

**A.L. 369 ta' l-2005**

**ATT DWAR IT-TAXXA FUQ L-INCOME  
(KAP. 123)**

**Regoli ta' l-2005 dwar *Finance Leasing***

BIS-SAHHA tas-setghat moghtija mis-subartikolu (2) ta' l-artikolu 14, l-artikolu 52A u l-artikolu 96 ta' l-Att dwar it-Taxxa fuq l-*Income*, hawn iżjed 'il quddiem imsejjah "l-Att", il-Prim Ministru u Ministru tal-Finanzi ghamel dawn ir-regoli li ġejjin:-

**1.** It-titolu ta' dawn ir-regoli hu Regoli ta' l-2005 dwar *Finance Leasing*, u dawn ir-regoli ghandhom jidhlu fis-sehh mis-sena ta' stima 2006. Titolu u bidu fis-sehh.

**2.** F'dawn ir-regoli, kemm-il darba r-rabta tal-kliem ma tkunx tehtieg mod ieħor - Tifsir.

“assi” tfisser kull assi illi dwarhom huwa dovut tnaqqis taht il-paragrafu (f) tas-subartikolu (1) ta' l-artikolu 14 ta' l-Att iżda teskludi bini jew struttura industrijali;

“*finance lease*” tfisser kiri ta' assi msemija f'regola 3 ta' dawn ir-regoli:

Iżda l-Kummissarju jista', fid-diskrezzjoni shiha tieghu, ma jaghrafx il-kiri ta' assi bhala *finance lease* jekk ikun tal-fehma li l-kumpannija tal-*leasing* u l-*lessee* huma b'xi mod relatati ma' xulxin;

“*finance lease* kwalifikanti” tfisser *finance lease* li tikkwalifika skond id-dispożizzjonijiet tar-regola 4 ta' dawn ir-regoli.

“istituzzjoni finanzjarja” tfisser istituzzjoni li jkollha liċenzja taht l-Att dwar Istituzzjonijiet Finanzjarji;

“kumpannija ta’ *finance leasing*” tfisser -

(a) kumpannija kif imfissra fl-Att, li jkollha liċenzja kif imiss bhala istituzzjoni finanzjarja li l-ghanijiet taghha huma espressament limitati ghal li x-xoghol taghha jkun biss dak li taghti *finance leases* u li twettaq atti u attivitajiet ohra neċessarji sabiex isir dak ix-xoghol;

(b) kumpannija inkorporata barra minn Malta li hi ta’ natura simili ghal dik imsemmija fil-paragrafu (a) ta’ din it-tifsira.

*Finance leases.*

**3.** (1) *Finance lease* hija maghmula minn kiri ta’ assi fi jew wara l-1 ta’ Jannar, 2005 li tinvolvi l-pagament mill-*lessee* lill-*lessor* tul ghadd ta’ snin tal-prezz kollu jew kważi kollu ta’ l-assi flimkien ma’ rikavat fuq il-finanzjament provdut mill-*lessor* u xi remunerazzjoni ohra u li tkun raġonevoli fiċ-ċirkostanzi tal-każ. Il-*lessee* ghandu sostanzjalment jassumi r-riskji u l-benefiċċji kollha li normalment huma marbuta mal-proprjetà ta’ assi, minbarra t-titolu legali relattiv.

(2) Kuntratt ta’ *hire purchase*, ftehim ta’ *lease purchase*, *operating lease*, u arrangamenti ohra bhal dawn, kif ukoll transazzjonijiet ta’ bejgħ u *leaseback* ma jikkostitwux *finance lease*.

*Finance leases*  
kwalifikanti.

**4.** Kuntratt ta’ kiri jikkwalifika bhala *finance lease* taht dawn ir-regoli meta:

(a) il-*lessor* ikun kumpannija ta’ *finance leasing*; u

(b) il-perijodu tal-kiri jkun ta’ erba’ snin jew aktar u ma jkunx iqsar mill-perijodu ta’ deprezzament ta’ l-assi kif stabbilit fl-Iskeda li tinsab mar-Regoli ta’ l-2001 dwar it-Tnaqqis (Tqagħbir bl-Użu ta’ Impjant u Makkinarju); u

(ċ) issir notifika tal-kuntratt tal-kiri lill-Kummissarju mill-kumpannija ta’ *finance leasing*, jew, jekk il-kumpannija ta’ *finance leasing* tkun taqa’ taht il-paragrafu (b) tar-regola 2 ta’ dawn ir-regolamenti, mill-*lessee*, fi żmien tliet xhur mill-iffirmar tal-kuntratt ta’ kiri, fuq il-formola preskritta fl-Iskeda li tinsab ma’ dawn ir-regoli flimkien ma’ kopja awtentikata ta’ l-imsemmi kuntratt ta’ kiri.

5. Għall-iskop li jiġi stabbilit l-*income* taxxabli taht l-Att ta' *lessor* u ta' *lessee*, l-arrangamenti li ġejjin għandhom japplikaw f'kaz ta' *finance lease* kwalifikanti:

Kif jiġi stabbilit l-*income* taxxabli.

(a) mingħajr preġudizzju għad-dritt ta' xi tnaqqis li jista' jkun attribwibbli kontra, il-*lessor* għandu jiġi ntaxxat fuq l-ammont shih tal-pagamenti annwali tal-kiri;

(b) il-*lessor* għandu jkun intitolat għal tnaqqis dwar it-tqagħbir bl-użu ta' l-assi mikrija skond id-dispożizzjonijiet tal-paragrafu (f) tas-subartikolu (1) ta' l-artikolu 14 ta' l-Att;

(ċ) il-*lessee* għandu jkun intitolat għal tnaqqis dwar l-ammont shih tal-pagamenti tal-kiri magħmulin minnu dwar l-assi mikrija kif ukoll kull tnaqqis iehor dovut taht l-artikolu 14 ta' l-Att; iżda ma għandu jingħata l-ebda tnaqqis taht il-paragrafu (f) tas-subartikolu (1) ta' l-imsemmi artikolu.

6. Meta mat-trasferiment tat-titolu tal-proprjetà fuq l-assi mikrija, il-*lessee* jagħmel pagament lill-*lessor* li jkun akbar mit-total maqbul tal-pagamenti annwali, dak il-pagament żejjed għandu jkun taxxabli f'idejn il-*lessor*. Minn hemm 'il quddiem il-*lessee* jkun intitolat għal tnaqqis taht il-paragrafu (f) tas-subartikolu (1) ta' l-artikolu 14 ta' l-Att fir-rigward ta' l-imsemmi pagament u d-dispożizzjonijiet ta' l-artikolu 24 ta' l-Att għandhom ikunu japplikaw ukoll.

Pagament meta jsir trasferiment tal-proprjetà.

7. (1) Għall-iskopijiet ta' dawn ir-regoli, meta *finance lease* tiġi terminata qabel ma jagħlaq iż-żmien tal-kiri, għandhom japplikaw dawn id-dispożizzjonijiet li ġejjin:

Terminazzjoni qabel id-data dovuta.

(a) fejn *lessor* jikseb il-pussess mill-ġdid ta' assi mikrija u jidhol f'xi ftehim iehor ta' kiri dwar l-istess assi, it-total tat-tnaqqis għal tqagħbir bl-użu li għalih il-*lessor* ikun intitolat dwar l-assi għandu jkun ekwivalenti għat-total tat-tnaqqis għal tqagħbir bl-użu li ma ttehidx taht xi ftehim preedenti;

(b) l-artikolu 24 ta' l-Att għandu japplika fejn;

(i) *lessor* jiddisponi minn assi wara li jkun kiseb pussess mill-ġdid ta' dan l-assi kif imsemmi fil-paragrafu (a) ta' din is-subregola; jew

(ii) il-*lessee* jiehu pussess ta' l-assi wara li jhallas kumpens.

(2) Fejn *finance lease* tiġi terminata qabel ma jaghlaq iż-żmien, il-kumpannija ta' *finance leasing* u l-*lessee* jkunu t-tnejn taht obbligu li jaghtu avviż bil-miktub lill-Kummissarju dwar dik it-terminazzjoni u dan l-avviż ghandu jinghata fi żmien tletin jum minn meta din isseħħ.

Restrizzjoni ta' eżenzjoni għal gruppi u jedd ta' suċċessjoni għal telf.

**8.** (1) Kumpannija ta' *finance leasing* ghandha titqies li ma tagħmilx parti minn grupp ta' kumpanniji għall-iskopijiet ta' l-artikoli 16 sa 22 ta' l-Att.

(2) Min jissuċċedi f'titolu ma jkollu ebda jedd għal tpaċija, jew benefiċċju jew eżenzjoni ohra, fir-rigward ta' xi telf magħmul minn kumpannija ta' *finance leasing*, u lanqas kumpannija ta' *finance leasing* ma jkollha jedd, bhala suċċessur f'titolu, għal xi tpaċija, jew benefiċċju jew eżenzjoni ohra, fir-rigward ta' xi telf magħmul minn xi kumpannija ohra.

(3) Tista' ssir biss tpaċija ta' telf magħmul minn kumpannija ta' *finance leasing* ma' profitti ġejjin mill-istess attivitá.

Kundizzjonijiet ohra.

**9.** (1) Dawn ir-regoli ghandhom japplikaw biss fejn ebda benefiċċji ohra ma jkunux qeghdin jiġu mitluba dwar l-istess assi taht xi leġislazzjoni ohra li taghti skemi ta' inentivi fiskali.

(2) Id-dispożizzjonijiet ta' dawn ir-regoli ma jkollhomx effett meta xi transazzjoni misthajla bhala *finance lease* tkun skema artifijali jew fittizja biex tnaqqas, kemm jekk direttament kemm indirettament, l-ammont ta' taxxa li ghandha tithallas fuq it-transazzjoni.

(3) Jekk *finance lease* ma tikkwalifikax bhala tali tkun xi tkun ir-raġuni, il-Kummissarju jista', fid-diskrezzjoni shiha tieghu, jiddetermina l-mod ta' kif din tiġi meqjusa għal skopijiet tat-taxxa.

## SKEDA

(Regola 4)

**Notifika lill-Kummissarju tat-Taxxi Interni  
dwar Kuntratt ta' *Finance Lease***

Isem u Indirizz tal-*lessor*: \_\_\_\_\_  
\_\_\_\_\_

Nru. tar-registrazzjoni tat-taxxa: \_\_\_\_\_

Isem u Indirizz tal-*lessee*: \_\_\_\_\_  
\_\_\_\_\_

Nru. tar-registrazzjoni tat-taxxa: \_\_\_\_\_

Deskrizzjoni ta' l-assi mikrija: \_\_\_\_\_

Pajjiż fejn l-assi ser jintuża: \_\_\_\_\_

Pagamenti annwali tal-kirja: \_\_\_\_\_

Data u perijodu tal-kirja: \_\_\_\_\_

Residenza ghat-taxxa tal-*lessee*: \_\_\_\_\_

Konformement mad-dispożizzjonijiet ta' Regola 4 tar-Regoli ta' l-2005 dwar *Finance Leasing*, qiegħed b'dan jingħata avviż illi sar kuntratt ta' *finance lease* bejn il-partijiet hawn qabel imsemmija. Dettalji tal-kirja qegħdin jidhru fil-kopja awtentikata tad-dokument rilevanti li tinsab hawn mehmuża.

\_\_\_\_\_  
Kumpannija ta' *Finance Leasing / Lessee*

\_\_\_\_\_  
Data

**L.N. 369 of 2005**

**INCOME TAX ACT  
(CAP 123)**

**Finance Leasing Rules, 2005**

IN exercise of the powers conferred by subarticle (2) of article 14, article 52A and article 96 of the Income Tax Act, hereinafter referred to as “the Act”, the Prime Minister and Minister of Finance has made the following rules:-

Title and commencement

**1.** The title of these rules is the Finance Leasing Rules, 2005, and they shall come into force as from the year of assessment 2006.

Interpretation.

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

“asset” means any asset in respect of which a deduction is due under paragraph (f) of sub-article (1) of article 14 of the Act but excluding any industrial building or structure;

“financial institution” means an institution licensed under the Financial Institutions Act, 1994;

“finance lease” means a lease of assets referred to in rule 3 of these rules:

Provided that the Commissioner may, at his absolute discretion, not recognise a lease of assets as a finance lease if he is of the opinion that the leasing company and the lessee are in any way related;

“finance leasing company” means -

(a) a company as defined in the Act, being a duly licensed financial institution which has its objects expressly limited to that of being engaged solely in the business of granting finance leases and in such other acts and activities as are necessary for the conduct of the said business;

(b) a company incorporated outside Malta and of a nature similar to that mentioned in paragraph (a) hereof;

“qualifying finance lease” means a finance lease qualifying in accordance with the provisions of rule 4 of these rules.

**3.** (1) A finance lease is constituted by the lease of an asset on or after the 1<sup>st</sup> January, 2005 involving the payment by the lessee to the lessor over a number of years of the full, or nearly the full cost of the asset together with a return on the finance provided by the lessor and such other remuneration as may be reasonable in the circumstances of the case. The lessee shall substantially assume all the risks and rewards normally associated with the ownership of an asset, other than the legal title thereto. Finance leases.

(2) A contract of hire purchase, a lease purchase agreement, an operating lease and similar arrangements, as well as sale and leaseback transactions shall not constitute a finance lease.

**4.** A contract of lease shall qualify as a finance lease under these rules where: Qualifying finance leases.

(a) the lessor is a finance leasing company; and

(b) the period of the lease is for four years or more and is not shorter than the period of the asset’s depreciation as established in the Schedule to the Deduction (Wear and Tear of Plant and Machinery) Rules, 2001; and

(c) notification of the lease contract is made to the Commissioner by the finance leasing company, or, if the finance leasing company falls under paragraph (b) of rule 2 hereof, by the lessee, within three months of the signing of the lease contract, on the prescribed form in the Schedule to these rules together with an authenticated copy of the relative lease contract.

**5.** For the purpose of determining the income chargeable to tax under the Act of a lessor and of a lessee the following arrangements shall apply in the case of a qualifying finance lease: Determination of chargeable income.

(a) without prejudice to the right for any deduction properly attributable there against, the lessor shall be chargeable to tax on the full amount of the annual lease payments;

(b) the lessor shall be entitled to a deduction in respect of the wear and tear of the leased asset in accordance with the provisions of paragraph (f) of sub-article (1) of article 14 of the Act;

(c) the lessee shall be entitled to a deduction in respect of the full amount of the lease payments made by him in respect of the leased asset as well as all other deductions properly due under article 14 of the Act: provided that no deduction under paragraph (f) of sub-article (1) of the said article shall be granted.

Payment on transfer of ownership.

**6.** Where on the occasion of the transfer of the title of ownership over a leased asset the lessee makes a payment to the lessor in excess of the total agreed annual payments such payment shall be chargeable to tax in the hands of the lessor. The lessee shall thereafter be entitled to deductions under paragraph (f) of sub-article (1) of article 14 of the Act in respect of any such payment and the provisions of article 24 of the Act shall also apply.

Termination before due date

**7. (1)** For the purposes of these rules, where a finance lease is terminated prior to the expiration of the lease term, the following provisions shall apply:

(a) where a lessor obtains repossession of a leased asset and enters into a second or subsequent lease agreement or agreements in respect of the same asset, the total of the deduction for wear and tear to which the lessor is entitled in respect of the asset shall be equal to the total of the deduction for wear and tear not availed of under the previous agreement or agreements;

(b) article 24 of the Act shall apply where:

(i) a lessor disposes of an asset after having obtained repossession of the said asset as mentioned in paragraph (a) of this sub-rule; or

(ii) the lessee takes over the asset against a consideration.

(2) Where a finance lease has been terminated before the due date, the finance leasing company and the lessee shall both be under obligation to give notice in writing to the Commissioner of the said termination and notice shall be given within thirty days of the happening thereof.

**8.** (1) A finance leasing company shall be deemed not to constitute part of a group of companies for the purposes of articles 16 to 22 of the Act. Restriction of group relief and entitlement to succession of losses.

(2) No successor in title shall be entitled to any set off, or other benefit or relief, in respect of any losses incurred by a finance leasing company, nor shall a finance leasing company be entitled, as a successor in title, to any set off, or other benefit or relief, in respect of any losses incurred by any other company.

(3) Any losses incurred by a finance leasing company can only be set-off against profits from the same activity.

**9.** (1) These rules shall only apply where no other benefits are being claimed on the same asset under any other legislation granting fiscal incentive schemes. Further conditions.

(2) The provisions of these rules shall not have effect where any transaction purporting to be a finance lease is an artificial or fictitious scheme to reduce, whether directly or indirectly, the amount of tax payable on the transaction.

(3) If a finance lease does not qualify as such under these rules for any reason whatsoever, the Commissioner may, at his absolute discretion, determine the manner of its treatment for tax purposes.

SCHEDULE

(Rule 4)

**Notification to the Commissioner of Inland Revenue  
of a Finance Lease Contract**

Name and Address of lessor: \_\_\_\_\_  
\_\_\_\_\_

Income Tax Reg. Number: \_\_\_\_\_

Name and Address of lessee: \_\_\_\_\_  
\_\_\_\_\_

Income Tax Reg. Number: \_\_\_\_\_

Description of asset leased: \_\_\_\_\_

Country where asset will be used: \_\_\_\_\_

Annual lease payments: \_\_\_\_\_

Date and period of lease: \_\_\_\_\_

Tax residence of lessee: \_\_\_\_\_

PURSUANT to the provisions of Rule 4 of the Finance Leases Rules, 2005, notice is hereby given that a finance lease has been contracted between the above named parties. Details of the lease appear in the attached authenticated copy of the relevant instrument.

\_\_\_\_\_  
Finance Leasing Company / Lessee

\_\_\_\_\_  
Date