this sub-rule shall not be reduced in any manner by the cost of acquisition of the investment, nor by any deduction or credit whatsoever. Capital gains.

(2) Where the investment in a qualifying company is disposed of after the lapse of three (3) years from the date of subscription to the equity shares by the qualifying investor, any gains or profits derived from such disposal shall be exempt from any tax otherwise due in terms of the Act.

7. Where the competent entity or the Commissioner is in receipt of information that, had it been available during the application process lodged, would have resulted in the status of a qualifying company being refused or alternatively in the status of a qualifying investor being refused, then all amounts invested by qualifying investors in the said qualifying company or by that particular qualifying investor, as the case may be, and which would have benefited from a tax credit as outlined in rule 3 hereof shall be brought to charge under articles 4 and 5 of the Act, together with interest at the rate of one per cent (1%) for every calendar month of the amount availed of as a tax credit by the qualifying investor. Claw back of tax credit.

Anti-abuse.

8. (1) If any person obtains benefits under these rules where that person was not so entitled, or so benefits in a manner which the Commissioner deems to be contrary to the purpose of these rules, the qualification status granted in terms of these rules may be withdrawn.

Cap. 372.

(2) The Commissioner may issue an assessment in terms of article 31 of the Income Tax Management Act in such manner and in such amount as may be necessary in the circumstances of the case, to nullify or modify the benefits claimed by such person and the consequent advantage obtained thereby.

Applicability.

9. (1) Any application for a formal determination, or otherwise for any benefit, in terms of these rules shall be made on such form and in such manner as the competent entity, after due consultation with the Commissioner, may require and shall contain the information and documentation therein requested.

(2) These rules shall cease to apply and have effect upon the application of these rules to five million euro (€5,000,000) of investments in qualifying companies, or to such other amount of investments in qualifying companies as may be established by the Minister responsible for finance by order published in the Gazette.

(3) These rules shall apply for qualifying investments made during an initial period of up to two (2) calendar years, so however that the Minister responsible for finance may extend the application thereof for such period or periods as he may deem fit by order published in the Gazette.

Records to be kept.

10. Records shall be maintained by the competent entity for a period of ten (10) years from the date on which the last benefit was granted in terms of these rules.

Repeal.
S.L. 123.193.

11. The Seed Investment Scheme (Income Tax) Rules are hereby repealed.

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