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Facts

B, a domestic company incorporated in Mauritius, is a wholly owned subsidiary of a Swedish company. The domestic company intends to make a distribution in kind of the shares it holds in D, a subsidiary company incorporated in Nigeria.

In that context, B would make a normal declaration of dividend, that is, a distribution made out of the retained earnings of the company. The payment of the dividends would be in kind, that is, instead of cash, the Swedish company would obtain shares that B holds in D.

Points at issue

1. Whether the definition of "dividend" under the Income Tax Act includes the "dividend in kind" as described above.
2. If the definition of "dividend" under the Income Tax Act does not cover the "dividend in kind", whether the dividend paid by the Mauritian company will be exempt from income tax in Mauritius.

Ruling

1. It is confirmed that the distribution to be made out of the retained earnings of the company, in shares which the company holds in its subsidiary, would fall within the definition of "dividends" under section 2 of the Income Tax Act, if it satisfies all the conditions imposed by that section.
   It is, however, to be noted that should the arm's length value of the shares exceed the amount of the dividends payable, the excess would not qualify as dividends, but would rather fall under section 86A as benefit to the shareholder and be taxable as "any other income" referred to in section 10(1)(g), subject to the relevant provisions of the Mauritius-Sweden Double Taxation Agreement.
2. In view of the ruling given at (1) above, the question at (2) above does not arise.