TR 223

Facts

B was incorporated on 22 February 2013 in Mauritius as a domestic company with its central management and control in Mauritius. B is tax resident and VAT-registered in Mauritius.

B is held by C, a company incorporated in the British Virgin Islands, and ultimately held by D, a company based in Jersey having tax residency in the UK. D is engaged in the provision of online payment solutions.

B is engaged in the information technology sector and mainly performs research and development (**"R&D"**) activities related to online payment solutions for D. B currently has 83 employees who have been involved in the development of the Third Party Processing (**"TPP"**) software in the prior years and now assist with ongoing maintenance, updates and integrations in respect of the platform to be able to comply with regulations but also meet the demands of merchants.

In 2018, the D implemented a group wide change to their accounting policies under the IFRS accounting standards. These accounting standards allow for the costs incurred to develop internal-use software to be capitalised to the extent the benefit will be delivered over a number of years. The software platform is the result of the joint R&D activities of B and F. Accordingly, the identified software platform development costs incurred in Mauritius have been capitalised in the books of B. B has claimed annual capital allowance on the capitalised intangible asset at the rate of 5% on cost.

The market value of the Mauritius IP is in the range of USD 35m – USD 50m, and the intangible assets will be transferred at book value.

B has not made any disposal of the Mauritius IP as of date

D is undertaking a restructuring project seeking to simplify its international IP strategy in order to own all IP in one territory and has therefore decided that it will transfer all IP that is currently owned outside the United Kingdom to the United Kingdom.

As part of the restructuring, a new entity of D, F will be set up in the UK and intends to acquire the business of B including a software platform ("Mauritius IP/intangible asset") partly developed in Mauritius.

The proposed transfer of the Mauritius IP is mainly driven by the fact that most of the technological development is now being led out of the UK from where the future on going development and exploitation of the IP will be led from. Also, the most senior resources of the Group are based in the UK and the workforce based in the UK is several times that of B. D has slowly built a strong presence in Europe during the past years and found that they have access to both a greater pool of potential customers and skilled workforce in Europe to further drive their growth as a technology company.

At the time of acquisition of the Mauritius IP from B, F will neither have a taxable presence nor a permanent establishment in Mauritius. The transfer of the IP will legally take place at net book value.

F will register a branch in Mauritius in the future to further support its R&D activities after employees are transferred from B to F. In other words, the Mauritius Branch will act as an R&D centre and shall provide R&D service to its head office in the UK. Depending on future needs and success of Mauritian operation, the Mauritius Branch may also provide R&D services to other non-resident sister companies in the future.

The Mauritius Branch of the UK-headquartered entity will be remunerated at arm's length and its remuneration is likely to exceed MUR 6m annually.

Points at issue

1. Whether the gain arising from the transfer of the Mauritius IP from B to F will be considered as capital gain and hence not subject to income tax in Mauritius?
2. Whether the transfer of Mauritius IP should fall within the ambit of section 24(6) of the Income Tax Act and hence no balancing charge or allowances need to be computed? If not, whether the amount of consideration received further to the transfer of IP should be limited to the cost of the Mauritius IP capitalised in the books of B for the purpose of computing balancing charge as per section 24(5)(a) of the Income Tax Act ?

Ruling

On the basis of the facts mentioned above -

1. the gain arising from the transfer of the Mauritius IP from B to F is capital in nature and hence is not subject to income tax in Mauritius.

2. the transfer of the Mauritius IP from B to F does not fall within the ambit of section 24(6) of the Income Tax Act and has to be dealt with in accordance with section 24(5)(a) of the Income Tax Act.