

L.N. 98 of 2009

**INCOME TAX ACT
(CAP. 123)**

Additional Tax Rules, 2009

IN exercise of the powers conferred by article 96(4) of the Income Tax Act, hereinafter referred to as “the Act”, the Minister of Finance, the Economy and Investment has made the following rules:-

1. (1) The title of these rules is Additional Tax Rules, 2009. Title and commencement.

(2) These rules shall apply with respect to additional tax chargeable in terms of article 56(12)(c) for the year of assessment 2009 and subsequent years of assessment: provided that the provisions of the Schedule to the Act as in force immediately before the coming into force of these rules shall continue to apply with respect to additional tax chargeable in accordance with the said article 56(12)(c) for years of assessment preceding the year of assessment 2009.

2. For the Schedule to the Act, there shall be substituted the following Schedule: Substitution of the Schedule to the Act.

“SCHEDULE

Article 56(12)(c)

Additional tax chargeable under article 56(12)(c)

Definitions.

1. In this Schedule:

“additional tax” means the additional tax chargeable in accordance with the provisions of article 56(12)(c) in respect of a default or omission;

“endangered tax” means, subject to the provisions of item 12, the difference between the tax declared to be chargeable by the taxpayer after taking into account any exemption, relief, allowance or tax credits to which he may be entitled and the tax actually chargeable after considering the same, but shall not include any additional tax;

“default” means a default in furnishing a return of income required to be submitted for the purposes of the Income Tax Acts;

“omission” means the omission from any return of income submitted for the purpose of the Income Tax Acts of any amount which should have been included therein and includes any act or omission which is deemed to constitute an omission in terms article 56(12);

“tax professional” means an individual being the holder of a warrant issued under the Accountancy Profession Act, or a member of the Malta Institute of Taxation, or a member of the legal profession in Malta who specialises in taxation, or a partnership of such individuals the majority of whom are so qualified: provided that the Commissioner shall be entitled to request such proof as he may deem appropriate to the effect that an individual qualifies as a tax professional as aforesaid.

Additional tax for
a default by an
individual.

2. Additional tax chargeable under article 56(12)(c) for a default by an individual in furnishing a return in respect of the year of assessment 2009 or any subsequent year of assessment shall be calculated on the tax chargeable before taking into account the additional tax itself on the total income of that individual for that year at the amounts shown in Table A hereunder:

TABLE A

Number of months from the date on which a return is required to be submitted in accordance with the relevant provisions of the Income Tax Management Act	Additional tax
Within 6 months	€10
Later than 6 but within 12 months	€50
Later than 12 but within 18 months	€100
Later than 18 but within 24 months	€150
Later than 24 but within 36 months	€200
Later than 36 but within 48 months	€300
Later than 48 but within 60 months	€400
Later than 60 months	€500

3. Additional tax chargeable under article 56(12)(c) for a default by a person, other than an individual, in furnishing a return in respect of the year of assessment 2009 or any subsequent year of assessment, shall be calculated on the tax chargeable before taking into account the additional tax itself on the total income of that person for that year at the amounts as shown in Table B hereunder:

Additional tax
for a default by a
person other than an
individual.

TABLE B

Number of months from the date on which a return is required to be submitted in accordance with the relevant provisions of the Income Tax Management Act	Additional tax
Within 6 months	€50
Later than 6 but within 12 months	€200
Later than 12 but within 18 months	€400
Later than 18 but within 24 months	€600
Later than 24 but within 36 months	€800
Later than 36 but within 48 months	€1,000
Later than 48 but within 60 months	€1,200
Later than 60 months	€1,500

Remission of additional tax for default.

4. Where a person proves that a default in furnishing a return filed or due to be filed by him was due to a reasonable excuse, the Commissioner shall remit the whole of the additional tax otherwise chargeable in accordance with item 2 or 3 in respect of that default:

Provided that:

(a) an insufficiency of funds to pay any tax due, or

(b) when reliance is placed on any other person to perform any task, the fact of that reliance or any dilatoriness or inaccuracies on the part of the person relied upon,

shall not constitute a reasonable excuse for the purpose of this item.

Additional tax for omission.

5. (1) Subject to the provisions of the other items of this Schedule, additional tax chargeable under article 56(12)(c) for an omission from a return shall be one point five per cent (1.5%) per month of the endangered tax.

(2) Subject to the provisions of item 7, the rate of additional tax per month as provided in paragraph (1) shall be calculated for every month or part thereof, such period commencing with the month during which the tax on the chargeable income for that year was due and payable and ending with the month during which the omission is rectified by a further return made under article 13 of the Income Tax Management Act or an assessment is made.

6. (1) When an omission from a return is rectified by a person by means of the delivery of a further return made in accordance with article 13 of the Income Tax Management Act before that person is notified in writing by the Commissioner, in terms of subarticle (7) of the said article, that an enquiry will be conducted into that person's tax declarations and liabilities -

Reduced rate of additional tax on omission.

(a) if that further return is delivered to the Commissioner not later than twelve months after the relative tax return date, the additional tax otherwise chargeable under item 5 for that omission shall be fully remitted;

(b) in any other case, the rate of additional tax otherwise chargeable under item 5 for that omission shall be zero point one per cent (0.1%) per month of the endangered tax.

(2) Where an omission from a return is rectified by a person by means of the delivery of a further return made in accordance with article 13 of the Income Tax Management Act after that person has been notified in writing by the Commissioner, in terms of subarticle (7) of the said article, that an enquiry will be conducted into that person's tax declarations and liabilities, but before that person is notified with an assessment in which additional tax is charged for that omission, the rate of additional tax otherwise chargeable under item 5 for that omission shall be zero point seven five 0.75% per month of the endangered tax.

7. The maximum additional tax for an omission payable under item 5 or 6 shall in no case be more than sixty times the applicable rate in terms of the respective item.

Maximum additional tax on omission.

8. (1) Where a return of income delivered by a person contains an omission and:

Remission of additional tax for an omission.

(a) that person has sought and relied upon the written advice of a tax professional, insofar as the matter to which the omission refers is concerned, and submits the original written

advice together with the return by not later than the relative tax return date; or

(b) that person proves that the omission was not due to any fraud, art, contrivance or gross or wilful neglect

the Commissioner shall remit the whole of the additional tax otherwise due in accordance with this Schedule in respect of that omission.

(2) An advice, referred to in paragraph (1)(a), furnished by a tax professional, shall not of itself constitute a binding interpretation of the relative statutory provisions and their proper application.

(3) The Commissioner shall not be required to remit the additional tax in accordance with item (1)(a) if he determines the advice in question to be spurious or frivolous: provided that the Commissioner's decision under this paragraph shall be subject to review by the Board of Special Commissioners in any appeal filed in connection with the relative assessment.

(4) Without prejudice to paragraph (1)(a), the fact that an omission was due to the complexity of a particular transaction or to the complexity of any particular provision of the law shall not, of itself, be considered as a valid ground for the remission of additional tax under paragraph (1)(b).

Additional tax not subject to interest.

9. The additional tax chargeable under article 56(12)(c) shall be in addition and without prejudice to interest chargeable under article 44(2A) of the Income Tax Management Act, but no such interest shall be charged on the said additional tax.

Omission by persons not eligible for election under article 12 of the Income Tax Management Act.

10. When a person files a declaration prescribed for the making of an election under article 12 of the Income Tax Management Act, and he is not a person to whom that article applies and subsequently submits a full and correct return, he shall be deemed for the purposes of article 56(12)(c) and of this Schedule to have omitted from his return all his income except for that income referred to in article 12(2)(b) of that Act and to have rectified that omission when he submits the full and correct return.

Default in connection with an election under article 12 of the Income Tax Management Act.

11. When a person to whom article 12 of the Income Tax Management Act applies files a declaration prescribed for the making of an election under that article after the date prescribed

therefor, he shall for the purposes of article 56(12)(c) and of this Schedule be deemed to have made a default in furnishing a return and that default shall continue until a return is furnished.

12. (1) When the Commissioner, having determined the amount of tax payable by a person for a year or years of assessment on the basis of an estimate made under article 31(3) of the Income Tax Management Act, gives notice in writing to that person, in terms of article 13(7) of that Act, that an enquiry will be conducted into his tax declarations and liabilities, and that person subsequently furnishes a return of income in respect of the said year or years, that person shall be deemed to be subject to additional tax for an omission in addition to any additional tax to which he may be liable for a default.

Additional tax for an omission in addition to additional tax for a default in the case of return filed after notice of enquiry.

(2) For the purposes of calculating the endangered tax for an omission to which the person referred to in paragraph (1) shall be subject, the said endangered tax shall be considered to be equal to the tax calculated on the total income, deducting therefrom any credits, as declared in the said return.

(3) Where an assessment or an additional assessment for a year or years of assessment is made under article 31(5) of the Income Tax Management Act on a person referred to in paragraph (1), for the purposes of calculating the endangered tax, the tax calculated on the total income, deducting therefrom any credits, as declared in the said return, shall be considered to be zero:

Provided that the additional tax for omission as resulting from paragraph (2) above shall be deducted from the amount of the additional tax as resulting from this paragraph.

13. (1) The Commissioner may remit such part or all of the additional tax otherwise chargeable in accordance with this Schedule in respect of a default or an omission as he may deem fit.

Certain powers of the Commissioner.

(2) The Commissioner may impose any condition that he may consider appropriate for any remission under paragraph (1), including the requirement that the person concerned shall not make another default or omission within such period as the Commissioner may establish or that the said person shall make a payment of tax

in such amount and within such time as the Commissioner may determine.

(3) Should any condition imposed by the Commissioner in accordance with the provisions of paragraph (2) be infringed by the person concerned, any reduction of additional tax granted by the Commissioner in addition to the reductions contemplated by the other provisions of this Schedule shall be forfeited.

(4) If forfeiture is due under the provisions of paragraph (3), any additional reduction made under the provisions of this item, but not under the provisions of the other items, shall be deemed to have been a suspension of liability to the said additional tax, and not the cancellation of the relevant additional tax.

(5) The Commissioner shall communicate in writing to the person concerned any condition imposed under paragraph (2), the consequences of an infringement of any such condition in accordance with paragraph (3) and, when such is the case, the fact that forfeiture has been incurred.

(6) The use of the Commissioner's discretion under this item shall not be questioned in any appeal.”.

Repeal and saving.

L.N. 126 of 2003.

L.N. 127 of 2003.

3. The Deduction of Additional Tax (Omissions) Rules and the Deduction of Additional Tax (Default in Furnishing Return) Rules are hereby being repealed:

Provided that the provisions of the said rules shall continue to apply as if they have not been repealed with respect to additional tax chargeable under article 56(12)(c) for any year of assessment preceding the year of assessment 2009.

