

TR142

Facts

B Ltd has invested in C, a company in Mozambique. B Ltd is a GBL1 company incorporated in Mauritius and holds 49% of the share capital in C. Even if the B Ltd owns only 49% of the share capital, the shareholder's and investment agreement has conferred 100% economic control over the company in Mozambique. To finance the construction of a 80,000 cubic meter oil terminal, B Ltd granted two loans to C which are as follows:

1) Senior Facility Loan

- (a) Amount : USD 27,000,000
- (b) Rate of Interest : Libor + 4.25%
- (c) Repayment date : 1 October 2015

2) Subordinated loan

- (a) Amount : USD 17,500,000
- (b) Rate of Interest : Libor + 4.25%
- (c) Repayment date : Year 2018

According to a shareholder's agreement dated 30 June 2005, C must announce an annual dividend of 33% of the total value of the financial loan outstanding at the end of the fiscal year. The dividend has been capped at USD 17,500,000. The financial loan outstanding as at 31 December 2012 amounted to USD 24,750,000.

Points at issue

- 1) Whether the dividend threshold will be considered as capital income and not subject to tax in Mauritius.
- 2) In the event the MRA rules that the dividend threshold is in the nature of income and thus taxable, can the company elect to tax the dividend threshold on a realized basis, that is, when the dividend threshold is actually received.

Ruling

- 1) The dividend cannot be considered as capital income as it falls under Section 10(1)(d) of the Income Tax Act.
- 2) The company cannot elect to declare the dividend when it is actually received. The dividend should be declared on an accrual basis. It will thus be taxed in the year when it is accrued in the financial statement.