TR 283

Facts

A is a discretionary trust set up in July 2024 and registered for tax purposes in Mauritius as Management and Control is with the Mauritian Trustees. It has a South African resident settlor and discretionary beneficiaries are members of the settlor's family. As at 04 September 2024, there has been no distributions paid out by A.

It has been proposed for A to be a beneficiary of B, a trust established and tax resident in South Africa. A is expected to receive capital and revenue distribution from B in the future.

B have investments in several companies namely C (all together referred as the "**Companies**") which are incorporated and tax resident in South Africa.

B will be receiving dividends from C and will suffer withholding tax ("**WHT**") at 20%. The WHT will be remitted to the South African Revenue Services and will be declared in form DTR01 of SARS a copy of which will be provided to A as proof. A will receive a similar document on any tax suffered on income repatriated.

A is also expected to sell its stake in C at a capital gain and consequently suffer Capital Gain Tax in South Africa when selling some investments.

B will remit from its net proceeds, distributions to A into the latter's Mauritius bank account.

Point at issue

(1) Will the distributions received by A from B be treated as dividend in line with Section 46(4) of the Income Tax Act?

(2) Will distributions treated as dividend per item (1) above be permitted to the partial exemption regime?

(3) Can A, if it so chooses, claim foreign tax credit on distributions received from B under the double tax treaty with South Africa as the underlying income has already suffered dividend withholding tax in South Africa?

(4) Are donations received from a foreign jurisdiction, that has not suffered any taxation, be subject to tax at the rate of 15% in Mauritius in the hands of A?

Ruling

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

(1) The distributions received from B, being a trust established and tax resident in South

Africa, will not be treated as dividend income under Section 46(4) of the Income Tax Act.

(2) 80 per cent partial exemption will not be available on the distributions received by A from B.

(3) A can claim credit for foreign tax suffered on the foreign source income.

(4) Any donations received from whatever sources are income in accordance with Section 10 of the Income Tax Act which should be included when computing the chargeable income of A and would be subject to tax at the rate specified in Part IV of the First Schedule to the Income Tax Act.