TR 260

Facts

M was incorporated in Mauritius on 30 April 2008 as a private company with liability limited by shares. It holds a Global Business Licence from the Financial Services Commission.

The business activity of M is investment holding. It currently holds 50% shareholding in a holding company situated in Singapore, namely N, which itself, amongst others, holds 67.13% shareholding in another holding company in Indonesia, namely O, which itself, amongst others, holds 100% in each of five operating companies, still in Indonesia, namely P, Q, R, S and T, anyone of which, for simplicity, hereinafter referred to as U.

In the light of its business activities, M derives dividend income which flows through the entire structure from U, i.e :

(i) U pays dividends out of its operating profits to O;

(ii) O pays dividends to N out of dividends received from U; and

(iii) N pays dividends to M out of dividends received from O, which itself originates from dividends received from U.

The corporate income taxes applicable in the relevant jurisdictions are as follows:

(a) U, based in Indonesia, is subject to a 22% corporate income tax rate in Indonesia;

(b) O, based in Indonesia, is exempt from corporate income tax on dividend earned in Indonesia from U; and

(c) N, based in Singapore, is exempt from corporate income tax in Singapore on dividend earned from O by virtue of the fact that the underlying profits out of which dividend were paid have already met the 'subject to tax' condition through the 10% withholding tax deducted by O and the 'foreign headline tax rate of at least 15% condition in Indonesia.

With respect to withholding taxes (**"WHT"**):

(i) U is not required to withhold WHT on payment of dividend to O;

(ii) O is required to withhold a 10% WHT on dividends paid to N under the Singapore-Indonesia DTA; and

(iii) N is not required to withhold WHT on dividends paid to the Company.

Based on the structure, M earns dividend from N in Singapore.

It should be noted that N may not always declare dividends to M in the same income year in which it receives corresponding dividend income from O. In these circumstances, dividends would be paid out of N retained earnings and not necessarily from its current year profits.

In addition, N is expected to declare both interim dividends as well as final dividends. Under the Singapore Companies Act, dividends should be declared out of profits. Accordingly, where the Board of N declares interim dividends (i.e., during the course of a financial year), it makes estimates and anticipates the profits to be disclosed in N forthcoming audited financial statements for that financial year for the purposes of making its decision.

However, N's profits as per its audited financial statements may be different from the Board's estimates due to factors beyond the control of the Board, e.g., due to the booking of an audit adjustment with respect to impairment loss on shares held by N in another investee company.

Points at issue

(i) Whether M is eligible to claim underlying tax credit ("UTC"), against its Mauritius tax liability arising on dividend from N, in respect of the corporate income tax paid by U in Indonesia on the latter's operating profits on receipt of dividends from N, which dividend originates ultimately from dividends paid by U to O?

(ii) Whether M is eligible to claim UTC on dividends from N in the event of timing differences between the declaration of dividend by U and earning of dividend by itself?

(iii) Whether M is eligible to claim UTC on interim dividends declared and paid by N based on estimates of its profits made by the Board of N in the event that any audit adjustment made in N audited financial statements subsequently at year end reduces the latter's profits below the amount of interim dividend declared?

Ruling

On the basis of the facts mentioned above, it is ruled that –

(i) By virtue of section 77 of the Income Tax Act and regulation 7 of the Foreign Tax Credit Regulations 1996, M is eligible to claim underlying tax credit, against its Mauritius tax liability arising on dividend from N, in respect of the corporate income tax paid by U in Indonesia on the latter's operating profits on receipt of dividends from N, which dividend originates ultimately from dividends paid by U to O.

(ii) M is eligible to claim underlying tax credit on dividends from N in the event of timing differences between the declaration of dividend by U and earning of dividend by itself, by virtue of section 77 of the Income Tax Act and regulation 7 of the Foreign Tax Credit Regulations 1996.

(iii) Since the interim dividend will be based on estimated retained earnings, it will not satisfy the definition of dividend as per section 2 of the Income Tax Act. As such, M is not eligible to claim underlying tax credit on interim dividends declared and paid by N based on estimates of its profits made by the Board of N.