

## UNITED STATES FEDERAL INCOME TAXATION

*United States Internal Revenue Service Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that (i) any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code; (ii) any such tax advice is written in connection with the promotion or marketing of the matters addressed; and (iii) if you are not the original addressee of this communication, you should seek advice based on your particular circumstances from an independent advisor.*

This section describes the material United States federal income tax consequences of the distribution of DuluxGroup Shares pursuant to the Demerger and the ownership of the DuluxGroup Shares. The discussion does not purport to be a complete analysis of all the potential tax effects of the Demerger. It applies to you only if you are a U.S. holder, you acquire your DuluxGroup Shares in the Demerger and you hold your Orica Shares and DuluxGroup Shares as capital assets for tax purposes. This section does not apply to you if you are a member of a special class of holders subject to special rules, including:

- a dealer in securities,
- a trader in securities that elects to use a mark-to-market method of accounting for securities holdings,
- a tax-exempt organization,
- a life insurance company,
- a person liable for alternative minimum tax,
- a person that actually or constructively owns 10% or more of Orica's or DuluxGroup's voting stock,
- a person that holds Orica Shares or DuluxGroup Shares as part of a straddle or a hedging or conversion transaction, or
- a person whose functional currency is not the U.S. dollar.

If a partnership holds the Orica Shares or DuluxGroup Shares, the United States federal income tax treatment of a partner will generally depend on the status of the partner and the tax treatment of the partnership. If you are a partner in a partnership holding the Orica Shares or DuluxGroup Shares, you should consult your tax advisor with regards to the United States federal income tax treatment of the Demerger and holding DuluxGroup Shares.

This section is based on the Internal Revenue Code of 1986, as amended (the "Code"), its legislative history, existing and proposed regulations, published rulings and court decisions, all as currently in effect. These laws are subject to change, possibly on a retroactive basis.

You are a U.S. holder if you are a beneficial owner of Orica Shares or DuluxGroup Shares, and you are:

- a citizen or resident of the United States,
- a domestic corporation,
- an estate whose income is subject to United States federal income tax regardless of its source, or
- a trust if a United States court can exercise primary supervision over the trust's administration and one or more United States persons are authorized to control all substantial decisions of the trust.

*You should consult your own tax advisor regarding the United States federal, state, local and other tax consequences of the Demerger and of owning DuluxGroup Shares in your particular circumstances.*

This discussion addresses only United States federal income taxation.

### **Receipt of DuluxGroup Shares pursuant to the Demerger**

It is not clear whether the distribution of DuluxGroup Shares pursuant to the Demerger (the “Distribution”) will be treated as a tax-free spin-off under Section 355 of the Code. We intend to take the view that the Distribution will not so qualify, and the remainder of the disclosure so assumes.

The amount received in the Distribution by you for United States federal income tax purposes will be the fair market value of the DuluxGroup Shares received. The amount received by you in the Distribution will be taxed as follows:

The gross amount received in the Distribution, to the extent paid out of Orica’s current or accumulated earnings and profits (as determined for United States federal income tax purposes) is subject to United States federal income taxation as a taxable dividend. Subject to the Passive Foreign Investment Company (“PFIC”) rules described below, dividends are taxable as ordinary income. If you are a non-corporate U.S. holder, dividends paid to you in taxable years beginning before January 1, 2011 that constitute qualified dividend income will be taxable to you at a maximum tax rate of 15% provided that you hold the shares for more than 60 days during the 121-day period beginning 60 days before the ex-dividend date and meet certain other holding period requirements. The portion of the Distribution that is taxable as a dividend will generally be qualified dividend income. Orica intends to treat the entire amount received in the Distribution as a taxable dividend without calculating the portion that is paid out of Orica’s earnings and profits for United States federal income tax purposes. Thus, even if the amount you receive in the Distribution exceeds your share of Orica’s earnings and profits, your basis in the Orica Shares will not be reduced as a result of the Distribution, while it is likely that the value of your Orica Shares will be reduced as a result of the Distribution. In such case, the Distribution could create a built-in loss that might be recognized on the sale of your Orica Shares. However, you may not receive the benefit of the built-in loss, for example, if you do not have a

corresponding capital gain in the tax year in which you recognize such loss, . If you wish to avoid this potential result, you should consider selling your Orica Shares prior to the Distribution.

You must include any Australian tax withheld from the Distribution in the gross amount of the dividend even though you do not in fact receive it. The dividend is taxable to you when you receive the dividend, actually or constructively. The dividend will not be eligible for the dividends-received deduction generally allowed to United States corporations in respect of dividends received from other United States corporations. The amount of the dividend that you must include in your income as a U.S. holder will be the U.S. dollar fair market value of the Distribution. The portion of the Distribution in excess of current and accumulated earnings and profits will be treated as a non-taxable return of capital to the extent of your basis in the Orica Shares and thereafter as capital gain.

Subject to certain limitations, any Australian tax withheld and paid over to Australia will be creditable against your United States federal income tax liability. To the extent a refund of the tax withheld is available to you under Australian law, the amount of tax withheld that is refundable will not be eligible for credit against your United States federal income tax liability.

The portion of the Distribution that is a taxable dividend will be income from sources outside the United States, and will, depending on your circumstances, be either “passive” or “general” income for purposes of computing the foreign tax credit allowable to you.

For United States federal income tax purposes, you will acquire an initial tax basis in your DuluxGroup Shares equal to the U.S. dollar fair market value of the stock received by you as of the distribution date. Your holding period for DuluxGroup Shares will begin on the day after the distribution date.

We have not determined at this point what portion, if any, of the Distribution will be treated as a taxable dividend. This will be determined by us after the Distribution and will be reported to you as described below.

The fair market value of the DuluxGroup Shares received by each Orica Shareholder will be determined by us after the Distribution, based on a number of factors that will include, without limitation, the trading price of DuluxGroup Shares at or near the distribution date. After this determination is made (if required and within the time limit required by the Code), we will report to such shareholders and to the IRS the fair market value of the DuluxGroup Shares, together with the portion of the Distribution treated as a taxable dividend. There is no assurance that the IRS or the courts will agree that the amount received in the Distribution by an Orica Shareholder is the amount determined by us, and it is possible that the IRS and the courts will ultimately determine that Orica Shareholders, or some of them, received a larger amount for United States federal income tax purposes than the amounts reported to them by us. If the IRS were to challenge the amount reportable by any Orica Shareholder on the shareholder’s United States federal income tax return, then the shareholder would have to bear the expenses and effort of defending against or otherwise resolving the challenge.

## **Taxation of DuluxGroup Shares**

### Taxation of Dividends

The gross amount of any dividend DuluxGroup pays out of current or accumulated earnings and profits (as determined for United States federal income tax purposes) is subject to United States federal income taxation. Subject to the PFIC rules described below, dividends are taxable as ordinary income. If you are a non-corporate U.S. holder, dividends paid to you in taxable years beginning before January 1, 2011 that constitute qualified dividend income will be taxable to you at a maximum tax rate of 15% provided that you hold the shares for more than 60 days during the 121-day period beginning 60 days before the ex-dividend date and meet certain other holding period requirements. Dividends DuluxGroup pays with respect to the DuluxGroup Shares will generally be qualified dividend income.

You must include any Australian tax withheld from the dividend payment in this gross amount even though you do not in fact receive it. The dividend is taxable to you when you receive the dividend, actually or constructively. The dividend will not be eligible for the dividends-received deduction generally allowed to United States corporations in respect of dividends received from other United States corporations. The amount of the dividend distribution that you must include in your income as a U.S. holder will be the U.S. dollar value of the Australian dollar payments made, determined at the spot AUD/USD rate on the date the dividend distribution is includible in your income, regardless of whether the payment is in fact converted into U.S. dollars. Generally, any gain or loss resulting from currency exchange fluctuations during the period from the date you include the dividend payment in income to the date you convert the payment into U.S. dollars will be treated as ordinary income or loss and will not be eligible for the special tax rate applicable to qualified dividend income. This gain or loss generally will be income or loss from sources within the United States for foreign tax credit limitation purposes. Distributions in excess of current and accumulated earnings and profits, as determined for United States federal income tax purposes, will be treated as a non-taxable return of capital to the extent of your basis in the DuluxGroup Shares and thereafter as capital gain.

Subject to certain limitations, any Australian tax withheld and paid over to Australia will be creditable against your United States federal income tax liability. Special rules apply in determining the foreign tax credit limitation with respect to dividends that are subject to the maximum 15% rate. To the extent a refund of the tax withheld is available to you under Australian law, the amount of tax withheld that is refundable will not be eligible for credit against your United States federal income tax liability.

Dividends will be income from sources outside the United States. Dividends paid will, depending on your circumstances, be either “passive” or “general” income for purposes of computing the foreign tax credit allowable to you.

### Taxation of Capital Gains

Subject to the PFIC rules discussed below, if you sell or otherwise dispose of your DuluxGroup Shares, you will recognize capital gain or loss for United States federal income tax purposes equal to the difference between the U.S. dollar value of the amount that you realize and

your tax basis, determined in U.S. dollars, in your DuluxGroup Shares. Capital gain of a non-corporate U.S. holder is generally taxed at preferential rates where the holder has a holding period greater than one year. The gain or loss will generally be income or loss from sources within the United States for foreign tax credit limitation purposes.

### **PFIC Rules**

[We believe that neither the Orica Shares nor the DuluxGroup Shares should be treated as stock of a PFIC for United States federal income tax purposes, but this conclusion is a factual determination that is made annually and thus may be subject to change. If DuluxGroup were to be treated as a PFIC, gain realized on the on the sale or other disposition of your DuluxGroup Shares would in general not be treated as capital gain. Instead, you would be treated as if you had realized such gain and certain “excess distributions” ratably over your holding period for the DuluxGroup Shares and would be taxed at the highest tax rate in effect for each such year to which the gain was allocated, together with an interest charge in respect of the tax attributable to each such year. With certain exceptions, your Orica Shares or DuluxGroup Shares will be treated as stock in a PFIC if Orica or Duluxgroup, respectively, were a PFIC at any time during your holding period in the Orica Shares or DuluxGroup Shares. Dividends that you receive from DuluxGroup and the portion of the Distribution treated as a dividend will not be eligible for the special tax rates applicable to qualified dividend income if DuluxGroup or Orica, respectively, is treated as a PFIC with respect to you either in the taxable year of the dividend or Distribution or the preceding taxable year, but instead will be taxable at rates applicable to ordinary income.]

### **Medicare Tax**

For taxable years beginning after December 31, 2012, a U.S. person that is an individual or estate, or a trust that does not fall into a special class of trusts that is exempt from such tax, will be subject to a 3.8% tax on the lesser of (1) the U.S. person’s “net investment income” for the relevant taxable year and (2) the excess of the U.S. person’s modified gross income for the taxable year over a certain threshold (which in the case of individuals will be between \$125,000 and \$250,000, depending on the individual’s circumstances). The net investment income of a holder of DuluxGroup Shares will generally include its gross dividend income and its net gains from the disposition of DuluxGroup Shares, unless such dividends or net gains are derived in the ordinary course of the conduct of a trade or business (other than a trade or business that consists of certain passive or trading activities). If you are a U.S. person that is an individual, estate or trust, you are urged to consult your tax advisors regarding the applicability of the Medicare tax to your income and gains in respect of your investment in the DuluxGroup Shares.

### **Information with Respect to Foreign Financial Assets**

Under recently enacted legislation, individuals that own “specified foreign financial assets” with an aggregate value in excess of \$50,000 in taxable years beginning after March 18, 2010 will generally be required to file an information report with respect to such assets with their tax returns. “Specified foreign financial assets” include any financial accounts maintained by foreign financial institutions, as well as any of the following, but only if they are

not held in accounts maintained by financial institutions: (i) stocks and securities issued by non-U.S. persons, (ii) financial instruments and contracts held for investment that have non-U.S. issuers or counterparties and (iii) interests in foreign entities. U.S. holders that are individuals are urged to consult their tax advisors regarding the application of this legislation to their ownership of the bonds/notes/stock/ADSs.

### **Backup Withholding and Information Reporting**

If you are a non-corporate U.S. holder, information reporting requirements, on Internal Revenue Service Form 1099, generally will apply to:

- dividend payments (including the portion of the Distribution that is taxable as a dividend) or other taxable distributions made to you within the United States, and
- the payment of proceeds to you from the sale of DuluxGroup Shares effected at a United States office of a broker.

Additionally, backup withholding may apply to such payments if you are a non-corporate U.S. holder that:

- fails to provide an accurate taxpayer identification number,
- is notified by the Internal Revenue Service that you have failed to report all interest and dividends required to be shown on your federal income tax returns, or
- in certain circumstances, fails to comply with applicable certification requirements.

In the event such backup withholding is required with respect to your receipt of the Distribution, the withholding agent will sell a portion of the DuluxGroup Shares that have been allocated to you to satisfy the backup withholding tax liability.

Payment effected at a foreign office of a broker of the proceeds from the sale of DuluxGroup Shares generally will not be subject to information reporting or backup withholding. However, a sale of DuluxGroup Shares that is effected at a foreign office of a broker will generally be subject to information reporting and backup withholding if:

- the proceeds are transferred to an account maintained by you in the United States,
- the payment of proceeds or the confirmation of the sale is mailed to you at a United States address, or
- the sale has some other specified connection with the United States as provided in U.S. Treasury regulations.

In addition, a sale of DuluxGroup Shares will be subject to information reporting if it is effected at a foreign office of a broker that is:

- a United States person,
- a controlled foreign corporation for United States tax purposes,
- a foreign person 50% or more of whose gross income is effectively connected with the conduct of a United States trade or business for a specified three-year period, or
- a foreign partnership, if at any time during its tax year:
  - one or more of its partners are “U.S. persons”, as defined in U.S. Treasury regulations, who in the aggregate hold more than 50% of the income or capital interest in the partnership, or
  - such foreign partnership is engaged in the conduct of a United States trade or business.

Backup withholding will apply if the receipt or sale is subject to information reporting and the broker has actual knowledge that you are a United States person.

You generally may obtain a refund of any amounts withheld under the backup withholding rules that exceed your income tax liability by filing a refund claim with the United States Internal Revenue Service.