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Facts

Z is a company incorporated in Germany. It has been awarded a contract by a Chinese contractor for the execution of sub-contractor works in Mauritius. In this connection, the German company has set up a branch as a foreign company in Mauritius for the execution of the construction works. The branch is provided support services from the head-quarter in Germany. The branch constitutes a permanent establishment (PE) under the Mauritius-Germany DTA.

Points at issue

In view of the new Authorised OECD Approach (AOA) on attribution of profits to permanent establishments (that is, the new Article 7 of the OECD Model Tax Convention on Income and on Capital as it reads on 22 July 2010), the questions are:

- (a) Whether all income generated by the construction project is taxable fully in Mauritius according to the Double Taxation Agreement between Germany and Mauritius and the Mauritius Income Tax Act 1995.
- (b) Whether it can be confirmed that the company which is a foreign company will be taxable on its profits in Mauritius and the OECD approach on attribution of profits to permanent establishments is ranked lower in order of precedence than the Mauritius Income Tax Act and is therefore not binding in this particular case.

Ruling

- (a) The German company is taxable in Mauritius on all its income generated by the construction project in Mauritius in accordance with the Double Taxation Agreement between Mauritius and Germany.
- (b) The German company will be taxable in Mauritius on the profits attributable to the branch and the relevant provisions of the treaty existing between Mauritius and Germany will apply for determining the profit attributable to the Mauritius branch.