

TR 192

Facts

G is a private company incorporated in Mauritius and holds a Category 1 Global Business License (“GBC1”). G is engaged in holding of investments, ownership and commercialisation of Intellectual Property (“IP”) rights and enters into license agreements with affiliates for the manufacture and commercialisation of pharmaceutical products, manufacturing and distribution of pharmaceutical, over the counter and infant nutritional products.

G is involved in the transactions mentioned below:

Transaction 1

G acts as a guarantor for the loans raised by its related parties by either signing bank guarantee documents, or offering G’s assets as guarantee for the bank loans raised by the related parties.

G charges a guarantee fee to the related parties for acting as guarantor. Furthermore, it also has to pay guarantee fee to the banks for the issue and maintenance of the guarantee documents.

Transaction 2

G has contracted a loan from F, a related company incorporated in South Africa. The principal activity of F is to provide financing services to its related parties.

F entered into a Facility Agreement with several banks and out of which a percentage of the funds received were lent by F to G. F incurred and as applicable, will continue to incur over the term of the loan various fees such as utilisation fees, arrangement fees, participation fees, commitment fees, commission fees, and service fees (collectively referred to as “the Fees”) in relation to the Facility Agreement. F recharges to G as applicable over the term of the loan the Fees incurred in the proportion determined by benchmarking exercises.

The loan contracted from F will be used by G for the following purposes:

- to refinance G's existing loan facilities; existing loan facilities were mainly for IP acquisitions;
- to finance Permitted Acquisition which include acquisition of securities, business or undertaking; and /or
- for general corporate purposes.

Points at issue

Transaction 1

1. Whether the guarantee fee that G charges to its related parties will be subject to tax; and
2. Whether the guarantee fee payable by G to the banks will be treated as deductible for tax purposes?

Transaction 2

1. Whether the Fees paid by G to F will be treated as deductible for tax purposes?

Ruling

Based on the facts mentioned above, it is confirmed that:

Transaction 1

1. The guarantee fee which G charges to its related parties should be at arm's length and will be subject to tax.
2. The guarantee fee paid by G to the banks will be deductible for tax purposes, provided the expenditures are exclusively incurred in the production of the company's gross income in accordance with Section 18 of the Income Tax Act.

Transaction 2

1. The Fees payable by G to F should be at arm's length and will be deductible for tax purposes, provided the expenditures are exclusively incurred in the production of the company's gross income in accordance with Section 18 of the Income Tax Act