VERŻJONI ELETTRONIKA

L.N. 183 of 2015

INCOME TAX ACT
(CAP. 123)

Tax Accounts (Income Tax) (Amendment) Rules, 2015

IN EXERCISE of the powers conferred by articles 2 and 96 of the Income Tax Act, the Minister for Finance has made the following rules:-

Citation.

1. (1) The title of these rules is the Tax Accounts (Income Tax) (Amendment) Rules, 2015, and these rules shall be read and construed as one with the Tax Accounts (Income Tax) Rules, hereinafter referred to as "the principal rules". S.L.123.101

(2) These rules shall be applicable as from the year of assessment 2015.

Amends rule 3 of the principal rules.

2. Rule 3 of the principal rules shall be amended as follows:

(a) in paragraph (k) thereof, for the words "article 31A of the Act" there shall be substituted the words "articles 31A to 31D of the Act"; and

(b) immediately after paragraph (m) thereof there shall be added the following proviso:

"Provided that with effect from year of assessment 2015 the provisions of paragraphs (c) and (l) shall no longer be applicable and the amount of chargeable income the tax on which has been relieved from payment by any tax credits shall after deducting the tax chargeable thereon and adding the amount of tax credits utilised to relieve the payment of such tax be allocated to the Maltese taxed account.".

Amends rule 5 of the principal rules.

3. Rule 5 of the principal rules shall be amended as follows:

(a) in paragraph (c) of sub-rule (7) thereof, for the words "the highest beneficial entitlement" wherever they recur there shall be substituted the words "the highest percentage beneficial entitlement", and for the words "the second highest beneficial entitlement" there shall be substituted the words "the second highest percentage beneficial entitlement";

(b) in the proviso to paragraph (c) of sub-rule (7)

VERŻJONI ELETTRONIKA

thereof, for the words "the parent company's Maltese Taxed Account and the Foreign Income Account." there shall be substituted the words "the parent company's Maltese Taxed Account and the Foreign Income Account:";

(c) immediately after the proviso to paragraph (c) of sub-rule (7) thereof there shall be added the following new proviso:

"Provided also that the percentage beneficial entitlement shall be that existing at the end of the respective accounting period. For the purposes of this sub-rule, "percentage beneficial entitlement" shall mean the percentage of the profits available for distribution to the ordinary shareholders represented by the profits available for distribution to the holders of those shares.";

(d) sub-rule (8) thereof shall be substituted by the following:

"(8) Where a company derives profits consisting of interest, royalties, fees or any other consideration howsoever described from the granting of loans or any form of credit or from the provision of services to a related company or from the use of tangible or intangible assets by a related company where the profits of the related company would have been allocated to the Immovable Property Account, were it not for the said transaction or transactions, and where such a transaction or transactions from which such profits are derived are entered into with the sole or main purpose of a shareholder or shareholders of any of the said companies obtaining a refund of an amount of tax in terms of article 48(4) or (4A) of the Income Tax Management Act to which the said shareholder or shareholders would not have been entitled were it not for the said transaction or transactions, the provisions of article 48(10) of the Income Tax Management Act shall apply.";

Cap. 372.

(e) sub-rule (9) thereof shall be substituted by the following:

"(9) (a) For the purpose of sub-rules (7) and (8), a company shall be deemed to be related to another

VERŻJONI ELETTRONIKA

company if at the end of the year preceding the relevant year of assessment both companies are:

(i) resident in Malta; and

(ii) one is a subsidiary of the other or both are subsidiary companies of a third company, resident in Malta.

For the purpose of this sub-rule a company shall be deemed to be a subsidiary of another company, hereinafter referred to as the "parent company":

(i) if and so long as more than 50% of its ordinary share capital and more than 50% of its voting rights are owned directly or indirectly by the parent company; or

(ii) the parent company is beneficially entitled either directly or indirectly to more than 50% of any profits available for distribution to the ordinary shareholders of the subsidiary company; or

(iii) the parent company would be beneficially entitled either directly or indirectly to more than 50% of any assets of the subsidiary company available for distribution to its ordinary shareholders on a winding up.

The Commissioner may, in his absolute discretion, deem a company to be related to another company where, in his opinion, the relationship between the companies has been structured with the sole or main purpose of circumventing the provisions of sub-rule (7) and (8).

(b) Notwithstanding anything contained in these rules, where during the year immediately preceding year of assessment 2015 or any year thereafter, as a result of a change in the direct or indirect shareholders of a company (hereinafter referred to as "Company A"), or a change in the rights attached to the shares issued by Company A, such company becomes related to another company (hereinafter referred to as "Company B") within the meaning of paragraph (a) of this sub-rule, the Commissioner may, on application made by either Company A or Company B, in his absolute discretion,

VERŻJONI ELETTRONIKA

determine that such companies are not related to one another for the purposes of sub-rules (7) and (8):

Provided that the Commissioner will only issue such determination where, in his opinion, the relationship between the companies has not been structured with the sole or main purpose of obtaining any advantage which has the effect of avoiding, reducing or postponing liability to tax, or of obtaining any refund or set-off of tax."; and

(f) immediately after sub-rule (9) thereof, as amended, there shall be added the following new sub-rule:

"(10) Where a person enters into an artificial arrangement intended to shift profits between tax accounts to create an entitlement to a refund in terms of article 48(4) or (4A) of the Income Tax Management Act, the provisions of article 48(10) of the Income Tax Management Act shall apply.".

Cap. 372.

Amends rule 9 of the principal rules.

4. Immediately after paragraph (c) of rule 9 of the principal rules there shall be added the following new paragraph:

"(d) When an election as aforesaid has been made, it shall also apply to all subsequent years, and may not at any time be renounced unless, upon being requested, the Commissioner gives his permission in writing:

Provided that the request for the renunciation of the election may only be made on such form as the Commissioner may require, and which request shall indicate acceptance by all the directors of the company or by the company secretary where such request is approved by the board of directors of the company:

Provided also that the Commissioner shall only give his permission if the company which has requested permission to renounce the election re-allocates its profits after tax to its tax accounts in accordance with the provisions of these rules from the year of assessment from which the said election was effective, as if the said company had never made such election:

VERŻJONI ELETTRONIKA

Provided also that the re-allocation referred to in this paragraph shall not require the submission of a further or further returns in accordance with article 13 of the Income Tax Management Act, but shall only require a change in the amounts brought forward in the return of income of the year of assessment from which the renunciation shall apply:

Cap. 372.

Provided further that where, at the time of the request for the renunciation of the election, the company making such request is in default of furnishing a return or returns of income, the Commissioner may impose such other conditions as he deems fit and reasonable, and where such company accepts the conditions laid down by the Commissioner, such conditions shall be operative notwithstanding any provisions of these rules and the Act.".

VERŻJONI ELETTRONIKA

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