

Guidance Note on the Recovery Measure regarding Income Tax and Duty on Documents and Transfers

These guidelines are issued under Article 96(2) of the Income Tax Act ([Cap. 123](#)) and Article 22A (2) of the Duty on Documents and Transfers Act ([Cap. 364](#)). The purpose of these guidelines is to provide an explanation of the recovery measure announced by the Prime Minister and Minister for Finance and Financial Services on the 8th June 2020 relating to reduced rates of income tax and duty on documents and transfers on certain property transfers. This measure has been implemented by Legal Notices [240 of 2020](#) and [241 of 2020](#), which are retroactive with effect from the 9th June 2020.

The measure applies to transfers *inter vivos* of immovable property or any real right over such property made on or after the 9th June 2020 but before the 1st April 2021. A transfer will only qualify for the reduced rates if the notice of the final deed in relation to the transfer is given to the Commissioner for Revenue by the 30th April 2021.

Income Tax

Where a transfer that qualifies for reduced rates under this measure is subject to tax in terms of article 5A of the Income Tax Act at a rate of eight percent (8%) or ten percent (10%), the tax on the first four hundred thousand euro (€400,000) of the transfer value is reduced to five percent (5%).

In the case of a transfer of an undivided share of property, the benefit applies on a *pro rata* basis according to the share of the property being transferred.

Duty on Documents and Transfers

In the case of a transfer that qualifies for reduced rates under this measure that is subject to duty in terms of the Duty on Documents and Transfers Act, the duty otherwise chargeable on the first four hundred thousand euro (€400,000) of the amount or value of the consideration for the transfer of the property or the value of the property, whichever is the higher, shall be chargeable at the rate of one euro and fifty cents (€1.50) for every one hundred euro (€100.00) or part thereof.

This measure does not apply to persons who require a permit for the purposes of the Immovable Property (Acquisition by Non-Residents) Act ([Cap. 246](#)). Also excluded from this measure are those persons who acquire property in a special designated area and would have required a permit under Cap. 246 had the property acquired not been situated in a special designated area.

This reduced rate of duty cannot be applied in conjunction with the exemption under Article 32C of the Duty on Documents and Transfers Act on the same transfer.

In the case of an acquisition of an undivided share of property, the benefit would apply on a *pro rata* basis according to the share of the property being acquired.

Anti-avoidance provisions

Where the Commissioner is of the opinion that two or more transfers form part of a structured arrangement, he may order by a notice served on the transferor and/or transferee that this exemption shall not apply to those transfers. A person served with such notice shall have the same rights of objection and appeal in accordance with the Income Tax Management Act ([Cap. 372](#)) and the Duty on Documents and Transfers Act as if that notice were an assessment.

"Structured arrangement" means two or more transfers/acquisitions of portions of the same property made by the same person within a period of six months which are executed by two or more deeds, rather than by one single deed, solely or mainly for the purpose of inflating the benefit of the exemption.

"Portions of the same property" includes:

- (i) adjacent parcels of land;
- (ii) portions of developed property or of property under construction that are not identifiable as separate units;
- (iii) the airspace and the property beneath it;
- (iv) portions of the airspace overlying the same property.

Transfers/acquisitions made by bodies of persons that are directly or indirectly controlled and beneficially owned as to more than fifty per cent (50%) by the same persons shall be deemed to be transfers/acquisitions made by the same person.

Last updated: 1st September 2020