TR 269

Facts

1. M is a company incorporated in Mauritius on 29 April 2022. It holds a Global Business Licence issued by the Financial Services Commission.
2. M is held at 100% by N, a company incorporated in Cayman Islands and holds 30.75% in O, a company incorporated in Kenya involved in the development of a smart city in Tatu, a special economic zone, and issued with a special economic zone (**"SEZ"**) licence.
3. Under section 29(1) and section 35(1) of the Kenyan Special Economic Zones Act, all licenced economic zone enterprises, developers and operations shall be granted tax incentives as specified in the respective tax laws.
4. Section 29(1) of the Kenyan Special Economic Zones Act has been replicated below:

   29. Special economic zone enterprises

   (1) The benefits prescribed in Part VI of this Act shall not accrue to any enterprise unless it holds a valid licence issued by the Authority.
5. Section 35(1) of the Kenyan Special Economic Zones Act has been replicated below:

   35. Benefits accruing to special economic zone enterprises, developers and operators

   (1) All licensed special economic zone enterprises, developers and operators shall be granted tax incentives as specified in the respective tax laws.
6. O benefits from a specific incentive provided under the Kenyan legislation and the headline tax rate would be applicable if it did not benefit from the tax reduction under the SEZ incentives.
7. Based on the SEZ incentives, the corporation tax is 10% in the first 10 years and 15% in the next 10 years instead of the headline rate of 30%. There is also no withholding tax on dividends paid by O compared to the rate of 15% outside of the SEZ.

Points at issue

(1) Whether M can claim a tax sparing credit on dividends received from O in Mauritius for the 30% corporate tax that should have been levied in Kenya if the SEZ Act had not been enacted?

(2) In the event M cannot claim the tax sparing credit in Mauritius, whether the dividends received from O will benefit from the 80% partial exemption assuming that M meets its substance requirements for foreign dividends in Mauritius?

Ruling

On the basis of the facts mentioned above, it is ruled that M is entitled to claim tax sparing credit in respect of dividend receivable from O in Mauritius in accordance with the provisions of Regulation 9 of the Income Tax (Foreign Tax Credit) Regulations 1996.