

TR 68

Facts

F Ltd is incorporated in Thailand and holds 99.99 % of shares in another Thai company - E, which holds 100% shares in a Singaporean company - D. D holds 95% shares in a first Indonesian investment holding company - C, which in turn holds 73% shares in a second Indonesian investment holding company - B, a publicly listed company on the Indonesian Stock Exchange. B holds 100 % investments in an Indonesian coal mining company - A. This latter company generates income and pays Indonesian corporate income tax at the rate of 30 %.

Z Ltd has a plan to set up a GBL 1 company in Mauritius (MU Co) which will acquire 100% of shares in D from E.

Based on the above respective shareholdings, it follows therefore that

- A will pay dividends to B
- B will pay dividends to C
- C will pay dividends to D
- D will pay dividends to E
- E will pay dividends to F

Dividends to be received by B from A and by C from B are exempted from tax under Indonesian tax laws, and so also are dividends receivable by D from C under Singaporean tax laws.

Points in issue

Whether corporate taxes paid by A can be used as credit for foreign tax against corporate tax of MU Co, and if so the extent of the credit;

What documents would be required to be produced in respect of corporate tax paid by A in order for MU Co to apply for foreign tax credit against Mauritius tax?

Rulings

It is confirmed that by virtue of regulations 7 (2) and (3) of the Income Tax (Foreign Tax Credit) Regulations 1996, as MU Co will hold directly or indirectly more than 5 % of the shares in D, it will be able to claim as foreign tax credit the underlying tax charged on the income out of which the dividends was paid against its Mauritius tax. The credit to which the company will be entitled will be in proportion of its shareholding in the company paying the dividends.

For the purpose of applying for credit in respect of foreign tax and underlying tax against Mauritius tax, MU Co will be required to produce a certificate of its shareholding in D as well as an official receipt from the relevant Tax Authorities in support of the foreign tax paid.