

SUBSIDIARY LEGISLATION 364.15

DUTY ON DONATIONS OF MARKETABLE SECURITIES AND IMMOVABLE PROPERTY USED FOR BUSINESS (EXEMPTION) ORDER

2nd May, 2016

LEGAL NOTICE 131 of 2017, as amended by Legal Notices 82 of 2018 and 320 and 412 of 2018, 281 of 2019, 427 of 2020, 460 of 2021 and 366 of 2022.

1. The title of this order is the Duty on Donations of Marketable Securities and Immovable Property Used for Business (Exemption) Order.

Citation.

2. (1) Notwithstanding any other provision of the Duty on Documents and Transfers Act:

Marketable securities.
Cap. 364

(a) where an individual owns marketable securities issued by a company, the transfer of which marketable securities would be chargeable to duty, duty shall be chargeable at a rate (referred to hereinafter as "the reduced rate") of one euro and fifty cents (€1.50) on every one hundred euro (€100.00) or part thereof of the real value of those marketable securities where those marketable securities are transferred by gratuitous title by the individual to persons referred to in article 5(2)(e)(i) of the Income Tax Act:

Cap. 123.

(b) where an individual transfers by gratuitous title immovable property being a commercial tenement as defined in article 1525 of the Civil Code (hereinafter referred to as "business property"), that had been used in a family business as defined in the Family Business Act for a period of at least three (3) years preceding the transfer, in assessing the duty chargeable in terms of the Duty on Documents and Transfers Act, if any such duty is chargeable, it shall be charged at the reduced rate where that business property is transferred by gratuitous title by the individual to persons referred to in article 5(2)(e)(i) of the Income Tax Act.

Cap. 16

Cap. 565

Cap. 364

Cap. 123

(2) When the reduced rate is applied on the transfer by gratuitous title of marketable securities or business property referred to in this rule, no other exemption or relief from duty shall apply to the said transfer.

3. This order applies to a transfer by gratuitous title that is made on or after the 1st April 2017 but prior to 1st January 2024.

Applicability.
Amended by:
L.N. 82 of 2018;
L.N. 320 of 2018;
L.N. 412 of 2018;
L.N. 281 of 2019;
L.N. 427 of 2020;
L.N. 460 of 2021;
L.N. 366 of 2022.

*DUTY ON DONATIONS OF MARKETABLE
SECURITIES AND IMMOVABLE PROPERTY USED
FOR BUSINESS (EXEMPTION)*

2 [S.L.364.15

Transfer by
gratuitous title.

Amended by:

L.N.82 of 2018;

L.N. 320 of 2018;

L.N. 412 of 2018;

L.N. 281 of 2019;

L.N. 427 of 2020;

L.N. 460 of 2021;

L.N. 366 of 2022.

4. (1) Any transfer by gratuitous title claiming benefits in terms of this order shall be made by public deed:

Cap. 364.
S.L. 364.06.

Provided that benefits in terms of this order shall only be granted in respect of a transfer by gratuitous title where the notice required in terms of the Duty on Documents and Transfers Act and the Duty on Documents and Transfers Rules has been submitted to the Commissioner for Revenue on the form or other means provided by the Commissioner on or before the 31st December 2023.

Cap. 565

(2) In the case of a transfer falling within the scope of paragraph (b) of rule 2, the individual transferring the business property shall provide to the notary who receives the deed of such transfer a report prepared by a certified public accountant holding a practicing certificate in auditing giving assurance that the business property being transferred by gratuitous title has been used in a family business as defined in the Family Business Act for a period of at least three (3) years preceding the transfer.

Relief.

(3) The Commissioner for Revenue may also request such further information, forms and documentation as he may deem fit, by means of a notice in writing within the period, not being less than thirty (30) days, specified in the said notice.

5. The relief granted under this order shall be forfeited and the provisions of rule 6 shall apply if the individual to whom the transfer by gratuitous title was made, transfers *inter vivos* the marketable securities or the business property, as the case may be, within a period of three (3) years immediately following the date of the transfer by gratuitous title:

Provided that in the case of a business property, the relief granted under this order shall also be forfeited and the provisions of rule 6 shall apply if the business property is not used within a business carried on by the said individual, for a period of three (3) years immediately following the date of the transfer by gratuitous title.

Relief from duty.

6. When the relief from duty under this order is forfeited as provided in rule 5, the provisions of rule 2 shall not apply and the duty chargeable on the transfer referred to in that rule shall be the duty that would have been chargeable in accordance with the provisions of the Duty on Documents and Transfers Act had the relief under this order not been claimed and availed of.

Cap. 364.

Duty on a transfer.

7. (1) In the event that duty on a transfer becomes chargeable in accordance with rule 6, the excess, if any, of the amount of the duty so chargeable over the amount of duty that was paid on the deed of that transfer shall become payable to the Commissioner by the person to whom the transfer was made within a period of thirty (30) days after the date on which the event resulting in the forfeiture of the relief granted under this order takes place:

Provided that where the duty referred to in this rule is payable in respect of business property or part thereof that had previously been transferred by gratuitous title to the particular individual or individuals, and the Commissioner issues a certificate attesting that the said business property that has been transferred *inter vivos* by the said individual or individuals, is replaced within one (1) year by an immovable property used solely for a similar purpose in the family business as defined in the Family Business Act (hereinafter referred to as the "replacement property"), in assessing the duty chargeable in respect of the replacement property, duty payable in accordance with this rule shall be allowed as a deduction against duty chargeable on the acquisition of the replacement property:

Cap. 565

Provided further that the deduction allowed in terms of the preceding proviso shall in no case exceed the amount of duty otherwise chargeable, but for the provisions of this rule, on the acquisition of the replacement property.

(2) The provisions of rules 5 and 6 shall apply to the replacement property in the same manner as they apply to the business property and references to "business property" in the said rules shall, where applicable, be construed as referring to the replacement property.
