

A.L. 429 ta l-2010

ATT DWAR IT-TAXXA FUQ L-INCOME
(KAP. 123)

Regoli ta l-2010 dwar l-Eżenzjoni fuq Royalties li Jirrizultaw minn Privattivi

Bis-saħħa tas-setgħat mogħtija bl-artikoli 12(1)(v) u 96 tal-Att dwar it-Taxxa fuq l-*Income*, hawn iżjed 'il quddiem imsejjaħ "l-Att", il-Ministru tal-Finanzi, l-Ekonomija u Investiment għamel dawn il-regoli li ġejjin:-

1. (1) It-titolu ta' dawn ir-regoli hu Regoli ta-2010 dwar l-Eżenzjoni fuq *Royalties* li Jirrizultaw minn Privattivi. Titolu u bidu fis-seħh

(2) Dawn ir-regoli japplikaw għal *royalties* u *income* ieħor ta' din ix-xorta li jirrizultaw fl-ewwel (1) ta' Jannar, 2010 jew wara minn privattivi kwalifikanti relattivi għal invenzjonijiet.

2. F'dawn ir-regoli, kemm-il darba r-rabta tal-kliem ma tkunx teħtieġ xort'oħra - Tifsir.

"invenzjoni" għandha t-tifsira mogħtija lilha fl-Att dwar il-Privattivi Industrijali u d-Disinni, u jinkludi wkoll kwalunkwe invenzjoni li hija klassifikata bħala tali fit-termini ta' xi linji gwida mahruġa mill-Korporazzjoni anki meta l-invenzjoni partikolari ma tkunx taqa' fit-termini tat-tifsira mogħtija lil dak it-terminu fl-Att dwar il-Privattivi Industrijali u d-Disinni; Kap. 417.

"il-Korporazzjoni" tfisser l-Intrapriża ta' Malta kif imwaqqfa skont it-termini tal-Att dwar l-Intrapriża ta' Malta. Kap. 463.

"privattiva kwalifikanti" tfisser privattiva, li hija registrata jew f'Malta jew f'xi pajjiż ieħor, li fir-rigward tagħha ir-riċerka, l-ippjanar, l-ipproċessar, l-esperimentar, l-ittestjar, il-ħolqien, l-iddisinjar, l-iżvilupp jew attività simili li twassal għall-invenzjoni rilevanti tkun saret f'Malta jew f'xi pajjiż ieħor;

"*royalties* u *income* ieħor ta' din ix-xorta" jinkludi kull somma mħallsa għall-ghoti ta' liċenzja biex jiġu eżerċitati drittijiet bis-saħħa ta' privattiva kwalifikanti.

3. Id-dispożizzjonijiet tal-artikolu 12(1)(v) tal-Att japplikaw meta persuna tikseb *royalties* jew *income* ieħor ta' din ix-xorta fl-ewwel ta' Jannar 2010 jew wara minn privattivi kwalifikanti, li huma taxxabli skont il-paragrafu (a) jew (e) tas-subartikolu (1) tal-artikolu 4 tal-Att, u meta din il-persuna tagħmel talba skont id-dispożizzjonijiet tar-regola 4 u tagħmel dikjarazzjoni tal-*income* tagħha kollu mill-ghejjun kollha fil-prospett magħmul skont l-artikolu 10 tal-Att dwar l-Amministrazzjoni tat-Taxxa: Applikabilità.
Kap. 372.

Iżda individwu ma jkunx intitolat li jkollu eżenzjoni mit-taxxa fuq xi ammont ta' *income* li jirriżulta lilu minn privattiva kwalifikanti kif imsemmi aktar 'il fuq, jekk dan l-individwu ma jkunx wettaq, jew hu waħdu jew hu flimkien ma' xi persuna jew persuni oħra, riċerka, ippjanar, ipproċessar, ittestjar, ħolqien, iddisinjar, żvilupp jew attività oħra simili li twassal għall-invenzjoni li hija s-sugġett tal-privattiva kwalifikanti:

Kap. 372.

Iżda wkoll jekk kumpanija turi dan l-*income* li jirriżulta minn privattiva kwalifikanti bħala parti mill-*income* tagħha li hu sogġett għat-taxxa fil-prospett magħmul skont l-artikolu 10 ta l-Att dwar l-Amministrazzjoni tat-Taxxa, dik il-kumpanija ma tkunx intitolata li tapplika d-dispożizzjonijiet tal-artikolu 12(1)(v) għall-*income* li jirriżulta minn dik il-privattiva għal dik is-sena ta' stima u għal snin ta' stima sussegwenti.

Dokumenti li għandhom jingħataw lill-Kummissarju.

4. (1) Rigward kull privattiva kwalifikanti li fil-konfront ta' *income* li jirriżulta minnha tintalab l-eżenzjoni msemmija aktar 'il fuq, persuna għandha tagħti lill-Kummissarju kopja tad-deċiżjoni maħruġa mill-Korporazzjoni li tiddekrivi l-invenzjoni partikolari, u tikkonferma li hi rċeviet għas-sodisfazzjon tagħha l-informazzjoni u d-dokumentazzjoni kollha mitluba minnha rigward il-privattiva partikolari u l-invenzjoni li tirreferi għaliha u li wara li hi għamlet dawk l-aċċertamenti li kkunsidrat neċessarji, hija tinsab soddisfatta li l-invenzjoni partikolari li għaliha tirreferi l-privattiva teżisti u ma tiksirx l-ebda oġġettiv ta' ordni pubbliku ta' Malta.

(2) Evidenza tad-deċiżjoni msemmija fis-subregola (1) għandha tingħata lill-Kummissarju flimkien mal-prospett tat-taxxa, b'dak il-mod li jista' jirrikjedi l-Kummissarju, għal kull sena ta' stima li fir-rigward tagħha tintalab l-eżenzjoni.

Deċiżjoni tal-Korporazzjoni.

5. Id-deċiżjoni msemmija fir-regola 4 għandha tinhareg mill-Korporazzjoni wara li din tkun irċeviet applikazzjoni f'dan is-sens mill-proprjetarju tal-privattiva jew minn xi hadd għan-nom tiegħu fit-termini tal-linji gwida maħruġa mill-Korporazzjoni, meta l-Korporazzjoni tkun sodisfatta li l-applikazzjoni hija applikazzjoni magħmula b'*bona fide*, li l-privattiva u l-invenzjoni li tirreferi għaliha jkunu jħarsu d-dispożizzjonijiet ta' dawn ir-regoli, u wara li tkun irċeviet dik l-informazzjoni u d-dokumentazzjoni kollha u li tkun għamlet dawk l-aċċertamenti li tkun ikkunsidrat neċessarji għal dan il-għan.

L.N. 429 of 2010

INCOME TAX ACT
(CAP. 123)

Exemption on Royalties Derived from Patents Rules, 2010

IN exercise of the powers conferred by articles 12(1)(v) and 96 of the Income Tax Act, hereinafter referred to as "the Act", the Minister of Finance, the Economy and Investment has made the following rules:

1. (1) The title of these rules is the Exemption on Royalties Derived from Patents Rules, 2010. Title and commencement.

(2) These rules shall apply to royalties and similar income derived on or after the first (1st) day of January, 2010 from qualifying patents in respect of inventions.

2. In these rules, unless the context otherwise requires - Definitions.

"the Corporation" means Malta Enterprise as established in terms of the Malta Enterprise Act; Cap. 463.

"invention" shall have the meaning assigned to it in the Patents and Designs Act, and shall also include any invention which is classified as such in terms of any guidelines issued by the Corporation even where the particular invention does not fall within the meaning assigned to the term in the Patents and Designs Act; Cap.417.

"qualifying patent" means a patent, which is registered in Malta or elsewhere, in relation to which the research, planning, processing, experimenting, testing, devising, designing, developing or similar activity leading to the relevant invention was carried out in Malta or elsewhere;

"royalties and similar income" include any sum paid for the grant of a licence to exercise rights under a qualifying patent.

3. The provisions of article 12 (1)(v) of the Act shall apply where any person derives royalties or similar income from qualifying patents on or after the first (1st) day of January 2010, chargeable to tax under paragraphs (a) or (e) of subarticle (1) of article 4 of the Act, and where the said person makes a claim in accordance with the provisions of rule 4 and makes a declaration of his total income from all sources in the return made pursuant to article 10 of the Income Tax Management Act; Applicability.
Cap. 372.

Provided that an individual shall not be entitled to have any amount of income arising to him from a qualifying patent exempt from tax as aforesaid, unless the said individual carried out, either solely or together with another person or persons, research, planning, processing, experimenting, testing, devising, designing, developing or other similar activity leading to the invention which is the subject of the qualifying patent:

Cap. 372.

Provided further that if a company shows such income derived from a qualifying patent as part of its chargeable income in a return made pursuant to article 10 of the Income Tax Management Act, such company shall not be entitled to apply the provisions of article 12(1)(v) to any of its income derived from that patent for that year of assessment and subsequent years of assessment.

Documents to be submitted to the Commissioner.

4. (1) A person shall submit to the Commissioner in respect of every qualifying patent relative to income in respect of which the exemption referred to above is claimed a copy of a determination issued by the Corporation describing the particular invention, and confirming that it has received to its satisfaction all information and documentation requested thereby relative to the particular patent and the invention to which it refers and that after making such ascertainment as it considered necessary, it is satisfied that the particular invention to which the patent refers is in existence and is not in breach of any public policy objectives of Malta.

(2) Evidence of the determination referred to in sub-rule (1) above shall be submitted to the Commissioner together with the tax return, in such manner as the Commissioner may require, for every year of assessment in respect of which the exemption is claimed.

Determination by the Corporation.

5. The determination referred to in rule 4 shall be issued by the Corporation after receiving an application in this respect by or on behalf of the person owning the patent in terms of guidelines issued by the Corporation, when the Corporation is satisfied that the application is a *bona fide* application, that the patent and the invention to which it refers comply with the provisions of these rules, and after it has obtained all such information and documentation and made such ascertainment as it has considered necessary for this purpose.

