

TR 75

Facts

G Inc., a company incorporated in BVI, is proposed to be re-domiciled to Mauritius as a registered domestic company under the Companies Act 2001. It is the ultimate holding company of the following companies in the G group:

G LUX	- incorporated in Luxembourg
G Capital S.A	- incorporated in Switzerland
G Corporate Services Ltd	- incorporated in Mauritius by way of continuation (holds a GBL 1 licence)
G Trust Ltd	- incorporated in Mauritius (licensed as a Management company by the FSC)
G Capital Management Ltd	- incorporated in Mauritius (holds a GBL 1 licence)

According to the corporate structure of the Group,

- G LUX holds 100 % of the shares in G Capital S.A
- G LUX holds 100 % of the shares in G Corporate Services Ltd
- G Inc. holds 100 % of the shares in G Trust Ltd
- G Inc. holds 100 % of the shares in G Capital Management Ltd

Dividends will be paid by each operating company to its holding company which will in turn pay dividends to the ultimate holding company. As a domestic company G Inc. will be subject to tax at the rate of 15% as from year of assessment 2007/08.

Points in issue

1. 1A. Whether it can be confirmed that as the dividend income G Inc. will receive from G LUX is sourced abroad, the company will benefit from foreign tax credit and underlying tax credit, i.e any dividend withholding tax and any underlying taxes suffered by G LUX S.A and G CAPITAL S.A can be claimed back, and by the application of the foreign tax credit and underlying tax credit the tax liability of G Inc. can be reduced to 0 % if the tax credit (including the underlying tax credit) is equal to or more than 15 %.

1B. Whether it can be confirmed that, as part of the dividend distribution G Inc. will receive from G LUX S.A has a Mauritian source element, dividend received from G Corporate Services Ltd , being

a Mauritian source income, will not be treated as ordinary income by G Inc. in its books and therefore be exempt from income tax and no foreign tax credit will be applicable.

2. Whether it can be confirmed that any dividend income received by G Inc. from G TRUST LTD will not be subject to withholding tax and be an exempt income. Also, as this will not be a foreign source income G Inc. will not be able to apply for foreign tax credit and underlying tax credit in respect of this income.
3. Whether it can be confirmed that irrespective of G Capital Management Ltd holding a GBLI licence, any dividend income received by G Inc. from G Capital Management Ltd will not be subject to withholding tax and be an exempt income. Also, as this will not be a foreign source income, G Inc. will not be able to apply for foreign tax credit and underlying tax credit in respect of this income.

Ruling

1. 1A. It is confirmed that as the dividend income G Inc. will receive from G LUX is sourced abroad, the company will benefit from foreign tax credit and underlying tax credit, i.e. any dividend withholding tax and any underlying taxes suffered by G LUX S.A and G CAPITAL S.A can be claimed back, and by the application of the foreign tax credit and underlying tax credit the tax liability of G Inc. can be reduced to 0 % if the tax credit (including the underlying tax credit) is equal to or more than 15 %.

1B. G Inc. will receive dividend income from G LUX S.A. This dividend income cannot be said to be income derived by G Inc. from Mauritius, and is therefore not exempt from income tax. It is a foreign source income on which G Inc. will be liable to tax and can apply for foreign tax credit and underlying tax credit.
2. It is confirmed that dividend income received by G Inc. from G TRUST LTD will not be a foreign source income and is therefore exempt. G Inc. will not be able to apply for foreign tax credit and underlying tax credit in respect of this income.
3. It is confirmed that dividend income received by G Inc. from G Capital Management Ltd will not be a foreign source income and is therefore exempt. G Inc. will not be able to apply for foreign tax credit and underlying tax credit in respect of this income.