

L.N. 80 of 2008

**INCOME TAX MANAGEMENT ACT
(CAP. 372)**

Tax Refunds and Registration Procedure Rules, 2008

IN exercise of the powers conferred by articles 48 and 58 of the Income Tax Management Act, the Prime Minister and Minister of Finance has made the following rules:—

1. (1) The title of these rules is the Tax Refunds and Registration Procedure Rules, 2008. Title.

(2) These rules shall be deemed to have come into force on 1st January, 2007.

2. Any person making a claim pursuant to paragraph (ii) of the proviso 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. Claim for refund.

3. A person who wishes to be registered with the Commissioner in terms of these rules shall advise, in writing, the company from which he expects to receive a dividend in relation to which he wishes to make a claim to be registered specifying the year of assessment in which the tax in relation to which he wishes to make a claim is assessable and the company shall forthwith effect the registration in the manner set out in rule 4: Registration by Company.

Provided that where the company 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 shall not be obliged to register the said person who, after having been requested by the said company, has not provided the company 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.

4. The company shall effect the said registration in such manner as shall be determined by the Commissioner. Method of registration.

5. (1) A person shall only be entitled to make a claim pursuant to the subarticles mentioned in rule 2 hereof 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 company's first provisional tax payment instalment for the relevant year of assessment falls due or Time limits for registration.

the date on which the company 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 company's second provisional tax payment instalment for the relevant year of assessment falls due or the date on which the company 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 company's first year of assessment the said registration must have been made not later than the date on which the company's second provisional tax payment instalment for the relevant year of assessment would have fallen due had that year of assessment been the company's second year of assessment and not the company's first year of assessment or the date on which the company makes a payment of tax in respect of that accounting period whichever is the earlier.

(2) Notwithstanding the provisions of sub-rule (1) of this rule but subject to the provisions of sub-rule (3) below the registration referred to in sub-rule (1) shall be made not later than the company's tax settlement date for that year of assessment.

(3) Where on the date of publication of these rules 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.

(4) In this rule:

(a) the "relevant year of assessment" is the 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 subarticles mentioned in rule 2 hereof.

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

(2) Where a company registers a person in terms of these rules, the company shall also provide the following information :

(a) details of the profit entitlement of all other shareholders of the company irrespective of whether such shareholders 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 as shall be determined by the Commissioner;

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

(3) Any change to the details of a registration made in terms of these rules 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 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, 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, take effect from the date of the change and the provisions of rules 5 and 7 of these rules shall not apply to such change.

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

(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, 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.

7. A person who wishes to cancel his registration in terms of these rules relative to a company shall inform such company in writing and the company shall de-register him by completing such form as the Commissioner may determine and delivering the said form to the Commissioner in such manner as the Commissioner may determine. Such deregistration 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.

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 (Income Tax) Regulations.

L.N. 232 of 2002.

Procedure.

10. All registrations, changes and cancellations of registrations shall be made by the relevant company upon a written request by the relevant shareholder.