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No. S 154

INCOME TAX ACT (CHAPTER 134)

INCOME TAX (AMALGAMATION OF COMPANIES) REGULATIONS 2011

ARRANGEMENT OF REGULATIONS

PART I

GENERAL

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.

Modifications to section 13Z of Act (Exemption of gains or profits from disposal of ordinary shares)

5A.—(1) The application of section 13Z of the Act to any gains or profits derived by the amalgamated company from the disposal of ordinary shares in another company (referred to in this regulation as the investee company), being ordinary shares transferred to the amalgamated company by any of the amalgamating companies (referred to in this regulation as the transferor company) on the date of amalgamation, shall be subject to the modifications set out in this regulation.

(2) In determining, for the purpose of section 13Z(1)(*b*) of the Act, whether the amalgamated company has, at all times during a continuous period of at least 24 months ending on the date immediately prior to the date of disposal of the shares, legally and beneficially owned at least 20% of the ordinary shares in the investee company, the legal and beneficial ownership of the transferor company of the ordinary shares in the investee company shall be treated as that of the amalgamated company, and section 13Z(4) of the Act shall apply accordingly.

(3) The reference in section 13Z(3) of the Act to outgoings and expenses wholly and exclusively incurred by the divesting company in the production of the gains or profits from the disposal of shares, including the expenses referred to in paragraphs (*a*) to (*f*) of that provision, include a reference to outgoings and expenses wholly and exclusively incurred by the transferor company in relation to the acquisition of the shares disposed of, including the expenses referred to in paragraphs (*a*) to (*f*) of that provision as they relate to such acquisition (with the reference in those paragraphs to money borrowed by the divesting company substituted with a reference to money borrowed by the transferor company).

(4) For the purpose of section 13Z(5) of the Act, the reference to an amount referred to in section 13Z(6) of the Act which is attributable to any of the shares disposed of and which has been allowed as a deduction to the divesting company for any year of assessment prior

to the year of assessment relating to the basis period in which the shares are disposed of, includes a reference to any such amount which is attributable to any of the shares disposed of and which has been allowed as a deduction to the transferor company for any year of assessment up to and including the year of assessment which relates to the basis period in which the date of amalgamation falls.

(5) For the purpose of section 13Z(7) of the Act, the reference to any write-back for a diminution in the value of the shares, or profit recognised in accordance with FRS 39 or SFRS for Small Entities, which is attributable to any of the shares disposed of, and which has been charged to tax as income of the divesting company for any year of assessment prior to the year of assessment relating to the basis period in which the shares are disposed of, includes a reference to such write-back or profit which is attributable to any of the shares disposed of and which has been charged to tax as income of the transferor company for any year of assessment up to and including the year of assessment which relates to the basis period in which the date of amalgamation falls.

[S 694/2013 wef 01/06/2012]

Modifications to section 14B of Act (Further deduction for expenses relating to approved trade fairs, exhibitions or trade missions or to maintenance of overseas trade office)

5C. Where the date of amalgamation falls within the period from 1 April 2012 to 31 March 2016 (both dates inclusive), then, for the purpose of applying section 14B(2A) of the Act to the amalgamated company in respect of expenses incurred by it during the basis period for any year of assessment, the reference to $100,000 in that section is a reference to the amount computed in accordance with the formula $100,000 – V, where V is the total of —

(*a*) the expenses for which a deduction is allowed to an amalgamating company for that year of assessment under section 14B(2A) of the Act; and

(*b*) the expenditure for which a deduction is allowed to an amalgamating company for that year of assessment under section 14K(1A) of the Act.

[S 170/2022 wef 01/04/2012]

Modifications to section 14K of Act (Further or double deduction for overseas investment development expenditure)

5D. Where the date of amalgamation falls within the period from 1 April 2012 to 31 March 2016 (both dates inclusive), then, for the purpose of applying section 14K(1A) of the Act to the amalgamated company in respect of expenditure incurred by it during the basis period for any year of assessment, the reference to $100,000 in that section is a reference to the amount computed in accordance with the formula $100,000 – W_1, where W_1 is the total of —

(*a*) the expenditure for which a deduction is allowed to an amalgamating company for that year of assessment under section 14K(1A) of the Act; and

(*b*) the expenses for which a deduction is allowed to an amalgamating company for that year of assessment under section 14B(2A) of the Act.

[S 170/2022 wef 01/04/2012]

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 1A — Specific Modifications to section 37L of Act

Interpretation of this Division

12A.—(1) In this Division, a qualifying acquisition by a company of ordinary shares in another company is one which qualifies for a deduction under section 37L of the Act, and a reference to a target company is a reference to that other company.

(2) For the purposes of this Division, the shareholders of a company (referred to in this paragraph as the first company) on any date are substantially the same as the shareholders of the first company or another company (referred to in this paragraph as the second company) on any other date if not less than 50% of the total number of issued shares of the first company on the first-mentioned date, and not less than 50% of the total number of issued shares of the first company or second company (as the case may be) on the second-mentioned date, are held by or on behalf of the same persons.

(3) For the purposes of paragraph (2) —

(*a*) shares in a company held by or on behalf of another company shall be deemed to be held by the shareholders of that other company; and

(*b*) 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.

[S 694/2013 wef 01/04/2010]

Treatment of deduction under section 37L of Act (Deduction for acquisition of shares of companies) to which amalgamating company which has ceased to exist is entitled

12B.—(1) Subject to paragraph (3), where —

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

(*b*) if not for the amalgamation, the amalgamating company would have been entitled in any subsequent year of assessment to any deduction under section 37L of the Act in relation to any qualifying acquisition of ordinary shares in another company; and

(*c*) the shares are transferred to the amalgamated company pursuant to the amalgamation,

then section 37L of the Act shall apply as if the amalgamated company were the amalgamating company, for the purpose of allowing the deduction under sub-paragraph (*b*) to the amalgamated company.

(2) Subject to paragraph (3), where —

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

(*b*) if not for the amalgamation, the amalgamating company would have been entitled in any subsequent year of

assessment to any deduction under section 37L of the Act in relation to any qualifying acquisition of ordinary shares in another company; and

(*c*) that other company is the amalgamated company,

then section 37L of the Act shall apply as if the amalgamated company were the amalgamating company and with all other necessary modifications, for the purpose of allowing the deduction under sub-paragraph (*b*) to the amalgamated company.

(3) Paragraphs (1) and (2) apply only if the Comptroller is satisfied that —

(*a*) the shareholders of the amalgamated company on the date of amalgamation are substantially the same as the shareholders of the amalgamating company on the date of the qualifying acquisition of shares in the target company for which the deduction is allowed, unless the Minister or such person as he may appoint has waived this requirement for the case in question and all conditions imposed by the Minister or the person have been satisfied;

(*b*) the shareholders of the amalgamated company on the first day of the year of assessment in which the deduction is to be allowed to it are substantially the same as its shareholders on the date of amalgamation; and

(*c*) on the date of amalgamation, the amalgamated company carries on the same trade or business as that carried on by the amalgamating company immediately before that date.

[S 694/2013 wef 01/04/2010]

Modification of section 37L of Act when target company is another amalgamating company which ceases to exist after amalgamation

12C. Where —

(*a*) before the amalgamation, an amalgamating company made a qualifying acquisition of ordinary shares in another company;

(*b*) the target company is another amalgamating company and it ceases to exist upon the amalgamation; and

(*c*) the amalgamating company referred to in paragraph (*a*) continues in existence after the amalgamation as the amalgamated company,

then, for the purpose of determining whether a deduction under section 37L of the Act may be made to the amalgamated company in respect of the expenditure for that acquisition of shares, the amalgamated company shall not be regarded as having divested of its shares in the target company for the purposes of section 37L(17)(*c*) or (*d*) by virtue only of the operation of section 34C(7) of the Act (amalgamating company treated as having disposed of shares in another amalgamating company immediately before amalgamation).

[S 694/2013 wef 01/04/2010]

Treatment of unabsorbed deduction under section 37L of Act of amalgamating company which ceases to exist

12D.—(1) Subject to paragraphs (2) and (4), where —

(*a*) an amalgamating company ceases to exist upon the amalgamation; and

(*b*) the amalgamating company has any deduction allowed under section 37L of the Act that remains unabsorbed on the date of amalgamation by reason of an insufficiency of gains or profits chargeable for any year of assessment (referred to in this regulation as the year of assessment with the shortfall),

then section 37L of the Act (other than subsection (21) of that section) shall apply as if the amalgamated company were the amalgamating company, for the purpose of allowing the unabsorbed deduction to be made against the income of the amalgamated company.

(2) Paragraph (1) applies only if —

(*a*) the amalgamating company was carrying on a trade or business up to the last day immediately before the date of 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; and

(*c*) the Comptroller is satisfied that —

(i) where the date of amalgamation is before the last day of the year of assessment with the shortfall, 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 unabsorbed deduction is to be allowed to the amalgamated company under this regulation; or

(ii) where the date of amalgamation is on or after the last day of the year of assessment with the shortfall, 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 unabsorbed deduction is to be allowed to the amalgamated company under this regulation.

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

(4) 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.

[S 694/2013 wef 01/04/2010]

Modifications of section 37L of Act when amalgamated company incurs contingent consideration for acquisition by amalgamating company

12E.—(1) Subject to paragraph (2) and regulation 12F, where —

(*a*) an amalgamating company made a qualifying acquisition of ordinary shares in another company;

(*b*) the amalgamating company ceases to exist upon the amalgamation; and

(*c*) the amalgamated company incurs capital expenditure in the form of contingent consideration in respect of that qualifying acquisition for which the amalgamating company would have been entitled to a deduction under section 37L of the Act if the amalgamation had not occurred and the amalgamating company had incurred the expenditure,

then section 37L of the Act shall apply as if the amalgamated company were the amalgamating company, for the purpose of allowing the deduction referred to in sub-paragraph (*c*) to the amalgamated company.

(2) Paragraph (1) applies only if the Comptroller is satisfied that —

(*a*) the shareholders of the amalgamated company on the date of amalgamation are substantially the same as the shareholders of the amalgamating company on the date of the qualifying acquisition of shares in the target company referred to in paragraph (1)(*a*), unless the Minister or such person as he may appoint has waived this requirement for the case in question and all conditions imposed by the Minister or the person have been satisfied;

(*b*) the shareholders of the amalgamated company on the first day of the year of assessment in which the deduction is to be allowed to it are substantially the same as its shareholders on the date of amalgamation; and

(*c*) on the date of amalgamation, the amalgamated company carries on the same trade or business as that carried on by the amalgamating company immediately before that date.

[S 694/2013 wef 01/04/2010]

Modification to cap on deduction allowable to amalgamated company in respect of capital expenditure under section 37L of Act

12F.—(1) This regulation applies for the purpose of computing the total amount of deduction to be allowed under section 37L of the Act to the amalgamated company for all qualifying acquisitions of ordinary shares in one or more companies the dates of acquisition of which fall within the basis period of amalgamation, including any past acquisition for which it is entitled to a deduction under that section by virtue of regulation 12E.

(2) In computing the total amount of deduction referred to in paragraph (1) —

(*a*) the references to "$100 million" in section 37L(11) of the Act shall each be read as a reference to the amount computed in accordance with the formula:

$$\$100\text{ million} - Z_1,$$

where Z_1 is the aggregate of every amount of capital expenditure —

(i) incurred by an amalgamating company for a past acquisition (whether or not for the same target company) before the date of amalgamation but during the basis period of amalgamation; and

(ii) for which a deduction is allowed to the amalgamating company under section 37L of the Act or to the amalgamated company under that section read with regulation 12B or 12C; and

(*b*) the aggregate amount referred to in section 37L(11)(*b*)(ii) of the Act shall be substituted with the aggregate of every amount of capital expenditure in the form of contingent

consideration incurred by the amalgamated company for a qualifying acquisition of ordinary shares in another company referred to in paragraph (1), including a past acquisition referred to in that paragraph.

(3) In this regulation —

"basis period of amalgamation" means the basis period for a year of assessment in which the amalgamation takes place;

"past acquisition" means a qualifying acquisition of ordinary shares in a company made by an amalgamating company the date of which falls within the basis period of amalgamation but is before the date of amalgamation.

[S 694/2013 wef 01/04/2010]

Modification to cap on deduction allowable to amalgamated company in respect of transaction costs under section 37L of Act

12G. For the purpose of computing the amount of deduction to be allowed to the amalgamated company under section 37L of the Act for transaction costs it incurred for a qualifying acquisition of ordinary shares in another company made during the period from 17th February 2012 to 31st March 2015 (both dates inclusive) (referred to in this paragraph as the subject qualifying acquisition), the reference to "$100,000" in section 37L(15A)(*b*) of the Act shall be read as a reference to the amount computed in accordance with the formula:

$$\$100\,\text{million} - Z_2,$$

where Z_2 is the aggregate of every amount of transaction cost incurred by an amalgamating company for a qualifying acquisition of ordinary shares in another company (whether or not it is the same target company as that of the first-mentioned acquisition), being a qualifying acquisition in relation to which the first claim for a deduction for capital expenditure thereon under section 37L of the Act is made in a year of assessment that is the same as that for which the first

claim for a deduction under that section for capital expenditure on the subject qualifying acquisition is made by the amalgamated company.

[S 694/2013 wef 17/02/2012]

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.

Modification to sections 97ZD to 97ZH of Economic Expansion Incentives (Relief from Income Tax) Act (Integrated investment allowance)

13A.—(1) Where —

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

(*b*) the qualifying period mentioned in section 97ZB 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 integrated investment allowance given under section 97ZC of that Act that remains unabsorbed on the date of amalgamation,

then sections 97ZD to 97ZH of that Act apply, with the necessary modifications, as if the amalgamated company is the amalgamating company for the purposes of deducting the unabsorbed integrated investment allowance against the income of the amalgamated company, subject to the conditions specified in paragraph (2).

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

(*a*) the amalgamating company was carrying on one or more trades or businesses until the amalgamation;

(*b*) the amalgamated company continues to carry on the same trade or business, or the same trades or businesses, on the date of amalgamation as that or those of the amalgamating company; 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 97ZC 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 integrated 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 97ZC of that Act, 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 integrated investment allowance.

(3) The Minister or such person as the Minister may appoint may, where there is a substantial change in the shareholders of an amalgamating company and that of the amalgamated company and the Minister or person 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 are not considered to be substantially the same as the shareholders of the amalgamating company at any other date unless, on both those dates, at least 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 are considered to be held by the shareholders of the other 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 are considered to be held by that deceased shareholder.

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

[S 170/2022 wef 17/02/2012]

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.

[MFR 32.7.2617 Vol. 3; AG/LLRD/SL/134/2010/3 Vol. 1]