

TR 98

Facts

A major multinational operating in the technological industry worldwide is proposing to set up a Category 1 Global Business Licence company (Company A) in Mauritius for investment in Country X. Company A will hold 100% stake in the investee company (Company B) to be situated in Country X and which will in turn set up operations in that country to manufacture technology-related products. Given the substantial amount of foreign direct investment involved and the likely impact on its economic, industrial and commercial development, Country X has entered into a Memorandum of Understanding (MOU) with the multinational to, inter-alia, refund 100% of the corporate income tax to be paid by Company B in Country X for a period of 10 years.

Under the provisions of the accounting standard to be adopted by Company B, the income tax refund will be treated as income and will be subject to income tax in the next accounting period; and the "additional" tax suffered in that accounting period will also be refunded as part of 100% refund of corporate tax referred to above.

Points in issue

Whether it can be confirmed that -

- a) Notwithstanding a corresponding refund/amount of tax suffered in the first year being refunded in the subsequent year, Company A can claim the underlying tax credit, and/or;
- b) Company A will be allowed to claim tax sparing credit in respect of the income tax refunds received by Company B, and in the affirmative;
- c) the relevant extract, certified and apostilled, of the MOU will be sufficient to substantiate the claims.

Rulings

- a) It is confirmed that Company A can claim the underlying tax credit on the corresponding amount of income tax refunded in respect of a year which will be treated as income in the subsequent year, by virtue of the provisions of Regulation 7(1) of the Income Tax (Foreign Tax Credit) Regulations 1996.
- b) It is also confirmed that Company A will be allowed to claim tax sparing credit in respect of the income tax refunds received by Company B, on the understanding that the agreement reached through the MOU by Country X with the multinational is tantamount to provisions having been introduced in the law of Country X with a view to promoting industrial, commercial and economic development in that country, pursuant to regulation 9 (1) of the above Regulations.
- c) It is confirmed that for the purpose of regulations 8 and 9 of the Income Tax (Foreign Tax Credit) Regulations 1996, the relevant extract, certified and apostilled, of the MOU will be sufficient to substantiate the claims.
- d) Notice is hereby given that Ruling TR 94 issued by the MRA and published in the Government Gazette No. 99 of 7 November 2009 is hereby revoked as from this date and replaced by a new ruling TR 99 as shown hereunder.