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Facts

P (the Company) is a company registered and incorporated in Mauritius. It carries on business as promoter and distributor of pharmaceutical products. The Company has incurred expenditure to secure intellectual property as set out below:

1. During June 2008, USD 338,024,265 to acquire X intangible assets.
2. During April 2003, USD 8,028,090 to acquire Y intangible assets.
3. During April 2008, USD12,856,189 - an upfront royalty payment to acquire the right to use Z intangible assets, with regular payments thereafter.
4. During December 2008, USD26,225,000 - an upfront royalty payment to acquire the right to use G intangible assets, with regular payments thereafter. The Company has assessed the intangible assets at 1 and 2 above to have an indefinite useful life and is therefore not amortizing these assets yet. It is of the view, however, that it is inevitable at some point in the future the indefinite life assessment will be reviewed, and that events and circumstances will no longer support an indefinite useful life. At that point the assessment will be changed to a finite useful life assessment and the. assets will become subject to amortization in terms of normal accounting principles. The Company is therefore of the view that the expenditure incurred to acquire these assets must be allowed to be deducted at the prescribed rate from the date the assets would be first available for use in terms of Section 24 of the Income Tax Act.

As regards the intangible assets at 3 and 4 above, the Company has assessed their finite useful life to be 25 years. In its books of accounts, the Company has already recognized a deferred tax liability equal to the deductions in respect of these assets. In other words, if it were to dispose of the assets, it would recoup the deductions allowed, and this recoupment is already recognised as a deferred tax liability. The Company is therefore of the view that the upfront expenditure incurred to acquire these assets must be allowed to be deducted at the prescribed rate in terms of Section 24 of the Income Tax Act.

Points in issue

Whether it can be confirmed that -

i. in respect of each of the items 1 to 4 , the Company may claim annual allowance on the cost of expenditure incurred to acquire the intangible assets in terms of Section 24 of the Act, notwithstanding that currently for accounting purposes the assets at items 1 and 2 are regarded by the Company as having an indefinite useful life, and are thus not amortized in terms of normal accounting principles, but will be changed to a finite useful life assessment in the future and become subject to amortization in terms of normal accounting principles.

ii. the annual allowance rate of 5% per annum on cost is acceptable.

Rulings

i. It is confirmed that by virtue of the provisions of Section 24 of the Income Tax Act, the Company will be entitled to claim annual allowance on the capital expenditure incurred to acquire the intellectual property rights as follows:

   a. in respect of items 1 and 2 , from the date the intangible assets will be considered to have a finite useful life and thus become subject to amortization in terms of normal accounting principles.

   b. in respect of items 3 and 4, since the time they are first available for use.

ii. It is confirmed that the annual allowance rate of 5% per annum on cost is acceptable, in accordance with item 8 of the Second Schedule to Regulation 7 of the Income Tax Regulations 1996.