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Facts

A and B are both Mauritian incorporated companies which hold Category 1 Global Business Licences (GBL 1) under the Financial Services Act 2007. A and B own 99 % and 1 % respectively of the share capital of C, an Irish resident company. A and B also hold 1 % and 99 % respectively of the share capital of D, an entity incorporated in the Netherlands.

In the year 2007, C sold the shares it held in E, a Zambian company to its sister company, D for Euro 221 million. No payment was effected by D at the time of sale and the transaction was reflected as a loan from C to D. D now holds 81.6 % shares in E.

Prior to the year 2007, any dividend received by C from E was distributed to its shareholders, A and B.

Between the years 2008 and 2013, D repaid Euro 37.7 million to C. The loan repayment was funded by D out of dividend income received from E and enabled C to distribute dividends to A and B.

The group proposes to proceed as stated below:-

(i) transfer the net assets of C to A and B through a share buy-back followed by the liquidation of C; and

(ii) sell the shares held by D in E to B at an estimated price of Euro 252 million which represents the fair market value followed by the liquidation of D. Once D is liquidated, B would directly own 81.6% of the shares in E.

Point at issue

Whether profits realised by A and B as a result of the proposed buy-back of C and the proposed liquidation of D fall outside the tax base of each respective company.

Ruling

On the understanding that there are no retained earnings in the hands of C and D which could potentially be distributed as dividend to B and A, we consider that any profit realised by A and B as a result of the buy-back of C and the liquidation of D is outside the tax base of each respective company.