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Facts

A foreign company Z, proposes to be resident in Mauritius for tax purposes, and will hold 100% shares in Company Y registered in Singapore. The latter company will hold 100% shares in each of two sub-companies, one based in Singapore and another in Cayman Islands. The Singaporean sub-company will hold 70% shares in an operating company A in China while the Cayman sub-company will hold 100% shares in company B, also operating in China.

The operating companies A and B will pay tax at the rate of 15% to 30 % in normal circumstances. However, no tax will be payable by operating company A as it will benefit from a tax holiday period.

Points in issue

1) Whether or not income tax payable by the operating companies A and B in China, including the tax spared in case of tax holidays, would be available for credit against Mauritius tax payable by foreign company Z after passing through the number of intermediate companies in the proposed structure;

2) Whether, based on the proposed shareholding structure provided and the Double Taxation Agreement (DTA) between Mauritius and China which provides a special rate of 5 % tax on dividends payable by Chinese companies to Mauritius beneficial owners, company Z can avail itself of the DTA privileges in the capacity of beneficial owner of shares in the Chinese companies;

3) If answers to (1) and (2) are positive,
    - what documents would be required in respect of corporate income tax and tax sparing credit of the operating companies A and B for company Z to apply for credit against its Mauritius tax ?;
    - what documents or evidences would be required for company Z to substantiate its status as 'beneficial owner' of the Chinese companies?

Rulings

a) It is confirmed that in accordance with regulations 7 and 9 of the Income Tax (Foreign Tax Credit)Regulations 1996, any income tax, including the tax spared in case of tax holidays, payable by the operating companies A and B in China, would be available for credit against Mauritius tax payable by company Z in the proposed structure;

b) On the basis of the proposed shareholding structure, as company Z will receive dividends from Singapore and not from China, the taxation of the dividends in Singapore will be governed by the Mauritius-Singapore DTA and not by the Mauritius-China DTA. In any case it would be for the Chinese Tax Authorities to decide whether the provisions of the Mauritius-China DTA could be applied for the taxation of dividends receivable by company Z;

c) (i) For the purpose of applying for credit in respect of foreign tax and tax sparing against Mauritius tax, company Z will be required to produce a certificate of its shareholding in the Singaporean company, together with evidence of its shareholding in the operating companies A and B through its investment in the Singaporean and Cayman sub-companies, as well as official receipts from the relevant Tax Authorities in respect of foreign tax paid.

   (ii)In view of the ruling given at (2) above, the question does not arise.