

TR 253**Facts**

M is a privately owned company which operates as a clinic providing medical facilities.

M intends to issue redeemable preference shares, at a price of MUR 100,000 per share for a maximum amount of MUR 50 million under a private placement to -

- "Eligible Practicing Doctors": these would be Visiting Doctors and Employed Doctors. Visiting Doctors are independent practitioners whereas Employed Doctors are full-time employees of M.
- "Eligible Senior Management": these would be members of the executive team or Heads of departments.

The purpose of this issue of redeemable preference shares is to align and increase the Eligible Practicing Doctors' and Senior Management's commitment to M and to finance expansion initiatives in M. The return on the preference shares would vary between 3% to 10%. For the doctors, the return will depend on M's performance and the annual doctor fees generated through M. As for the Senior Management, their return will depend on M's performance and their years in service.

From an accounting perspective, the redeemable preference shares will be classified as a financial liability. The debt will be measured at amortised cost and interest will accrue every year at a specified interest rate.

Points at issue

1. Whether from the perspective of M,
 - (i) the interest payments made to Visiting and Employed Doctors would be tax deductible?
 - (ii) TDS would be applicable on interest paid to Visiting doctors?
 - (iii) the return of the redeemable preference shares paid to Senior Management will be treated as interest or emoluments ?
 - (iv) TDS or PAYE would be applicable, based on the reply to question (iii) above ?
 - (v) the interest or emoluments paid to Senior Management would be tax deductible based on the reply to question (iii) above ?
2. (i) Whether the Visiting and Employed Doctors will be subject to tax on the interest and whether they can deduct TDS suffered ?
 - (ii) Whether the Senior Management would be subject to tax on the interest and whether they can deduct any TDS or PAYE suffered ?

Ruling

On the basis of the facts provided above, it is ruled that -

1. (i) Interest payments made to Visiting and Employed Doctors would be tax deductible.
(ii) TDS at the rate of 15% would be applicable on interest paid to Visiting Doctors in accordance with section 111B(a) of the Income Tax Act.
(iii) The return on the redeemable preference shares paid to Senior Management will be treated as interest.
(iv) TDS would be applicable on interest paid to Senior Management.
(v) The interest payments made to Senior Management would be tax deductible.

2. (i) The Visiting and Employed Doctors will be subject to tax on the interest and they can deduct any TDS suffered.
(ii) Senior Management would be subject to tax on the interest and they can deduct any TDS suffered.