



Recent legislation

The purpose of this memo is to give a brief overview of recent legislation issued under the Income Tax Acts.

LN247/2022	Tax Credit (Malta International Airport plc) (COVID-19 Damage Compensation) Rules, 2022
LN 284/2022	Transfer Pricing Rules, 2022
LN 311/2022	Exemption from Tax on Property Transfers (Set-off of Tax Arrears) (Amendment) Rules, 2022
LN 356/2022	Seed Investment Scheme (Income Tax) Rules, 2022
LN 4/2023	Deduction (Income from Employment) (Amendment) Rules, 2023
LN 8/2023	Cooperation with Other Jurisdictions on Tax Matters (Amendment) Regulations, 2023
LN 9/2023	Exemption from Tax on Property Transfers (Set-off of Tax Arrears) (Amendment) Rules, 2023



Tax Credit (Malta International Airport plc) (COVID-19 Damage Compensation) Rules, 2022

To compensate MIA for the losses suffered due to the Covid -19 pandemic, through this Legal Notice, which follows an agreement with the European Commission, the MIA will be receiving €12,000,000 Government aid in the form of a tax credit. The tax credit shall not exceed the tax on its chargeable income for that year after taking into account any other tax credit, tax exemption and any other form of tax relief that may be allowed to the company for that year.

Any balance of the tax credit that is not availed of in the year of assessment 2023 shall be carried forward and made available as a tax credit for subsequent years of assessment, until it is fully availed of.

Transfer Pricing Rules, 2022

By means of this legal notice, Transfer Pricing Rules were published which will be effective from 1st January 2024.

In ascertaining the chargeable income of a company, if any amount is incurred or derived under any cross-border arrangement (including notional dealings) which differs from the arm's length amount, then it shall be deemed that the arm's length amount was incurred or derived. The rules stipulate that the arm's length amount is the amount that independent parties would have agreed to in comparable circumstances.

The Rules set out that the following instances constitute a cross-border arrangement:

- An arrangement between a Maltese-resident company and a non-Maltese-resident party;
- An arrangement between a Maltese-resident company and a permanent establishment situated outside Malta to which the arrangement is effectively connected; and
- An arrangement between a company that maintains a permanent establishment in Malta to which the arrangement is effectively connected, or otherwise derives income or gains arising in Malta, and a non-Maltese resident party.

The rules shall not apply to companies which are considered for the purpose of these rules as micro, small or medium sized enterprises.



The Rules shall also not apply where the aggregate arm's length value of all items of income and expenditure of a:

1. revenue nature forming part of cross-border arrangements does not exceed €6 million; and
2. capital nature forming part of cross-border arrangements does not exceed €20 million;

in the year preceding the year of assessment.

Unilateral Transfer Pricing Rulings and Advance Pricing Agreements

The Rules provide a framework for the request and issuance of unilateral transfer pricing rulings and advance pricing agreements. A unilateral transfer pricing ruling is binding on the CfR for a period of five years from the date the ruling takes effect. The CFR may, however, decline to issue a unilateral transfer pricing ruling where the Income Tax Acts (including any rules, regulations and guidelines issued thereunder) provide sufficient certainty regarding the tax treatment of the relevant transaction. An advance pricing agreement may also be entered into for a duration not exceeding five years from the date the advance pricing agreement takes effect as determined during the relevant mutual agreement procedure.

Exemption from Tax on Property Transfers (Set-off of Tax Arrears) (Amendment) Rules, 2022

The Exemption from Tax on Property Transfers (Set-off of Tax Arrears) Rules, which were introduced in 2021 have been revised by this Legal Notice, amending Rule 4 to permit the transfer of tax arrears between related companies and between individuals and companies which are wholly owned (+99%) thereby.

Seed Investment Scheme (Income Tax) Rules, 2022

By means of this legal notice, new Seed Investment Scheme Rules have been published which basically provide for an extension period to the previous rules, with the aim of encouraging investment by natural persons in start-up companies.

With effect from 1st January 2022, qualifying investors may benefit from a tax credit equivalent to 35% of the aggregate value of the investments made in one or more qualifying companies. Such tax credit, capped at €250,000 per annum, will be set off against the tax due by the qualifying investor in respect of any income or gains brought to tax, with any excess credit being carried forward until fully absorbed, without giving rise to a right to any tax refund.



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

- is incorporated or controlled and managed from Malta or have a place of business in Malta;
- have been in existence and carrying out qualifying activities for a period not exceeding three years following the first commercial sale;
- is not listed on any recognised stock exchanges;
- Have a maximum of 10 employees;
- Have gross assets of not more than €250,000.

Furthermore, the Rules provide for list of specifically excluded entities which may not benefit under this Scheme.

Both the 'qualifying investor' and the 'qualifying company' must obtain formal determination by way of application. Once compliance certificate is issued, a qualifying investor must invest in the qualifying company within a period of two years from when the qualifying company is first issued with the said compliance certificate.

Deduction (Income from Employment) (Amendment) Rules, 2023

In terms of this legal notice, the deduction threshold available under the main rules has been increased from €10,020 to €10,535. This is to ensure that the COLA increase to the minimum wage (together with statutory bonuses) remains below the taxable threshold. This applies from year of assessment 2024.

Cooperation with Other Jurisdictions on Tax Matters (Amendment) Regulations, 2023

In terms of this legal notice, The Cooperation with Other Jurisdictions on Tax Matters Regulations (S.L 123.127) have been revised.

The numerous amendments introduced by this measure include the introduction of a definition of "joint audit" and a new provision regulating joint audits; clarification of the notion of "foreseeable relevance" in Regulation 12; as well as provisions addressing automatic exchange of information reported by Platform Operators and penalties imposed on Platform Operators for failure to comply with reporting obligations.



Exemption from Tax on Property Transfers (Set-off of Tax Arrears) (Amendment) Rules, 2023

This legal notice, amends Rule 4 of The Exemption from Tax on Property Transfers (Set-off of Tax Arrears) Rules to allow qualification where the sale has been months back, but after the introduction of the Rules. It includes a notification cut-off date of 31st March 2023.

Disclaimer:

Please be advised that the information in this memo is provided simply as guidance and are not legal documents providing legally binding rulings. If you require more precise information on how to implement any specific measure, kindly contact the Office of the Commissioner for Revenue on servizz@gov.mt or call on 153/144.