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L.N. 104 of 2013

INCOME TAX ACT
(Cap. 123)
DUTY ON DOCUMENTS AND TRANSFERS ACT
(Cap. 364)

Rulings (Income Tax and Duty Treatment of Mergers and Divisions) Rules, 2013

IN exercise of the powers conferred by articles 27A and 96 of the Income Tax Act, and by article 22 of the Duty on Documents and Transfers Act, the Minister of Finance, the Economy and Investment has made the following rules:-

Citation.

1. The title of these rules is the Rulings (Income Tax and Duty Treatment of Mergers and Divisions) Rules, 2013.

Ruling.

2. The Commissioner shall, on the application of any one or more company involved in a merger or division, notify his ruling in respect of any transaction or transactions carried out in the course of the merger or division or resulting therefrom that:

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(a) the provisions of articles 4, 5(1)(a)(iv), 5A(12A) and 51 of the Income Tax Act shall not apply to that transaction or transactions;

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(b) the transaction or transactions qualify for tax relief under the provisions of articles 5(9), 5(14) and 5A(4)(f) of the Income Tax Act notwithstanding that the conditions laid down in the said articles or rules regulating the said articles, are not satisfied;

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(c) the provisions of article 3 (3) and (4) of the Duty on Documents and Transfers Act shall not apply to that transaction or transactions;

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(d) the transaction or transactions qualify for duty relief under the provisions of articles 32(6), 41A, and the provisos to article 42(1) of the Duty on Documents and Transfers Act notwithstanding that the conditions laid down in the said articles or rules regulating the said articles, are not satisfied:

Provided that the Commissioner is, in his absolute discretion, satisfied that the transaction or transactions are to be effected for bona fide commercial reasons and do not form part

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of a scheme or arrangements of which the main purpose, or one of the main purposes is avoidance of liability to duty or tax.

Conditions.

3. In granting his permission for the purposes of these rules, the Commissioner shall, in his absolute discretion, impose such conditions as he may deem fit and reasonable, and such conditions shall apply to any company involved in the merger or division as the case may be, to any shareholder thereof and to any other person (whether or not in existence at the time of the application for the ruling), as may be indicated by the Commissioner in the particular ruling, and shall be operative notwithstanding any other provisions of the Income Tax Act and the Duty on Documents and Transfers Act. Any resulting ruling specified in rule 2 shall be void if such conditions are at any time not complied with.

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Fee.

4. The issue and notification of a ruling in terms of rule 2 shall be made in advance of the occurrence of any transaction in respect of which an application for a ruling is made in terms of these rules and in respect of which the non-refundable administrative fee referred to in rule 5(b) is paid.

Application.

5. (a) All applications under these rules shall be made in writing and shall contain all relevant particulars of the transactions to be effected and shall include a copy of the latest audited financial statements (if any) of the companies involved in the particular merger or division and which are in existence at the time of the application.

(b) Each application as aforesaid shall be submitted to the Commissioner together with a payment of €1000.

(c) Where the Commissioner requires further particulars for the purposes of enabling him to make a decision in respect of an application made in terms of these rules, the Commissioner shall, within thirty days of the receipt of the application, or of receipt of any further particulars previously required in terms of this paragraph, as the case may be, 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.

(d) The Commissioner shall notify his ruling to the applicant and to any other company which is in existence and is involved in the particular merger or division, within thirty days of receiving the application or, if he gives a notice under sub-rule (c), within thirty days after the notice has been complied with. The ruling shall not become effective unless it is signed by at least one director of each of the companies involved in the merger or division as the

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case may be, and which companies are in existence at the time of the issue of the ruling.

(e) If any particulars furnished under this article do not fully and accurately disclose all facts and considerations material for the ruling of the Commissioner, any resulting ruling shall be void.

(f) The ruling in terms of these rules is final and shall not be questioned in any appeal.

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