L.N. 49 of 2005

INCOME TAX ACT
(CAP. 123)

INCOME TAX MANAGEMENT ACT
(CAP. 372)

Sale of Agricultural Produce Rules, 2005

IN exercise of the powers conferred by articles 14(2) and 96 of the Income Tax Act and articles 23 and 58 of the Income Tax Management Act, the Prime Minister and Minister of Finance has made the following rules:-

Citation.

1. The title of these rules is the Sale of Agricultural Produce Rules, 2005.

Interpretation.

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

"agricultural produce" means any item produced or derived from farming and other agricultural activities;

"approved marketing centre" means a place where agricultural produce is sold through the services of licensed brokers (*pitkali*) and recognised as such by the Commissioner for the purposes of these rules;

"guidelines" means guidelines published by the Commissioner under the provisions of article 96(2) of the Income Tax Act;

"non-qualifying sales" means sales of agricultural produce other than qualifying sales;

"payor" means -

(a) in the case of any sale of agricultural produce made on or after 1 January 2004, whether it is a qualifying sale or not, through the services of a licensed broker (*pitkal*) in an approved marketing centre, the licensed broker (*pitkal*) providing those services, and

(b) in the case of any qualifying sale other than a sale made through the services of a licensed broker (*pitkal*), the person to whom the sale is made:

Provided that to the extent necessary for the purposes of rule 10 "payor" also includes a representative or a bank to whom that rule applies:

Provided also that a person who is registered as a payor shall continue to be treated as a payor by reason of his registration and without reference to the other provisions of this definition until his registration is cancelled;

"qualifying sale" means a sale made on or after 1 January 2004 of agricultural produce grown and cultivated in Malta in the course of an agricultural activity carried on by or in the name of the vendor and which is:

(a) a sale of fresh fruit and/or fresh vegetables made through the services of a broker (*pitkal*) at an approved marketing centre; or

(b) a sale of fresh fruit and/or fresh vegetables to a hotel operator; or

(c) a sale of tomatoes to a tomato processor for processing in Malta; or

(d) a sale of grapes to a vintner for processing in Malta; or

(e) a sale of olives to an olive processor for processing in Malta; or

(f) a sale of fresh fruit and/or fresh vegetables to a food processor for processing in Malta; or

(g) a sale designated as a qualifying sale for the purpose of these rules by means of guidelines.

Registration and deregistration of Payors.

3. (1) Every payor shall register with the Commissioner by not later than fifteen days from the date of the first sale in respect of which he is the payor.

(2) The registration shall be made by the delivery to the Commissioner of the registration form, duly filled in, set out in Schedule A.

(3) Every payor shall give notice in writing to the Commissioner of any material change in the circumstances shown on the registration form.

(4) When a person who is registered as a payor under these rules ceases to carry on the activity in respect of which he was so registered, he shall give notice to the Commissioner within fifteen days on the deregistration form set out in Schedule B and the Commissioner shall, upon being satisfied that that person is not required to remain registered, cancel his registration.

(5) The Commissioner shall give notice of every registration and deregistration to the person concerned.

(6) The deregistration of a person shall be without prejudice to the obligation of that person to register again in the event that he is the payor in accordance with these rules in respect of a subsequent sale.

Withholding tax.

4. (1) A payor shall deduct tax from the price of every qualifying sale in respect of which he is the payor, at a rate of three cents for every lira of such price.

(2) A deduction of tax as aforesaid shall be made whenever a qualifying sale is made regardless of the time when and the manner in which the payment is made and regardless of the tax status of the vendor and of any exemption or relief from tax to which he may be entitled.

(3) For the purposes of these rules a qualifying sale is deemed to be made at the time when the agricultural produce in question is delivered to the purchaser or to his representative.

Purchase note.

5. A payor shall for every sale in respect of which he is the payor furnish the vendor with a document, in these rules referred to as a purchase note, giving the particulars of the sale including, as a minimum, the tax deducted, if any, in accordance with these rules and the other particulars specified in Schedule C.

Monthly return and payment of tax to the Commissioner.

6. (1) The tax deducted or that ought to be deducted from the price for a qualifying sale shall be a debt due by the payor to the Government and shall be remitted to the Commissioner not later than the last working day of the month following that in which the sale was made, or any other date approved by the Commissioner, and shall be recoverable as such.

(2) Every payor shall make a monthly return of all sales of agricultural produce in respect of which he is the payor and of tax deducted in accordance with these rules.

(3) The monthly return shall be prepared on the form set out in Schedule D and contain the particulars required by that form and such form shall be delivered by not later than the last working day of the month following that to which it refers, or any other date approved by the Commissioner.

(4) The obligation to furnish the monthly return shall arise even when a payor has not made any deductions of tax or has no relevant transactions to report.

(5) A person whose registration as a payor is cancelled shall furnish a monthly return for the month during which he was still registered as a payor even though he is no longer registered as a payor on the date on which the return is due to be filed.

Annual statement to be furnished to vendors.

7. (1) Every payor shall furnish to the vendors of sales of agricultural produce in respect of which he was the payor an annual statement showing the tax deducted in accordance with these rules and the other particulars specified in Schedule E.

(2) The annual statements shall be delivered to the vendors by not later than the last working day of January of the year immediately following that to which it refers.

(3) A person whose registration as a payor is cancelled shall prepare an annual statement as aforesaid for the year during which he was still registered as a payor and shall furnish that statement to the respective vendors by not later than the date set out in paragraph (2) or, where his registration is cancelled before the end of the year to which the statement refers, by not later than the last working day of the month following that in which his registration is cancelled.

Annual reconciliation of transactions and remittances.

8. (1) Every payor shall prepare an annual transaction reconciliation giving the details of the sales made during each year in respect of which he was the payor and the other particulars specified in Schedule F. The annual transaction reconciliation shall, unless the Commissioner otherwise approves in any particular case, be drawn up in such electronic format as would enable such detailed analysis as may be specified in guidelines, including an analysis of the price of sales and of the tax withheld on sales by reference to the vendor, the payor and the type of produce. The annual transaction reconciliation required

to be furnished by a payor who is a licensed broker (pitkal) shall contain such further details and breakdowns as may be required by guidelines.

(2) Every payor shall also prepare an annual reconciliation of remittances giving the details of the deductions and remittances of tax made in respect of those sales and the other particulars specified in Schedule G.

(3) The annual transaction reconciliation and the annual reconciliation of remittances shall be furnished to the Commissioner by not later than the last working day of January of the year following that to which they refer.

(4) The obligation to furnish the annual transaction reconciliation and the annual reconciliation of remittances shall arise even when a payor has not made any deductions of tax or has no relevant transactions to report.

(5) A person whose registration as a payor is cancelled shall furnish an annual transaction reconciliation and an annual reconciliation of remittances as aforesaid covering the period of the respective calendar year up to the month during which he issued the last purchase note as a payor.

Presumption of deduction and payment.

9. Where a purchase note has been issued in accordance with rule 5 it shall be presumed, in so far as the tax liability of the vendor is concerned, that that any amount of tax shown in the note as having been deducted from a qualifying sale has been duly deducted and remitted in accordance with rules 4 and 6.

Appointment of representative.

10. (1) A payor who is a licensed broker (*pitkal*) may make arrangements with a representative under which the representative will assume the obligation to prepare and furnish the documents referred to in rules 5, 6, 7 and 8 and any other documents and information requested by the Commissioner.

(2) A payor who is a licensed broker (*pitkal*) may make arrangements with a bank under which the bank will assume obligation for the payments to vendors for sales effected through his services and for the remittance of the tax deducted from the said payments to the Commissioner.

(3) When arrangements to which paragraphs (1) or (2) apply have been approved in writing by the Commissioner and accepted by the representative or the bank, as the case may be, they shall bind the said representative or bank to assume in lieu of the licensed broker

(*pitkal*) those obligations of the payor to which the arrangements refer and the liability to the relative additional tax imposed under these rules for a default.

(4) The obligations to register and to apply for deregistration as provided in rule 3 shall not apply to any such representative or bank but shall continue to apply to the licensed broker (pitkal) who makes the said arrangements.

Tax deducted to be final.

11. When tax has been deducted in accordance with these rules from the price of a qualifying sale and where a purchase note has been issued in accordance with these rules in respect of that sale, the deduction of the tax shall be deemed to be in final settlement of the tax due by the vendor on the income derived from that sale and no further tax shall be due by the vendor on the said income. The tax deducted as aforesaid shall not be available as a credit against the vendor's tax liability and shall not be available for a refund to the vendor or, where the vendor is a company, to any shareholder thereof, or to any other person.

Tax return and records.

12. (1) A person whose income consists of, or includes income from qualifying sales, shall deliver together with his income tax return for any year of assessment the annual statement or annual statements furnished to him by a payor or by payors as required by rule 7 and, when so requested, the purchase notes referred to in rule 5. He shall also deliver with his income tax return such attachments as may be prescribed by rules with respect to returns filed by vendors of agricultural produce.

(2) Save as provided in this rule and subject to the provisions of rules 15 and 16, a vendor of qualifying sales other than a company shall not be required to produce to the Commissioner any other records or documents relating to qualifying sales.

(3) Nothing in these rules shall be construed as exempting any person from the obligation to keep records and other documents and to furnish information, including records and information relating to qualifying sales, that may be required in terms any provision of the Income Tax Acts for the purpose of determining and ascertaining the total income from sources of income other than from qualifying sales, including the determination of the deductions in accordance with rule 14(3)(b).

Allocation of income to the Maltese taxed account.

13. The amount that is deemed, in accordance with rule 14(1), to be the total income derived by a company (including a co-operative society) from qualifying sales, net of the tax deducted therefrom in accordance with these rules, shall be allocated to its Maltese taxed

account and shall be treated for all purposes of the Income Tax Acts as income that has been taxed at 5%.

Deemed amount of total income.

14. (1) The total income derived by a person from qualifying sales for any year of assessment shall be deemed to amount to sixty per cent of the total price of those sales for that year before deductions and shall be reported in the relative tax return accordingly.

(2) In the calculation of the total income in accordance with paragraph (1) all deductions otherwise available for that year of assessment with respect to income from qualifying sales, including any unabsorbed capital allowances and/or losses relating to that income that may have been brought forward from any previous year, shall be deemed to have been set off and absorbed, and no deduction shall be allowed against that income except as provided in paragraph (1).

(3) Where the person who derives income from qualifying sales also derives income from other sources:

(a) for the purpose of calculating the tax due on the income derived from such other sources, and without prejudice to rule 11, the income from qualifying sales, determined in accordance with these rules, shall be deemed to constitute the first part of the total income from all sources;

(b) if the income from those other sources consists of or includes income from non-qualifying sales the deductions that that person may claim and that are allowable for the purpose of ascertaining the total income derived from non-qualifying sales shall be the lower of:

(i) D x NQS / S

where:

- D is the amount that would be allowable as deductions for the year of assessment in question, had this rule not been applicable to that year of assessment, in determining the total income derived from qualifying and non-qualifying sales

- NQS is the total receipts before deductions derived from non-qualifying sales

- S is the total receipts before deductions derived from non-qualifying sales and from qualifying sales gross of tax deductible in accordance with these rules

and

(ii) the amount allowable in accordance with the other relevant provisions of the Income Tax Acts without reference to this rule.

Option.

15. (1) Subject to the other provisions of this rule and to rule 16, a vendor may, by means of an irrevocable notice in writing, opt to have his tax liability for a year of assessment determined without reference to rule 14.

(2) An option for the purpose of paragraph (1) shall be made in writing on the applicable form prescribed for the tax return for each year of assessment in respect of which it is exercised, and shall not be valid unless the said form is delivered to the Commissioner by the relative tax return date

(3) An option under this rule shall apply to income from all qualifying sales for the relative year of assessment and any restriction, exclusion or reservation shall be disregarded.

Provisions applicable when option is exercised.

16. Notwithstanding the other provisions of these rules, when the option referred to in rule 15(1) has been validly exercised for a year of assessment:

(a) the total income of that person for that year shall be computed without reference to rule 14: provided that where any amount of losses or capital allowances has been deemed as set off and absorbed in accordance with rule 14(2) in a particular year of assessment for which the option was not exercised, it shall not be treated as unabsorbed and carried forward to a subsequent year, even though an option as aforesaid is exercised for that subsequent year;

(b) the amount of tax withheld in accordance with these rules, as evidenced by the delivery of the annual statement and, if so requested, the relative purchase notes, shall be available against the taxpayer's tax liability and where any tax so withheld is in excess of such liability, the difference shall be refunded;

(c) rule 12(2) shall not apply to records and documents relating to qualifying sales made for that year;

(d) where the taxpayer is a co-operative society, the income from its qualifying sales for that year shall be allocated to its untaxed account.

17. The failure by any person to comply with any obligation imposed by these rules shall constitute a default against these rules and shall render that person liable to additional tax as prescribed in Schedule H. Defaults and additional tax.

18. (1) Without prejudice to rule 12 and subject to the provisions of article 20 of the Income Tax Management Act, the Commissioner may require any person to allow him access to any place where an agricultural activity is carried on or where agricultural produce is sold and to give such information about such activity or sale as he may consider relevant for the proper application of the Income Tax Acts in general and of these rules in particular to income from the sale of agricultural produce. Powers of the Commissioner.

(2) When, as a direct or indirect result of any disposition, any sale of agricultural produce is reported for the purpose of these rules as a sale made by a person other than the person who would be the vendor were it not for that disposition, and if that disposition was made for the sole or main purpose of avoiding, reducing or postponing liability to tax or of obtaining any refund or set-off of tax, the Commissioner may, by order in writing, determine the person who should or should not be treated as the vendor in that sale and the rules shall apply to that sale according to that order.

(3) In paragraph (2) "disposition" includes any agreement, deed, arrangement, renunciation or declaration.

(4) An order made under paragraph (2) shall be subject to objection and appeal in accordance with the provisions of the Income Tax Acts.

19. Notwithstanding the other provisions of these rules, where a person derives income from a qualifying sale but also qualifies, in respect of such income, under the provisions of the Part-time Work Rules, 1996, the tax liability in respect of such income shall be determined without reference to rules 12(1) and 14 hereof, and such person may, by means of a notice in writing on the form as may be prescribed under the said rules, opt to - Qualifying Sales under the Part-time Work Rules, 1996.

(a) have the tax withheld under the provisions of rule 4 of these rules to be considered as final; or

(b) declare the said income on the form prescribed under the Part-time Work Rules, 1996, in which case the provisions of the said rules shall apply thereto, with the tax withheld under the provisions of rule 4 of these rules being credited against the tax so

charged, and any excess shall be available as a credit against the individual's tax liability as resulting from the tax return submitted in accordance with article 10 of the Income Tax Management Act, and where any tax so paid is in excess of such liability, it shall be refunded.

SCHEDULE A

(Rule 3)

Inland Revenue Department - Malta

AS 1

Sale of Agricultural Produce Scheme
Payor Registration Form

Details of Payor Please indicate the category of person registered for income tax purposes	**Individual** ☐ **Partnership** ☐ **Company** ☐ (tick ☑ as appropriate)
Identified as Payor acting in the capacity of:	**Broker (Pitkal)** ☐ **Hotel Operator** ☐ **Tomato Processor** ☐ **Vintner** ☐ **Olive Processor** ☐ **Food Processor** ☐ **Other** ☐ (tick ☑ as appropriate)

Name of Business Establishment

Name of Payor

Mailing Address

Income Tax Registration Number — PE Number

Company (ROC) Number — VAT Number

Name of Contact Person

Telephone Number(s) — Fax Number

e-mail address

Signature _____ ID Number

Name in full — Designation

DATE:

SCHEDULE B

(Rule 3)

Inland Revenue Department - Malta

AS 2

Sale of Agricultural Produce Scheme

Payor Deregistration Form

Details of Payor Please indicate the category of person registered for income tax purposes	**Individual** ☐ **Partnership** ☐ **Company** ☐ (tick ☑ as appropriate)
Identified as Payor acting in the capacity of:	**Broker (pitikal)** ☐ **Hotel Operator** ☐ **Tomato Processor** ☐ **Vintner** ☐ **Olive Processor** ☐ **Food Processor** ☐ **Other** ☐ (tick ☑ as appropriate)

Name of Business Establishment

Name of Payor

Mailing Address

Income Tax Registration Number | PE Number

Company (ROC) Number | VAT Number

Name of Contact Person

Telephone Number(s) | Fax Number

e-mail address

Deregistration

I _____ on my own behalf / on behalf of _____do hereby give notice in terms of regulation 3 (4) that I ceased to be a payor as from ☐☐☐☐☐☐☐☐☐☐

Please cancel my registration as payor.

SCHEDULE C

(Rule 5)

Inland Revenue Department - Malta

Sale of Agricultural Produce Scheme

Purchase Note

Business Name _____ **SAP No** _____

Purchase Note No _____ **Date** _____

Vendor Details

Vendor's Name _____

I T Reg No _____ **FRC No** _____ **Vat No** _____

Type of produce *(to be completed only if Payor is a Broker)*

Description	Code	Quantity

Value of products purchased

Value of qualifying sale	
Value of non-qualifying sale	
Total value of purchased sale	
Withholding tax of 3% on qualifying sale	
Net amount paid / payable to vendor	

B 482

SCHEDULE D

(Rule 6)

Inland Revenue Department - Malta

AS 5

Sale of Agricultural Produce Scheme
Monthly Return and Payment Advice

Payor Information

Person's Name
(Individual / Body of Persons)

Income Tax Registration No

Business Name

Business Address

SAP No

Statement for the quarter ending

d d m m y y y y

Total number of vendors included in this statement

Vendors Details

Surname	Name	FRC No	IT Reg No	Value of Qualifying Sale (Lm)	Value of non Qualifying Sale (Lm)	Tax @ 3% withheld at source (Lm)
Totals						

SCHEDULE E

(Rule 7)

Inland Revenue Department - Malta

AS 3

Sale of Agricultural Produce Scheme

Annual Statement to Vendors

Payor's Details

Year ended 31st December

Person's Name (individual / corporate)

Income Tax Reg No

SAP No

Establishment Name

Business Address

Vendor's Details

Person's Name (individual / corporate)

Income Tax Reg No

FRC No

Vat No

Value of qualifying sales

Tax @ 3 % withheld at source

Value of qualifying sales after withholding tax

Value of non-qualifying sales sold to establishment during the year

Net payment to vendor during the year

SCHEDULE F

(Rule 8)

Inland Revenue Department - Malta

AS 6

Sale of Agricultural Produce Scheme
Annual Transaction Reconciliation Statement

Year ended 31st December

Payor Detail

SAP No

Person's Name
(Individual / Corporate)

Income Tax Registration No

Business Name

Total number of vendors included in this statement

Business Address

Vendors Details

Surname	Name	FRC No	IT Reg No	Value of non Qualifying Sale (Lm)	Value of non Qualifying Sale (Lm)	Tax @ 3% withheld at source (Lm)
Totals						

SCHEDULE G

(Rule 8)

Inland Revenue Department - Malta

AS 7

Sale of Agricultural Produce Scheme
Annual Reconciliation of Payments Statement

Year ended 31st December

Payor Detail

SAP No

Person's Name
(Individual / Corporate)

Income Tax Registration No

Business Name

Business Address

Total number of vendors included in this statement

Total tax withheld for the year remitted to IRD

Payment Reconciliation

	Receipt No	Amount (Lm)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

Name of person completing this return _____

Designation _____ Signature _____ Date _____

SCHEDULE H

(Rule 17)

Additional Tax

	Default	Imposition of Additional Tax *[subject to a maximum of Lm200 for each default per regulation]*
1	**Payor Registration AS 1**	
	Payor fails to register or re-register under these regulations.	Lm50 for default in registering or re-registering as a Payor, as the case may be
2	**Certificate of deduction**	
	Payor fails to issue a certificate of deduction to vendor or fails to deduct tax	Lm10 for every transaction that is not supported by a certificate of deduction
3	**Montly statement AS 5**	
	Payor fails to submit to the Commissioner, form AS 5	Lm10 for every month, or part thereof, during which form AS 5 has not been forwarded to the Commissioner
4	**Monthly payment**	
	Payor fails to remit to the Comissioner the monthly total amount of withholding tax deducted	1% per month, or part thereof, during which the default continues calculated on the tax due when the payment is effected OR Lm20 whichever is the greater.
5	**Annual statement to vendor AS 3**	
	Payor fails to furnish the vendor with the annual statement AS 3	Lm20 for every statement not furnished by Payor
6	**Annual Reconciliation statements AS 6 and AS 7**	
	Payor fails to submit to the Commissioner forms AS 6 and AS7	1% per month, or part thereof, during which the default continues calculated on the tax deducted for the year OR Lm50 whichever is the greater.

Ippubblikat mid-Dipartiment ta' l-Informazzjoni (doi.gov.mt) — Valletta — *Published by the Department of Information (doi.gov.mt) — Valletta*
Mitbugh fl-Istamperija tal-Gvern — *Printed at the Government Printing Press*

Prezz 72c – *Price 72c*