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Facts

X Ltd is incorporated and registered in Mauritius and holds a GBL I Licence. It owns 100 % share in

Y Ltd, a company resident in Hong Kong which in turn holds 100% share in Z Ltd, another company registered in Mauritius holding a GBL 1 Licence. Z Ltd owns 70 % share in A Ltd, a company incorporated in China.

In accordance with the above shareholding structure, the dividends flow is as follows: A Ltd (China) pays dividends to Z Ltd (Mauritius)

- Z Ltd pays dividends to Y Ltd (Hong Kong)
- Y Ltd pays dividends to X Ltd (Mauritius)
- Y Ltd has not suffered any tax on dividends received from Z Ltd, and the dividends flow from Y Ltd to X Ltd is free of withholding tax.

Point in issue

Whether X Ltd (Mauritius) is entitled to underlying foreign tax credit in respect of dividends received indirectly from A Ltd (China) by virtue of Regulation 7 of the Income Tax (Foreign Tax Credit) Regulations 1996 (GN 80 of 1996) although Z Ltd (Mauritius), one of the payers of dividend, is a GBL I company?

Ruling

Regulation 7 (2) of the Income Tax (Foreign Tax Credit) Regulations 1996 lays down that a company resident in Mauritius can make a claim for underlying tax where it has received dividends from a company not resident in Mauritius which *"has itself received a dividend, from another company not resident in Mauritius... "*, provided that the company paying the dividend holds directly or indirectly not less than 5% of the share capital in that company.

As Y Ltd (Hong Kong) has received dividends from Z Ltd, which is a company resident in Mauritius, X Ltd will not be entitled to claim underlying tax credit, in respect of dividends received indirectly from A Ltd (China) through the intermediary Y Ltd, in accordance with the above regulation.