

TR 184

Facts

M was incorporated on 20 September 2017 and its sole shareholder is Mr N.

The company contemplates to acquire a vessel that will be used to:

- (a) transport commodities such as raw sugar for refining or coal, from foreign countries to Mauritius (“activity A”);
- (b) transport commodities such as refined sugar, from Mauritius to foreign countries (“activity B”); and/or
- (c) transport certain commodities between foreign countries only (“activity C”).

The vessel will be registered in Mauritius and the company will not be engaged in any fishing activities.

Its surplus cash may generate interest income. The company may also have foreign interest income.

Whilst its core business activities will initially be the transport of coal and related products for sugar milling companies in the Indian Ocean region, it will ensure that it is able to adapt itself so that it can transport any other commodity. This may require modification to the vessel and the company may have to incur capital expenditure at a later date.

The company will initially be funded by equity from Mauritian tax-resident shareholders, corporate and non-corporate. Given the magnitude of the proposed project and depending on its performance and expansion strategy, the company may also in the future have foreign shareholders with the long-term objective of becoming a Mauritian-based shipping company of international repute. However, the control of the company will remain with Mauritian tax-residents.

It is very likely that the company will fund part of the cost of acquisition of the vessel through a loan from a South African (“SA”) commercial bank.

The company may also have to undergo repairs outside Mauritius, whilst it would prefer to have such repairs being done in Mauritius.

Points at issue

- (i) **Corporate tax treatment of the income from transport of goods**

- a. Whether income derived by the company from Activity A, B or C is exempt from tax?
- b. Whether the income of the company will be exempt from Corporate Social Responsibility (“CSR”)?
- c. Whether upon the acquisition of a second vessel by the company, the tax treatment of the income from the second vessel will depend on the country in which the vessel is registered and the activities undertaken by the vessel in question?

(ii) Corporate tax treatment of interest income

- a. Whether to the extent that the interest income is incidental to the core activities of the company, the interest income should-also be exempt from tax?
- b. Whether in case the interest income is found to be taxable, any foreign tax suffered on the interest income will qualify for foreign tax credit (“FTC”) and any unutilised FTC can be offset against CSR?
- c. Whether any foreign exchange gain or loss on the interest income would be disregarded for tax purposes?

(iii) Tax treatment of interest to the bank

- a. Whether interest incurred on loan taken from a South African bank to finance capital expenditure in connection with the vessel is a non-allowable expense for tax purposes?
- b. Whether the rate applicable for TDS on interest paid to South Africa is 10 % in accordance with Article 11(2) of the tax treaty between Mauritius and South Africa?
- c. Whether the effective rate for TDS should be computed at one-ninth of the interest payment where the company agrees that it should bear the TDS?

(iv) Foreign exchange difference on interest and capital repayment to the bank

- a. Whether for purposes of the TDS mechanism, the foreign exchange rate prevailing on the date the interest is paid should be applied?
- b. Whether foreign exchange gain or loss on the interest and capital repayment to the bank should be disregarded for tax purposes since it relates to the acquisition of the vessel?

(v) Impact of the OECD/G20 BEPS project

- a. Whether, given that the core-income generating activities referred to in paragraph F of Part III of Chapter 4 of the BEPS Action 5 Report will be

performed in Mauritius, the employees of the company will be taxed on their employment income in Mauritius?

- b. Whether the corporate tax regime that currently applies to the company should not pose any international tax issue and whether the company should be considered as a 'qualified person' within the Multilateral Convention signed by Mauritius on 5 July 2017?

Ruling

On the basis of facts provided, it is confirmed that:

- (i) Corporate tax treatment of the income from transport of goods**
 - a. Income derived by the company from Activity A, B or C is exempt from tax by virtue of item 10 of Sub Part C of Part II of the Second Schedule to the Income Tax Act.
 - b. The company will be exempt from CSR to the extent that it derives exempt income.
 - c. Since the second vessel will not fall within the definition of a foreign vessel as laid down in section 2 of the Income Tax Act, the tax treatment of the income from the second vessel will depend on the activities undertaken by the vessel and whether it is a local vessel registered in Mauritius.
- (ii) Corporate tax treatment of interest income**
 - a. The interest income would be subject to tax.
 - b. Any foreign tax suffered on interest income can be offset against tax on foreign source income and any unutilized FTC can be set off against CSR pertaining to foreign source income.
 - c. any foreign exchange gain or loss on the interest income would be considered for tax purposes.
- (iii) Tax treatment of interest to the bank**
 - a. Interest incurred on loan taken from a South African bank to finance capital expenditure in connection with the vessel is not an allowable expense by virtue of section 26 (1) (a) of the Income Tax Act.
 - b. The rate applicable for TDS on interest paid to South Africa is 10 % in accordance with Article 11(2) of the tax treaty between Mauritius and South Africa.
 - c. Where the company agrees that it should bear the TDS, the effective rate for

TDS should be computed at one-ninth of the interest payment.

- (iv) Foreign exchange difference on interest and capital repayment to the bank**
 - a. For purposes of the TDS mechanism, the foreign exchange rate prevailing on the date the interest is paid should be applied.
 - b. The foreign exchange gain or loss on the capital repayment to the bank should be disregarded for tax purposes since it relates to the acquisition of the vessel.
- (v) Impact of the OECD/G20 BEPS project**
 - a. The employees of the company will be taxed on their employment income in Mauritius.

As regards confirmation of whether the corporate tax regime that currently applies to the company would not pose any international tax issue or whether the company would be considered as a 'qualified person' within the Multilateral Convention signed by Mauritius on 5 July 2017, these issues are beyond the scope of Section 159 of the Income Tax Act.