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Facts

X is a company incorporated in Mauritius as a Category 1 Global Business Licence company. The main purpose of X is to act as an intermediary holding and financing company for its subsidiaries and joint ventures in Africa.

X holds 90% in a Senegalese company, Y, and the remaining 10% is held by the Government of Senegal. Y's main activity is to carry out mining operations in Senegal.

In view of promoting the mining industry in Senegal, the Government of Senegal has granted several tax concessions through a mining agreement to companies operating in the Senegalese mining industry including exemption from corporate tax. These concessions were introduced in law by the Mining Code.

The Government of Senegal entered into a Mining Agreement with Z, a company based in Senegal to carry out surveys and research for the exploration of gold and related ores. Under Article 28 of the Mining Agreement, Z is exempt from corporation tax for a period of 7 years from the date a mining concession is signed. Subsequently, an amendment was made to the Mining Agreement through L'Avenant No 1 whereby the exemption from corporation tax was reduced to 5 years and under Article 10 of the Mining Agreement, the exemption of 5 years may be restored to the full 7 years in the event that the mining life can be extended by an additional year.

The survey and exploration rights were then transferred from Z to K in 2011 and on 14 July 2016, K was also granted a mining concession. The mining concession was later transferred from K to Y in 2017 which now operates the Mako mine.

Y has approved a dividend distribution on 7 December 2020 and X has accrued that dividend in its accounts for the year ended 31 December 2020. Hence, X will be subject to tax in Mauritius on the dividends when filing its return for the Year of Assessment (YOA) 2020/2021.

Points at issue

(1) Whether X will be eligible to claim tax sparing credit under Regulation 9 of the Income Tax (Foreign Tax Credit) Regulations 1996 on any dividend income derived from its investment in Y for:

(i) the YOA 2020/2021; and

(ii) any subsequent years during which Y would be exempted from corporate tax in Senegal?

(2) Whether X would be eligible to claim any underlying tax credit instead of the tax sparing credit on the dividend receivable from Y, its subsidiary in Senegal after the proposed exemption period lapses?

Ruling

On the basis of facts provided, it is ruled that -

(1) X is entitled to claim tax sparing credit in respect of dividend receivable from Y in accordance with the provisions of Regulation 9 of the Income Tax (Foreign Tax Credit) Regulations 1996 for the YOA 2020/2021.

(2) In the event Y no longer benefits from the corporate tax exemption, X would be entitled to claim underlying tax credit on dividends received from Y. However, no foreign tax credit shall be allowed where X has claimed a partial exemption in respect of that income under Part II of the Second Schedule to the Income Tax Act.