L.N. 110 of 2019

INCOME TAX ACT
(CAP. 123)

Consolidated Group (Income Tax) Rules, 2019

IN exercise of the powers conferred by articles 22A and 96 of the Income Tax Act, hereinafter referred to as "the Act" and article 58 of the Income Tax Management Act, the Minister for Finance has made the following rules:-

Citation and commencement.

1. (1) The title of these rules is the Consolidated Group (Income Tax) Rules, 2019.

(2) These rules shall come into force with effect from year of assessment 2020 in relation to fiscal units having accounting periods commencing in calendar year 2019 and subsequent years.

Definitions.

2. (1) In these rules, unless the context otherwise requires:

"Act" means the Income Tax Act; Cap. 123.

"company" has the same meaning as set out in the definition of the term in article 2(1) of the Act and includes:

(a) a trust arrangement whose trustee has made an election in terms of article 27D(1)(a) of the Act; and

(b) a foundation as defined in the Foundations (Income Tax) Regulations, S.L. 123.114

and when applied to a trust arrangement or foundation, the terms "share", "shareholder", "ordinary shareholder", "capital", "profits available for distribution" and "winding up" shall be read and construed so as to mean what is essentially equivalent in nature or purpose within the context of the said trust or foundation:

Provided that the term "company" shall not include:

(i) a foundation whose administrators have made an election in terms of rule 4 of the Foundations (Income Tax) Rules; S.L. 123.114

(ii) a securitisation vehicle in terms of the Securitisation Act; and Cap. 484.

(iii) a finance leasing company as defined in the Finance S.L. 123.88

Leasing Rules;

"fiscal unit" means a fiscal unit formed in terms of rule 3 and shall comprise the principal taxpayer and all its direct and indirect transparent subsidiaries;

"ignored transactions" shall have the meaning assigned to it in terms of rule 6(a);

"parent company" means a company that holds shares in another company (hereinafter, for the purposes of this definition, "the subsidiary company") that, in the year prior to the year of assessment in which an election in terms of rule 3(1) is made, meets any two of the following conditions:

(a) the parent company holds at least ninety-five per cent (95%) of the voting rights in the subsidiary company;

(b) the parent company is beneficially entitled to at least ninety-five per cent (95%) of any profits available for distribution to the ordinary shareholders of the subsidiary company;

(c) the parent company would be beneficially entitled to at least ninety-five per cent (95%) of any assets of the subsidiary company available for distribution to its ordinary shareholders on a winding up:

Provided that for the purposes of these rules, a subsidiary company of a parent company that meets any two of the conditions set out in paragraphs (a) to (c) of this definition shall be referred to as a "ninety-five per cent (95%) subsidiary":

Provided further that a ninety-five per cent (95%) subsidiary shall be referred to as a "one hundred per cent (100%) subsidiary" where both of the satisfied conditions referred to in the immediately preceding proviso are satisfied at a percentage of one hundred per cent (100%) instead of ninety-five per cent (95%):

Provided also that when applied within the context of a trust or foundation a beneficiary shall only be deemed to have satisfied the requirements of paragraph (a) of this definition where, and only for so long as, that beneficiary has a vested right, whether resulting from the terms of the settlement or the deed of foundation or whether subsequently arising as a result of the exercise of a power or discretion by the trustee of the trust or the administrator of the foundation, to at least ninety-five per cent (95%) of the distributable

income of the trust or foundation and at least ninety-five per cent (95%) of the capital of the trust or foundation:

Provided further that when applied within the context of a cell company referred to in the first proviso to the definition of "company" in article 2(1) of the Act, any cell and that part of a cell company in which non-cellular assets are held (hereinafter "the core"), shall constitute a parent company and a ninety-five per cent (95%) subsidiary to the extent that at least ninety-five per cent (95%) of the voting rights, profits available for distribution to ordinary shareholders and assets available for distribution to ordinary shareholders on a winding up in the particular cell or the core are owned by the same persons and in such case the election made in terms of rule 3(1) shall indicate which of the cells or the core shall constitute the parent company and which shall constitute the ninety-five per cent (95%) subsidiary;

"principal taxpayer" means a company which -

(a) is not a transparent subsidiary; and

(b) is the parent company of one or more transparent subsidiaries:

Provided that the principal taxpayer shall at all times be one that satisfies the conditions applicable to "a company registered in Malta" as set out in article 2(1) of the Act;

"tax due by the fiscal unit" shall mean the tax due by the fiscal unit on the chargeable income of the fiscal unit as computed in accordance with these rules;

"transparent subsidiary" shall have the meaning assigned to it in terms of rule 3(2)

(2) Any terms not defined in sub-rule (1) shall, unless the context otherwise requires, have the meaning assigned to them in the Act.

Formation of a fiscal unit.

3. (1) A parent company may make an election in order for itself and its ninety-five per cent (95%) subsidiary to form a fiscal unit:

Provided that the ninety-five per cent (95%) subsidiary must have its accounting period beginning and ending on the same dates as the accounting period of the parent company in all the years in which it forms part of the fiscal unit and in determining whether this condition is satisfied the provisions of article 18(2) of the Act shall,

mutatis mutandis, apply:

Provided further that where the ninety-five per cent (95%) subsidiary is not a hundred per cent (100%) subsidiary, such election shall also require the approval of the holders of the equity shares which are not owned, directly or indirectly, by the parent company.

(2) A ninety-five per cent (95%) subsidiary whose parent company made an election in terms of sub-rule (1) shall be referred to as a "transparent subsidiary" for the purposes of these rules.

(3) Where a parent company has made an election in terms of sub-rule (1) in respect of more than one ninety-five per cent (95%) subsidiary, each ninety-five per cent (95%) subsidiary in respect of which the election is made shall form part of the same fiscal unit of its parent company.

(4) Where a parent company has made an election in terms of sub-rule (1) in respect of its ninety-five per cent (95%) subsidiary and the ninety-five per cent (95%) subsidiary is itself a parent company of one or more transparent subsidiaries, the ninety-five per cent (95%) subsidiary and its transparent subsidiaries shall join the fiscal unit of the parent company of the said ninety-five per cent (95%) subsidiary.

(5) No company shall form part of more than one fiscal unit at any one time.

(6) An election made in terms of this rule shall be made in such form as the Commissioner may require. The fiscal unit shall be registered as such and the principal taxpayer shall assume the rights, duties and obligations under the Income Tax Acts relative to that fiscal unit. Save as otherwise may be provided, and without prejudice to the Final Settlement System (FSS) Rules, during the time that the fiscal unit exists, the rights, duties and obligations of companies forming part of that fiscal unit under the Income Tax Acts relating to those years of assessment for which the said companies form part of the fiscal unit shall be suspended.

S.L. 372.14

(7) An election made in terms of this rule may be revoked in such form and under such conditions as the Commissioner may require.

(8) An election made by a parent company in terms of sub-rule (1) in respect of its ninety-five per cent (95%) subsidiary shall become effective as from the year of assessment in which it is made:

Provided that if such election is made after the date by when the said ninety-five per cent (95%) subsidiary is due to file an income tax

return for that year of assessment, the election will enter into effect as from the following year of assessment.

Joining a fiscal unit.

4. (1) Where a ninety-five per cent (95%) subsidiary joins a fiscal unit by virtue of an election made in terms of rule 3 -

(a) the balance of any item allowed to be carried forward thereby under the Act, under any rules made thereunder or any other tax credits that may be carried forward in terms of any other law, and

(b) the balance of any profits allocated to the tax accounts, excluding the untaxed account, of the ninety-five per cent (95%) subsidiary,

existing at the end of the basis year preceding that with regard to which the election for the ninety-five per cent (95%) subsidiary to join the fiscal unit becomes effective, shall be considered to be a balance of the principal taxpayer as from the basis year with regard to which the election for the ninety-five per cent (95%) subsidiary to join the fiscal unit becomes effective:

Provided that where the ninety-five per cent (95%) subsidiary is not a hundred per cent (100%) subsidiary, the aggregation referred to in this sub-rule shall be subject to the approval of the holders of the equity shares which are not owned, directly or indirectly, by the parent company.

(2) In any circumstance in which the provisions of sub-rule (1) do not apply, where the balances referred to in sub-rule (1) shall be retained by the ninety-five per cent (95%) subsidiary, such balances shall be kept in abeyance and not taken into account for the purposes of the Act for as long as the ninety-five per cent (95%) subsidiary remains a transparent subsidiary, after which time such balances shall once again become available to the ninety-five per cent (95%) subsidiary without reduction or limitation.

Leaving a fiscal unit.

5. (1) Where a company (hereinafter "the exiting company") is a transparent subsidiary and forms part of a fiscal unit (hereinafter "the old fiscal unit") and the exiting company no longer remains a ninety-five per cent (95%) subsidiary or no longer has its accounting period beginning and ending on the same dates as the principal taxpayer of the fiscal unit it forms part of, it and any of its transparent subsidiaries, if any, shall be deemed to no longer form part of the old fiscal unit with effect from the basis year in which that company no longer remains a ninety-five per cent (95%) subsidiary or no longer has its accounting period beginning and ending on the same dates as the principal taxpayer of the said fiscal unit.

(2) If the exiting company is the parent company of one or more transparent subsidiaries, the exiting company and such transparent subsidiaries shall be considered to form a separate fiscal unit (hereinafter "the resulting fiscal unit") if registered as such and, if so registered, the exiting company shall be considered to be the principal taxpayer of that fiscal unit with effect from the start of the basis year in which the exiting company no longer forms part of the old fiscal unit:

Provided that this sub-rule shall not apply where the exiting company becomes a ninety-five per cent (95%) subsidiary of another company (hereinafter "the new parent company") and the new parent company makes an election in respect of the exiting company in terms of rule 3, in which case the exiting company and its transparent subsidiaries shall become part of such fiscal unit.

(3) Where an election is revoked in terms of rule 3(7), the transparent subsidiary whose parent company has revoked the election shall be deemed an exiting company and the provisions of this rule shall apply *mutatis mutandis* to such transparent subsidiary.

(4) Where an exiting company ceases to remain part of the old fiscal unit or where a fiscal unit ceases to exist:

(a) the balance of any trading loss, unabsorbed deductions for wear and tear, except for those unabsorbed deductions resulting from assets referred to in paragraph (b), losses claimed under the group relief provisions and any other loss, allowance or otherwise, and the balance of any profits allocated to the tax accounts, that are considered in terms of these rules to be balances pertaining to the principal taxpayer, shall continue, for all intents and purposes of the Act, to pertain to the company being the principal taxpayer of the fiscal unit and the relevant provisions of the Act shall accordingly apply to such losses, unabsorbed deductions for wear and tear or such other loss, allowance or otherwise;

(b) (i) the cost of any assets owned by the exiting company or the resulting fiscal unit, as the case may be, (hereinafter "the relevant assets") shall be deducted from the cost of the assets attributable to the principal taxpayer of the old fiscal unit;

(ii) where the relevant assets consist of or include assets in respect of which a deduction in terms of article 14 of the Act has been claimed by the

principal taxpayer or any company forming part of the old fiscal unit prior to joining such old fiscal unit, the exiting company, or the resulting fiscal unit, as the case may be, shall be entitled to continue claiming a deduction in respect of the relevant assets in the same manner and on the same basis as would have been claimed by the principal taxpayer had the exiting company or the resulting fiscal unit continued to form part of the old fiscal unit:

Provided that such deduction may only be claimed by the exiting company or the resulting fiscal unit where the conditions required to claim that deduction in terms of the Act are satisfied by the exiting company or the resulting fiscal unit;

(c) upon the occurrence of any of the events referred to in articles 5A(12B) or 24(1) of the Act in respect of any relevant asset, the exiting company or the resulting fiscal unit, as the case may be, shall prepare a balancing statement and for this purpose it shall be deemed that:

(i) the asset had been acquired by the exiting company or the principal taxpayer, as the case may be, for a cost equal to the original cost at which such property had been acquired by a company forming part of the old fiscal unit, and

(ii) the deductions claimed by the exiting company under paragraphs (f) and (j) of article 14(1) of the Act shall equal the total of any such deductions claimed in respect of the property by it, the principal taxpayer of the old fiscal unit and any other company forming part of the old fiscal unit irrespective of whether or not such company still forms part of the old fiscal unit or otherwise.

The chargeable income of the fiscal unit.

6. (1) The chargeable income of a fiscal unit for a year of assessment shall be computed as if such income was derived by the principal taxpayer and shall be chargeable to tax in the name of the principal taxpayer at the rate/s applicable thereto:

Provided that in computing such chargeable income:

(a) all transactions occurring between two or more companies forming part of the fiscal unit (including any receipts, payments, revenues, expenses, transfers of assets, distributions, accruals or otherwise) in the year preceding the year of assessment (hereinafter "ignored transactions") shall be

deemed not to have occurred, so however that transactions falling within the purport of article 5A of the Act or transactions involving the transfer of shares in a property company shall in no case fall within the purport of such ignored transactions:

Provided that dividends distributed by a transparent subsidiary to its parent company out of taxed profits that it derived prior to it becoming a transparent subsidiary shall not be considered to be an ignored transaction and shall be deemed in terms of paragraph (b) to be dividend income derived by the principal taxpayer of the fiscal unit of which the transparent subsidiary forms part;

(b) all income derived by companies forming part of the fiscal unit in the year preceding the year of assessment and which are not ignored transactions shall be deemed to be derived by the principal taxpayer:

Provided that any such income shall retain the same character and shall be deemed to have been derived from the same source and the same country and be allocated to the same tax account as if the said income was received by the said principal taxpayer;

(c) all outgoings and expenses incurred by companies forming part of the fiscal unit in the year preceding the year of assessment and which are not ignored transactions shall be deemed to be incurred by the principal taxpayer:

Provided that such outgoings and expenses shall be deductible against income attributable to the principal taxpayer in accordance, *mutatis mutandis*, with articles 14 to 26 of the Act, so however that in such case it shall be deemed that activities or transactions carried on by any person comprised within the fiscal unit are carried out by the principal taxpayer:

Provided further that, without prejudice to the generality of the preceding proviso, where any outgoings or expenses would have been deductible, save for the application of these rules, against income which is deemed not to have arisen as a result of the application of the provisions of paragraph (a), such outgoings or expenses shall be deductible against income attributable to the principal taxpayer as set out in paragraph (b), if, in the absence of a fiscal unit:

(i) such outgoings or expenses would have been deductible against income derived by a company, and

(ii) the expense resulting from the income generated by the company referred to in sub-paragraph (i) would have been deductible in another company:

Provided also that if the income referred to in sub-paragraph (i) consists of a dividend, the provisions of sub-paragraph (ii) shall be deemed to be satisfied;

(d) any industrial building, structure or plant and machinery used or employed in acquiring income by a company forming part of the fiscal unit shall be deemed to be so used or employed by the principal taxpayer in acquiring the said income:

Provided that where a company forming part of the fiscal unit ("the transferor") sells or transfers under an onerous title any property to another company forming part of the fiscal unit and such company is required, but for the provisions of this paragraph, to render a balancing statement in terms of articles 5A(12B) or 24 of the Act, such sale or transfer of property shall be deemed not to have occurred and the transferor shall not be required to render such a balancing statement:

Provided further that deductions in respect of the wear and tear of the property that was sold or transferred shall continue to be calculated as though such sale or transfer did not occur;

(e) where any property in respect of which deductions under paragraphs (f) and (j) of article 14(1) of the Act have been claimed by the principal taxpayer or any company forming part of the same fiscal unit of the principal taxpayer is transferred under an onerous title to another company that does not form part of the fiscal unit, or to another person, as the case may be, or on the occurrence of the events set out in article 5A(12B) or in paragraphs (b) and (c) of article 24(1) of the Act, and the said transfer or event occurs while the company which owns the said property forms part of the fiscal unit, the obligation to render a balancing statement in terms of articles 5A(12B) or 24 of the Act, as the case may be, shall fall upon the principal taxpayer. In rendering such balancing statement, it shall be deemed that:

(i) the property had been acquired by the principal taxpayer for a cost equal to the original cost at which such property had been acquired by a company forming part of the fiscal unit, and

(ii) the deductions claimed by the principal

taxpayer under paragraphs (f) and (j) of article 14(1) of the Act shall equal the total of any such deductions claimed in respect of the property by it and any other company forming part of the fiscal unit, irrespective of whether or not such company still forms part of the fiscal unit.

(f) any income or gains derived by a transparent subsidiary that is not resident in Malta shall be deemed to be attributable to a permanent establishment of the principal taxpayer situated outside Malta:

Provided that such transparent subsidiary maintains sufficient substance in terms of physical presence, personnel, assets or other relevant indicators, as is commensurate with the type and extent of activity being carried out in the relevant jurisdiction;

(g) where any income or gains are derived by a transparent subsidiary resident in Malta, or a transparent subsidiary not resident in Malta derives income or gains arising in Malta, where the principal taxpayer is a person to which any of sub-paragraphs (i) or (ii) of the proviso to article 4(1)(g) of the Act applies, the following shall be attributable to the principal taxpayer:

(i) all of the income and gains derived by the transparent subsidiary resident in Malta, which income and gains shall be deemed to arise in Malta:

Provided that where the transparent subsidiary resident in Malta is a person to which any of sub-paragraphs (i) or (ii) of the proviso to article 4(1)(g) of the Act applies, the income and gains attributable to the principal taxpayer shall be such income and gains as arise in Malta and such income as arises outside Malta but which is received in Malta; and

(ii) all of the income and gains arising in Malta of the transparent subsidiary which is not resident in Malta;

(h) any interest held by a transparent subsidiary in any body of persons not forming part of the fiscal unit shall be deemed to be held directly by the principal taxpayer;

(i) for the purposes of claiming a deduction in terms of paragraph (o) of article 14(1) of the Act and any rules made thereunder, the risk capital of the principal taxpayer shall be

deemed to be:

(i) where the principal taxpayer is resident in Malta, the share capital, any share premium, positive retained earnings, loans or other debt borrowed by the undertaking which do not bear interest, and any other reserves resulting from a contribution to the undertaking, and any other positive balance which is shown as equity in the consolidated balance sheet prepared in terms of rule 11; and

(ii) where the principal taxpayer is not resident in Malta, that part of the risk capital, as defined in sub-paragraph (i), of that principal taxpayer that is attributable to the fiscal unit.

(2) Where the provisions of sub-articles (4) or (4A) of article 48 of the Income Tax Management Act (hereinafter in this sub-rule referred to as "the relevant sub-articles") would have applied to a shareholder of a company that forms part of a fiscal unit upon a receipt of a dividend from such company and such shareholder is specifically empowered to consolidate its results pursuant to Maltese law, the chargeable income of the fiscal unit shall be fully subject to tax at a rate determined by deducting from the rate referred to in sub-rule (1), that resulting from dividing the total amounts claimable by all members of the fiscal unit and, or persons entitled to receive distributions from the principal taxpayer in terms of the provisions of the relevant sub-articles, by the chargeable income of the fiscal unit. Cap. 372.

(3) The provisions of sub-articles (4) or (4A) of article 48 of the Income Tax Management Act shall not apply in respect of profits relative to which the provisions of sub-rule (2) are claimed. Cap. 372.

7. Any foreign tax suffered by a company forming part of the fiscal unit shall be deemed to have been incurred by the principal taxpayer, and where evidence of such foreign tax is in the name of a company forming part of the fiscal unit, it shall be deemed that such evidence is in the name of the principal taxpayer. Double tax relief.

8. (1) The principal taxpayer shall be required to allocate the profits attributable to it in terms of these rules to the same tax accounts and in the same manner as it otherwise would have, had it derived those profits directly. The distributable profits of the transparent subsidiaries shall be allocated to the untaxed account. Tax accounts.

(2) For the purposes of paragraph (h) of rule 5(3) of the Tax Accounts (Income Tax) Rules, it shall be deemed that any immovable property situated in Malta that is owned by a company forming part S.L. 123.101

of the fiscal unit is owned by the principal taxpayer.

(3) The principal taxpayer may make an election in terms of rule 9 of the Tax Accounts (Income Tax) Rules and the provisions of that rule shall apply *mutatis mutandis* to the principal taxpayer and shall be deemed to include also all the other companies forming part of the fiscal unit.

S.L. 123.101

Investment income provisions.

9. The investment income provisions set out in articles 32 to 42 of the Act shall not apply to payments of investment income where the recipient and the payor are companies forming part of the same fiscal unit.

Payment to transparent subsidiary.

10. The principal taxpayer may make a payment to a transparent subsidiary for any loss, deduction or allowance which is transferred to the principal taxpayer in terms of rule 4(1) or which would have been a loss, deduction or allowance of the transparent subsidiary had it not been part of the fiscal unit of the principal taxpayer, which payment shall not exceed the amount of such loss, deduction or allowance and any such payment shall not be taxable in the hands of the recipient company and shall not be tax deductible for the payor.

Consolidated audited accounts.

11. (1) Every principal taxpayer shall be required for each year to prepare a consolidated balance sheet and consolidated profit and loss account covering all the companies in the fiscal unit of which it is the principal taxpayer up to the day immediately preceding the commencement of the next following year of assessment or up to such other day as has been permitted under article 11(2) of the Act.

(2) Other than for the fact that the companies in the fiscal unit may be different from the subsidiary undertakings of a parent company in terms of the Companies Act, the consolidated balance sheet and consolidated profit and loss account shall comply in every respect with the applicable provisions of articles 170 and 171 of the Companies Act, and notwithstanding any exemption granted by that Act or by any other law, such balance sheet and profit and loss account shall be accompanied by a report made out by a certified public auditor as provided by the applicable provisions of articles 179 and 181 of that Act.

Cap. 386.

(3) Without prejudice to any obligation to prepare audited financial statements in terms of any other law, where the results of a company are contained in a consolidated balance sheet and consolidated profit and loss account prepared in terms of sub-rule (1), such company shall be exempted from the requirement to prepare an audited balance sheet and profit and loss account in terms of paragraph (a) of article 19(4) of the Income Tax Management Act:

Cap. 372.

Provided that no company shall be exempt from the requirements imposed by the provisions of the Cooperation with Other Jurisdictions on Tax Matters Regulations. S.L. 123.127

12. (1) Every principal taxpayer shall file a self-assessment and return in respect of the fiscal unit of which it is the principal taxpayer in such manner as the Commissioner shall determine. The provisions of the Act and of the Income Tax Management Act and of any rules prescribed thereunder shall apply *mutatis mutandis* to such self-assessment and return in the same manner as they apply to any company to which these rules do not apply. Income tax return. Cap. 372.

(2) Where a company other than the principal taxpayer forms part of a fiscal unit, such company shall be exempted from the requirement to file a self-assessment and an income tax return:

Provided that the provisions of this sub-rule shall only apply for a year of assessment in respect of which the company formed part of a fiscal unit for the entire year preceding that year of assessment and where the chargeable income of that company is deemed to be derived by the principal taxpayer and is taken into account for the purposes of determining the total income of such principal taxpayer.

(3) Where a fiscal unit has been formed: Payment of tax.

(a) the principal taxpayer and its hundred per cent (100%) subsidiaries which are transparent subsidiaries shall be jointly and severally liable for the payment of tax, additional tax and interest due by the fiscal unit;

(b) without prejudice to paragraph (a):

(i) the tax due by the fiscal unit may be apportioned between the principal taxpayer and its hundred per cent (100%) subsidiaries which are transparent subsidiaries as the principal taxpayer may determine;

(ii) the tax due by the fiscal unit, or part thereof, may also be apportioned to a transparent subsidiary which is a ninety-five per cent (95%) subsidiary but not a hundred per cent (100%) subsidiary in accordance with an agreement agreed to by and between the principal taxpayer and all of the holders of shares in that ninety-five per cent (95%) subsidiary which are not held directly or indirectly by the principal taxpayer.

13. (1) Where the tax payable by the principal taxpayer after taking into account, where applicable, the provisions of rule Anti-abuse measures.

6(2), including any applicable tax refund or credit (if any) whether paid to the principal taxpayer or to its shareholders, in relation to a fiscal unit (hereinafter "the tax payable by the principal taxpayer") for any year of assessment, is lower than ninety-five per cent (95%) of the aggregate of the tax that would have been payable by all the companies forming part of the fiscal unit on their chargeable income after any applicable tax refunds or credit (if any) whether paid to the principal taxpayer or to its shareholders for the same year of assessment had those companies not formed part of the fiscal unit, including any tax that was or could have been withheld on investment income referred to in sub-paragraphs (2), (3) and (4) of article 41(a)(viii) of the Act (hereinafter "the tax payable by all the fiscal unit companies"), the election made under rule 3 shall be deemed to have caused an advance to the shareholders of the principal taxpayer falling within the purport of article 46 of the Act which cannot be set off and which is equal to the result of the difference between the tax payable by all fiscal unit companies and the tax payable by the principal taxpayer divided by the rate set out in article 56(6) of the Act:

Provided that where any of the shareholders is a person, other than an individual, which is owned and controlled by, directly or indirectly, or which acts on behalf of an individual who is ordinarily resident and domiciled in Malta (hereinafter "the beneficial owner") or a trustee of a trust where the beneficiaries of such trust fall within the purport of article 61(a)(iii) of the Act (hereinafter "the beneficiaries"), for the purpose of this rule, the shareholders shall be deemed to be the beneficial owners or the beneficiaries, as the case may be.

(2) The advance referred to in sub-rule (1) shall, for the purposes of article 46 of the Act, be deemed to be a dividend distributed to the shareholders of the principal taxpayer on the tax return date following the end of the accounting year in which the shareholders are deemed to have received the advance and the provisions of article 46 of the Act shall apply *mutatis mutandis* in relation thereto.

(3) Without prejudice to the above, the deemed dividend referred to in sub-rule (2) shall be deemed to constitute an untaxed dividend and the provisions of articles 62 to 65 of the Act shall apply *mutatis mutandis* in relation thereto:

Provided that, for the purposes of article 62(1) of the Act, where tax is chargeable in respect of such dividend this shall be deducted at the rate set out in article 56(6) of the Act:

Provided further that the proviso to sub-article (2) of article 62 of the Act shall not apply.

(4) Without prejudice to the provisions of article 51 of the Act or any other general anti-avoidance rules under the Income Tax Acts, where in relation to a transaction, or to a series of transactions, the principal taxpayer, the shareholders thereof or the individual direct or indirect beneficial owners of the principal taxpayer, or any person which is controlled and beneficially owned directly or indirectly to the extent of more than fifty per cent (50%) by the same individuals, is in a position to obtain an undue advantage which has the effect of reducing their liability to tax in a manner which is not reconcilable with the object and purpose of this sub-rule, the Commissioner shall determine the relevant liability to tax in such manner and in such amount as may be necessary so as to nullify any such benefit or advantage.

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Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — ***Published by the Department of Information (doi.gov.mt) — Valletta***
Mitbugħ fl-Istamperija tal-Gvern fuq karta FSC — ***Printed at the Government Printing Press on FSC certified paper***

Prezz/*Price*
€1.44