

TR 45

Facts

X Group is a UK quoted company and also a holding company of an international group. A large proportion of the group's activities are carried out in a country outside UK and the Group is planning to reorganize its operations in that country. The proposed structure will be such that there will be Mauritian Société holding a GBC 1 with two partners which will be companies holding GBC 1 also. One of these Mauritian Companies will advance interest-free loans to the holding Company incorporated in the country referred to above.

Point of Issue

Whether it can be confirmed that

- a) the société's profits allocated to the partners will be taxed on the partners at an effective rate of 3 %.
- b) only the partners of the Société will be subject to Mauritius taxation on their respective share of income from the Société and that the Société itself will not be subject to taxation as an entity.
- c) the interest-free loans from the Mauritian Company to the South African Holding Company will be treated as equity and Mauritius will not seek to impute tax on the interest adjustments on the loans.
- d) repayments of share capital, share premium and interest -free loans by the South African Holding Company will be treated as of a capital nature and not be reclassified as dividend income on applying anti-avoidance legislation.

Ruling

It is confirmed that

- a) Every partner of a société holding a Category 1 Global Business Licence (GBL 1) under the Financial Services Development Act is liable to income tax in respect of his income in the société at the rate of 15%. However, where the partner is a corporation holding a Category 1 Global Business Licence, the company will be entitled to presumed tax credit in accordance with the provisions of regulation 8 of the Income Tax (Foreign Tax Credit) Regulations 1996.
- b) A société is not liable to income tax except where a société holding a Category 1 Global Business Licence opts under Section 47(6) of the Income Tax Act to be liable to tax.
- c) In the context of the reorganization of the Group's operations in South Africa so as to comply with the Black Economic Empowerment Legislation, the interest -free loans advanced by the Mauritian Company to the wholly owned South African Holding Company will be assimilated to equity capital. The Mauritian company will not be subject to tax on any deemed interest receivable on such loans.
- d) Repayments of share capital, share premium and interest-free loans by the South African Holding Company to the Mauritian company will not be reclassified as income and will not be taxed by application of any anti-avoidance legislation.