

TR 281**Facts**

A is a company incorporated in Mauritius and is engaged in the provision of payment services to banks and financial institutions locally and abroad. A is a wholly owned subsidiary of B, a company based in Morocco and listed on the Moroccan Stock Exchange.

In 2019, B decided to grant stock-option to its employees worldwide, based on duration of service and position held within the Group. This stock-option plan was subject to obtaining corporate authorisations to increase in capital and obtaining approvals from relevant Moroccan authority for the transaction. At the time of application, the offer price was set at MAD 1,500 whereas the prevailing market price was MAD 4,200. B received the required approvals in August 2020.

Pursuant to Moroccan regulations, B had to elect an independently regulated financial body for the attribution of shares, settlement and management of both bank and securities accounts. The elected body was C.

The beneficiaries of this stock-option were given the right, at their own discretion, to accept or reject this attribution of the shares of B.

Beneficiaries who were willing to purchase any undersubscribed shares had to signify their intention in the first attribution process. These undersubscribed shares were reallocated on a pro-rata basis to the shareholders who had elected this option.

B received the approval of relevant Moroccan authorities in April 2023 to proceed with the subscription exercise and the beneficiaries were required to exercise their rights by effecting payment by 12 July 2023.

All exchanges relating to the attributions, payments and shares transfers were made in strict confidentiality between C and the beneficiaries.

A received the list of beneficiaries and number of shares attributed in September 2023. The beneficiaries received 10 shares for each share held after the subscription date.

No PAYE has been withheld as at date in respect of benefit arising from this stock-option plan.

A has no indication about whether the beneficiaries have sold or are still holding their shares.

Points at issue

- (1) Whether the benefit in kind should be calculated as the difference between the offer price and:
 - (i) market price at date of application; or
 - (ii) market price at date of subscription.
- (2) Whether the PAYE on resulting benefit in kind has to be paid: -
 - (i) at once; or
 - (ii) can be spread over a defined period of time; or
 - (iii) can be deferred until such shares are disposed of by beneficiaries?

- (3) How to ensure that beneficiaries of share option scheme who are no longer employees of A comply with the PAYE requirements?

Ruling

On the basis of the facts mentioned above, it is ruled that:

- (1) The value of the taxable benefit is the difference between the purchase consideration and the market value of the shares at the date the employee exercises the share options.
- (2) A ought to have withheld PAYE on the taxable benefit arising in the month in which the employee exercises the share options under section 99 of the Income Tax Act. The PAYE amount due had to be remitted to this Office before the end of the month following which the tax ought to have been withheld.
- (3) A was responsible for withholding PAYE on the taxable benefit at the time the options were exercised, irrespective of whether the beneficiaries are no longer employees. A will also be liable to the penalties and interest on any tax not withheld.