

Guidance Note

Reduced Duty on Certain Business Acquisitions Causa Mortis

Legal Notice 250 of 2026

Introduction

The Chamber of Advocates draws members' attention to Legal Notice 250 of 2026, published on 18 September 2026, which amends the Duty on Donations of Marketable Securities and Immovable Property Used for Business (Exemption) Order, S.L. 364.15. The amendment introduces article 8, extending the preferential duty rate of €1.50 for every €100, or part thereof, to certain acquisitions causa mortis where a genuinely intended qualifying donation remained incomplete because the donor died.

The amendment is relevant to advocates advising on succession, business transfers and estate administration. It also expressly recognises a sworn declaration by a warranted advocate as a form of supporting evidence. Members should establish the statutory conditions and assemble the evidence before advising that the preferential rate is available. The relief is conditional and does not apply automatically to every inheritance of business assets.

Assets and Recipients Within the Existing Scheme

Article 8 preserves the requirement that the intended lifetime donation would have met all eligibility requirements under the principal Order if completed immediately before death. Article 2 covers qualifying marketable securities issued by a company and qualifying immovable property constituting a commercial tenement that had been used in a family business, as defined in the Family Business Act, for at least three years preceding the transfer.

The intended recipient must fall within the categories referred to in article 5(2)(e)(i) of the Income Tax Act. Members should verify the precise relationship against that provision rather than assume that every relative qualifies. In business property cases, they should also address the report contemplated by article 4(2), prepared by a certified public accountant holding a practising certificate in auditing, concerning the required period of family business use.

The amendment concerns duty under Chapter 364. It should not be represented as a general exemption from all taxes associated with a business or succession transaction, or as authority to treat every inherited immovable property as qualifying business property.

Conditions for the Causa Mortis Relief

The following requirements in article 8(1) and (2) are cumulative. The deceased must have died after 31 December 2025. Written proof must demonstrate a genuine intention, before death, to make the qualifying gratuitous transfer. The intended transaction must have satisfied the Order's conditions if completed immediately before death, and death before execution of the relevant public deed must have been the sole reason for non-completion.

The same property must actually devolve upon and be acquired causa mortis by the person identified in the written evidence as the intended donee. The acquisition must not be prevented, altered, redirected or otherwise affected by a will, another testamentary disposition or the operation of law. Members should

reconcile the intended donation with the actual devolution, including any competing testamentary or statutory entitlement.

The proposed donation must have been bona fide and not intended to avoid an applicable legal provision. It must not have been abandoned, revoked, withdrawn or materially altered before death and must have been capable of completion in the ordinary course of events but for the death. A general wish to pass the business to the family is insufficient unless the required intention, identified recipient, assets and circumstances can be established.

Evidence of the Intended Donation

Article 8(3) identifies several evidential routes. They include documentation or evidence contemplated by the Order; a document signed by the deceased evidencing the proposed transfer; proof of substantial and demonstrable steps towards completion; and a sworn declaration by an eligible professional confirming the relevant facts and circumstances.

The category of documents signed by the deceased under article 8(3)(b) includes a written promise of donation, agreement, declaration, succession plan, shareholders' agreement, board resolution or another written instrument evidencing the proposed transfer. The document must establish the relevant proposed transfer; its title alone does not prove eligibility.

Members should preserve original documents and contemporaneous records of instructions, drafts, correspondence and steps towards execution. Such records may support a claim, but their sufficiency depends on their contents and the statutory route relied on. Evidence should identify the assets and intended recipient and explain why completion was interrupted solely by death. The Commissioner may reject a document on objective evidence if it is not appropriate to establish the relevant requirements.

The Advocate's Sworn Declaration and the 365 Day Period

Article 8(3)(d) expressly allows a declaration under oath by a warranted advocate, certified public accountant, notary public or another professional acceptable to the Commissioner. Where evidence under article 8(3)(a) or (c) is produced, it must be accompanied by the professional declaration, referring to the documents relied on.

The proviso to article 8(1)(a) imposes a distinct timing requirement: where the written proof does not constitute a document within article 8(3)(b), it must be endorsed by a professional within article 8(3)(d) no later than 365 days from the deceased's death. Members should identify the evidential category at the outset and diary that period. It is not expressed as a universal deadline for every application or declaration *causa mortis*.

As a matter of professional practice, an advocate making a declaration should identify the documents examined, distinguish personal knowledge from information obtained from others, and state the basis for confirming the facts. Assertions by beneficiaries should be tested against the available records. A professional declaration does not displace the claimant's burden of proof or the Commissioner's assessment of entitlement.

If the advocate's involvement makes the advocate a material witness in subsequent contested proceedings, the implications for continued representation should be assessed under the applicable professional rules. Confidentiality and legal professional privilege should also be considered when selecting documents to disclose, with the client's authority obtained where required.

Certificate of Entitlement and the Declaration Causa Mortis

Under article 8(4), the intended donee claiming the reduced rate bears the burden of proving entitlement. Where satisfied, the Commissioner issues a certificate confirming entitlement. That certificate must be attached to the declaration of the relevant transfer *causa mortis* drawn up under article 33 of the Duty on Documents and Transfers Act.

The Commissioner may determine the forms, procedures, details and documents required for the certificate and may refuse the claim where objective evidence does not establish that the intended donation would have qualified before death. Members should coordinate with the receiving notary and the tax authorities on the application and supporting evidence; a professional declaration alone should not be treated as approval of the preferential rate.

Existing Time Limits and Continuing Conditions

The current principal Order retains its temporal limits: article 3 addresses gratuitous transfers made before 1 January 2027, while article 4(1) requires the relevant donation notice to be submitted by 31 December 2026. Article 8 requires the hypothetical donation immediately before death to have met the Order's eligibility requirements. The amendment therefore should not be presented as an indefinite extension of the existing scheme.

Members should distinguish those existing donation provisions from the new certificate procedure and the 365-day endorsement requirement. Article 8 does not expressly formulate a separate universal date for filing every *causa mortis* claim. Where timing or an already filed declaration raises uncertainty, the applicable procedure and treatment should be clarified with the Commissioner before the client relies on the reduced rate. Members should not assume that a past duty payment is automatically refundable under this amendment.

Article 8(1) expressly applies articles 5 and 6 to qualifying *causa mortis* acquisitions. The relief can therefore be forfeited if the recipient transfers the securities or business property *inter vivos* within the relevant three-year period. Business property must also meet the continuing business-use condition. Members should explain the potential clawback and assess any intended disposal, reorganisation or change of use before implementation.

What Practitioners Should Do Now

- Review succession files involving deaths after 31 December 2025 where a planned qualifying donation remained incomplete.
- Confirm the asset category, intended recipient's eligibility and the actual testamentary or intestate devolution.
- Collect contemporaneous written evidence and document why death was the sole reason for non-completion.
- Identify whether professional endorsement and a sworn declaration are required and diary the 365-day period where applicable.
- Coordinate the certificate application and declaration *causa mortis* with the notary and verify current requirements with the Commissioner.
- Explain the existing scheme's temporal limits and the continuing conditions that can result in forfeiture of relief.

Sources and Scope of this Note

This Note reflects the legislative position reviewed on 2 October 2026. Members should consult the official texts and any current procedures issued by the Commissioner:

Legal Notice 250 of 2026 — <https://legislation.mt/eli/ln/2026/250/eng>

Principal Order S.L. 364.15, particularly articles 2 to 6 and 8 — <https://legislation.mt/eli/sl/364.15/eng>

Income Tax Act, Chapter 123, article 5(2)(e)(i) — <https://legislation.mt/eli/cap/123/eng>

Duty on Documents and Transfers Act, Chapter 364, article 33 — <https://legislation.mt/eli/cap/364/eng>

This Note provides general guidance for members. It does not amend the law or create additional ethical obligations and is not a substitute for the legislation, applicable tax procedures or professional judgment in an individual matter.

