SUBSIDIARY LEGISLATION 372.25

TAX REFUNDS AND REGISTRATION PROCEDURE RULES

1st January, 2007

LEGAL NOTICE 80 of 2008, as amended by Legal Notices 193 of 2010, 284 of 2016, and 377 of 2017.

Title.

1. The title of these rules is the Tax Refunds and Registration Procedure Rules.

Interpretation. *Added by: L.N.377 of 2017.*

1A. For the purposes of these rules:

"trust" means a trust, the trustee of which has made an election in terms of the provisions of sub-article 27D(1) of the Income Tax Act;

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"trustee" means any trustee of a trust where such trustee is resident in Malta; and

"shareholder" includes a partner or member of any body of persons that has elected to be treated as a company in terms of article 27(6) of the Income Tax Management Act and for as long as such election remains in force.

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Claim for refund. *Substituted by: L.N. 193 of 2010.*

2. Any person, except for shareholders of an international trading company, making a claim pursuant to article 48(4) or pursuant to article 48(4A) shall, in order to be entitled to make such a claim, be registered with the Commissioner in accordance with these rules.

Registration by company or trustee. *Amended by: L.N. 193 of 2010. Substituted by: L.N.377 of 2017.*

3. (1) A person who wishes to be registered with the Commissioner in terms of these rules shall advise, in writing, the company or trustee, as the case may be, from which he expects to receive a dividend or a distribution of profits in relation to which he wishes to make a claim to be registered and the company or the trustee, as the case may be, shall forthwith effect the registration in the manner set out in rule 4:

Provided that where the company or the trustee, as the case may be, as a result of such registration may be deemed to be a payor in terms of article 41(b) of the Income Tax Act, the said company or trustee shall not be obliged to register the said person who, after having been requested by the said company or trustee, has not provided the company or trustee with security, including a bank guarantee, for the tax that may be payable by it in terms of article 33 of the Income Tax Act:

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Provided further that the trustee shall be required to register only those beneficiaries whom he expects shall be entitled to receive distributions out of profits of the trust.

(2) The registration by the company or by the trustee, as the case may be, in terms of sub-rule (1) will apply for the year of assessment in which registration with the Commissioner in terms of the said sub-rule (1) is duly effected and for all subsequent years of assessment until such time that the person notifies the company or the

trustee, as the case may be, of his wish to cancel his registration in terms of rule 7 and such de-registration is effected by the Commissioner:

Provided that for each applicable year of assessment following the registration referred to in these rules and until such time that the cancellation of registration is notified in accordance with the provisions of these rules, it shall be deemed that:

(*a*) the registered shareholder or the registered beneficiary, as the case may be, intends to make a claim in relation to the tax assessable in relation to each of the said years of assessment;

(*b*) the relevant registration has been renewed for each of the said years of assessment with the original details on the application and, if applicable, as amended by any new details notified in writing by the company or the trustee, as the case may be, to the Commissioner;

(*c*) in the case of a company, the registered shareholder expects to receive a dividend out of the profits earned in relation to each of the said years of assessment; and

(*d*) in the case of a trust, the registered beneficiary expects to receive a distribution out of the profits attributable to the trust in relation to each of the said years of assessment.

Method of registration. *Substituted by: L.N.377 of 2017.*

4. The company or the trustee, as the case may be, shall effect the said registration in such manner as shall be determined by the Commissioner.

Time limits for registration. *Amended by: L.N. 193 of 2010. Substituted by: L.N.377 of 2017.*

5. (1)A person shall only be entitled to make a claim pursuant to the sub-articles mentioned in rule 2 if, at the time of making the claim, he is registered in terms of these rules and that registration was made not later than the date on which the first provisional tax payment instalment of the company or the trust, as the case may be, for the relevant year of assessment falls due or the date on which the company or the trustee, as the case may be, makes a payment of tax in respect of that year of assessment whichever is the earlier:

Provided that where the period commencing from the first day of the accounting period ending in the year preceding the relevant year of assessment and the date on which the first provisional tax payment instalment falls due is less than one hundred and twenty days, the said registration must have been made not later than the date on which the second provisional tax payment instalment of the company or the trustee, as the case may be, for the relevant year of assessment falls due or the date on which the company or the trustee, as the case may be, makes a payment of tax in respect of that year of assessment (other than the payment in respect of the first provisional tax payment for that same year of assessment) whichever is the earlier:

Provided further that where the relevant year of assessment is the first year of assessment of the company or the trust, as the case may be, the said registration must have been made not later than the date on which the second provisional tax payment instalment for the

relevant year of assessment of the company or the trust, as the case may be, would have fallen due had that year of assessment been the second year of assessment and not the first year of assessment or the date on which the company or the trustee, as the case may be, makes a payment of tax in respect of that accounting period whichever is the earlier.

(2) Notwithstanding the provisions of sub-rule (1) but subject to the provisions of sub-rule (3) the registration referred to in sub-rule (1) shall be made not later than the tax settlement date for that year of assessment of the company or the trust, as the case may be.

(3) Where on the date of publication of these rules or on the date of any relevant amendment thereto, the time period within which a registration is to be made in accordance with the preceding provisions of this rule has already elapsed or is a date falling within one hundred and twenty days from such date, the registration referred to in sub-rules (1) and (2) shall be made not later than one hundred and twenty days from the date of publication of these rules or from the date of any relevant amendment thereto as the case may be.

(4) Notwithstanding the provisions of sub-rules (1), (2) and (3), the Commissioner may, in his discretion and provided that there are sufficient serious reasons for the request, accept a request for registration of a person for entitlement to make a claim pursuant to the sub-articles mentioned in rule 2 provided that such request is made not later than eighteen months after the end of the accounting period to which the registration under these rules refers.

(5) In this rule:

(*a*) the "relevant year of assessment" is the first year of assessment in which the tax in respect of which a claim and registration is made or is to be made in terms of these rules is assessable;

(*b*) the "company" is the company which makes a payment of a dividend as a result of which the said person is entitled to make a claim pursuant to the sub-articles mentioned in rule 2;

(*c*) the "trustee" is the resident trustee which makes a distribution out of profits as a result of which the said person is entitled to make a claim pursuant to the sub-articles mentioned in rule 2.

Registration details and changes thereto. *Substituted by: L.N.377 of 2017.*

6. (1)The registration of a person under these rules shall indicate that person's entitlement to receive by way of dividend or distribution the whole or part of the distributable profits of the company or the trust, as the case may be, and such entitlement is hereinafter referred to as the "profit entitlement".

(2) Where a company or trustee, as the case may be, registers a person in terms of these rules, the company or the trustee, as the case may be, shall also provide the following information:

(*a*) details of the profit entitlement of all other shareholders of the company or beneficiaries of the trust, as the case may be, irrespective of whether such shareholders or beneficiaries have required registration in terms of these rules indicating separately any entitlement

to any profit entitlement of a fixed amount;

(*b*) such details on the ultimate beneficial owners of the company or of the beneficiaries of the trust as shall be determined by the Commissioner; and

(*c*) such other information as the Commissioner may require.

(3) Any change to the details of a registration made in terms of these rules, including any change to the profit entitlement where applicable, shall be notified to the Commissioner in such manner as the Commissioner may determine.

(4) Where the change relates to a change in a person's profit entitlement relative to a company or trust and as a result of such change, the profit entitlement of a person who is registered in terms of these rules is reduced and the profit entitlement of another person who may or may not be registered in terms of these rules is increased by a corresponding amount or percentage, the registration of the latter person in terms of these rules in respect of such increase in profit entitlement shall take effect from the date of the change and the provisions of rules 5 and 7 shall not apply to such change:

Provided that the said registration is notified to the Commissioner contemporaneously with the notification to the Commissioner of the corresponding cancellation or reduction in the profit entitlement registered in the name of the former person as a result of the said change.

(5) Where in relation to a change in the profit entitlement relative to a company or trust:

(*a*) the conditions of sub-rule (4) are not satisfied, the provisions of rule 5 shall apply to any registration of the additional profit entitlement of a person resulting from that change;

(*b*) any person registered in terms of these rules is no longer entitled to any profit entitlement in the company or trust, his registration shall be cancelled by means of the said notification which cancellation shall be effective as from the date of the change;

(*c*) any person registered in terms of these rules has had his profit entitlement reduced, his registration shall be amended to reflect the new profit entitlement and such change shall be effective as from the date of the change.

Cancellation of registration. *Substituted by: L.N.377 of 2017.*

7. A person who wishes to cancel his registration in terms of these rules relative to a company or a trust shall inform in writing such company or the trustee of such trust, as the case may be, and the company or trustee shall de-register him by completing such forms as the Commissioner may determine and delivering the said form to the Commissioner in such manner as the Commissioner may determine. Such de-registration shall have effect upon its notification to the Commissioner.

Tax refunds.

8. A claim for refund shall be made on such form as the

Commissioner may determine and shall be delivered to the Commissioner in such manner as the Commissioner may determine.

Electronic communications. *Amended by: L.N. 284 of 2016.*

9. The Commissioner may require that any registration and any cancellation or any change to such registration may be made by electronic means and all such registrations, cancellations or changes and any forms which the Commissioner may require to be made in terms of these rules shall be considered to be acts which can be made by electronic means in terms, and under the provisions of, the Electronic Communications Rules prescribed under the Commissioner for Revenue Act.

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Procedure. *Substituted by: L.N.377 of 2017.*

10. All registrations, changes and cancellations of registrations shall be made by the relevant company or trustee, as the case may be, upon a written request by the relevant shareholder or relevant beneficiary of the trust, as the case may be.