

TR 145

Facts

W, a multinational engaged in the fishing industry, wishes to promote a major project in the Mauritian fishing industry. It will involve the acquisition of fishing vessels for the purposes of fishing tuna, and processing same into fish products, primarily for exports.

The project necessitates the establishment of several companies in Mauritius for the various segments of the production chain. X, a private limited company will be incorporated in Mauritius with a Category 1 Global Business Licence (GBL 1) and several Special Purpose Vehicles ('SPVs') will be incorporated in Mauritius as private limited companies, each holding a Category 2 Global Business Licence ('GBL 2').

W, along with other investors, shall invest in X for the purposes of financing the acquisition of the fishing vessels. The acquisition shall be effected through the SPVs, each a subsidiary of X. Each vessel will be held by one distinct SPV. In addition to the investments from X, each SPV shall seek a loan from banking institutions in Mauritius and overseas for the purposes of acquiring their respective fishing vessel.

Once the vessels are operational, each SPV will lease their respective vessel to Y, a company incorporated in Mauritius and holding a GBL 1 licence. The SPVs will enter into a bareboat lease agreement with Y for that purpose. The fishing activity, primarily on the high seas will be carried out by Y.

Each SPV will receive ship rental income from Y under the bareboat agreement. It is expected that each of X and SPVs will be managed and controlled from Mauritius, with a majority of Mauritian resident directors in office, as well as board meetings and banking transactions carried out in Mauritius.

All the voting shares of X and the SPVs will be held by Z, a Category 1 Global Licence company which will also be managed and controlled in Mauritius, with a majority of Mauritian resident directors. However, since Z will itself be wholly owned by foreign investors, X and the SPVs will not be under the effective control of citizens of Mauritius.

Points at issue:

1. Whether the SPVs will be exempt from income tax in Mauritius.
2. Whether the SPVs shall not have any income tax obligations in Mauritius.
3. Whether Y shall not be required to withhold tax at source on the rent payable to the SPVs.
4. Whether the fact that the management and control of the SPVs shall be in Mauritius will neither alter the tax exempt status of the SPVs nor their income tax obligations in Mauritius.
5. Whether the SPVs will not be deemed as tax transparent vehicles with the consequence that the rental income becomes subject to income tax at the level of X.
6. Whether by virtue of the tax exempt status, the provisions of the Income Tax Act relating to income tax assessments shall not apply to the SPVs.

Ruling:

1. According to Item 9 of Sub Part C of Part II of the Second Schedule of the Income Tax Act '*Income derived by the registered owner of a foreign vessel from the operation of the vessel shall be exempt from income tax*'. Since the income derived from the operation of a vessel includes income obtained from the charter of such vessel, the SPVs will derive exempt income.
2. In the light of the above, the question of giving a ruling on the other issues raised in the application does not arise.