SUBSIDIARY LEGISLATION 372.18

PAYMENT OF PROVISIONAL TAX (P.T.) RULES

21st March, 2000

LEGAL NOTICE 48 of 2000, as amended by Legal Notices 204 and 268 of 2002, 425 of 2007, 426 of 2012 and 304 of 2019.

Title.

1. The title of these rules is the Payment of Provisional Tax (P.T.) Rules.

Interpretation.

2. (1) In these rules, unless the context otherwise requires:

"Act" means the Income Tax Management Act; Cap. 372.

"basis period" means a period of twelve months ending on the 31st December or, in the case of a provisional tax payer who has been permitted to make his accounts to any other date in accordance with the provisions of article 11(2) of the Income Tax Act, on such other date; Cap. 123.

"benchmark year of assessment" with respect to a basis period means the later of:

(*a*) the year of assessment 1999; and

(*b*) the last year of assessment in respect of which a tax return was due to be furnished before the commencement of the calendar year in which the first P.T. payment for that basis period falls due;

"provisional tax" means provisional tax paid or payable in accordance with these rules or with the Payment of Provisional Tax (P.T.) Rules, 1973;

"provisional tax payer" means and includes, unless the Commissioner otherwise determines by means of a notice in writing, any person who during a basis period is:

(*a*) a company;

(*b*) an individual who was liable to tax in Malta for the relative benchmark year of assessment but excluding an individual who was eligible to make an election in terms of article 12 of the Act in respect of the benchmark year of assessment;

(*c*) a person who is not a company or an individual;

"P.T. benchmark" means the amount determined in accordance with rule 6, 7, 8 or 9 as may be applicable;

"P.T. payment" means a payment of provisional tax required to be effected in terms of rule 3.

(2) Except as otherwise provided, and unless the context otherwise requires, words and expressions used in these rules have the same meaning and the same interpretation as the meanings and interpretations which they have in terms of the Act and of the Income Tax Act. Cap. 123.

Liability to provisional tax. *Amended by: L.N. 204 of 2002; L.N. 425 of 2007.*

3. (1) Every provisional tax payer shall effect payments of provisional tax during every basis period ending on or after the 31st January, 2000 on account of his liability to tax for the year of assessment commencing on the 1st January of the year immediately following that during which the said basis period ends.

(2) P.T. payments shall be made in the amounts and within the times prescribed in these rules or as otherwise notified by the Commissioner under the provisions of article 11(4) of the Income Tax Act. Cap. 123.

(3) The amount of any P.T. payment due under these rules shall be the amount determined in accordance with the applicable provisions rounded up or down to the nearest euro.

Due dates.

4. (1) P.T. payments fall due on the 30th April, 31st August and 21st December of each basis period.

(2) The first P.T. payment for a basis period of a provisional tax payer is that which falls due on that of the said three dates which comes first during that basis period and the order of the other P.T. payments is regulated accordingly.

Amount of provisional tax payable. *Substituted by: L.N. 204 of 2002.*

5. Save as otherwise provided in these rules the total of the P.T. payments during a basis period shall not be less than the P.T. benchmark applicable at the time the third P.T. payment falls due and shall be paid as follows:

(*a*) at least twenty percent of the P.T. benchmark shall be paid by the date on which the first P T. payment falls due;

(*b*) at least a further thirty percent of the P.T. benchmark shall be paid by the date on which the second P.T. payment falls due:

Provided that where the P.T. benchmark resulting from the operation of rule 6(3) or rule 6(4) is higher than that which had been determined in accordance with rule 6(1) or rule 7, then the amount of provisional tax which shall be paid by the date on which the second P.T. payment falls due shall be at least fifty percent of the P.T. benchmark as determined by rule 6(3) or 6(4) but subtracting therefrom any P.T. payments already made for the basis period;

(*c*) at least a further fifty percent of the P.T. benchmark shall be paid by the date on which the third P.T. payment falls due:

Provided that where the P.T. benchmark resulting from the operation of rule 6(3) or rule 6(4) is higher than that which had been determined in accordance with rule 6(1) or rule 7, then the amount of provisional tax which shall be paid by the date on which the third P.T. payment falls due shall be the full P.T. benchmark as determined by rule 6(3) or 6(4) but subtracting therefrom any P.T. payments already made for the basis period.

P.T. benchmark. *Amended by: L.N. 204 of 2002; L.N. 268 of 2002.*

6. (1) Save as otherwise provided in these rules the P.T. benchmark of a provisional tax payer for a basis period is determined by taking the amount of tax payable, if any, for the benchmark year of assessment as shown in the self assessment of that provisional tax payer for that year and computed in accordance with the provisions of article 10(2) of the Act and adding back provisional tax taken into account in the said self assessment.

(2) For the purpose of sub-rule (1) no account shall be taken of any further return submitted in accordance with article 13 of the Act after the commencement of the month immediately preceding that in which the first P.T. payment for the basis period in question falls due.

(3) Where the Commissioner has made an assessment of the chargeable income of a provisional tax payer in terms of article 31(5) of the Act for any benchmark year of assessment and has given notice of that assessment to that provisional tax payer before the commencement of the month in which a P.T. payment falls due, the P.T. benchmark shall be arrived at by taking the amount of tax shown as payable in that assessment and adding back any provisional tax taken into account in the said assessment.

(4) Notwithstanding any other provision of these rules, where it appears to the Commissioner that the P.T. benchmark of a provisional tax payer as resulting from rule 6(1) or rule 7 is substantially lower than the amount which in his opinion should be payable for the period by the said provisional tax payer, he may at any time establish an applicable benchmark and inform the provisional tax payer accordingly by a notice in writing and where such notice is given before the commencement of the month in which a P.T. payment falls due, the P.T. benchmark shall be equivalent to the amount shown in the said notice:

Provided that where the notice referred to in this sub-rule is given during the month in which a P.T. payment falls due or during any subsequent month in the same basis period, the P.T. benchmark as established by the Commissioner under this sub-rule shall still apply and the P.T. payment or payments based on the said benchmark shall, notwithstanding the provisions of rule 4 but without prejudice to the provisions of rule 10, become payable by the last day of the month in which the notice has been given or by such later date within the same basis period as may be determined by the Commissioner.

P.T. benchmark in the case where self assessment has not been furnished. *Amended by: L.N. 204 of 2002.*

7. (1) When a provisional tax payer has not, before the commencement of the month immediately preceding that in which a P.T. payment falls due, furnished a self assessment for the relative benchmark year of assessment the P.T. benchmark with respect to that particular payment shall be determined as follows:

(*a*) if the Commissioner has made a determination with respect to the tax payable by that provisional tax payer for the said year of assessment in terms of article 31(3) of the Act and has given notice of that determination to that provisional tax payer before the commencement of the month in which the said P.T. payment falls due

the P.T. benchmark shall be arrived at by taking the amount of tax shown as payable in that determination and adding back the provisional tax, if any, taken into account therein;

(*b*) if the provisions of paragraph (*a*) do not apply the P.T. benchmark shall be an amount determined in the manner specified in rule 6 except that the reference therein to the benchmark year of assessment shall be construed as a reference to the last year of assessment in respect of which a self assessment has been furnished being a self-assessment furnished before the commencement of the month immediately preceding that in which the P.T. payment in question falls due and relating to a year of assessment preceding the benchmark year of assessment;

(*c*) if the Commissioner has not made a determination to which paragraph (*a*) applies and the provisional tax payer has not furnished a self assessment to which paragraph (*b*) applies the P.T. benchmark shall be nil;

(*d*) if, after having made a determination in terms of article 31(3) of the Act with respect to the tax payable for the year of assessment in question, the Commissioner has made an assessment in terms of article 31(5) of the Act and has given notice of that assessment to that provisional tax payer, the P.T. benchmark shall be determined in the manner specified in rule 6(3).

(2) When the P.T. benchmark with respect to a P.T. payment that fell due during a basis period has been determined in accordance with any of the provisions of sub-rule (1) and as a result of the submission of a self assessment that sub-rule is not applicable to a subsequent P.T. payment that falls due during the same period, the P.T. benchmark for that period shall be re-calculated by reference to that self assessment as provided in rule 6. The re-calculated P.T. benchmark shall apply and shall be deemed to have applied for all the purposes of these rules, but saving the provisions of rule 10, with respect to all the P.T. payments for that basis period.

(3) The foregoing provisions of this rule are without prejudice to the Commissioner's powers to take action for the collection of any provisional tax due in an amount calculated under the provisions of sub-rule (1) before a re-calculation falls to be made in accordance with sub-rule (2).

New taxpayers.

8. (1) The P.T. benchmark with respect to provisional tax payable on account of the first year of assessment of a provisional tax payer who is not an individual is nil.

(2) The P.T. benchmark with respect to provisional tax payable on account of the second year of assessment of a provisional tax payer who is not an individual shall be determined in the manner specified in rule 6 except that:

(*a*) the reference to the benchmark year of assessment shall be construed as a reference to that provisional tax payer's first year of assessment; and

(*b*) the references to a self assessment shall be construed as references to a computation made by that provisional tax payer on the basis of his records in the same manner as a self assessment.

Power of the Commissioner to determine the P.T. benchmark in the case of mergers and divisions of companies.

9. (1) Where it appears to the Commissioner that as a result of a merger of companies or a division of a company the total of the P.T. benchmarks for one or more basis periods of the companies involved in the merger or the division computed in accordance with the other provisions of these rules is or will be less than the amount that would result if such merger or division did or does not take place he may by order in writing determine the P.T. benchmark for any or all of the said companies for the basis period or periods in question in amounts which in his opinion compensate for the said shortfall.

(2) Notwithstanding anything contained in these rules, but without prejudice to the provisions of rule 10, the P.T. benchmark determined in accordance with sub-rule (1) shall apply during the basis period or periods in question as from the date of the service of that order on the respective company.

Reduction in P.T. payment.

10. (1) Where it appears to a provisional tax payer that the tax payable for a year of assessment (hereinafter in these rules referred to as "the current year liability") is less than the P.T. benchmark for the corresponding basis period, he has an option to limit the amount payable as provisional tax during that basis period to an amount that is not less than the current year liability.

(2) The option referred to in sub-rule (1) shall be exercised by means of the delivery to the Commissioner of the form prescribed in the Schedule and may be exercised more than once during the same basis period.

(3) The amount of any P.T. payment that falls due during a basis period after an option has been exercised as aforesaid with respect to that period shall be the lower of:

(*a*) the amount due in accordance with rule 5; and

(*b*) the excess, if any, of the current year liability over the total provisional tax already paid for the basis period in question.

Provisional tax payer's estimation of the tax payable.

11. For the purpose of rule 10 and subject to the provisions of rule 12 the current year liability shall be deemed provisionally to be an amount determined in the manner specified in rule 6 except that:

(*a*) the reference to the benchmark year of assessment shall be construed as a reference to the year of assessment on account of which the provisional tax payment in question is payable;

(*b*) the references to a self assessment shall be construed as references to a computation based on amounts estimated by the provisional tax payer at the time that

the option is exercised.

Revision of estimation.

12. (1) An amount that is provisionally deemed as the current year liability in accordance with rule 11 shall be revised as provided in sub-rule (2) when -

(*a*) a self assessment for the year of assessment in question is furnished to the Commissioner; or

(*b*) the Commissioner makes a determination in terms of article 31(3) of the Act with respect to the tax payable for the year of assessment in question and serves a notice of that determination on the provisional tax payer.

(2) When a revision falls to be made in terms of sub-rule (1) the current year liability for the purposes of rule 10 shall be deemed to be and to have always been the amount resulting to be payable in terms of the self assessment or the determination, as the case may be, and the provisions of rule 14 shall be construed accordingly.

(3) The foregoing provisions of this rule are without prejudice to the Commissioner's powers to take action for the collection of any provisional tax due in an amount calculated under the provisions of rules 10 and 11 before a revision falls to be made in accordance with rule 12.

Appropriation of payments, set off and refund of provisional tax.

13. (1) Provisional tax paid for a basis period shall be applied towards the discharge of any provisional tax for that period that has fallen due and any excess shall be appropriated to provisional tax for that period that has not yet fallen due.

(2) Provisional tax paid by a provisional tax payer on account of his tax liability for a year of assessment shall be set off for the purpose of collection against the tax chargeable in respect of the said year of assessment and if there is an excess after the aforesaid set off has been made such excess shall be refunded in accordance with the provisions of article 48 of the Act.

Additional tax.
Amended by: L.N. 204 of 2002; L.N. 304 of 2019.

14. (1) When any provisional tax payable in accordance with these rules is not paid by the date when it falls due additional tax shall be charged as provided in article 44 of the Act in an amount equal to one percent of the unpaid provisional tax for each calendar month or part thereof during which such tax remains unpaid:

Provided that in respect of any period or part thereof commencing on or after 1 January 2020, the said additional tax shall be charged in an amount equal to zero point three three per cent (0.33%) for each calendar month or part thereof:

Provided further that where the tax for the basis period which will result from a provisional tax payer's self-assessment is less than that resulting from the P.T. benchmark, the additional tax chargeable on this difference shall be reduced by ninety percent.

(2) No further additional tax shall be chargeable on unpaid provisional tax for any month commencing after the tax settlement date relative to the year of assessment on account of which that provisional tax was due.

(3) Notwithstanding the provisions of rule 13 the amount of provisional tax that would otherwise be available for set off in accordance with sub-rule (2) of that rule against the tax chargeable in respect of a year of assessment shall first be applied towards the discharge of additional tax, if any, due on and up to the tax settlement date corresponding to that year of assessment and the amount available for set off shall be reduced accordingly.

(4) Any additional tax on provisional tax that has not been discharged as provided in sub-rule (3) shall be deemed to be tax due for the year of assessment on account of which the said provisional tax was due and the provisions of the Income Tax Acts relating to the collection and recovery of tax shall apply to the collection and recovery of such additional tax.

(5) The foregoing provisions of this rule are without prejudice to the Commissioner's powers to take action for the collection of any additional tax before the tax settlement date referred to in sub-rule (2).

Powers of the Commissioner upon a change in the accounting date. Cap. 123.

15. Nothing in these rules shall be construed as in any way limiting the powers granted to the Commissioner under article 11(4) of the Income Tax Act.

Transitory provision.

16. When, in terms of the other provisions of these rules, the date on which any P.T. payment for a basis period that ends during 2000 falls due is a date that falls during 1999 any such payment shall be deemed, to the extent that it has not been paid, to fall due on the 30th April, 2000 in addition to any other payment that falls due on that date.

Saving.

17. The Payment of Provisional Tax (P.T.) Rules, revoked by these Rules, shall remain fully applicable with respect to any provisional tax payment that was made or that was due to be made on account of tax chargeable for any year of assessment preceding the year of assessment 2001.

Amended by:
L.N. 425 of 2007;
L.N. 426 of 2012.

SCHEDULE

(Rule 10)

P.T. REDUCTION FORM

In terms of rule 10 of the Payment of Provisional Tax (PT.) Rules, I opt to reduce the amount payable as provisional tax for the basis period ending ..... .

I estimate that the current year liability for the said basis period will be € ..... .

I declare that I am aware of the provisions of the said Rules and I understand that I shall become liable to additional tax of 1% on any unpaid P.T. for each calendar month or part thereof during which such provisional tax remains unpaid.

Name of P.T. payer									
Reference No./ LegalLy Valid Identification Document Number.									
Address									
Date									
Signature									
Permit No.*									
**(only in case of persons who, in accordance with the provisions of article 11(2) of the Income Tax Act have been permitted to make their accounts to a date other than 31 December)*									