

L.N. 105 of 2013

INCOME TAX ACT
(CAP. 123)
Capital Gains (Amendment) Rules, 2013

IN exercise of the powers conferred by articles 5 and 96 of the Income Tax Act, hereinafter referred to as "the Act", the Minister of Finance, the Economy and Investment has made the following rules:-

Citation.

1. The title of these rules is the Capital Gains (Amendment) Rules, 2013 and they shall be read and construed as one with the Capital Gains Rules, hereinafter in these rules referred to as "the principal rules".

S.L. 123.27.

Amendment of
rule 5 of the
principal rules.

2. Rule 5 of the principal rules shall be amended as follows:

(a) in paragraph (c) of sub-rule (2) the words "of that company:" shall be substituted by the words "of that company;", and immediately thereafter there shall be added the following new paragraph:

"(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:"

(b) sub-rule (5) shall be substituted by the following:

"(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."

Adds new
rule 10A to the
principal rules.

3. Immediately after rule 10 of the principal rules there shall be added the following new rule:

"Sale by
judicial
auction.

Cap. 372.

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.

Cap. 372

(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 provisional tax (or part thereof, as the case may be) relating to the transfer of the property or any rights thereon in terms of article 43(1)(b) 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.

(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.

B 974

Cap. 372.

(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 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."

Adds Schedule J
to the principal
rules.

4. Immediately after Schedule F of the principal rules there shall be added the following new Schedule:

**"SCHEDULE J
[Rule 10A]**

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 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 (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	

B 976

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

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.

Transferors

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.

(1) CONSIDERATION OF JUDICIAL SALE:

(2) AMOUNT PAYABLE TO CREDITORS:

(3) AMOUNT DUE TO THE COMMISSIONER:

AMOUNT REMITTED TO THE COMMISSIONER:

Registrar of Courts ."