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Facts

B is incorporated as a private company and holds an investment certificate issued by the BOI under the Investment Promotion Act. The company will be engaged in setting up a high-tech 200-bed multi-specialty hospital. The central management and control of B is in Mauritius.

A is incorporated as a public listed company in India and tax resident in India. Its principal activity as well as those of its subsidiaries and associates inside and outside India is to own, operate and manage health care institutions of international standards, and to provide comprehensive health care related consultancy, management and training services. Under an agreement (LOMA), certain staff members of A will be seconded to B, their emoluments will be borne in full by B and they will report to the Board of B.

Point in Issue

1. **Corporate Status**

   Whether it can be confirmed that

   i. the income derived by B will be exempt from income tax for the first five succeeding income years starting as from the first year of operation;
   ii. should the company incur a loss during the exemption period, the loss would be allowable notwithstanding the provisions of Section 26 (1) (b) of the Income Tax Act;
   iii. any loss incurred during the exemption period will be subject to the restriction under Section 59 (b) of the Income Tax Act;
   iv. losses attributable to annual allowance in respect of capital expenditure incurred on or after 1 July 2006 will not be restricted to the five- year time limit and therefore available for carry forward indefinitely.

2. **Capital Allowances**

   Transitional Rules

   i. Whether for the purpose of complying with Section 153 of the Act, such documents as the supplier's invoice, the construction contract, the leasing agreement and the maintenance contract are sufficient evidences in as much as keeping of books and records are concerned;
   ii. Whether it can be confirmed that in the event the company decides to exercise option to claim annual allowances under the pre-FA 2006 regime,
      a. this will apply to all class of assets and for the three years of assessment 2007/08,2008/09 and 2009/10;
      b. annual allowance would be available on the construction of the hospital;

c. the irrevocable notice to be made to the Director-General should at latest be at the time the company submits its return for the year of assessment 2007/08.

Qualifying Expenditure

a) whether B will be entitled to claim annual allowance at the rate of 5% on the construction of the hospital under the provisions of Section 63 of the Act;

b) whether it can be confirmed that the items of capital expenditure, viz land development, landscaping and horticultural works and earthwork will not attract annual allowances as they are excluded from the definition of "industrial premises" ;

c) whether it can be confirmed that the capital expenditure incurred by the company in respect of the construction of the road access to the hospital will be eligible for annual allowance.

3. Payments made by B to A

Whether it can be confirmed that:

(i) the payment B will make to A for the services provided by the latter company will be tax deductible under Section 57 of the Act;

(ii) the royalty payment B will make to A will be considered as Mauritian sourced income and therefore taxable in Mauritius at the rate of 15 %;

(iii) any other fees A will receive from B will not be subject to tax;

(iv) B will have to apply TDS on the royalties payable to A at the time of the transfer of such amounts to the latter;

(v) A will have to furnish an annual tax return to the MRA and pay any residual tax at the rate of 5% on the gross amount of royalties as, pursuant to the DTA, the tax rate on the royalties is 15%.

4. Emoluments derived by staff members of A seconded to B

Whether it can be confirmed that the staff members seconded to B will be subject to income tax in Mauritius on their emoluments derived in Mauritius.

Ruling

1. Corporate Status

It is confirmed that:

(i) B will be exempt from income tax by virtue of item 13(a) of Sub-Part C of Part II of the Second Schedule to the Act for the five succeeding income years as from the income year it starts its operation;

(ii) in case the company incurs a loss during the period of exemption of its income, the loss will be allowable for deduction and carry forward under Section 59 (b) of the Act, in accordance with the provisions of item 13 (b) of Sub-part C of Part II of the Second Schedule to the Act;

(iii) any loss incurred during the exemption period will be subject to the restriction under Section 59 (b) of the Income Tax Act;

(iv) losses attributable to annual allowance claimed in respect of capital expenditure incurred on or after 1 July 2006 will not be restricted to the five year time limit and therefore available for carry forward indefinitely in accordance with Section 59 (c) of the Act.

2. Capital Allowances

Transitional Rules

(i) Although the Company would be expected to keep documents for a period of five years, these documents will not be sufficient to comply fully with Section 153 (1) of the Act, the provisions of which will need to be satisfied in full in order for a person to be entitled to annual allowance under Section 63 of the Act;

(ii) It is confirmed that:

(a) in the event the company decides to exercise option to claim annual allowances under the pre-FA 2006 regime as provided under the transitional provisions of Section 161A of the Act, this will apply to all class of assets and be in respect of the three years of assessment 2007/08,2008/09 and 2009/10;

(b) annual allowance would be available on the construction of the hospital under the current provisions of Section 63 of the Act;

(c) the irrevocable notice to the Director-General should be made as early as possible but at any rate not later than the due date for the submission of the annual return of the company for the year of assessment 2007/08.

Qualifying Expenditure

It is confirmed that:

(i) B will be entitled to claim annual allowance at the rate of 5 % on the construction of the hospital under the current provisions of Section 63 of the Act;

(ii) the items of capital expenditure ,with land development, landscaping and horticultural works and earthwork will not attract annual allowances as they are not subject to depreciation under normal accounting principles in as much as these are excluded from the definition of " industrial premises" under Section 2 of the Act;

(iii) capital expenditure incurred by the company in respect of the construction of the road access to the hospital will be eligible for annual allowance at the rate of 5 % on the cost, as the capital expenditure is subject to depreciation under normal accounting principles.

3. **Payments made by B to A**

   It is confirmed that:

   (i) the payment B will make to A for the services provided by the latter company will be tax deductible under Section 57 of the Act;

   (ii) the royalty payment B will make to A will be considered as Mauritian sourced income under Section 74 of the Income Tax Act and therefore taxable in Mauritius at the rate of 15 %;

   (iii) any other fees A will receive from B will not be subject to income tax in accordance with paragraph 1 of Article 22 of the Mauritius -India DTA;

   (iv) B will have to apply TDS at the rate of 10 % on the royalties payable to A at the time any amount of royalties is made available to A in accordance with Section 111 C (1) of the Act;

   (v) A will have to furnish an annual tax return to the MRA and pay any residual tax at the rate of 5% on the gross amount of royalties as, pursuant to the DTA, the tax rate on the royalties specified at paragraph 2 of Article 12 of the Mauritius-India DTA is 15 %.

4. **Emoluments derived by staff members of A seconded to B**

   It is confirmed that the staff members of A seconded to B will be subject to income tax in Mauritius on their emoluments derived in Mauritius in accordance with paragraph 2 of Article 15 of the Mauritius- India DTA.