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INCOME TAX ACT (CHAPTER 134)

INCOME TAX (AMALGAMATION OF COMPANIES) REGULATIONS 2011

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In exercise of the powers conferred by section 34C of the Income Tax Act, the Minister for Finance hereby makes the following Regulations:

PART I

GENERAL

Citation and commencement

1. These Regulations may be cited as the Income Tax (Amalgamation of Companies) Regulations 2011 and shall be deemed to have come into operation on 22nd January 2009.

Definitions

2. In these Regulations, references to an amalgamated company and to an amalgamating company are references to an amalgamated company and an amalgamating company, respectively, in the same qualifying amalgamation referred to in section 34C of the Act.

PART II

GENERAL MODIFICATIONS AND EXCEPTIONS TO ACT AND THE ECONOMIC EXPANSION INCENTIVES (RELIEF FROM INCOME TAX) ACT

Modification or exception to Act or Economic Expansion Incentives (Relief from Income Tax) Act for deductions, allowances and writing-down allowances claimable for more than one year of assessment

3.—(1) Where —

(*a*) an amalgamating company was entitled to any deduction, allowance or writing-down allowance under any provision of the Act or the Economic Expansion Incentives (Relief from Income Tax) Act (Cap. 86) in respect of any expenditure incurred by the amalgamating company in relation to any property;

(*b*) the amalgamating company ceased to exist upon the amalgamation in a basis period relating to any year of assessment;

(*c*) the property is transferred to the amalgamated company pursuant to the amalgamation; and

(*d*) the amalgamating company would have, but for the amalgamation, continued to be entitled to any deduction, allowance or writing-down allowance under that provision of the Act or the Economic Expansion Incentives (Relief from Income Tax) Act in respect of that expenditure in any subsequent year of assessment,

then —

(i) subject to paragraph (2), the amalgamated company shall be entitled to the deduction, allowance or writing-down allowance referred to in sub-paragraph (*d*) as if it were the amalgamating company; and

(ii) such transfer of the property shall not —

(A) be considered to be a transfer, sale, disposal or assignment of the property by the amalgamating company for the purposes of that provision of the Act or the Economic Expansion Incentives (Relief from Income Tax) Act (Cap. 86); or

(B) be considered to have resulted in the property ceasing to belong to the amalgamating company for the purpose of section 20 of the Act,

as the case may be.

(2) Notwithstanding paragraph (1)(i), where the amalgamating company would not have been entitled to any deduction, allowance or writing-down allowance referred to in that paragraph but for any approval granted by the Minister or such person as he may appoint, the amalgamated company shall not be entitled to the deduction, allowance or writing-down allowance unless the amalgamated company itself is granted the same approval.

(3) For the avoidance of doubt, save as is provided in paragraph (1)(ii), the provision of the Act or the Economic Expansion Incentives (Relief from Income Tax) Act under which the amalgamating company was entitled to the deduction, allowance or writing-down allowance shall apply to the amalgamated company as if it were the amalgamating company.

(4) This regulation is without prejudice to any other modification or exception made by these Regulations to that provision of the Act or the Economic Expansion Incentives (Relief from Income Tax) Act.

PART III

SPECIFIC MODIFICATIONS AND EXCEPTIONS TO ACT AND THE ECONOMIC EXPANSION INCENTIVES (RELIEF FROM INCOME TAX) ACT

Division 1 — Specific Modifications and Exceptions to the Act

Modification or exception to section 13A of Act (Exemption of shipping profits)

4.—(1) Where —

(*a*) an amalgamated company is a shipping enterprise; and

(*b*) all of the amalgamating companies that are shipping enterprises have elected under section 13A(13) of the Act for their respective incomes derived or deemed to be derived from the operation of all of their respective Singapore ships to be taxed at the rate prescribed by section 43(1)(*a*) of the Act,

then the income of the amalgamated company that is derived or deemed to be derived from the operation of all its Singapore ships shall be taxed at the rate prescribed by section 43(1)(*a*) of the Act as if the amalgamated company had made an election under section 13A(13) of the Act for the same.

(2) Where —

(*a*) an amalgamated company is a shipping enterprise; and

(*b*) one or more, but not all, of the amalgamating companies that are shipping enterprises have elected under section 13A(13) of the Act for their respective incomes derived or deemed to be derived from the operation of all of their respective

Singapore ships to be taxed at the rate prescribed by section 43(1)(*a*) of the Act,

then the exemption under section 13A of the Act of the income of the amalgamated company derived or deemed to be derived by the amalgamated company from the operation of all of its Singapore ships shall not be affected by any such election made by any amalgamating company.

(3) If the amalgamated company wishes for its income that is derived or deemed to be derived from the operation of all its Singapore ships to be taxed at the rate prescribed by section 43(1)(*a*) of the Act, the amalgamated company shall make an election for the same under section 13A(13) of the Act no later than the time it furnishes a return of income to the Comptroller for the year of assessment relating to the basis period in which the date of amalgamation falls.

Modification or exception to section 13M of Act (Equity remuneration incentive scheme (start-ups))

5. Where all the amalgamating companies cease to exist on the date of amalgamation, then the amalgamated company shall not be a qualifying company for the purposes of section 13M of the Act (notwithstanding the definition of "qualifying company" in subsection (7) of that section) unless —

(*a*) the amalgamated company is a company incorporated in Singapore which, at the time of the grant to its employees of any right or benefit to acquire its shares —

(i) carries on business in Singapore;

(ii) has been incorporated for 3 years or less;

(iii) has its total share capital beneficially held directly by no more than 20 shareholders —

(A) all of whom are individuals; or

(B) at least one of whom is an individual holding at least 10% of the total number of issued ordinary shares of the qualifying company; and

(iv) has gross assets the market value of which does not exceed $100 million; and

(*b*) at the time of the grant by the amalgamated company to its employees of any right or benefit to acquire its shares, at least one of the amalgamating companies would have been incorporated for 3 years or less, had the amalgamation not taken place.

Modification or exception to section 14M of Act (Deduction for hotel refurbishment expenditure)

6. Where —

(*a*) an amalgamating company is allowed any deduction under section 14M of the Act; and

(*b*) the amalgamating company had obtained the requisite written approval under section 14M(18) of the Act to do any of the things referred to in section 14M(18) of the Act,

then, notwithstanding such approval, the amalgamated company shall not, during the qualifying period referred to in section 14M(3)(*a*) of the Act and within 5 years after the date of completion of the approved refurbishment project of the amalgamating company, and without the written approval of the Minister or such person as he may appoint, do any of the things referred to in section 14M(18) of the Act.

Modification or exception to section 14Q of Act (Deduction for renovation or refurbishment expenditure)

7.—(1) Where —

(*a*) on or before the date of amalgamation, any amalgamating company incurred renovation or refurbishment expenditure referred to in section 14Q of the Act; and

(*b*) on the date of the amalgamation, the amalgamating company has not claimed all deductions allowed to it under that section in respect of the renovation or refurbishment expenditure incurred by it,

then the amalgamated company may claim under that section all deductions not already claimed by the amalgamating company under

that section as if the amalgamated company is the amalgamating company, subject to the following provisions:

(i) notwithstanding section 14Q(8) of the Act, the specified period for the purpose of section 14Q(7) of the Act in relation to the amalgamated company shall be a period of 3 successive basis periods beginning with the basis period for the year of assessment in which a deduction was first allowed to any of the amalgamating companies under section 14Q of the Act (as if the amalgamated company existed on the first day of that basis period), or any basis period for the next successive 3 years of assessment; and

(ii) where the amalgamated company incurs any renovation or refurbishment expenditure in a basis period forming any part of a specified period referred to in sub-paragraph (*i*), the deduction that may be allowed to the amalgamated company under section 14Q of the Act in respect of its renovation or refurbishment expenditure for the basis period shall be as specified in paragraph (2).

(2) For the purpose of sub-paragraph (*ii*) of paragraph (1), the deduction that may be allowed to the amalgamated company in respect of its renovation or refurbishment expenditure for a basis period referred to in that sub-paragraph shall be determined as follows:

(*a*) in the case of a specified period in which the date of amalgamation falls —

(i) where only one basis period of the amalgamated company falls within that specified period, the deduction for that basis period shall be the lower of —

(A) the amount of the renovation or refurbishment expenditure incurred by the amalgamated company during that basis period; and

(B) an amount computed in accordance with the formula

$$\$150,000 - X,$$

where X is the aggregate of the amount of renovation or refurbishment expenditure incurred by each amalgamating company during the specified period of that amalgamating company (determined in accordance with section 14Q(8) of the Act) in which the day immediately before the date of amalgamation falls; or

(ii) where more than one basis period of the amalgamated company falls within that specified period, the deduction for each such basis period shall be the lower of —

(A) the amount of renovation or refurbishment expenditure incurred by the amalgamated company during that basis period; and

(B) an amount computed in accordance with the formula

$$\$150,000 - Y - Z,$$

where Y is the aggregate of the amount of renovation or refurbishment expenditure incurred by each amalgamating company during the specified period of that amalgamating company (determined in accordance with section 14Q(8) of the Act) in which the day immediately before the date of amalgamation falls; and

Z is the aggregate of the amount of renovation or refurbishment expenditure incurred by the amalgamated company during all the basis periods preceding the basis period for which the deduction is being determined; and

(*b*) in the case of any other specified period, the deduction shall be determined in accordance with section 14Q of the Act (without any modification or exception).

Modification or exception to sections 23 (Carry forward of allowances) and 37 of Act (Assessable income)

8. Where —

(*a*) an amalgamating company ceases to exist on the date of amalgamation;

(*b*) any allowance of the amalgamating company arose, any loss was incurred by the amalgamating company or any donation was made by the amalgamating company in the year in which the amalgamation occurs; and

(*c*) the date of amalgamation is earlier than the last day of the year referred to in paragraph (*b*),

then the references to —

(i) "the last day of the year in which the allowances arose" in section 23(4) of the Act; and

(ii) "last day of the year in which the loss was incurred or the donation was made, as the case may be," in section 37(12) of the Act,

shall, in relation to the amalgamating company and that allowance, loss or donation, be read in each case as a reference to "the day immediately before the date of amalgamation".

Modification or exception to section 37C of Act (Group relief for Singapore companies)

9.—(1) Subject to paragraph (2), where —

(*a*) any unabsorbed capital allowances, donations or losses of an amalgamating company are transferred to the amalgamated company pursuant to section 34C(23) of the Act, being —

(i) unabsorbed capital allowances that arose in the year of assessment relating to the basis period of the amalgamating company in which the day immediately before the date of amalgamation falls; or

(ii) unabsorbed donations or losses that were made or incurred in the basis period of the year of assessment of

the amalgamating company in which the day immediately before the date of amalgamation falls,

as the case may be; and

(*b*) the year of assessment referred to in sub-paragraph (*i*) or (ii) of sub-paragraph (*a*), as the case may be, is the same as the year of assessment relating to the basis period of the amalgamated company in which the date of amalgamation falls,

then the amount by which such unabsorbed capital allowances, donations or losses, as the case may be, exceeds the income of the amalgamated company from the same trade or business as that of the amalgamating company for that year of assessment shall be the qualifying deduction that may be transferred by the amalgamated company as a transferor company to a claimant company of the same group for the purposes of section 37C of the Act for the same year of assessment.

(2) Notwithstanding subsection (2) of section 37C of the Act, a transfer of the qualifying deduction referred to in paragraph (1) for any year of assessment from the amalgamated company to a claimant company under that section shall be made only if —

(*a*) the amalgamating company referred to in paragraph (1) and the claimant company are members of the same group immediately before the date of amalgamation; and

(*b*) the amalgamated company and the claimant company, for that year of assessment —

(i) are members of the same group on the last day of the basis period for that year of assessment;

(ii) have accounting periods ending on the same day; and

(iii) have made an election under subsection (11) of that section.

Modification or exception to section 37G of Act (Deduction for incremental expenditure on research and development)

10.—(1) Where —

(*a*) an amalgamating company ceases to exist on the date of amalgamation; and

(*b*) the amalgamating company has a research and development account which is in credit immediately before the amalgamation,

then section 37G of the Act shall apply to the amalgamated company as if it is the amalgamating company subject to the following provisions:

(i) on the date of amalgamation there shall be credited to the research and development account of the amalgamated company an amount equivalent to the amount standing to the research and development account of the amalgamating company immediately before the date of amalgamation;

(ii) as soon as the research and development account of the amalgamated company is credited with the amount referred to in sub-paragraph (*i*), the balance standing to the research and development account of the amalgamating company shall be reduced to nil by debiting it with the same amount;

(iii) any credit and debit to the research and development account of the amalgamated company subsequent to the date of amalgamation shall be made in accordance with section 37G of the Act; and

(iv) the base qualifying research and development expenditure of the amalgamated company shall be the aggregate of the amounts of qualifying expenditure incurred by all the amalgamating companies in their respective base years.

(2) Notwithstanding section 37G of the Act, any amount credited to the research and development account of an amalgamating company on the day immediately before the date of amalgamation shall not be available for deduction against the assessable income of the amalgamated company for the year of assessment relating to the

basis period in which the date of amalgamation falls, if that year of assessment is the same year of assessment relating to the basis period of the amalgamating company in which the day immediately before the date of amalgamation falls.

Modification or exception to section 37H of Act (Cash grant for research and development expenditure for start-up company)

11.—(1) Where all the amalgamating companies cease to exist on the date of amalgamation, then, in respect of any year of assessment in which the amalgamated company is a qualifying start-up company for the purpose of section 37H of the Act —

(*a*) in a case where the date of amalgamation does not fall within either of the basis periods of the first 2 years of assessment of any of the amalgamating companies, that section shall not apply to the amalgamated company; and

(*b*) in a case where the date of amalgamation falls within either of the basis periods of the first 2 years of assessment of any of the amalgamating companies, that section shall apply to the amalgamated company if and only if the year of assessment in which the amalgamated company is a qualifying start-up company falls within a year of assessment specified in paragraph (2).

(2) For the purpose of paragraph (1)(*b*) —

(*a*) in a case where the day immediately before the date of amalgamation falls within the basis period of any amalgamating company in which that amalgamating company was incorporated, the specified year of assessment shall be —

(i) the year of assessment relating to the basis period in which the date of the amalgamation falls; or

(ii) the year of assessment immediately following that year of the assessment; and

(*b*) in any other case, the specified year of assessment shall be the year of assessment relating to the basis period in which the date of amalgamation falls.

Modification or exception to section 43I of Act (Concessionary rate of tax for offshore leasing of machinery and plant)

12.—(1) Where —

(*a*) an amalgamated company is a leasing company; and

(*b*) all of the amalgamating companies that are leasing companies have elected under section 43I(6) of the Act for their respective incomes accruing in or derived from Singapore in respect of offshore leasing of their respective machinery or plant to be taxed at the rate prescribed by section 43(1)(*a*) of the Act,

then the income of the amalgamated company that accrues in or is derived from Singapore in respect of offshore leasing of its machinery or plant shall be taxed at the rate prescribed by section 43(1)(*a*) of the Act as if the amalgamated company had made an election under section 43I(6) of the Act for the same.

(2) Where —

(*a*) an amalgamated company is a leasing company; and

(*b*) one or more, but not all, of the amalgamating companies that are leasing companies have elected under section 43I(6) of the Act for their respective incomes accruing in or derived from Singapore in respect of all offshore leasing of their respective machinery or plant to be taxed at the rate prescribed by section 43(1)(*a*) of the Act,

then the concessionary rate of tax under section 43I of the Act of the income of the amalgamated company accruing in or derived from Singapore in respect of offshore leasing of its machinery or plant shall not be affected by any such election made by any amalgamating company.

(3) If the amalgamated company wishes for its income that accrues in or is derived from Singapore in respect of offshore leasing of its machinery or plant to be taxed at the rate prescribed by section 43(1)(*a*) of the Act, the amalgamated company shall make an election for the same under section 43I(6) of the Act no later than the time it furnishes a return of income to the Comptroller for the year

of assessment relating to the basis period in which the date of amalgamation falls.

Division 2 — Specific Modifications and Exceptions to the Economic Expansion Incentives (Relief from Income Tax) Act

Modification or exception to sections 69 to 71 of Economic Expansion Incentives (Relief from Income Tax) Act (Investment allowance)

13.—(1) Where —

(*a*) an amalgamating company ceases to exist on the date of amalgamation;

(*b*) the qualifying period referred to in section 68 of the Economic Expansion Incentives (Relief from Income Tax) Act (Cap. 86) of the amalgamating company has expired; and

(*c*) the amalgamating company has any investment allowance given under section 69 of that Act that remains unabsorbed on the date of amalgamation,

then sections 69, 70 and 71 of the Economic Expansion Incentives (Relief from Income Tax) Act shall apply, with the necessary modifications, as if the amalgamated company is the amalgamating company for the purposes of deducting the unabsorbed investment allowance against the income of the amalgamated company, subject to the conditions specified in paragraph (2).

(2) The conditions referred to in paragraph (1) are —

(*a*) the amalgamating company was carrying on a trade or business until the amalgamation;

(*b*) the amalgamated company continues to carry on the same trade or business on the date of amalgamation as that of the amalgamating company from which the unabsorbed investment allowance was transferred pursuant to paragraph (1); and

(*c*) the Comptroller is satisfied that —

(i) where the date of amalgamation is the same as or occurs after the last day of the year of assessment for which the allowance was given to the amalgamating company under section 69 of the Economic Expansion Incentives (Relief from Income Tax) Act, the shareholders of the amalgamating company on the last day of that year of assessment were substantially the same as the shareholders of the amalgamated company on the first day of the year of assessment in which the amalgamated company is claiming the unabsorbed investment allowance; or

(ii) where the date of amalgamation occurs before the last day of the year of assessment for which the allowance was given to the amalgamating company under section 69 of the Economic Expansion Incentives (Relief from Income Tax) Act (Cap. 86), the shareholders of the amalgamating company on the day immediately before the date of amalgamation were substantially the same as the shareholders of the amalgamated company on the first day of the year of assessment in which the amalgamated company is claiming the unabsorbed investment allowance.

(3) The Minister or such person as he may appoint may, where there is a substantial change in the shareholders of an amalgamating company and that of the amalgamated company and he is satisfied that such change is not for the purpose of deriving any tax benefit or obtaining any tax advantage, exempt that amalgamated company from the provisions of paragraph (2)(*c*).

(4) For the purposes of paragraphs (2) and (3) —

(*a*) the shareholders of the amalgamated company at any date shall not be deemed to be substantially the same as the shareholders of the amalgamating company at any other date unless, on both those dates, not less than 50% of the total number of issued shares of the amalgamated company and

the amalgamating company are held by or on behalf of the same persons;

(*b*) shares in the amalgamated company or amalgamating company held by or on behalf of another company shall be deemed to be held by the shareholders of the last-mentioned company; and

(*c*) shares held by or on behalf of the trustee of the estate of a deceased shareholder or by or on behalf of the person entitled to those shares as beneficiaries under the will or any intestacy of a deceased shareholder shall be deemed to be held by that deceased shareholder.

(5) Any deduction referred to in paragraph (1) shall only be made against the income of the amalgamated company from the same trade or business as that of the amalgamating company immediately before the amalgamation.

PART IV

MISCELLANEOUS

Prescribed period for purposes of section 34C of Act (Amalgamation of Companies) read with section 43 of Act (Rate of tax upon companies and others)

14. For the purpose of section 34C(27)(*b*) of the Act, the prescribed period shall be —

(*a*) in a case where the day immediately before the date of amalgamation falls within the basis period of any amalgamating company in which that amalgamating company was incorporated —

(i) the year of assessment relating to the basis period in which the date of the amalgamation falls; or

(ii) the year of assessment immediately following that year of the assessment; and

(*b*) in any other case, the year of assessment relating to the basis period in which the date of the amalgamation falls.

Functional currency of amalgamating company and amalgamated company

15.—(1) Where —

(*a*) an amalgamating company maintains its financial accounts in respect of any trade or business carried on by it in a functional currency other than Singapore dollar in accordance with financial reporting standards in Singapore; and

(*b*) the amalgamating company has made an irrevocable election in writing of one of the two rates of exchanges under regulation 4(1) of the Income Tax (Functional Currency) Regulations 2004 (G.N. No. S 748/2004) for the purposes of converting the amounts referred to in regulation 2 of those Regulations denominated in Singapore dollar into an equivalent amount in a non-Singapore dollar functional currency,

the rate of exchange so elected shall continue to be applicable to the amalgamated company until the amounts are fully utilised, as if the amalgamated company is the amalgamating company.

(2) Where —

(*a*) an amalgamating company ceases to exist on the date of amalgamation; and

(*b*) the functional currency in which the amalgamating company maintained its accounts in respect of any trade or business carried on by it (referred to as the functional currency of the amalgamating company) differs from that of the amalgamated company (referred to as the functional currency of the amalgamated company),

the rate of exchange between the 2 functional currencies on the date of amalgamation shall be used to convert into the functional currency of the amalgamated company —

(i) any capital allowance, donation or loss of the amalgamating company remaining unabsorbed on the date of amalgamation

which is denominated in the functional currency of the amalgamating company; and

(ii) for the purpose of section 34C(8) and (10) of the Act, the residue of the value of any industrial building, structure, machinery or plant, or right of the amalgamating company referred to in section 16, 19, 19A, 19B, 19C or 19D of the Act which is denominated in the functional currency of the amalgamating company.

Made this 8th day of March 2011.

CHAN LAI FUNG
Permanent Secretary
(Finance) (Performance),
Ministry of Finance,
Singapore.

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