

## **Guidelines on the Exemption from Duty on Donations of Marketable Securities and Immovable Property used for Business**

These guidelines are issued under 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 *Duty on Donations of Marketable Securities and Immovable Property Used for Business (Exemption) Order* (SL 364.15).

Duty is chargeable at a reduced rate of €1.50 on every €100.00 or part thereof of the real value of marketable securities/business property transferred by donation in the following cases:

- a) Where an individual owns marketable securities issued by a company and transfers such marketable securities by donation to persons referred to in Article 5(2)(e)(i)<sup>1</sup> of the Income Tax Act<sup>2</sup>.
- b) Where immovable property which is a commercial tenement as defined in Article 1525 of the Civil Code (hereinafter referred to as “business property”) that has been used in a family business as defined in the Family Business Act<sup>3</sup> for at least 3 years preceding the transfer is transferred by donation by an individual to persons referred to in Article 5(2)(e)(i) of the Income Tax Act.

### **General Terms and Conditions to qualify for the benefit:**

1. The donation is made on or after the 1<sup>st</sup> April 2017 but prior to the 1<sup>st</sup> January 2023.
2. The donation is made by public deed.
3. Notice of the transfer in terms of the DDTA and Duty on Documents and Transfers Rules is submitted to the Commissioner for Revenue on or before the 31<sup>st</sup> December 2022.
4. In the case of a donation of business property, the individual transferring the business property is to provide to the notary who receives the deed a report prepared by a certified public accountant holding a practicing certificate in auditing giving assurance that the business property being transferred has been used in a family business as defined in the Family Business Act for a period of at least 3 years preceding the transfer.

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<sup>1</sup> Spouse, descendants and ascendants in the direct line and their relative spouses, or in the absence of descendants to brothers or sisters and their descendants.

<sup>2</sup> Chapter 123 of the Laws of Malta: <https://legislation.mt/eli/cap/123/eng/pdf>.

<sup>3</sup> Chapter 565 of the Laws of Malta: <https://legislation.mt/eli/cap/565/eng/pdf>.

When such reduced rate is applied on the donation of marketable securities or business property, no other exemption or relief from duty shall apply to the said transfer.

The relief granted under this Order will be forfeited if the individual to whom the donation was made transfers *inter vivos* the marketable securities or business property within a period of 3 years immediately following the date of donation.

In the case of a business property, the relief will also be forfeited if the business property is not used within a business carried on by the said individual, for a period of 3 years immediately following the date of the donation.

In the event that the relief from duty is forfeited, the excess, if any, of the amount of the duty so chargeable over the amount of duty that was paid on the deed shall become payable to the Commissioner by the person to whom the transfer was made within a period of 30 days after the date on which the event resulting in the forfeiture of relief takes place. Where this duty is payable in respect of business property or part thereof that had previously been transferred by donation to the particular individual/s, and the Commissioner issues a certificate attesting that the said business property that has been transferred *inter vivos* by the said individual/s, is replaced within 1 year by an immovable property (replacement property) used solely for a similar purpose in the family business as defined in the Family Business Act, in assessing the duty chargeable in respect of the replacement property, duty payable on the property transferred shall be allowed as a deduction against the duty chargeable on the acquisition of the replacement property. This deduction should not exceed the amount of duty otherwise chargeable on the acquisition of the replacement property.

Link to SL 364.15: <https://legislation.mt/eli/sl/364.15/eng/pdf>  
<https://legislation.mt/eli/sl/364.15/mlt/pdf>

*Last updated: September 2022*