

SUBSIDIARY LEGISLATION 123.27

CAPITAL GAINS RULES

25th November, 1992

LEGAL NOTICE 102 of 1993, as amended by Legal Notices 379 of 2002, 5 of 2005, 51 of 2006, 37, 409 of 2007, 317, 336 of 2010, 413 of 2011, 105 of 2013, 379 of 2017 and 191 of 2020.

1. The title of these rules is the Capital Gains Rules.

Title.

2. (1) In computing the gains or profits on the transfer of immovable property the following shall be taken into consideration:

Computation of gains.
Amended by:
L.N. 5 of 2005;
L.N. 336 of 2010.;
L.N. 379 of 2017.

(a) the cost of acquisition which shall include:

- (i) the cost of property transferred declared in a deed of purchase and any expenses directly related to such deed including duty under the Stamp Duties Ordinance, the Duty on Documents Act, the Duty on Documents and Transfers Act, and agents', legal and notarial fees proved to the satisfaction of the Commissioner;
- (ii) where the immovable property in question was acquired *causa mortis* or by means of a donation, its value at the time of its acquisition, determined in accordance with the following sub-rules;
- (iii) any expenditure proved to the satisfaction of the Commissioner to have been wholly and exclusively incurred in developing the property being transferred;
- (iv) duty paid in terms of the Duty on Documents and Transfers Act on the transfer *causa mortis* of the immovable property in question, including duty paid on a deed of adjustment relating to that property made in terms of the Adjustments to Declared Value of Immovable Property Rules;
- (v) duty paid on the donation to the transferor of the immovable property in question in terms of the Duty on Documents and Transfers Act, the Death and Donation Duty Act or any law replaced by any of those Acts;

Cap. 364.

Cap. 364.

S.L. 364.11

Cap. 364.

- (b) the increase in inflation determined in accordance with rule 8;
- (c) improvements to immovable property after acquisition if these are proved to the satisfaction of the Commissioner; the provisions of paragraph (b) shall also apply *mutatis mutandis* with respect to such improvements;
- (d) a maintenance allowance calculated at 0.4% of the

value of the building, cost price or cost of completion for every year between the year of acquisition or completion and disposal;

- (e) other expenses duly received and directly related to the transfer and not exceeding five per cent of the sale price.

(2) Subject to subrule (4) -

- (a) the value of immovable property acquired *causa mortis* on or after the 25th November, 2003 shall be deemed to be the value as at the time of acquisition of immovable property situated in Malta that was acquired *causa mortis* made for the purpose of and in accordance with the provisions of the Duty on Documents and Transfers Act not later than six months after the date of the relative succession, without regard to any adjustment to or replacement of that declaration made after the said period of six months, and notice of which has been given to the Commissioner in accordance with that Act by not later than either fifteen working days after the date of the publication of the said deed or the expiration of the said period of six months, whichever is the later;

Cap. 364.

- (b) where the notice referred to in paragraph (a) is given to the Commissioner later than fifteen working days after the date of the publication of the said deed and after the expiration of the said period of six months, the value of the property shall be deemed to be such value which, in the opinion of the Commissioner, represents the price which the property would have fetched had it been sold on the open market on the date of the transfer *causa mortis*;

- (c) a value determined in accordance with paragraph (b) shall be subject to appeal; provided that no evidence shall be considered by the Administrative Review Tribunal as sufficient to warrant any change to the value so determined if the notice referred to in the said paragraph is delivered to the Commissioner more than eighteen months after the date of the transfer *causa mortis*;

- (d) notwithstanding the foregoing provisions of this subrule, where the value of property acquired *causa mortis* on or after the 25th November, 2003 is the subject of an assessment made under the Duty on Documents and Transfers Act, and that assessment becomes final and conclusive, or is confirmed or amended by a final decision of an appellate tribunal or court or is withdrawn following an agreement in writing with the Commissioner, the value of the property shall be deemed to be the value resulting from the said final and conclusive assessment, decision or agreement;

Cap. 364.

- (e) where, in a final and conclusive assessment made under the Income Tax Management Act, the chargeable gain on a transfer of immovable property that had been acquired *causa mortis* on or after the 25th November, 2003 is higher than that declared by the taxpayer, and the excess is attributable to a value of the property exceeding the value declared by the taxpayer for the purpose of computing that gain by not more than twenty-five per cent of the taxpayer's value, that excess shall not constitute an omission for the purposes of article 56(12) of the Income Tax Act, hereinafter referred to as "the Act", if the value declared by the taxpayer is supported by an architect's valuation delivered to the Commissioner before that assessment became final and conclusive.

Cap. 372.

Cap. 123.

(3) Subject to subrule (4) -

- (a) the value at the time of acquisition of immovable property situated in Malta that was acquired *causa mortis* before the 25th November, 2003 shall be deemed to be the value declared in a notice given to the Commissioner for the purpose of and in accordance with the provisions of the Duty on Documents and Transfers Act not later than the 30th June, 2005, taking into account any adjustment to the said value made in accordance with the Adjustments to Declared Value of Immovable Property Rules, 2005 and delivered to the Commissioner by not later than the 30th June, 2005:

Cap. 364.

S.L. 364.11

Provided that if the said property is transferred after the 25th November, 2004 and before the 30th June, 2005, the value of the property shall be deemed to be the value declared in a notice given as aforesaid not later than the date of that transfer, taking into account any adjustment made in accordance with the said Rules not later than the date of that transfer;

- (b) where the notice referred to in paragraph (a) in respect of property acquired *causa mortis* before the 25th November, 2003 is not given to the Commissioner by 30th June, 2005 or, in the circumstances mentioned in the proviso to paragraph (a), by the date of the transfer, the value of that property shall be deemed to be such value which, in the opinion of the Commissioner, represents the price which the property would have fetched had it been sold on the open market on the date of the transfer *causa mortis*, and no evidence shall be considered by the Administrative Review Tribunal as sufficient to warrant any change to the value so determined.

(3A) Subject to sub-rule (4), the value at the time of acquisition of immovable property situated in Malta that was acquired by means of a donation shall be deemed to be the value declared in the deed of donation.

(3B) Subject to sub-rule (4), the value at the time of acquisition of immovable property situated outside Malta that was acquired *causa mortis* or by means of a donation shall be deemed to be equivalent to the price which that property would have fetched had it been sold in the open market at the date of the acquisition.

(4) When the total of the value at the time of acquisition of immovable property that was acquired *causa mortis* or by means of a donation and the other deductions allowable in terms of the foregoing provisions of this rule exceeds the value at which that property is transferred, the amount that shall be taken as the value of that property at the time of acquisition shall be the value determined in accordance with the foregoing sub-rules of this rule reduced by an amount equivalent to that excess: provided that the value so reduced shall never be less than zero.

Allowable
expenditure.

3. In determining what expenditure is allowable there must be excluded any sum which has been allowed as a deduction for the purposes of Part IV of the Act or otherwise as a deduction against income under any other Part of the Act other than article 5 of the Act.

Gains derived from
the transfer of
assets referred to in
article 5(1)(a)(ii) of
the Act.

Substituted by:
L.N. 5 of 2005;
L.N. 379 of 2017.

4. (1) Subject to the other provisions of these rules, in computing the gains or profits on the transfer of any asset to which article 5(1)(a)(ii) of the Act applies, there shall be taken into account the cost of acquisition of that asset.

(2) Without prejudice to the generality of rule 3, in the case of a transfer of intellectual property or intellectual property rights, the cost of acquisition shall not include any amount in respect of which a deduction has been claimed in terms of article 14(1)(m) of the Act.

Cap. 364.

(3) When the said asset was acquired *causa mortis* or by means of a donation, the cost of acquisition shall be deemed to be an amount equal to the price which that asset would have fetched had it been sold on the open market on the date of that acquisition. However, where a notice was given to the Commissioner for the purposes of the Duty on Documents and Transfers Act in respect of that acquisition and the value declared in that notice was lower than the said price, the cost of acquisition shall be deemed to be equivalent to the value so declared.

Transfer of shares
that have been
admitted for
trading on an
alternative trading
platform.

Added by:
L.N.379 of 2017.

4A. (1) In the computation of the capital gains derived by an original shareholder from a transfer of shares that is made in consequence of the admission of those shares for trading on an alternative trading platform, the amount on which tax is chargeable shall be the amount computed in accordance with the Act and the other provisions of these rules multiplied by the percentage indicated in the second column of the following table, depending on the level of public participation in the company in which the shares are held:

Level of public participation	Taxable portion
Less than 10%	100%
At least 10% but less than 15%	75%
At least 15% but less than 20%	50%
At least 20% but less than 25%	25%
25% or more	0%

(2) Subject to the provisions of sub-rule (1), when a person who is not an original shareholder transfer shares in a company that have been admitted for trading on an alternative trading platform and the level of public participation in the company is at least 10%, no tax shall be chargeable on capital gains derived from that transfer.

(3) For the purpose of this rule -

- (a) "alternative trading platform" is an alternative trading platform, as defined in Commission Regulation (EU) No 651/2014 of 17 June, 2014, that is operated by a stock exchange recognized under the Financial Markets Act; Cap. 345.
- (b) "level of public participation" means the percentage of equity shares held by persons who are not original shareholders at the end of the day of the transfer in question;
- (c) "original shareholder" means:
 - (i) a person who was a shareholder of the company before any shares in that company were admitted for trading on an alternative trading platform;
 - (ii) the spouse, a direct descendant or the spouse of a direct descendant of an original shareholder described in the other sub-paragraphs;
 - (iii) a trust or a company, partnership, foundation or other legal person whose beneficiaries are, to the extent of more than 50%, original shareholders described in the other sub-paragraphs or which is owned and controlled, directly or indirectly, to the extent of more than 50%, by such original shareholders; or
 - (iv) a shareholder in a company who acquired his shares from an original shareholder described in the other sub-paragraphs by means of a transfer *causa mortis* or any other transfer to which sub-rule (1) was not applicable.

Transfer of
company shares.
Substituted by:
L.N. 5 of 2005.
Amended by:
L.N. 51 of 2006;
L.N. 37 of 2007;
L.N. 317 of 2010;
L.N. 336 of 2010;
L.N. 413 of 2011;
L.N. 105 of 2013;
L.N.379 of 2017.

5. (1) Where a transfer of shares in a company is a transfer of a controlling interest in that company, the transfer shall be deemed, for the purpose of determining the chargeable gain, to have been made at the higher of the consideration and the market value of the shares.

(2) A transfer is a transfer of a controlling interest when any of the following criteria apply to the shares held by the transferor at any time during the period of eighteen months immediately preceding the transfer:

- (a) their aggregate nominal value represents at least twenty-five percent of the nominal value of the issued share capital of the company;
- (b) the aggregate voting rights attached to them represent at least twenty-five per cent of the voting rights in that company;
- (c) the aggregate rights attached to them give the right to the holder to be appointed or to nominate or appoint or to withhold the nomination or appointment of a director of that company;
- (d) the aggregate rights to profits available for distribution attached to them represent at least twenty-five percent of the total rights to profits available for distribution to the ordinary shareholders of the company:

Provided that, notwithstanding the provisions of this subrule, where a transfer of shares in a company is a transfer referred to in article 5(9A)(d) of the Act, such transfer shall be treated as a transfer of a controlling interest in that company:

Provided further that, notwithstanding the provisions in this subrule, where a transfer of shares in a company is a deemed transfer of a proportion of a holding as referred to in article 5(13)(b)(i) of the Act, such transfer shall not be treated as a transfer of a controlling interest in a company.

(3) When two or more transfers of shares in the same company ("the relevant transactions") are made by the same or by related persons within a period of eighteen months or less, then, for the purpose of determining the chargeable gains arising from the last of those transfers, the relevant transfers shall be deemed to be one transfer ("the global transfer") made by the same person on the date of that last transfer, and if the global transfer satisfies any of the criteria listed in subrule (2), the following provisions shall apply:

- (a) the last of the relevant transactions shall be deemed to be a transfer of a controlling interest;
- (b) the market value of the shares transferred in the last transfer shall be deemed to be equal to the market value of the global transfer reduced by the total value that was or is to be taken into account for the purpose of determining the chargeable gain arising from each of the relevant transactions preceding the last of those transfers.

(4) For the purpose of subrule (3) -

- (a) an individual is deemed to be related to another person if that other person is his spouse, his descendant in the direct line, his adoptive child, the spouse of any such descendant or adoptive child, his brother or sister, or a company of which the individual is, directly or indirectly, a shareholder;
- (b) two bodies of persons are deemed to be related persons if they are companies within the same group of companies in terms of article 16 of the Act or are directly or indirectly controlled and beneficially owned as to more than fifty per cent by the same persons.

(5) The market value of shares in a company is a percentage of the market value of the company to be determined in accordance with the following formula -

$$Y = (0.4 \times A) + (0.2 \times B) + (0.4 \times C)$$

where -

- (a) 'Y' represents the percentage to be determined;
- (b) 'A' is the percentage of the issued share capital represented by the nominal value of those shares;
- (c) 'B' is the percentage of the total voting rights in the company represented by the total voting rights attached to those shares; and
- (d) 'C' is the percentage of the profits available for distribution to the ordinary shareholders represented by the profits available for distribution to the holder of those shares:

Provided that -

- (i) saving proviso (ii), for the purpose of determining the market value of the shares, where the percentage determined by the above formula has decreased as a result of a change in the issued share capital of that company or a change in rights attached to such shares, made during the period of eighteen months preceding the transfer, and such change was not subject to duty under article 42B of the Duty on Documents and Transfers Act, it shall be deemed that such change had not taken place and the market value of the shares shall be determined by reference to the market value of the company and the percentage determined by the above formula, calculated by taking into account the values of 'A', 'B' and 'C' as existing at the time immediately preceding that change; Cap. 364.
- (ii) the market value of shares that are listed on a stock exchange recognised under the Financial Markets Act shall be the last quoted price of those shares on that exchange before the date of the transfer; Cap. 345.

- (iii) where the transferor submits, together with Schedule C referred to in sub-rule (10), a share valuation prepared by an expert (specialist valuer) who is independent of the company, the Commissioner may at his absolute discretion accept such valuation and in such case the market value of the shares shall be such amount as determined by the expert. The share valuation shall be accompanied by the expert's report which shall include a detailed description of the methods of valuation which have been used in determining the market value of the shares:

Provided that the transferor shall only be authorised to submit a share valuation where:

- (a) the capital gain differential exceeds ten per centum (10%); and
- (b) the capital gain differential exceeds thirty thousand euro (€30,000).

For the purpose of this proviso "capital gain differential" means the difference between the capital gain computed by applying the formula prescribed in this sub-rule and the capital gain computed on the basis of the share valuation;

- (iv) Where the Commissioner requires further particulars for the purposes of enabling him to make a decision on whether to accept a share valuation submitted by an authorised transferor, the Commissioner shall, within thirty days of the receipt of the share valuation, or of the receipt of any further particulars previously required under this paragraph, by written notice, require the applicant to furnish such further particulars, and if any such notice is not complied with within thirty days, or such longer period as the Commissioner may allow, the Commissioner need not proceed further with the application;
- (v) The Commissioner shall notify his decision to the transferor in writing within a reasonable time of receiving the share valuation or, if he gives a notice under sub-rule (iv), within a reasonable time after the notice has been complied with.

- (6) The market value of a company is the total of the net asset value of the company as resulting from its financial statements for the financial year preceding that in which the transfer is made:

Provided that, where during the financial year in which the transfer is made, but not later than the date of the transfer, the company has transferred or acquired any immovable property or rights over an immovable property or any shares in another company representing at least ten percent of the nominal value of the issued share capital of that other company, the net asset value of the company shall be that resulting from an accounting statement prepared by a certified public accountant holding a practicing

certificate in auditing, to be drawn up as at the date of the transfer. The accounting statement shall consist of a balance sheet showing the position of the company as at the date of the transfer and shall be drawn up using the same methods and the same layout as used for its financial statements for the financial year preceding that in which the transfer is made:

Provided further that -

- (a) where the assets of the company include shares in another company, and such shares represent at least ten percent of the nominal value of the issued share capital of that other company, their book value shall be replaced by their market value determined in accordance with this rule 5, including this proviso. So however that where the market value as determined in accordance with this rule is a negative figure, their market value shall be taken to be zero;
- (b) where the assets of the company include immovable property, the book value of that property shall be replaced by its market value, that is to say, the price that the property would fetch if sold on the open market on the date of the transfer: provided that this paragraph shall not apply if the market value of the property is less than its book value;
- (c) the net asset value shall be increased by an amount, representing the value of the goodwill, equivalent to two years' average profits calculated by reference to the profits of the company for the five financial years immediately preceding the year in which the transfer is made;
- (d) where the issued share capital of the company includes shares whose return is limited to a fixed rate of return, the net asset value shall be reduced by the book value of such shares:

Provided that this paragraph shall not apply where the company has applied an amount standing to the credit of any of its reserve accounts funds, other than a capital redemption reserve and profits available for distribution in paying up to any extent the allotment of the said shares.

(7) For the purpose of subrule (6) -

- (a) where the transfer is made during the company's first financial year, its net asset value shall be the nominal value of its issued share capital as adjusted in accordance with the provisos to the said subrule;
- (b) where the company has not been in existence for a sufficient period to determine the value of the goodwill in the manner stated in proviso (c) to subrule (6), the average profits shall be calculated by reference to the total profits for the years preceding that during which the transfer is made:

Provided that, subject to paragraph (c), where the transfer is made during the company's first or second financial year no value is to be attributed to the goodwill;

- (c) where the company has acquired its business or part thereof from another person during the company's first three financial years the value of the goodwill of the business so acquired shall be the higher of the consideration, if any, paid for the acquisition of the goodwill of that business and its value determined in accordance with the foregoing provisions by reference to the profits derived by that other person from the relevant business;
- (d) in determining the value of the goodwill in accordance with sub-rule (6)(c), in cases where the provisions of sub-rule (6)(a) come into operation, any dividends paid to the company out of profits for the years being considered, by another company in which the company is a shareholder, are excluded from the calculation;
- (e) where the value of the goodwill determined in accordance with the foregoing provisions is negative, the value that shall be taken into consideration shall be nil.

(8) Where a controlling interest includes shares in a company that directly or indirectly owns, at the time of the transfer of those shares, immovable property there shall be allowed a deduction for the increase in inflation calculated in accordance with rule 8 in respect of that immovable property or its relevant portion:

Provided that no such deduction for inflation shall be allowed where the book value of the shares has not been replaced by their market value in accordance with proviso to sub-rule (6)(a).

(9) Where a transfer of a controlling interest is a transfer to which article 5(3)(a) of the Act applies, the deduction allowable in terms of subrule (8), where applicable, is to be deemed as satisfying the requirement for any adjustment to the value of the immovable property that may be due in terms of that article:

Provided that where the transfer is not a transfer of a controlling interest, the adjustment required by the said article 5(3)(a) shall consist of an increase for inflation made in accordance with rule 8 but taking index^{yd} to be the index for 1991.

(10) The transferor in any transfer of shares shall submit to the Commissioner a statement prepared by a certified public auditor stating whether the transfer is a transfer of a controlling interest or not and indicating the grounds on which this statement is based. Where the transfer is a transfer of a controlling interest, the auditor's statement shall be made on the form prescribed in Schedule C including a computation of the market value of the shares as required by these rules, and shall be accompanied, where applicable, by an architect's valuation of the market value of the immovable property taken into account in determining the value of the shares. In any other case, except as provided in sub-rule (14),

the auditor's statement shall be made on the form prescribed in Schedule D including a valuation of the shares.

(11) The statement referred to in subrule (10) shall be delivered in triplicate to the Commissioner (Capital Transfer Duty Department) and the transferor shall, together with the delivery, pay to the Commissioner the provisional tax due on the transfer in accordance with article 43 of the Income Tax Management Act, and the Commissioner shall not consider that delivery or the notice of the transfer required in accordance with the Duty on Documents and Transfers Act as valid unless payment is made as aforesaid. Cap. 372. Cap. 364.

(12) The Commissioner shall stamp one of the copies of the certificate submitted in accordance with subrule (11) in acknowledgement of the receipt of same and return it to the person who submitted it.

(13) An architect's valuation delivered to the Commissioner in accordance with rule 5A and this rule ("the taxpayer's technical valuation") constitutes proof of the market value of the property to which it refers unless a different value results from a valuation prepared by an architect appointed by the Commissioner ("the Commissioner's technical valuation"):

Provided that -

- (a) where the taxpayer's and the Commissioner's technical valuations are produced in any proceedings in the Administrative Review Tribunal, the Tribunal shall, unless the parties otherwise agree, appoint a third architect to report on the value after examining the two valuations and inspecting the property, and the Tribunal shall decide the matter after taking into account the third architect's report and any other consideration that it may consider appropriate;
- (b) where, in a final and conclusive assessment, the chargeable gain on a transfer of shares is higher than that declared by the taxpayer, the excess shall not, to the extent that it is attributable to a value of immovable property as assessed exceeding the taxpayer's technical valuation by not more than twenty-five percent, constitute an omission for the purposes of article 56(12) of the Act.

(14) Where the transferor is a person to whom the provisions of articles 5(2)(e), 5(6)(e), 5(9), 5(14) and 12(1)(c)(ii) of the Act apply, a valuation of shares or immovable property need not be made, and the statement referred to in sub-rule (10) shall be made on the form prescribed in Schedule E.

(15) For the purposes of this rule, the term "shares" or "shares in a company" shall mean:

- (a) shares in a company which is resident in Malta in terms of article 2 of the Act; or
- (b) shares held directly or indirectly in any other company the assets of which consist wholly or principally of immovable property, provided that where such shares

are held by a company whose shareholders are, either directly or indirectly, all not resident in Malta (excluding the holding by any person resident in Malta of not more than one share in the company), immovable property situated outside Malta shall be disregarded for the purpose of making the determination contemplated in this paragraph; or

- (c) shares in a company referred to in article 5(9A)(a) of the Act:

Provided that any shares whose return is limited to a fixed rate of return shall be excluded.

Transfer of value.
Added by:
L.N. 317 of 2010.

- 5A.(1)(i)** Where as a result of a change in the issued share capital of a company or a change in voting rights attached to such shares, (hereinafter referred to as the "change"), a transfer of value as provided for in article 5(13)(b)(ii) of the Act is deemed to have taken place, the value transferred or acquired by a person shall be determined in accordance with the following formula:

$Y = (A - B) + C - D$ where -

- (a) 'Y' represents the amount to be determined;
- (b) 'A' is the market value of the shares held in the company immediately before the change;
- (c) 'B' is the market value of the shares held in the company immediately after the change;
- (d) 'C' is the consideration paid for the acquisition of shares or additional shares issued by the company, where the change consists of an issue of share capital for consideration;
- (e) 'D' is the amount paid by the company in respect of a cancellation of shares, where the change consists of a reduction of share capital of the company;

Provided that where the market value of the company immediately before the change does not exceed the value of the paid up share capital of such company, the value of 'Y' shall be taken as zero:

Provided further that where such person does not hold any shares in the company immediately before or after the change, the value of 'A' or 'B' in the said formula, as the case may be, shall be taken as zero:

Provided also that, where the change in the issued share capital consists of a conversion of securities, for the purpose of paragraphs (b) and (c) the market value of shares not being securities as defined in article 5(1)(b) of the Act shall be taken as zero.

- (ii) Where the amount determined in accordance with the said formula is a positive amount, such person ("the transferor") shall be deemed for the purposes of article 5(13)(b)(ii) of the Act to have made a transfer of value

equal to the said amount and such value shall be deemed for the purposes of the said article to have passed into other shares in or rights over the company held by any other person or persons. The amount so determined shall be the gains or profits referred to in the said article.

- (iii) Where the amount determined in accordance with the said formula is a negative amount, such person ("the transferee") shall be deemed to have acquired value equal to the said amount and such value shall be deemed to have passed into shares in or rights over the company held by him.

(2) For the purpose of sub-rule (1):

- (i) the market value of shares held in a company is a percentage of the market value of the said company corresponding to the percentage of the issued share capital represented by the nominal value of those shares;
- (ii) where the issued share capital of the company is made up of different classes of shares (whether before or after the change in the issued share capital) or where the change consists of an alteration of voting rights, the market value of shares held in the company shall, notwithstanding paragraph (i), be the percentage of the market value of the said company corresponding to the percentage of the total voting rights in the company represented by the total voting rights attached to those shares;
- (iii) notwithstanding paragraph (ii), where the value of 'Y' as determined by the application of paragraph (i) is higher than the value of 'Y' as determined by the application of paragraph (ii), the value of 'Y' is to be determined by the application of paragraph (i).

(3) The market value of a company shall, for the purpose of sub-rule (2), be determined in accordance with rules 5(6) and (7):

Provided that in determining the market value of the company the total net asset value referred to in rule 5(6) shall be that resulting from an accounting statement prepared by a certified public accountant holding a practicing certificate in auditing, to be drawn up as at the date of the deemed transfer of value. The accounting statement shall consist of two balance sheets showing the position of the company immediately before and after the change and shall be drawn up using the same methods and the same layout as used for its financial statements for the financial year preceding that in which the change takes place.

- (4) (i) For the purpose of determining the chargeable gain there shall be allowed as a deduction against the gains or profits determined in accordance with sub-rule (1) of this rule, a portion of the cost of acquisition of the shares held by the transferor immediately before the change in the issued share capital or voting rights

(hereinafter referred to as the "change"), to be determined in accordance with the following formula -

$Z = ((A - B) / A) \times E$ where -

- (a) 'Z' represents the amount to be determined;
- (b) 'A' is the market value of the shares held by the transferor immediately before the change as determined in sub-rule (1);
- (c) 'B' is the market value of the shares held by the transferor immediately after the change as determined in sub-rule (1); and
- (d) 'E' is the cost of acquisition of the shares held by the transferor immediately before the change:

Provided that the deduction to be allowed against the said gains or profits, shall in no case exceed such gains or profits:

Provided further that where the amount determined in accordance with the said formula is a negative amount, such amount shall be taken to be zero:

Provided also that no such deduction shall be allowed where the gains or profits determined in accordance with sub-rule (1) of this rule arise as a result of a change in the issued share capital consisting of a reduction of share capital.

- (ii) On a subsequent transfer of the shares held by the transferor immediately before the change, the cost of acquisition shall be deemed to be the portion of the cost of acquisition not taken into account in determining the chargeable gain referred to in paragraph (i) of this subrule, and proviso (ii) of rule 5(5) shall not apply to the said transfer.
- (iii) The acquisition cost of shares held by the transferee acquiring value referred to in subrule (1)(iii) shall be increased by the amount referred to in the said paragraph, which shall for such purpose be treated as a positive amount, and the aggregate amount so obtained shall, for the purpose of determining the chargeable gain on a subsequent transfer, be the cost of acquisition of the said shares:

Provided that where the said transferee, held shares in the company immediately before the change in the issued share capital and acquired further shares as a result of a change in the issued share capital consisting of an increase in the share capital of the company, the acquisition cost of the shares held and acquired shall be increased *pro rata* by the said amount:

Provided further that the acquisition cost of shares, not being securities as defined in article 5(1)(b) of the Act, held by the transferee immediately before the change in the issued share capital shall, for the purpose of determining the aggregate amount referred to in this

paragraph, be taken to be zero:

Provided also that this paragraph shall only apply where the said transferee acquiring value has paid the relative duty as determined in accordance with article 42 of the Duty on Documents and Transfers Act in respect of the value so acquired. Cap. 364.

- (iv) On a subsequent transfer of the shares held by the transferor and transferee immediately after the change, made before the end of the financial year in which the change took place, the market value taken into account in determining the chargeable gain shall, notwithstanding the provisions of rule 5, not be lower than the value of 'B' referred to in sub-rule (1)(i)(c) of this rule, being the value that was taken into account in determining the value transferred or acquired, as the case may be.

(5) The transferor in any transfer of value referred to in this rule shall submit to the Commissioner a computation of the market value of the shares, made on the form prescribed in Schedule F, accompanied, where applicable, by the accounting statement referred to in sub-rule (3) and by an architect's valuation of the market value of the immovable property taken into account in determining the value of the company.

(6) The form referred to in sub-rule (5) shall be delivered in triplicate to the Commissioner and the transferor shall, together with the delivery, pay to the Commissioner the provisional tax due on the transfer in accordance with article 43 of the Income Tax Management Act. Cap. 372.

(7) The Commissioner shall stamp one of the copies of the form submitted in accordance with sub-rule (5) in acknowledgement of the receipt of same and return it to the person who submitted it.

(8) For the purposes of this rule, the term "shares" or "share capital" shall exclude shares which do not participate in any way in the profits of a company other than by way of a fixed rate of return.

5B. The provisions of article 5(9) of the Act shall not apply where the asset transferred from one company to another company consists of value in securities as provided for in article 5(13)(b)(ii) of the Act. Applicability of article 5(9) of the Act.
Added by: L.N. 317 of 2010.

5C. For the purposes of identifying shares acquired with shares subsequently disposed of, in so far as the shares are of the same class, shares acquired at an earlier time shall for the purposes of determining the gains or profits referred to in article 5(1)(a)(ii) of the Act be deemed to have been disposed of before shares acquired at a later time. Transfer of shares acquired by means of separate acquisitions.
Added by: L.N. 317 of 2010.

5D. (1) The adjusted cost of a partner's interest in a partnership shall be the cost of such interest determined in accordance with article 5(3A)(a) of the Act, and - Transfer of an interest in a partnership.
Added by: L.N. 413 of 2011.

- (a) increased by the sum of:

- (i) any additional capital contributions made by the partner to the partnership during the period he was a partner,
 - (ii) the partner's total share of partnership profits for the period during which he was a partner, and
- (b) reduced by (but not below zero) the sum of:
- (i) the amount of capital contributions drawn out or received back,
 - (ii) all partnership profits distributed to the partner during the period he was a partner,
 - (iii) the partner's total share of partnership losses for the period during which he was a partner.

For the purpose of this sub-rule:

Cap. 372.

- (i) "partnership profits" means the income of the partnership as referred to in article 27 of the Income Tax Management Act, declared by the partners in a return of income;
- (ii) "partnership losses" means the amount of losses incurred by the partner from the partnership as referred to in articles 5(10)(a) and 14(1)(g) of the Act;
- (iii) "partner or partners" means any person holding an interest in a partnership:

Provided that where the transfer is a transfer of a partial interest the adjustments referred to in paragraphs (a) and (b) shall be made *pro rata*:

Provided further that where it is not practical to apply the said adjustments or where it is reasonable to conclude that the result will not vary substantially from that which would be obtained by applying such adjustments, the Commissioner may in his absolute discretion accept such other adjustments as the transferor of the interest in the partnership may determine.

(2) Gains or profits relating to a transfer of an interest in a partnership shall be determined by deducting, from the transfer value of the interest, the adjusted cost of acquisition of the interest determined in accordance with sub-rule (1). The transfer value of the interest is the higher of the market value of that interest and the consideration paid or payable for the transfer.

(3) The market value of an interest in a partnership is the percentage of the market value of the partnership corresponding to the share to which the transferor is entitled to assets available for distribution on the winding up of that partnership:

Provided that -

- (a) for the purpose of determining the said percentage, the value of the assets available for distribution shall be deemed to be the market value of the partnership as determined in accordance with sub-rule (4), which shall, unless otherwise provided in the contract of partnership, first be allocated between the partners to satisfy each partner's capital and current account balances as at the date of the transfer, and any remaining balance of market value shall be allocated among the partners in proportion to their share of the profits of the partnership. The provisions of article 1666 of the Civil Code shall apply where the contract of partnership does not fix the share of each partner in the profits of the partnership. Cap. 16.

Where the share of the profits of the partnership, as fixed in the contract of partnership, cannot be readily ascertained due to such share being dependent either on a particular condition or a set of conditions, or a formula the attributes of which are dependent on a particular condition or set of conditions, such share shall be determined by reference to the actual apportionment of profits or losses made in the last complete financial year preceding the transfer;

- (b) where the market value of the interest of the transferor has been reduced, as a result of any alteration or addition to the contract of partnership including any change in the manner in which the assets of the partnership are to be distributed between the partners upon winding up and to the profit sharing arrangements, made during the period of eighteen months preceding the transfer, the market value of the interest shall be determined by reference to the terms of the contract of partnership, as existing at the time immediately preceding that alteration, addition or change;
- (c) where the transfer is a transfer of a partial interest, the market value of the part transferred is to be calculated by reference to such portion of the market value of the whole interest as corresponds to the portion of the interest transferred.

(4) The market value of a partnership is the total of the net asset value of the partnership as resulting from a balance sheet showing the state of affairs of the partnership as at the date of the transfer, to be prepared by a certified public accountant, and drawn up using the same methods and the same layout as used for its financial statements for the financial year preceding that in which the transfer is made:

Provided that -

- (a) where the assets of the partnership include shares in a company, and such shares represent at least ten percent of the nominal value of the issued share capital of that company, their book value shall be replaced by their

market value determined in accordance with rule 5. So however that where the market value as determined in accordance with rule 5 is a negative figure, their market value shall be taken to be zero;

- (b) where the assets of the partnership include immovable property, the book value of that property shall be replaced by its market value, that is to say, the price that the property would fetch if sold on the open market on the date of the transfer;
- (c) the net asset value shall be increased by an amount, representing the value of the goodwill, equivalent to two years' average profits calculated by reference to the profits of the partnership for the five financial years immediately preceding the year in which the transfer is made;
- (d) where the partnership has not been in existence for a sufficient period to determine the value of the goodwill in the manner stated in paragraph (c), the average profits shall be calculated by reference to the total profits for the years preceding that during which the transfer is made;
- (e) in determining the value of the goodwill, in cases where the provisions of paragraph (a) come into operation, any dividends paid to the partnership out of profits for the years being considered, by another company in which the partnership is a shareholder, are excluded from the calculation;
- (f) where the value of the goodwill determined in accordance with the foregoing provisions is negative, the value that shall be taken into consideration shall be nil.

(5) In the case of a transfer of an interest in a partnership that directly or indirectly owns, at the time of the transfer of that interest, immovable property, there shall be allowed a deduction for the increase in inflation calculated in accordance with rule 8 in respect of that immovable property or its relevant portion to be determined on the percentage determined in accordance with sub-rule (3):

Provided that no such deduction for inflation shall be allowed where the book value of shares has not been replaced by their market value in accordance with paragraph (a) of the proviso of sub-rule (4).

(6) The transferor in any transfer of an interest in a partnership shall submit to the Commissioner a statement prepared by a certified public accountant holding a practicing certificate in auditing made on the form prescribed in Schedule G including a computation of the market value of the interest as required by sub-rule (4), and such statement shall be accompanied, where applicable, by an architect's valuation of the market value of the immovable property taken into account in determining the value of the interest.

(7) The statement referred to in sub-rule (6) shall be delivered in triplicate to the Commissioner (Capital Transfer Duty Department) and the transferor shall, together with the delivery, pay to the Commissioner the provisional tax due on the transfer in accordance with article 43 of the Income Tax Management Act, and the Commissioner shall not consider that delivery or the notice of the transfer required in accordance with the Duty on Documents and Transfers Act as valid unless payment is made as aforesaid.

Cap. 372.

Cap. 364.

(8) The Commissioner shall stamp one of the copies of the certificate submitted in accordance with sub-rule (7) in acknowledgement of the receipt of same and return it to the person who submitted it.

(9) The provisions of rule 5(13) shall, *mutatis mutandis*, apply to this rule.

(10) Where the transferor is a person to whom the provisions of article 5(2)(e) or (6)(e) of the Act apply, no valuations need to be made, and the statement referred to in sub-rule (6) shall be made on the form prescribed in Schedule H.

(11) For the purpose of the Act and these rules, "contribution" means the amount of capital that a person contributes to the partnership on his own account consisting of money or other property but does not include a contribution consisting in personal services.

5E. (1) Where a person (hereinafter referred to as "the transferee") acquires or increases a partnership share (hereinafter referred to as "the change"), other than by way of an acquisition of an interest in the partnership from another partner or partners, it shall be deemed that a transfer of an interest in the partnership has been made by the other partner or partners (hereinafter referred to as "the transferor") to that person. For the purposes of this rule, "partner or partners" means any person holding an interest in a partnership.

Deemed transfer of an interest in a partnership.
Added by:
L.N. 413 of 2011.

(2) The chargeable gain arising from the transfer referred to in sub-rule (1) shall be determined in accordance with the following formula:

$$Y = A - B \text{ where -}$$

- (a) 'Y' represents the amount to be determined;
- (b) 'A' is the market value of the interest held by the partner in the partnership immediately before the change;
- (c) 'B' is the market value of the interest held by the partner in the partnership immediately after the change.

For the purpose of sub-rule (1), where the value of 'Y' in the formula results in a positive amount such partner shall be deemed to have transferred an interest in the partnership:

Provided that where the value of 'Y' is a negative amount or is below one hundred euro (€100), it shall be taken to be zero:

Provided also that where the deemed transfer is made by the transferor to a person referred to in article 5(2)(e)(i) of the Act, the value of 'Y' shall be taken to be zero and the statement referred to in sub-rule (4) shall not be required to be submitted:

Provided also that, where a person ("the transferee") acquires or increases a partnership share, any payment made outside of the partnership accounts by such person to any other partner or partners shall, where such payment exceeds the chargeable gain as determined by the said formula, be the amount chargeable to tax.

(3) For the purpose of sub-rule (2), the market value of the interest in the partnership, immediately before and after the change, is to be determined in accordance with the provisions of rule 5D(3) and (4):

Provided that -

- (a) paragraph (b) of the proviso of rule 5D(3) shall not apply for the purpose of determining the value of 'B' in the formula referred to in sub-rule (2);
- (b) for the purpose of determining the value of 'B' in the formula referred to in sub-rule (2), any contribution consisting of money or other property made to the partnership by the transferee, which is credited to the capital or current accounts of the other partner or partners, shall be treated as being credited to the capital or current account of the transferee;
- (c) for the purpose of carrying out the allocation of the market value of the partnership between the partners to satisfy each partner's capital and current account balances, whether immediately before or after the transfer, as the case may be, any revaluations or goodwill adjustments credited to such accounts shall be disregarded and shall form part of the remaining balance of the market value.

(4) The transferor in any deemed transfer of an interest in a partnership shall submit to the Commissioner a statement prepared by a certified public accountant holding a practicing certificate in auditing made on the form prescribed in Schedule I including a computation of the market value of the interest as required by rule 5D(4), and such statement shall be accompanied, where applicable, by an architect's valuation of the market value of the immovable property taken into account in determining the value of the interest.

(5) The statement referred to in sub-rule (4) shall be delivered in triplicate to the Commissioner (Capital Transfer Duty Department) and the transferor shall, together with the delivery, pay to the Commissioner the provisional tax due on the transfer in accordance with article 43 of the Income Tax Management Act.

(6) The Commissioner shall stamp one of the copies of the certificate submitted in accordance with sub-rule (5) in acknowledgement of the receipt of same and return it to the person who submitted it.

(7) The provisions of rule 5(13) shall, *mutatis mutandis*, apply to this rule.

- (8) (a) A reduction in the contribution of a partner in a partnership shall be deemed to be a transfer of such proportion of the partner's interest in the partnership as is equal to the proportion of the reduction in the contribution of the partner and shall constitute a gain or loss in the year in which such reduction is effected:

Provided that where there is a proportionate reduction in the contribution of all the partners, such that the proportion of the interest of each partner with respect to profit sharing ratios and share of assets on winding up is equal both before and after the reduction is effected, it shall be deemed that no loss or gain has arisen from the transfer:

Provided further that the provisions of sub-rule (2) shall not apply in the case where this sub-rule applies.

- (b) On any subsequent transfer of the remaining interest of such partner, the cost of acquisition shall be deemed to be the residual part of the cost of acquisition not taken into account on the reduction of the contribution.
- (c) The provisions of rule 5D shall, *mutatis mutandis*, apply for determining the chargeable gains or profits derived from a deemed transfer of an interest in a partnership resulting from a reduction in the contribution of a partner:

Provided that the provisions of rule 5D(6) to (11) shall also apply to the said transfer.

6. (1) The provisional tax payable in terms of article 43 of the Income Tax Management Act in respect of immovable property is to be collected from the vendor and, or, transferor by the notary on publication of the relative deed of transfer. This payment is to be made by means of a bank draft or a cheque drawn by the notary who published the transfer deed payable to the Commissioner for Revenue:

Notary to collect provisional tax and to give notices to the Commissioner.
Amended by:
L.N. 379 of 2002;
L.N. 5 of 2005;
L.N. 409 of 2007.
Cap. 372.

Provided that no provisional tax shall be collected by the notary where the parties declare on the deed that the provisions of article 5(5)(b) of the Act apply to them.

(2) The bank drafts or cheques are to be presented with the notice contained in the First Schedule to the Duty on Documents and Transfers Rules, and the notice shall be presented in triplicate. One of the notices shall be stamped by the Commissioner in acknowledgement of the receipt of the same notice and of the draft or cheque, and shall be returned to the notary to be annexed to the relative deed.

S.L. 364.10.

(3) In calculating the provisional tax payable by the vendor and, or, transferor, the resulting amount is to be rounded down to the nearest euro. This rounding down may be made in respect of each vendor and, or, transferor if there is more than one vendor or transferor on the particular deed of transfer.

(4) The notice referred to in article 5(9)(ii) of the Act shall be made on the form prescribed in Schedule A and shall be presented in triplicate together with the notice referred to in subrule (2). One of the copies shall be stamped by the Commissioner in acknowledgement of the receipt of the same notice and shall be returned to the Notary to be annexed to the relative deed.

Applicability of article 5(14) of the Act.
Added by:
L.N. 5 of 2005.

7. The provisions of article 5(14) of the Act shall apply where the exchange of the shares does not produce any change in the individual direct or indirect beneficial owners of the companies involved or in the proportion in the value of each of the companies involved represented by the shares owned beneficially directly or indirectly by each such individual.

Inflation.
Added by:
L.N. 5 of 2005.
Amended by:
L.N. 413 of 2011.
Cap. 158.

8. (1) The increase for inflation of the value of immovable property is to be determined by using the index of inflation established in terms of article 13 of the Housing (Decontrol) Ordinance and applying the following formula:

$$\frac{\text{cost of acquisition/improvements}}{1} \times \frac{\text{index}^{yd} - \text{index}^{ya}}{\text{index}^{ya}}$$

Where -

cost of acquisition/improvements is the cost as computed in accordance with rule 2(1)(a) but excluding any expenses related to the deed or any duty or fees;

index^{yd} is the index for the year immediately preceding that in which the transfer is made;

index^{ya} is the index for the year immediately preceding that in which the property in question had been acquired or completed, whichever is the later, or, when it relates to improvements, for the year immediately preceding that in which the cost for carrying out the improvements was incurred:

Provided that -

(a) where, in terms of the Act, the cost of acquisition of immovable property that is transferred by a person is to be determined by reference to an acquisition happening before the acquisition of that property by that person, index^{ya} is the index for the year immediately preceding that in which the earlier acquisition took place;

(b) the deduction for inflation shall not exceed -

$$TP - CA - D$$

where -

(i) TP = the transfer price of the property

(ii) CA = the cost of its acquisition, taking into account any reduction in the value of property that may be required in terms of rule 2(4)

(iii) D = the other deductions, excluding the deduction for inflation, allowable in terms of these rules.

(2) Where the increase in inflation is to be calculated in connection with a transfer of a controlling interest in a company in the circumstances mentioned in rule 5(8), or a transfer of an interest in a partnership, the formula referred to in sub-rule (1) shall apply subject to the following provisions:

- (a) index^{yd} is the index for the year immediately preceding that in which the said transfer is made;
- (b) the increase is to be calculated by reference to such portion of the cost of the acquisition of the immovable property as corresponds to the portion of the immovable property represented by the shares transferred;
- (c) if the property was acquired or completed by the company before the interest or shares were acquired by the transferor, the increase in inflation computed in accordance with the foregoing provisions of this sub-rule shall be reduced by the amount corresponding to the increase in inflation from the date of the acquisition or completion of the property by the company or partnership to the date of the acquisition of the interest or shares by the transferor; and when the interest or shares were acquired in different years the reduction shall be calculated up to each year of acquisition. The cost of acquisition to be taken into account in each such calculation shall be such percentage of the cost of acquisition of the property as corresponds to the portion of the immovable property represented by the interest or shares acquired in each year;
- (d) the deduction for inflation computed in accordance with this subrule shall not exceed -

$$MV - CA - R$$

where -

MV = the market value, determined in accordance with rule 5, of the portion of the immovable property represented by the interest or shares transferred

CA = an equivalent portion of the cost of acquisition or completion of that property

R = the amount of the reduction, if any, computed in accordance with paragraph (c).

(3) Where the increase in inflation is to be calculated in connection with a transfer of an immovable property acquired *causa mortis* after the 24th November 1992 but before the 25th November 2003, and in respect of which an adjustment to the value thereof is made in accordance with the Adjustments to Declared Value of Immovable Property Rules, index^{ya} shall be deemed to be the index for the year 2003.

S.L. 364.11

Cost of acquisition of rights under a promise of sale or transfer or an emphyteutical grant.

Added by:

L.N. 5 of 2005.

Amended by:

L.N. 191 of 2020.

9. (1) A transfer of any rights acquired under a promise of sale or transfer of immovable property or any rights over immovable property, including a promise of an emphyteutical grant, shall not be valid unless it is made by means of a written agreement signed by the transferor and the transferee and authenticated by a notary or an advocate and notice thereof is given to the Commissioner together with the relative payment in accordance with subrules (2) and (3).

(2) The notice referred to in subrule (1) shall be signed by the transferor and the transferee and authenticated by the notary or the advocate who authenticated the relative written agreement and shall be in the form set out in, and contain the information required by, Schedule B.

(3) The notice referred to in subrule (2) shall be delivered to the Commissioner (Capital Transfer Duty Department) in triplicate within twenty-one days of the relative written agreement and shall be accompanied by a payment of provisional tax equivalent to 7% of the consideration for the transfer.

(4) In computing the gains or profits on the transfer of any right to which this rule applies, the only deductions that shall be taken into account shall be in respect of:

- (a) where the transferor had acquired that right from another person, the consideration, if any, which he had paid to that other person for that acquisition, to the extent that the consideration is supported by a receipt and results from an agreement that complies with this rule and in respect of which notice has been given and payment of provisional tax has been made as provided for in this rule:

Provided that where the transferor had acquired that right under an agreement made before the date on which this rule came into force a deduction for the consideration paid for that acquisition shall be allowable if proof thereof is submitted to the satisfaction of the Commissioner;

- (b) brokerage fees paid in respect of the said transfer, to the extent that they result from documentary evidence and supported by a receipt.

(5) This rule shall not apply to any transfer made on or after the 1 January 2020.

Transfer of property by persons about to leave Malta.

Added by:

L.N. 5 of 2005.

Amended by:

L.N. 413 of 2011;

L.N. 379 of 2017.

10. (1) When a notary is engaged to publish a deed of transfer of immovable property and the transferor is a person who is about to leave Malta, that notary shall give the notice referred to in sub-rule (3) not less than two months before the date set for the publication of that deed.

(2) When a notary is engaged to publish a deed of a transfer of immovable property and the transferor is a person who is either not resident in or not a citizen of Malta, that notary shall give the notice referred to in subrule (3) not less than two months before the date set for the publication of that deed.

(3) The notice required to be given by a notary in terms of subrule (1) or (2) shall state the details of the proposed transfer, including the details identifying the parties and their addresses, a description of the property, the date of the proposed transfer and the consideration at which the proposed transfer is to be made, and where an agreement for promise of sale or transfer has been concluded in writing, it should be accompanied by a certified copy of that agreement:

Provided that, for the purposes of this sub-rule, the notary shall not be obliged to give notice of any change in the acquirer of the property after the initial notification.

(4) A notary who is required to give a notice in accordance with subrule (1) or (2) may not publish the deed of the relative transfer before the expiration of two months from the date on which he gave the said notice to the Commissioner or before the date given in the said notice as the date of the proposed transfer unless he is so authorised in writing by the Commissioner:

Provided that in any case the notary may not publish the deed of the relative transfer:

- (a) unless the transfer is made for a consideration not exceeding the consideration notified to the Commissioner as aforesaid; and
- (b) unless he complies with any conditions that may have been imposed in the authorisation in writing given by the Commissioner before the publication of that deed; and
- (c) if the Commissioner refuses to give the said authorisation and notifies the notary of that refusal before the publication of the deed:

Provided also that if the notary publishes the deed of transfer without the said authorisation where such authorisation was required, such deed shall not be rendered null, but the notary shall be responsible for any tax which may result to be uncollected by the Commissioner from the transferor.

(5) The Commissioner may refuse to give the authorisation mentioned in subrule (4) if, in the circumstances mentioned in article 46 of the Income Tax Management Act and subject to the procedures provided for in that article, the transferor has not made such payment, and, or made such return, and, or given such security as the Commissioner may have requested in accordance with that article:

Cap. 372.

Provided that the Commissioner may give the said authorisation on condition that on the deed of transfer the notary collects, by means of a deduction from the transfer price, an amount equivalent to the payment or security that the Commissioner requests in accordance with the said article and remits that deduction to the Commissioner within fifteen days of that transfer. The deduction shall be remitted together with the notice that is required to be presented in accordance with rule 6.

(6) For the purposes of this rule:

Cap. 372.

- (a) "a person who is about to leave Malta" is a person who will leave Malta before the tax return date of the year immediately following that in which the transfer is made with the intention to establish his ordinary residence outside Malta;
- (b) a transferor who is a resident of Malta and is not a person who is about to leave Malta shall make a declaration to this effect to the notary engaged to publish the deed of transfer and the notary shall record such declaration in the deed;
- (c) where the transferor makes the declaration required by paragraph (b), the notary shall not be required to give the notice referred to in sub-rule (3) unless the transferor is not a citizen of Malta;
- (d) where it results that the declaration referred to in paragraph (b) is not a correct declaration, the transferor making the said declaration shall be liable to the penalties contemplated in article 52 of the Income Tax Management Act in terms of the provisions of the said article, and the provisions of the second proviso to sub-rule (4), to the extent that it refers to the responsibility of the notary for any tax which may result to be uncollected by the Commissioner from the transferor, shall not apply:

Cap. 372.

Provided that, if the transferor proves, to the satisfaction of the Commissioner, that the declaration required by paragraph (b) was a correct declaration, because at the time of such declaration the transferor had no intention to leave Malta to establish his ordinary residence outside Malta, the Commissioner shall refrain from invoking the provisions of article 52 of the Income Tax Management Act.

Sale by judicial auction.
 Added by:
 L.N. 105 of 2013.
 Cap. 372.
 Added by:
 L.N.379 tal-2017.

10A. (1) Any third party claiming that he holds security or rights which are not affected by the rights of the Commissioner in respect of withholding and payment of tax in terms of article 43(9)(c) of the Income Tax Management Act in respect of transfers of immovable property and any rights thereon in a sale by judicial auction, shall complete the relevant parts of the form prescribed in Schedule J and file the said form in triplicate with the Registrar of Courts, together with such documents as may be required to be attached thereto in terms of the said form. One of the copies of the form shall be stamped by the Registrar of Courts in acknowledgement of the receipt of the said notice.

(2) Within a period of two (2) months from the date of a sale by judicial auction, any transferor of immovable property and any rights thereon in a sale by judicial auction shall be entitled to complete the relevant parts of the form prescribed in Schedule J, either separately or concurrently with the use of the same form as set out in sub-rule (1), in order to indicate the tax treatment that should be applicable to the said transfer, and such form shall be filed in triplicate with the Registrar of Courts, together with such documents as may be required to be attached thereto in terms of the said form. One of the copies shall be stamped by the Registrar of Courts in acknowledgement of the receipt of the said notice. Where any transferor does not file the duly completed form prescribed in Schedule J with the Registrar of Courts in terms of this sub-rule, any tax deducted by the Registrar of Courts shall be deemed to constitute final tax or provisional tax relating to the transfer of the property or any rights thereon in terms of paragraph (a) or (b), as the case may be, of article 43(1) of the Income Tax Management Act. This is without prejudice to any tax payment or reporting obligations applicable to the transferor in terms of any of the provisions of the Income Tax Acts.

Cap. 372

(3) On receipt of the form prescribed in Schedule J in the circumstances set out in sub-rules (1) and, or (2), the Registrar of Courts, after ascertaining that the relevant parts thereof are duly completed and that any documents required to be attached thereto in terms of the said form are duly annexed, shall forward them, together with the application for withdrawal of funds, to a judge of the Superior Courts for his decree thereon. One of the copies of the duly completed form prescribed in Schedule J, together with the documents attached thereto and the Court decree, shall, within a period of not more than three (3) months after the Court's decree is issued, be forwarded by the Registrar of Courts to the Commissioner.

(4) Where any third party holds any security or rights which are not affected by the rights of the Commissioner in respect of withholding and payment of tax in terms of article 43(9)(c) of the Income Tax Management Act or rule 10B of these rules in a transfer of immovable property and any rights thereon in a sale by judicial auction, but after the satisfaction of all amounts due in respect of such security or rights any funds remain from the proceeds of the sale by judicial auction, the obligations of the Registrar of Courts in terms of article 43(9)(c) of the Income Tax Management Act shall be applicable and any tax due to the Commissioner shall be paid out of such remaining funds.

Cap. 372.

10B. Without prejudice to rule 10A, where any asset the transfer of which is subject to tax on property transfers under article 5A of the Act is sold in a judicial auction, the Registrar of Courts shall have the same duties with regard to the withholding and payment of the tax as those that are imposed on him by article 66 of the Duty on Documents and Transfers Act in relation to the duty leviable on transfers *causa mortis* under the said Act.

Registrar to withhold tax in the case of judicial sales by auction.
Cap. 364.
Added by:
L.N.379 of 2017.

Rules to be without
prejudice to certain
provisions of
article 43 of the
Income Tax
Management Act.
Added by:
L.N. 5 of 2005.
Cap. 372.

11. These rules shall be without prejudice to article 43(1)(a)
and (4)(a) of the Income Tax Management Act.

Added by:
L.N. 5 of 2005.
Amended by:
L.N. 37 of 2007.

SCHEDULE A
(Rule 6(4))

INCOME TAX ACT

(CAP. 123)

Capital Gains Rules

Notice of transfer of immovable property, within or from a group of companies
pursuant to article 5(9), Income Tax Act

Name of transferor company:

Delivered by (*officiating notary*):

I (*a director and/or legal representative of a transferor company*) on
behalf of the above-mentioned company, hereby give notice in accordance with article 5(9)
of the Income Tax Act, of the transfer of the immovable property referred to below and
assume full responsibility as to the correctness of the contents of this notice.

1. Details referring to the immovable property

Address of property	Transfer Value of property	Name of officiating notary on this public deed	Date of public deed

2. Details relating to transferor company appearing on this deed

Name of transferor company	Address of transferor company	Income Tax Reference no.

3. Details relating to transferee appearing on this deed

Name of transferee	Address of transferee	Income Tax Reference no.

4. Details relating to all previous transferors and transferees since the immovable property
entered the group

Name of transferor company	Income Tax Reference no.	Name of transferee	Income Tax Reference no.	Date of transfer	<u>Purchase price</u> as appearing on public deed of acquisition	Value of <u>improve- ments</u> made (if any) from date of acquisition to date of the transfer in each case	Total purchase price and improve- ments

Signature Dated this day of of the year
(*Director and/or legal representative*)

5. This Notice shall be accompanied by an auditor's signed report which shall form an integral part of the notice giving assurance (a) as to the agreement with the deed of acquisition of the purchase price of the relative property and (b) as to whether the values representing the said purchase price and the relative improvements have been properly extracted from the books and records of the company and (c) that the said values represent the historical cost of the property.

SCHEDULE B
(Rule 9(2))

*Added by:
L.N. 5 of 2005.
Substituted by:
L.N. 409 of 2007.*

INCOME TAX ACT
(CAP. 123)

Capital Gains Rules

Notice of transfer of a right referred to in article 5(1), Income Tax Act

This notice is to be filled in, duly signed by all parties and delivered in triplicate to the Commissioner (Capital Transfer Duty Department) within 21 days of the relative transfer and shall be accompanied by a provisional payment equivalent to 7% of the consideration relating to the transfer

1. Details referring to the property in respect of which the right is being transferred

Address of immovable property	Promise of Sale No.	Date of agreement	Name of Notary

2. Details relating to transferor

Transferor's name	Present address	I.T. reference no. or I.D. card no.

3. Details relating to transferee

Transferee's name	Present address	I.T. reference no. or I.D. card no.

4. Provisional tax payment

Consideration paid for the cession of the right		€
Provisional tax payable (7% of consideration)		€
No. of bank draft cheque		<i>Notification will be invalid if cheque is dishonoured</i>
Name of Bank		

5. Signatures of parties

Signature of transferor	Signature of transferee

6. Witness to signatures

Name in block capitals of witness to signatures (Notary or Advocate)	Signature of witness	Rubber stamp of witness

OFFICE USE

Name in block capitals of officer receiving the notice	Signature of officer	Official rubber stamp signifying receipt of notice

Added by:
L.N. 51 of 2006.
Amended by:
L.N. 37 of 2007;
L.N. 317 of 2010;
L.N.379 of 2017.

SCHEDULE C

[Rule 5(10)]

Notice in terms of Rule 5(10) of the Capital Gains Rules

Statement to be submitted by a transferor of shares where there is a transfer of controlling interest

Part 1 - Details of transferor

Name	
Address	
ROC No. (companies only)	
Income Tax Registration No.	

State the number of shares held by transferor immediately prior to the transfer

Type	Class	Votes per share	Nom. Value per share	Number	Date of acquisition

Part 2 - Details of Company in which shares are being transferred

Company Name	
Income Tax Registration No.	
Company year end	
Date of incorporation	
ROC No.	
Authorised share capital	
Issued share capital	

State whether (Yes or No)

- a The Company holds shares directly or indirectly in other companies
(if Yes attach details)
- b The Company or any companies specified in (a) above own immovable property at the date of the share transfer
(if Yes attach details)
- c An increase or reduction in the share capital of the company took place within eighteen months prior to the date of the share transfer
(if Yes attach details)
- d Any shares have been transferred by the transferor or a related party within eighteen months prior to the date of the share transfer
(if Yes attach details)
- e The company came into existence as a result of a restructuring
(if Yes attach details specifying the date and whether a merger, division)
- f Such shares are held by a company whose shareholders, directly or indirectly, are all not resident in Malta

g The transfer is a transfer to which art. 5(3)(a) of the Act applies

Part 3 - Details of share transfer

a	Date of share transfer	
b	Number of shares held at date of transfer	
c	Number of shares transferred	
d	Consideration for shares transferred	

Give details of the shares transferred

Type	Class	Votes per share	Nom. Value per share	Number	Date of acquisition

Part 4 - Computation of the market value of the shares transferred

The market value of the shares being transferred is to be determined as follows:

Market value of shares transferred / global transfer

Sec I. Determination of the % of the market value of the company represented by the transferred shares
--

	Type	Class	Company total		Transferred shares		
			Nominal value	Voting rights	Nominal value	Voting rights	% of rights to profits distributable to ordinary shareholders
Issued share capital							
Total							
			(A)	(B)	(C)	(D)	(E)

Percentage of the market value of company

(XX)

C/A*.4 +	D/B*.2 +	E*.4
----------	----------	------

- a State whether there has been a change in the issued share capital of the company or in the shareholding rights during the period of eighteen months preceding the transfer

- b If the answer to (a) is "yes", state whether the change constituted a transfer that was subject to duty under article 42B of the Duty on Documents and Transfers Act

- c If the answer to (b) is "No", give details of the capital structure and shareholding rights of the company as existing at the time immediately preceding that change

	Type	Class	Company total		Transferred shares		
			Nominal value	Voting rights	Nominal value	Voting rights	% of rights to profits distributable to ordinary shareholders
Issued share capital							
Total							
			(E)	(F)	(G)	(H)	(I)

Percentage of the market value of company

(YY)

$G/E \times .4 +$	$H/F \times .2 +$	$I \times .4$
-------------------	-------------------	---------------

Sec II. Computation of Market value of company

- a Total Net Asset Value of the company
- b Market Value of shares held in another company representing at least 10% of the nominal value of the issued share capital of that other company, determined in accordance with rule 5
- | Company | Income Tax no. | Market Value |
|---------|----------------|--------------|
| | | |
-
- Deduct book value of shares held in the company (as stated in the financial statements)
- c Total market value of immovable property as stated in the Architect's Valuation (as per Part 5)
- less Total book value of immovable property
- Adjustment to the value of immovable property (this adjustment can never be less than €0)
- d Value of goodwill (as calculated in Sec IV below)
- e Deduct book value of the shares referred to in rule 5(6)(d)
- f Total adjusted market value of the company

Sec III. Market value of shares transferred:

- a Adjusted market value of the company
(*Sec IIe*)
- b % of market value as represented by shares transferred or global transfer
(*higher of (XX) and (YY) in Sec I*)
- c Market value of shares transferred or global transfer
(*a X b*)
- d Total value taken into account for the purpose of determining the
chargeable gain arising from each of the relevant transactions preceding
this transfer
- e Market value of shares transferred
(*c - d*)
- f Value of the consideration of shares transferred
(*Part 3d*)
- g Value to be taken into account for the purpose of calculating any gain or
loss from the share transfer
(*higher of e or f*)

Sec IV. Calculation of the amount representing the value of goodwill:

- a Where company was in existence for the five financial years immediately preceding the
year in which the transfer is made

Year ended

	<i>Year 1</i>	<i>Year 2</i>	<i>Year 3</i>	<i>Year 4</i>	<i>Year 5</i>	Total
Profit before tax	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Value of goodwill:

Note: Where the transfer is made during the company's first or second financial year the
value of goodwill above shall be zero

- b Where the company has acquired its business or part thereof from another person during
the company's first three financial years

State date when business was acquired

State consideration paid for the acquisition of the goodwill of such business

Profits of the company excluding profits attributable to business acquired:

Year ended

	<i>Year 1</i>	<i>Year 2</i>	<i>Year 3</i>	Total
Profit before tax	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Value of goodwill:

Profits attributable to business acquired from another person:

Year ended

	<i>Year 1</i>	<i>Year 2</i>	<i>Year 3</i>	<i>Year 4</i>	<i>Year 5</i>	Total
Profit before tax						

Value of goodwill attributable to business acquired: A

Consideration paid for the acquisition of such goodwill B

Value of goodwill of the business so acquired:
(higher of A and B)

Total amount representing the value of goodwill:

Note: Where the assets of the company include shares in another company, and such shares represent at least ten per cent of the nominal value of the issued share capital of the other company, the computations in this Part must be made for each such shareholding.

Part 5 - Architect's valuation

If the company owns immovable property at the date of the share transfer, attach an architect's valuation of the market value of the immovable property taken into account in determining the value of the said shares.

Part 6 - Declaration

I do hereby declare that the information submitted through this form is true and complete:

Transferor's signature Transferor's name

This Notice shall be accompanied by an auditor's signed report which shall form an integral part of the notice, giving assurance as to (a) the fact that the transfer is a transfer of a controlling interest (including the grounds on which such statement is based) and (b) whether the computation of the market value of the shares being transferred has been properly prepared in accordance with the Capital Gains Rules.

SCHEDULE D

[Rule 5(10)]

Added by:
L.N. 51 of 2006.
Amended by:
L.N. 37 of 2007.

Notice in terms of Rule 5(10) of the Capital Gains Rules

Statement to be submitted by a transferor of shares where there is no transfer of controlling interest

Part 1 - Details of transferor

Name	
Address	
ROC No. (companies only)	
Income Tax Registration No.	

State the number of shares held by transferor immediately prior to the transfer

Type	Class	Votes per share	Nom. Value per share	Number	Date of acquisition

Part 2 - Details of Company in which shares are being transferred

Company Name	
Income Tax Registration No.	
Company year end	
Date of incorporation	
ROC No.	
Authorised share capital	
Issued share capital	

Part 3 - Details of share transfer

a Date of share transfer	
b Number of shares held at date of transfer	
c Number of shares transferred	
d Consideration for shares transferred	

Give details of the shares transferred

Type	Class	Votes per share	Nom. Value per share	Number	Date of acquisition

Part 4 - Declaration

I do hereby declare that the information submitted through this form is true and complete:

Transferor's signature Transferor's name

This Notice shall be accompanied by an auditor's signed report which shall form an integral part of the notice and shall give assurance as to the fact that the transfer does not constitute a transfer of a controlling interest. The report shall be accompanied by a valuation by the auditor attesting the value of the said shares as required by the provisions of rule 5(10) of the Capital Gains Rules.

Added by:
L.N. 51 of 2006.
Amended by:
L.N. 37 of 2007;
L.N. 317 of 2010.

SCHEDULE E

[Rule 5(14)]

Notice in terms of Rule 5(10) of the Capital Gains Rules

Statement to be submitted by a transferor of shares where the transfer is exempt from tax in the circumstances mentioned in Rule 5(14)

Part 1 - Details of transferor

Name	
Address	
ROC No. (companies only)	
Income Tax Registration No.	

State the number of shares held by transferor immediately prior to the transfer

Type	Class	Votes per share	Nom. Value per share	Number	Date of acquisition

Part 2 - Details of Company in which shares are being transferred

Company Name	
Income Tax Registration No.	
Company year end	
Date of incorporation	
ROC No.	
Authorised share capital	
Issued share capital	

Part 3 - Details of share transfer

Date of share transfer	
Number of shares held at date of transfer	
Number of shares transferred	
Consideration being paid for shares transferred	

Give details of the shares transferred

Type	Class	Votes per share	Nom. Value per share	Number	Date of acquisition

Part 4 - Details of exemption

State under which of the following provisions the share transfer is exempt

Article 5(2)(e) Income Tax Act	
Article 5(6)(e) Income Tax Act	
Article 5(9) Income Tax Act	
Article 5(13) Income Tax Act (please quote specific paragraph)	
Article 5(14) Income Tax Act	

Article 12(1) (please quote specific paragraph)	
Rule 3(1): Merchant Shipping (Taxation and Other Matters relating to Shipping Organisations) Regulations	

Part 5 - Declaration

I do hereby declare that the information submitted through this form is true and complete:

Transferor's signature Transferor's name

This Notice shall be accompanied by an auditor's signed report which shall form an integral part of the notice and shall give assurance as to the fact that the transfer is exempt from tax under one of the circumstances mentioned in rule 5(14) of the Capital Gains Rules.

[illegible]

SCHEDULE J
[Rule 10A]

*Added by:
L.N. 105 of 2013.
Amended by:
L.N.379 of 2017.*

Notice submitted to the Registrar of Courts in terms of Rule 10A
of the Capital Gains Rules

Statement to be submitted in respect of sales by judicial auction of immovable property and any rights thereon the transfer of which is subject to tax on capital gains or to the final tax on property transfers under the Income Tax Acts.

Part 1 – Details of Third party referred to in article 66 of the Duty on Documents and Transfers Act, as applicable by article 43(9)(c) of the Income Tax Management Act or by rule 10B of these rules. (claimant)

Name	
Address	
ROC No (companies only)	
Income Tax Reg. No	

Part 2 – Details of Transferor

Name	
Address	
ROC No (companies only)	
No of legally valid identification document (individuals only)*	

Part 3 – Details of Immovable Property or any rights thereon which are being transferred

--

Part 4 – Details of Transfer

Date of transfer	
Consideration	
Details of judicial auction	

Part 5 - Details of rights held by third party

(a) State which of the following is applicable in the circumstances:

- (1) Holder of real rights over the property in question
- (2) Third party in possession of the property
- (3) Holder of a privilege or hypothec registered by a creditor/s of the transferor of the immovable property and/or any right thereon
- (4) Holder of rights of creditors who have demanded the separation of the transferor's estate from that of his heirs

(b) Indicate the amount due by the transferor to the third party

Attach documentary evidence (appropriately numbered and described) to support your claim.

DOCUMENT REF	DESCRIPTION

Indicate any relevant facts as well as the legal reasoning for the choice set out above:

--

Relying on the documentation listed above and attached herewith, I hereby confirm that the legal reasoning for the above selected option is sound.

.....
Third party

.....
Advocate

Part 6 - Transferor's Declaration

The transferor hereby declares that the transfer of immovable property or any rights thereon referred to above is subject to the following tax treatment:

- (i) Exempt from tax in terms of article 5(5)(b) of the Income Tax Act, being property or an undivided part thereof which has been owned and occupied for a period of at least 3 years as the transferor's own residence immediately preceding the date of transfer and the property is disposed of within 12 months of vacating the premises
- (ii) Provisional tax equivalent to 7% of the consideration relating to the transfer of the property or any rights thereon under article 43(1)(b) of the Income Tax Management Act
(Note: where this paragraph (ii) applies, the transfer must be declared in the relative income tax return for the year).
- (iii) Full and final payment equivalent to 7% of the consideration or the value of the transfer of the property or any rights thereon under article 43(1)(a) of the Income Tax Management Act
- (iv) Provisional tax equivalent to 7% of the consideration relating to the transfer of the property or any rights thereon is due under article 43(1)(b) of the Income Tax Management Act but the Commissioner has issued a permit for reduction in terms of article 43(3).
(Note: where this paragraph (iv) applies, the permit issued by the Commissioner is to be attached to this Schedule).

If none of the above is marked by the transferor or if this part is not completed in full, it shall be deemed that option (ii) has been selected.

Indicate any relevant facts as well as the legal reasoning for the choice set out above:

Relying on the information
provided to me, I hereby
confirm that the legal basis
for the above selected
option is correct.

.....
Transferor

.....
Advocate

Part 7 - Declaration

For all intents and purposes of law any and all signatories of this form hereby declare that the entire contents hereof and all declarations made in this Schedule are true and correct and that they are hereby furnishing all facts relevant to determine whether the relevant provisions of the Income Tax Acts (Cap. 123 and 372 of the Laws of Malta) and the Duty on Documents and Transfers Act (Cap. 364 of the Laws of Malta) and any rules issued thereunder are applicable. The signatories of this form further declare that they are fully aware of the impact and consequences of this declaration in terms of law and of the statutory rights of the Commissioner in this respect.

Third party

Transferors

The completed Schedule shall be accompanied by a report signed by the holder of a warrant to exercise the profession of Advocate in the Courts of Justice of Malta, which report shall give assurance in respect of the legal applicability of the claims made herein by the signatories hereto.

NOTE: Third parties and transferors have the option of filing separate forms in respect of the same judicial sale by auction. Whenever any specific third party or transferor decides to file a form separately from that of any other third party or transferor he may complete only the parts relative to his claim. In the case of the Third party, all parts except part 6 must be completed; in the case of a transferor, all parts except parts 1 and 5 must be completed.

FOR OFFICIAL USE:DETAILS OF JUDICIAL AUCTION:

CONSIDERATION OF JUDICIAL SALE:

AMOUNT PAYABLE TO CREDITORS:

AMOUNT DUE TO THE COMMISSIONER:

AMOUNT REMITTED TO THE COMMISSIONER:

.....
Registrar of Courts