TR 290

Facts

A is a private limited company incorporated in Mauritius on 15 April 2024. B is the sole shareholder of A.

A has been set up specifically to produce a movie in Mauritius and to comply with the eligibility requirements of the Film Rebate Scheme administered by the Economic Development Board (EDB), which requires the production to be undertaken by a company incorporated in Mauritius.

Resident Mauritius companies will be approached to invest in the production of the movie.

An application under the Film Rebate Scheme has been submitted to the EDB. The EDB will issue a letter of approval to A if the application is successful (the "Rebate Certificate"). As per the Film Rebate Scheme, up to 40% of qualifying production expenditure incurred in Mauritius will be paid by the EDB to A at the end of the movie's production in terms of the Rebate Certificate.

C (the "Producer Company"), based in South Africa, owns the rights to the film and is responsible for overall production oversight.

The Producer Company and A will enter into a production servicing agreement, under which A will produce the film in Mauritius on behalf of the Producer.

The Producer Company has entered into a distribution agreement with a North American distributor (the "distributor"). Under this agreement, the distributor will collect revenue and remit:

- First, to the Mauritius investors until their investments are fully recouped; and
- Thereafter, 50% to the Mauritius investors and 50% to the Producer Company.

The financing from Mauritian investors will be structured in the following ways:

Type 1 investors: Mauritian investors will contract to provide financing to A. These investors will not be shareholders of A, but will have separate contractual agreements with the Producer Company entitling them to:

- recoup their investment from the distributor, and
- receive 50% of net profits thereafter (remaining 50% is remitted to the Producer Company).

Type 2 investors: Mauritian investors inject funds into A and become 99% shareholders. In this case, A has a contract with the Producer Company, under which its Mauritian shareholders are entitled to:

- recoup their investment from the distributor, and
- receive 50% of net profits thereafter (remaining 50% is remitted to the Producer Company).

Type 3 investors: Mauritian investors may participate as limited partners in a resident limited partnership, where A acts as general partner.

Each limited partner is a tax-resident Mauritian company and will have a direct contractual arrangement with the Producer Company entitling them to:

- full recoupment of their capital from the distributor, and
- 50% of the net profits thereafter (remaining 50% is remitted to the Producer Company).

Some Mauritian companies may also provide funds to a third-party non-resident marketing or distribution company for the international promotion of the film.

The film is a feature-length production based on the true story of D, a South African golfer of Indian origin who gained prominence in the 1960s.

Points at issue

(a) Whether Type 1, Type 2, and Type 3 investors will be eligible for the double tax deduction under section 67R of the Income Tax Act in respect of their investment made into A in relation to the production of the movie, provided the conditions under section 67R (a) and 67R (b) are met?

(b) If the answer to (a) is yes, whether the double tax deduction would apply to the full investment made into A, and not be limited to 60% of the budgeted expenditure?

(c) Whether the expenses incurred by A in producing the film would be deductible for tax purposes?

(d) Whether Mauritian companies providing funds to third-party non-resident marketing or distribution companies (involved in promoting the film internationally) will be eligible for the double tax deduction under section 67R of the MITA, assuming the conditions of section 67R (a) and (b) are satisfied?

(e) Whether the rebate received from the EDB by A will be taxable in the hands of A or the investors?

Ruling

Based on the facts provided, it is ruled that:

(a) Type 1, Type 2 and Type 3 investors would be eligible for the double tax deduction under section 67R of the Income Tax Act in respect of their investment made into A in relation to the production of the movie, provided:

- the film has been approved under the Film Rebate Scheme by the EDB;
- the film after post-production, is made up of at least 90 per cent of the principal photography of Mauritius, as certified by the EDB; and
- the investors are companies incorporated in Mauritius.

(b) The double tax deduction under section 67R of the Income Tax Act would apply to the entire amount financed by the Mauritian investors into A, provided:

- the expenses have been approved under the Film Rebate Scheme by the EDB;
- the film after post-production, is made up of at least 90 per cent of the principal

photography of Mauritius, as certified by the EDB; and

- the investors are companies incorporated in Mauritius.

(c) The expenses incurred by A in producing the film will be tax deductible in accordance with section 18 and section 26 of the Income Tax Act.

(d) The Mauritian companies incorporated in Mauritius which provide funds to third party non-resident marketing or distribution companies will be eligible for the double tax deduction, provided the expenditure is approved by the EDB under the Film Rebate Scheme.

(e) The rebate received from the EDB at the end of the movie by A forms part of the gross income under section 10 (1) (g) of the Income Tax Act and is taxable in the hands of the Mauritius investors or A.