

TR 113

Facts

B Ltd (the Company) raises part of its capital by borrowing money from some of its shareholders, i.e. through shareholder loans. Such loans are unsecured, are repayable at call and carry interest at an annual rate ranging from 6% to 7%, depending on the average prevailing bank rates available to the Company. For the purpose of the ruling application, the shareholders are referred to as "loan at call shareholders" and are assumed to be tax resident in Mauritius.

Following confirmation received from the MRA in 2007 to the effect that the Company has the obligation to apply tax deduction at source (TDS) in accordance with Sub-Part BA of Part VIII of the Act on the interest income receivable by the said shareholders, the Company has been applying TDS on the interest paid and remitting the relevant amount of income tax to the MRA.

The Finance (Miscellaneous Provisions) Act 2010 has, inter alia, brought the following changes to the Act:

- a) For the purpose of TDS under section 111C, the threshold of the aggregate amount of deposit in Part II of the Sixth Schedule has been raised from Rs 2,000,000 to Rs 5,000,000, and the rate of tax under Part I of the Schedule revised from 15% to 10%.
- b) interest payable on a savings or fixed deposit accounts held by an individual, a société or a succession with any bank or a non-bank deposit taking institution under the Banking Act is now exempt;
- c) introduction of the "solidarity income tax", applicable to a resident individual.

Point of Issue

- 1) Whether the Company should continue to apply TDS at the new rate of 10% on interest paid to its shareholders where the corresponding shareholders' loan amount exceeds Rs 5,000,000?
- 2) Whether the interest received in the hands of the "loan at call shareholders" from the Company will qualify for exemption from income tax under item 3 (c) of Sub-Part B of Part II of the Second Schedule to the Act, assuming that their total income for the purpose of "solidarity income tax" does not exceed Rs 2,000,000 ?
- 3) If the answer to question 2 above is in the negative, at what rate should "loan at call shareholders" pay income tax?

- 4) Whether the "loan at call shareholders" who have a total income in an income year not exceeding Rs 2,000,000, including interest income received from the Company are liable to solidarity income tax?
- 5) If the answer to question 4 above is in the negative, at what rate should "loan at call shareholders" pay income tax on such interest income?
- 6) Whether the "loan at call shareholders", who have a total income in an income year exceeding Rs 2,000,000 which includes interest income received from the Company on the shareholders loan that does not exceed Rs 5,000,000, are liable to solidarity income tax on the interest income received from the Company ?
- 7) If the answer to question 6 above is in affirmative, at what rate should "loan at call shareholders" pay income tax on such interest income received?
- 8) If the answer to question 6 above is in the negative, at what rate should "loan at call shareholders" pay income tax on such interest income received?
- 9) Whether the "loan at call shareholders" who have a total income in an income year exceeding Rs 2,000,000, including interest income received from the Company on the shareholders loan which exceeds Rs 5,000,000, are liable to solidarity income tax on the interest income received from the Company?
- 10) If the answer to question 9 above is in affirmative, at what rate should "loan at call shareholders" pay income tax on such interest income received? Whether the Company should apply TDS on the interest paid to the "loan at call shareholders", and if so at what rate?
- 11) If the answer to question 9 above is in the negative, at what rate should "loan at call shareholders" pay income tax on such interest income received? Whether the Company should apply TDS on the interest paid to the "loan at call shareholders", and if so, at what rate?

Ruling

- 1) It is confirmed that the Company should continue to apply TDS at the rate of 10% on interest paid to the "loan at call shareholders", in accordance with the provisions of section 111C of the Act.
- 2) It is confirmed that the interest received in the hands of the "loan at call shareholders" from the Company will not qualify for exemption from income tax under item 3 (c) of Sub-Part B (A) of the Second Schedule to the Act, given that the interest receivable by the shareholders is from loan advanced to the Company, and not from "a savings or fixed deposit account held with a bank or a non-bank deposit taking institution under the Banking Act."
- 3) On the basis of the ruling given at 2 above, it is confirmed that the rate of tax applicable on the interest income is 15%.
- 4) It is confirmed that the "loan at call shareholders" who have a total income in an income year not exceeding Rs 2,000,000, including interest income received from the Company, are not liable to solidarity income tax, in accordance with the provisions of Sub-Part AA of the Act.
- 5) Following the ruling given at 4 above, it is confirmed that the rate of tax applicable on the interest income is 15%.
- 6) The interest income received does not fall within the meaning of 'specified exempt income' as defined under section 16A of the Act and accordingly, it is confirmed that the "loan at call shareholders" are not liable to solidarity income tax on the interest income received from the Company.
- 7) The answer to question 6 above is not relevant. The "loan at call shareholders" should pay income tax at the rate of 15% on the interest income received.
- 8) The answer to question 6 above is not relevant. The "loan at call shareholders" should pay income tax at the rate of 15% on the interest income received.
- 9) Please refer to ruling given at 6 above.
- 10) The answer to question 9 above is not relevant. The "loan at call shareholders" should pay income tax at the rate of 15% on the interest income received and the Company shall apply TDS at the rate of 10% on the interest paid to the "loan at call shareholders."
- 11) The answer to question 9 above is not relevant. The "loan at call shareholders" should pay income tax at the rate of 15% on the interest income received and the Company shall apply TDS at the rate of 10% on the interest paid to the "loan at call shareholders."