TR 151

Facts

B is a company registered in the United States. It provides an innovative new education-to-employment training model designed to provide companies in East Africa with the globally competitive staff they need to thrive. It holds the copyright (intellectual property rights-“IPR”) to the education-to-employment training model.

B through its wholly owned subsidiary in Kenya called C, provides career-focused higher education and training.

B has previously partnered with D and has been commissioned to develop and implement a project to analyse and develop large scale employment bridge model in Kenya.

D is a foundation (stichting) incorporated under the laws of the Netherlands with its seat in Amsterdam, Netherland. It is a charitable foundation that oversees F’s global philanthropy to improve the lives of children living in extreme poverty. F’s profits provide D with financial resources to undertake and manage all global F’s social and philanthropic efforts.

B would like to establish a Category 1 Global Business License company (GBC1) in Mauritius (“B Mauritius”). The ownership structure of B Mauritius will be held by four US nationals. The founders do not envision contributing in any significant capital themselves in B Mauritius before D’s grant other than paying a nominal value for the shares of B Mauritius.

The D grant will be the source of significant initial capital for B Mauritius.

The funding received from D is planned to be disbursed as follows:

(a) to acquire between 10% to 90% in B Kenya from B United States. The remaining holdings will in all likelihood go to a local partner resident in Kenya; and

(b) the balance of the grant funds will be loaned by B Mauritius to B Kenya. The loan amount would be about $300K/quarter with an interest rate no greater than 3%.

The main purpose of B Mauritius will be:

(i) to act as a regional holding company for B Kenya and future subsidiaries in East Africa and will undertake similar initiatives;

(ii) to receive grant funding from D and disburse funds as per above.

(iii) to hold certain intellectual property rights (copyright) in the employment bridge model which it will license to B Kenya.

The proposed grant would be provided by D to B Mauritius in two instalments. B Kenya will use the grant funding to start up the new employment bridge model and related product offerings as well including undergraduate degree-bearing programs and corporate training.

Point at issue

Whether the grant funding received by B Mauritius from D will be treated as a capital receipt and hence not taxable in Mauritius?

Ruling

On the basis of the facts submitted, the grant funding received by B Mauritius from D would not be included in the gross income of the company by virtue of section 51 of the Income Tax Act.

However, it is to be noted that the company would be subject to income tax on dividend from foreign source, interest and royalty income.