

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.

