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Facts

C and D are two wholly owned subsidiaries of Z, a company incorporated in the British Virgin Islands. Both C and D are incorporated in Mauritius. D is registered as a joint venture law firm with the Attorney General's Office in Mauritius whereas C holds a management licence from the Financial Services Commission.

As at 31 March 2017, Z has advanced interest free loans to the tune of USD 1,904,462 and USD 702,132 to D and C respectively to support their operating expenses over the years. C has also advanced interest free loans amounting to USD 1,886,171 as at 31 March 2017 to D.

In their Income Tax returns for the year ended 31March 2017, D and C have declared tax losses and tax payable of Rs 66,392,624 and Rs 741,919 respectively.

The following transactions will take place to amend the existing group structure:

(i) D will deregister as a law firm and amend its business activity to that of secretarial services;

(ii) The current outstanding balance of loans due to Z by D (USD 1,904,462) and C (USD 702,132) will be converted into shares of D and C issued to Z;

(iii) C receivables of USD 1,886,791 in D will be converted into shares of D, issued to C; and

(iv) Z will transfer all its D shares to C at nominal value such that D becomes the wholly owned subsidiary of C;

Once the new structure is in place, Z will dispose of its stake in C to third parties.

Points at issue

Whether there are any income tax implications -

(i) on the proposed restructuring of the group: and

(ii) upon disposal of the shares of C after the restructuring?

Ruling

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

(i) Regarding the income tax implications on the proposed restructuring of the group -

a. the MRA considers that the interest free loan advanced by C to D is not at arm's length by virtue of Section 75 of the Income Tax Act; and

b. D will not be allowed to carry forward any loss in accordance with Section 59 of the Income Tax Act.

(ii) The disposal of the shares in C will not be subject to tax since it is of a capital nature.