GROUP DEDUCTIONS GUIDANCE NOTE

1.0 Introduction & Scope

The measure being introduced allows for an optional deduction, whereby companies may opt to surrender unutilized or unabsorbed capital allowances specifically incurred during basis years 2020 and 2021 to other companies within the same group and having chargeable income during 2021. The intention of this allowable deduction is to assist in the recovery of those groups of companies which have encountered adverse repercussions due to the Covid-19 pandemic.

This measure is limited to companies which are members of a group, as defined in articles 16 to 22 of the Income Tax Act (i.e. the "group relief provisions"). Indeed, the group relief provisions find application in this measure, unless otherwise indicated. Furthermore, in order to be eligible to claim such deduction, either the surrendering company or the company claiming the deduction [i.e. the claimant company] must have been <u>granted</u> a benefit under the *COVID-19 Fiscal Assistance - Postponement of Payment of Certain Taxes* Tax Deferral Scheme[1].

2.0 Mechanics

Capital allowances available as a deduction [hereinafter referred to as 'Allowable Deductions'] and for potential surrender by the "surrendering company" would be those which are **unabsorbed during basis 2020 and 2021**, but which **<u>were not</u>** unabsorbed capital allowances brought forward from year of assessment 2020 and previous years. A balancing allowance in terms of article 24 of the Income Tax Act [resulting in respect of the years of assessment 2021 and 2022 and in so far as being unabsorbed during the said years] shall be treated in the same manner as capital allowances and would thus also be considered as an allowable deduction.

The claimant company would then be able to avail itself of an allowable deduction in the **Y/A 2022 income tax return**, through the addition of a new attachment to be duly filled in [***Group Deductions (Income Tax) Rules, 2022* - TRA 125**]. Allowable deductions are available for set-off against <u>any</u> taxable income of the claimant company and are therefore not limited to trading income.[2] Nevertheless, the total allowable deductions that may be claimed by a claimant company cannot exceed the claimant company's chargeable income for the Y/A 2022. Thus, the claimant company can only avail itself of the deduction if it has chargeable income available, and only up to such chargeable income. This essentially means that there is no possibility for carry

[1] https://cfr.gov.mt/en/News/Pages/2020/Fiscal-Assistance-Postponement-of-Payment-of-Certain-Taxes.aspx

[2] In this regard, it is to be noted that the limitation in the group loss provisions (in Article 18(1)(c) and (d)) restricting the deductibility of an allowable loss to specific tax accounts has been deactivated for the purposes of this measure.

forward of any unutilised allowable deductions. Moreover, the total allowable deductions that can be claimed is capped at EUR 1,000,000 per group of companies.

3.0 Group Deductions (Income Tax) Rules, 2022 - TRA 125

As outlined in Section 2.0 above, taxpayers will avail themselves of such deduction through a new attachment which has been added to the corporate income tax return. The same attachment is to be used by both the surrendering company as well as by the claimant company when surrendering or claiming allowable deductions.

The first part of the attachment is to be filled in by the surrendering company, providing for a calculation of the total allowable deductions that may be surrendered. This essentially categorizes both the total capital allowances brought forward from Y/A 2020 and previous years [which are out of scope] and those brought forward from Y/A 2021. These together with the capital allowances for the year represent the total available capital allowances. Nevertheless, as outlined under Section 2.0 above, the allowable deductions available for surrender would be the balance left after eliminating capital allowances brought forward from Y/A 2020 and previous years, as well as after any capital allowances absorbed during Y/A 2022. In the case of the latter, the oldest balances are absorbed first, i.e. [Y/A 2020 and previous years balances]. The surrendering company would then need to fill in the details of the group companies to whom such deductions have been surrendered, including the income tax number, the name of the claimant company as well as the identification of the taxed accounts to which such deduction relates to.

A claimant company would only need to fill in the table situated in the lower part of the attachment, which indicates the same details included in the previous table in relation to allowable deductions being claimed from other group companies. The total allowable deductions that may be claimed are then featured in Page 4 of the income tax return, as a deduction from the total chargeable income for the year.