No. 290

MINISTRY FOR FINANCE AND EMPLOYMENT

Explanatory Notes[1]

1. Introduction

Title of Legal Notice	Excise Duty Act (Amendment of Sixth Schedule) Regulations, 2024
Scope of the regulations	To further implement Council Directive 95/60/EC of 27 November 1995 regarding the Fiscal Markings of Gas Oils and Kerosene
Responsible entity	Ministry for Finance and Employment (Customs Department).

2. Summary and background

Directive 95/60/EC provides for a common marking system to identify gas oils and kerosene, which have been released for consumption exempt from excise duty, or subject to a reduced excise duty rate.

Commission Implementing Decisions (EU) 2017/14 and 2011/544/EU established the product Solvent Yellow 124 as the common fiscal marker for the marking of gas oils and kerosene.

In view of the foregoing and following the identification of certain shortcomings, ACCUTRACE™ PLUS was established as the common fiscal marker instead of Solvent Yellow 124.

The marking level has been set at a harmonised range to facilitate implementation and control of compliance across the Union.

3. Overview of the structure of the instrument

The instrument consists of one regulation which amends Part D of the Sixth Schedule to the Excise Duty Act (Chapter 382 of the Laws of Malta).

4. Commentary

The amendment consists of amending existing regulation 17 of Part D of the Sixth Schedule to the Excise Duty Act (Chapter 382 of the Laws of Malta) by replacing Solvent Yellow 124 with ACCUTRACE™ PLUS (butoxybenzene) as a fiscal marker.

[1]These Explanatory Notes are for the purpose of and in accordance with Article 3(2)(c) and Schedule III of Chapter 512 of the Laws of Malta.

The amendments stipulate the amount in nanometres of the marker to be added to mineral oils and kerosene respectively and the colour absorbence to be yielded to satisfy the requirements of this regulation and to effectivley enable the guaging of the marker.

5. Concluding Section

All the provisions of these proposed regulations shall come into force on their date of publication in the Gazette.

Despite the fact that these regulations have been classified as impacting the Small Businesses, since they consist of a transposition of law they qualify as an exemption under the Small Business Act (Exemptions) Regulations (S.L. 512.01.) and thus the two (2) month stand-still period from their date of publications is not required as it does not apply.

For further information please contact the Customs Department by email on (malta.customs@gov.mt) or by telephone on +356 23783310, 23783311 and 23783312.

N.B. These Explanatory Notes are not intended to be an exhaustive description of the instrument nor a substitute thereof or legislative supplement to it. These Notes do not purport to be an authoritative ruling on the interpretation of the legislation.

Annex

(for the purpose of paragraph (vi) of Schedule III of Chapter 512 of the Laws of Malta)

Commission Implementing Decision (EU) 2022/197 of 17 January 2022 establishing a common fiscal marker for gas oils and kerosene	**Legal Notice**
Articles 1 and 2	Regulation 17(2) and (3) of Part D of the Sixth Schedule to the Excise Duty Act

1st March, 2024

No. 291

MINISTRY FOR FINANCE AND EMPLOYMENT

Explanatory Notes[1]

1. Introduction

Title of Legal Instrument	Excise Duty Act (Amendment of Sixth Schedule) Regulations, 2024
Aim of the regulations	To transpose the provisions as required by Council Directive (EU) 2020/1151 of 29 July 2020 amending Directive 92/83/EEC on the harmonization of the structures of excise duties on alcohol and alcoholic beverages. The transposition is being made under the Excise Duty Act (Chapter 382 of the Laws of Malta), specifically by transposing Article 27(1)(a) and (b) of the Directive by amending the Second Schedule of the Act and the introduction of new sub-regulation 7 to the Sixth Schedule of the principal Act.
Responsible entity	Ministry for Finance and Employment (Customs Department).

2. Summary and background

For the purpose of excise tax, goods within the EU falls within two broad categories: harmonized goods and non-harmonized goods. The harmonized goods are: energy products, alcohol and tobacco, while all other goods are held to be non-harmonized.

Procedures regarding the movement of harmonized goods within the European Union are regulated by EU directives, as opposed to the movement of non-harmonized goods.

The first EU legislation on harmonized goods dates back to 1992 Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages . Over the years the 2008 Directive was amended a number of times and in 2020 a recast directive was enacted (Council Directive (EU) 2020/1151 of 29 July 2020 amending Directive 92/83/EEC on the harmonization of the structures of excise duties on alcohol and alcoholic beverages) (hereinafter "Directive 1151/2020/" or the "Directive").

The current Legal Notice partially transposes Council Directive 1151/2020 of 29 July 2020 by the introduction of regulations under the Excise Duty Act, Chapter 382 of the Laws of Malta.

Overview of the Structure of the Instrument

The newly amended regulations to Chapter 382 follow the Directive's same structure and transposed accordingly.

The instrument consists of three regulations:

Regulation 1 establishes the citation and scope;
Regulation 2 amends the Second Schedule;
Regulation 3 amends the Sixth Schedule.

[1]These Explanatory Notes are for the purpose of and in accordance with Article 3(2)(c) and Schedule III of Chapter 512 of the Laws of Malta.

Harmonisation of structures of excise duties in alcohol are regulated both by the articles and schedules of the Excise Duty Act as well as the provisions of these amended regulations of the Excise Duty Act.

Commentary

3. The amendments to be made to Chapter 382

Regulation 2 consists of two amendments to the Second Schedule of the principal Act:

Paragraph (a) amends item 1(a) under the sub-header "EXEMPTIONS" in the table under the heading "Description of excisable goods" of the Second Schedule of the principal Act whereby the words "to the satisfaction of the Commissioner" shall be substituted by the words "in accordance with the requirements of the Member State where it has been released for consumption, where such requirements were duly notified in writing and authorised. The Commissioner shall apply Chapter V of Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (recast)".

Whilst paragraph (b) amends item 1(b) under the sub-header "EXEMPTIONS" in the table under the heading "Description of excisable goods" of the Second Schedule of the principal Act, whereby immediately after the words "this particular manufacturing process;" there shall be added the following new paragraph:

"The Commissioner shall apply Chapter IV of Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (recast) to movements of denatured alcohol that has not yet been incorporated into a product that is not for human consumption;".

The aim of the amendment is again is to apply the provisions of Chapter V of Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (recast) to cases of denatured alcohol not yet incorporated into a product that is not for human consumption.

Regulation 3 consists of one amendment to the Sixth Schedule to the principal Act:

This regulation adds the following new sub-regulation (7) immediately after sub-regulation (6) of regulation 11 of Part VI of the Beer Regulations in Part E of the Sixth Schedule to the principal Act:

"(7) All the ingredients of the beer, including those added after the completion of fermentation, shall be taken into account for the purposes of measuring the degree Plato.".

The aim of this amendment is to apply the degree Plato by taking into account all ingredients in the beer.

4. Concluding Section

Council Directive (EU) 2020/1151 of 29 July 2020 amending Directive 92/83/EEC on the harmonization of the structures of excise duties on alcohol and alcoholic beverages required a minor changes to the current legislation governing harmonised excise goods. In practice the day-to-day operations of the business concerned will not be significantly impacted given that the changes only clarified minor matters that had already been clarified, particularly by judicial interpretation.

However, Council Directive (EU) 2020/1151 of 29 July 2020 amending Directive 92/83/EEC on the harmonization of the structures of excise duties on alcohol and alcoholic beverages includes an important gradation 'Degree Plato' and also

the application of procedures as per Chapter V of Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (recast).

All the provisions of these proposed regulations shall come into force on their date of publication in the Gazette.

Despite the fact that these regulations have been classified as impacting the Small Businesses, since they consist of a transposition of law they qualify as an exemption under the Small Business Act (Exemptions) Regulations (S.L. 512.01.) and thus the two (2) month stand-still period from their date of publications is not required as it does not apply.

For further information please contact the Customs Department by email on (malta.customs@gov.mt) or by telephone on +356 23783310, 23783311 and 23783312.

N.B. This Explanatory Note is not intended to be an exhaustive description of the instrument nor a substitute thereof or a legislative supplement to it. This Note does not purport to be an authoritative ruling on the interpretation of the legislation.

1st March, 2024

Annex

(for the purpose of paragraph (vi) of Schedule III of Chapter 512 of the Laws of Malta)

Transposition Notes for the transposition of Council Directive (EU) 2020/1151 of 29 July 2020 amending Directive 92/83/EEC on the harmonization of the structures of excise duties on alcohol and alcoholic beverages into the Excise Duty Act (Amendment of the Second and Sixth Schedules) Regulations:

Directive Article number/s	**Transposing regulations** Legal Notice establishing a regulation under the Excise Duty Act (Chapter 382)
Article 27(1) (a) when distributed in the form of alcohol which has been completely denatured in accordance with the requirements of the Member State where it has been released for consumption, where such requirements having been duly notified in writing and authorised in accordance with paragraphs 3 and 4 of this Article. Member States shall apply Chapter V of Directive 2008/118/EC; (b) when used as part of the manufacturing process of any product not for human consumption, provided the alcohol has been denatured in accordance with the requirements of any Member State for the given use.	The amendments to the Second Schedule in paragraph (a) of item 1 under the sub-header "EXEMPTIONS" in the table under the heading "Description of excisable goods" to the Second Schedule of the principal Act and in paragraph (b) of item 1 under the sub-header "EXEMPTIONS" in the table under the heading "Description of excisable goods" to the Second Schedule of the principal Act is as follows: The products described in this Schedule are exempt from the payment of excise duty under such conditions which the Minister may prescribe for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any evasion, avoidance or abuse:

That exemption shall apply when such denatured alcohol: - has been incorporated into the product not for human consumption, or - is used for maintenance and cleaning of the manufacturing equipment used for this particular manufacturing process Member States shall apply Chapter IV of Directive 2008/118/EC to movements of denatured alcohol that has not yet been incorporated into a product that is not for human consumption.	1. a. when distributed in the form of alcohol which has been completely denatured in accordance with the requirements of the Member State where it has been released for consumption, where such requirements were duly notified in writing and authorised. The Commissioner shall apply Chapter V of Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (recast); b. when used as part of the manufacturing process of any product not for human consumption, provided the alcohol has been denatured in accordance with the requirements of any Member State for the given use. This exemption shall apply when such denatured alcohol: – has been incorporated into the product not for human consumption; or – is used for maintenance and cleaning of the manufacturing equipment used for this particular manufacturing process; The Commissioner shall apply Chapter IV of Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (recast) to movements of denatured alcohol that has not yet been incorporated into a product that is not for human consumption
Article 3(1) All the ingredients of the beer, including those added after the completion of fermentation, shall be taken into account for the purposes of measuring the degree Plato. By way of derogation from the second subparagraph, Member States that, on 29 July 2020, do not take ingredients of the beer that have been added after fermentation into account for the purposes of measuring the degree Plato, may continue to do so until 31 December 2030.	The amendment to the Sixth Schedule which adds new sub-regulation (7) to regulation 11 of Part VI of the Beer Regulations in Part E of the Sixth Schedule to the principal Act is as follows: (7) All the ingredients of the beer, including those added after the completion of fermentation, shall be taken into account for the purposes of measuring the degree Plato.

No. 292

MINISTRY FOR FINANCE AND EMPLOYMENT

Explanatory Notes[1]

Accountancy Profession (General Accounting Principles for Small and Medium-Sized Entities) (Amendment) Regulations, 2024

1. Introduction

The Accountancy Profession (General Accounting Principles for Small and Medium-Sized Entities) (Amendment) Regulations, 2024 are being issued under the Accountancy Profession Act (Cap. 281) and have been prepared by the Ministry for Finance and Employment on the recommendation of the Accountancy Board.

These regulations will:

- Clarify certain aspects already incorporated in the current regulations, but which gave rise to uncertainty in their interpretation;

- Rectify a number of inconsistencies and typos identified in the current regulations;

- Align the current regulations with concepts and other rules emanating from other accounting and audit standards; and

- Affect consequential changes as a result of the above amendments.

2. Summary and background

The objectives behind the amendments being proposed to the Accountancy Profession (General Accounting Principles for Small and Medium-Sized Entities) Regulations (S.L. 281.05) (hereinafter referred to as "GAPSME") are the following:

(i) Clarification of certain aspects already incorporated in the current regulations, but which gave rise to uncertainty in their interpretation;

(ii) Rectification of a number of inconsistencies and typos identified in the current regulations;

(iii) Alignment of the current regulations with concepts and other rules emanating from other accounting and audit standards such as:

- introduction in the regulations of the definition of "business" as provided for in International Financial Reporting Standard 3 – Business Combinations (IFRS3)[2] ;
- defining the period to be considered by management in its assessment of the entity's ability to continue as a going concern in line with what is provided for in International Standards on Auditing 570 – Going Concern (ISA 570)[3].

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[1]These Explanatory Notes are for the purpose of and in accordance with Article 3(2)(c) and Schedule III of Chapter 512 of the Laws of Malta.
[2]Vide amendment to paragraph 21.2 of Section 21 of the Schedule to the Regulations.
[3]Vide amendment to paragraph 3.4 of Section 3 of the Schedule to the Regulations.

(iv) Consequential changes as a result of the above amendments.

All the amendments being proposed seek to maintain and enhance the original objective of the current GAPSME framework, that of simplification and alignment with Directive 2013/34/EU

on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings.

Consultation was carried out with the following entities:

- the Accountancy Board;

- the Malta Institute of Accountants (MIA).

The proposed amendments were discussed and agreed upon by all parties.

3. Overview of the structure of the instrument

Besides clarifying certain aspects already incorporated in the current regulations, but which gave rise to uncertainty in their interpretation and rectifying of a number of inconsistencies and typos identified in the current regulations, the following are some of the salient changes to the current GAPSME framework:

i) Amendment to Section 7 - Property, plant and equipment [regulation 5(f)]:

Paragraph 7.30 was amended in such a way as to introduce a new disclosure requirement for small entities, having already been required for medium-sized entities in the current regulations, namely with regards to the basis of valuation in instances where items of property, plant and equipment have been revalued. This amendment is being proposed to enhance the usefulness of financial statements, whilst also aligning same with requirements emanating from other international accounting standards.

ii) Amendments to Section 9 - Financial assets, financial liabilities and equity [regulation 5(g)(iv) and ((ix))]:

- Paragraph 9.17 was amended in such a way as to introduce the measurement basis of Fair Value through Profit or Loss ("FVTPL") at initial recognition, subject to the satisfaction of certain criteria laid out therein. This amendment is being proposed with two other projects in mind, namely (1) the minimum financial reporting requirements for different categories of entities authorised by, supervised by or in the supervisory remit of the Malta Financial Services Authority (MFSA), and (2) the Accountancy Profession (General Accounting Principles in respect of certain Eligible Entities related to the business of Insurance) Regulations, 2023 (GAPEE).

- Paragraph 9.36 was amended in such a way as to deal with financial instruments containing both a liability and an equity component, including the respective allocation of the initial amount thereof. This amendment is being proposed to clarify the correct approach and avoid instances which would merit the need for interpretation, and may thus result in incorrect accounting treatment being applied and possible accounting inconsistencies across different entities.

iii) Amendment to Section 11 - Intangible assets other than goodwill [regulation 5(i)]:

Paragraph 11.1 was amended, through a proviso, in such a way as to exclude cryptographic assets and tokens from the scope of the reporting requirements relating to intangible assets as prescribed under this Section. This amendment is being

proposed due to the fact that the reporting requirements emanating from Section 11, as catered for in the current regulations, cannot be applied to cryptographic assets and tokens given the nature of these items.

iv) Amendments to Section 21 - Business combinations and goodwill [regulation 5(q(i) and(ix))]:

Various paragraphs were amended in such a way as to provide clarifications in relation to business combinations. Among such clarifications there are:

- the application of paragraphs 21.18 and 21.19 to business combinations under common control;

- substitutes to be used for book values of shares and percentage of capital where a business combination under common control does not result in the acquirer holding shares in the capital of an entity; and

- the interchangeable use of the terms "consolidated reserves" and "equity".

4. Commentary on parts and articles

Regulation 1 states the citation and commencement of these regulations.

Regulation 2 substitutes the reference in the margin to regulation 3 of the principal regulations, rectifying a typo in the current regulations.

Regulation 3 clarifies the date incorporated in the current regulations of when the regulations that were in force prior to the coming into force of the 2015 regulations will apply.

Regulation 4 clarifies the definition of "revenue" already incorporated in the current regulations by removing the word "total".

Regulation 5 clarifies certain aspects already incorporated in the current regulations, but which gave rise to uncertainty in their interpretation, rectifies f a number of inconsistencies and typos identified in the current regulations, aligns the current regulations with concepts and other rules emanating from other accounting and audit standards and affects consequential changes as a result of the above amendments.

5. Concluding Section

These regulations shall come into force after 2 months from publication as required by article 3(2)(b) of the Small Business Act (Cap 512).

For further information please contact: Dr. Ivan Sammut 79820577

N.B. These Explanatory Notes are not intended to be an exhaustive description of the instrument nor a substitute thereof or a legislative supplement to it. These Explanatory Notes do not purport to be an authoritative ruling on the interpretation of the legislation.

1st March, 2024

No. 293

MINISTRY FOR THE ECONOMY, ENTERPRISE AND STRATEGIC PROJECTS

Explanatory Notes

1. Introduction

Title of Regulations	Conduct Certificates Ordinance (Amendment of Fourth Schedule) (Amendment No. 2) Regulations, 2024.
Activity to be regulated	The Fourth Schedule to the Conduct Certificates Ordinance (Cap. 77) is being amended to grant the right to the Commerce Department to request a complete record of criminal convictions from the Commissioner of Police.
Responsible entity	Commerce Department

2. Summary and background

2.1 Aims & Objectives of the legislation

In line with Moneyval recommendations the Trading Licences Regulations (S.L. 441.07) provides that no person shall carry on the business of a dealer in precious metals and stones (DPMS) after 1st January 2021 unless that person is the holder of a licence issued under these regulations. Regulation 49(3) of the Trading Licences Regulations (S.L. 441.07) further provides that the application for a licence shall inter alia be accompanied by a police certificate issued not more than one (1) month before the date of submission of the application, of the persons who effectively direct the business, of the owner or owners of the business and as applicable of all directors, partners, the company secretary and beneficial owners.

Regulation 50 of the Trading Licences Regulations (S.L. 441.07) specifies that for a person to be eligible for a DPMS licence, that person must not have been convicted by any competent court or tribunal in or outside Malta, of any offence punishable by deprivation of liberty or a detention order for a maximum of more than one (1) year or, in the case of jurisdictions that have a minimum threshold for offences in their legal systems, any offence punishable by deprivation of liberty or a detention order for a minimum of more than six (6) months, other than involuntary homicide or other crime against the person excusable in terms of the Criminal Code. This implies that police certificate to accompany the licence applications must be detailed enough to meet the requisites of Regulation 50.

The Conduct Certificates Ordinance (Cap. 77) regulates the issuing of conduct certificates by the Commissioner of Police. In particular, Article 3(3) provides that it shall be lawful for the competent national authorities and entities listed in the Fourth Schedule and designated by the Minister responsible for the Police for this purpose, to request, with the consent in writing of the person to whom the record of criminal convictions relates, the Commissioner of Police to submit a complete record of criminal convictions of the person to whom they relate.

The purpose of this legislation is to amend the Fourth Schedule to the Conduct Certificates Ordinance (Cap. 77) to include the Commerce Department in the said Schedule. Through this amendment, the Commerce Department would be granted

the right to request the Commissioner of Police to submit a complete record of criminal convictions in respect of persons applying for a licence to operate as dealers in precious metals and stones. Such a request will be subject to being consented to by the persons in question.

2.2 Importance of Regulations

This amendment gives the Commerce Department the authority to request a complete record of criminal convictions of a person applying for a licence to operate as dealers in precious metals and stones with that person's consent from the Commissioner of Police. This would put the Department in a better position to assess whether or not to grant a new licence or cancel an existing one, hence enhancing scrutiny in the sector. The amendments would also facilitate compliance by the applicant with regard to the conduct certificate obligations as provided in the Trading Licences Regulations (S.L. 441.07) as the Department would be able to secure it on his behalf with his consent.

2.3 Public Consultation

In this instance, public consultation was not required and thus was not carried out.

3. Overview of the structure of the instrument

The amending regulations consist of two (2) regulations namely Regulation 1 and Regulation 2.

4. Commentary on parts and articles

Regulation 1 includes the title of the amending regulations.

Regulation 2 contains an amendment to the Fourth Schedule to the Conduct Certificate Ordinance (Cap. 77) by adding the Commerce Department in the Fourth Schedule.

5. Concluding Section

The amending regulations shall come into force upon their publication in the Government Gazette.

For any queries please contact Mr. Brian Montebello Director Trade Services and Projects at the Commerce Department on +356 25690214 or on (brian.montebello@gov.mt).

N.B. These Explanatory Notes are not intended to be an exhaustive description of the instrument nor a substitute thereof or a legislative supplement thereto. These Notes do not purport to be an authoritative ruling on the interpretation of the legislation.

1st March, 2024

No. 294

MINISTRY FOR THE ECONOMY, ENTERPRISE AND STRATEGIC PROJECTS

Explanatory Notes

Seed Investment Scheme (Income Tax) Rules, 2023

1. Introduction

These Explanatory Notes refer to the Seed Investment Scheme Rules, 2023, made under the Income Tax Act (Cap. 123) which has been drawn up by Malta Investment Management Company Limited (MIMCOL) on behalf of the Ministry for Economy, Enterprise and Strategic Projects with the intent to encourage potential investors to help finance qualifying startups in Malta.

2. Summary and Background

The limited options available for securing access to finance for start-ups, and the difficulty with which these options present themselves led directly to the creation of the Scheme. The Scheme was based on the successful modell of the UK's Enterprise Investment Scheme (EIS) and Seed Enterprise Investment Scheme (SEIS) so as to create a scheme that would be of interest locally.

The Seed Investment Scheme was originally launched in 2016 through Legal Notice 232 of 2016 to help start-ups raise equity finance. The Scheme incentivises investment in start-ups by granting a tax credit to individual investors resident in or operating in Malta who invest in equity shares of local start-ups. The Scheme has two major components, a 'qualifying investor' who must be an individual and a 'qualifying company', which must be locally incorporated or controlled and managed from Malta, or has a place of business in Malta, amongst other requisites. In each instance, to become a 'qualifying investor' and a 'qualifying company' an application process must be undertaken to determine eligibility.

The tax credit offered to individual investors is equivalent to thirty-five percent (35%) of the aggregate value of the investments made in a qualifying company. There is no minimum investment, and the total tax credit any one investor can receive is capped at two hundred and fifty thousand euro (€250,000) per year whilst the total investment a qualifying company may receive may not, in aggregate, exceed seven hundred and fifty thousand euro (€750,000). An additional benefit for qualifying investors is that should they retain their investment for at least three years (3), then after those three (3) years any gains or profit from the disposal of their investment is exempt from tax.

Ultimately, the scheme promotes a shift in investors' profiles in a booming economy, from investing in property and well-established businesses to investing in innovative start-ups with typically digital profiles. This is considered crucial for the ecosystem in Malta to continue growing.

3. Overview of the Structure of the Instrument

These rules consist of eleven (11) rules concerning the following:

Citation, scope and commencement
Interpretation
Application and eligibility
Tax credit
Losses
Capital gains
Recovery of tax credit
Anti-abuse
Applications
Records to be kept
Repeal and saving

4. Commentary on parts and articles

Rule 2 deals with interpretation of the various terminology being used in the context of the scheme. Of particular importance are the various sectors mentioned which are considered excluded as qualifying activities.

Rule 3 deals with the eligibility for qualifying companies and qualifying investors. In order to become a qualifying company a company should submit an application to MIMCOL, which upon vetting and approval of the required documentation will issue a compliance certificate. The maximum amount of investment which a qualifying company can receive is capped at seven hundred and fifty thousand euro (€750,000) per qualifying company.

To become a qualifying investor, applicants must equally submit an application with MIMCOL in relation to an investment in a qualifying company, for which they must hold their investment for a period of not less than three (3) years and must not be connected to the qualifying company prior to the issue of equity shares. Equally, a qualifying investor shall invest in the qualifying company within a period of two (2) years from when the qualifying company is first issued with a compliance certificate for the status of a qualifying company by MIMCOL.

Rule 4 explains how any qualifying investor to whom rule 3 applies shall benefit from a tax credit equivalent to thirty-five percent (35%) of the value of the investment made by such investor in one or more qualifying companies, with the total tax credit applicable to any such investor capped at two hundred and fifty thousand euro (€250,000) per annum.

Rule 5 deals with how any part of the tax credit that is not fully absorbed may be carried forward for subsequent years until fully absorbed, but in no way should this lead to a tax refund. Also, should the investor incur a loss because of their investment this will not be allowed as a deduction in respect of income or gains.

Rule 6 deals with an additional benefit for the qualifying investor whereby if their investment in a qualifying company is disposed of after the lapse of three (3) years from the date of investment by the qualifying investor, any gains or profits derived from such disposal shall be exempt from any capital gains tax.

Rule 7 deals with a recovery of tax credit mechanism whereby if MIMCOL or the Commissioner for Tax and Customs is in receipt of information that, had it been available during the application process lodged, would have resulted in the status of a qualifying company being refused or alternatively in the status of a qualifying investor being refused, then all amounts invested by qualifying investors which would have benefited from a tax credit shall be brought to charge, together with interest at the rate of one per cent (1%) for every calendar month of the amount availed of as a tax credit by the qualifying investor.

Rule 8 legislates anti-abuse by highlighting how if any person obtains benefits under the rules where that person was not so entitled or deemed to be contrary to the purpose of these rules, the qualification status granted may be withdrawn.

Rule 9 deals with the fact that this scheme shall remain valid up till the threshold of five million euro (€5,000,000) of investments in qualifying companies is reached.

Rule 10 states that records shall be maintained by MIMCOL for a period of ten (10) years from the date on which the last benefit was granted in terms of the rules, and in accordance with data protection law.

Rule 11 states that the Seed Investment Scheme (Income Tax) Rules (S.L. 123.308) are being repealed by these new rules, without prejudice to anything done or omitted to be done thereunder.

5. Concluding Section

These rules shall come into force on 1 January 2024. For further information please contact (info.mimcol@mimcol.com).

N.B. These Explanatory Notes are not intended to be an exhaustive description of the instrument nor a substitute thereof or a legislative supplement to it. These Explanatory Notes do not purport to be an authoritative ruling on the interpretation of the legislation.

1st March, 2024