

TR 128

Facts

A Ltd, hereinafter referred to as the applicant is a company holding a Category 1 Global Business License (GBC1) and is tax resident in Mauritius. Its main activity is investment holding. The applicant has 100% shareholding in both B Inc and C Inc. C Inc has 26% interest in D. C Inc is also an investment holding company. Accordingly the main source of income of C Inc is dividend income. Both B Inc and D pay tax in Philippines. The business activity of B Inc is to employ people for D which owns a power plant and sells electricity generated. C Inc received dividend from D over several financial years. The profit out of which dividend was distributed by D to C Inc has been subject to income tax in Philippines. C Inc in turn loaned the dividend income to affiliates of A and they appeared as receivables in the books of C Inc. Some of the loans are interest free and some are interest bearing. The retained earnings of C Inc are made up of mainly dividend from D and some of the affiliates of A. B Inc also loaned money to some of the affiliates of A and suffered corporate tax in Philippines. Now, both C Inc and B Inc intend to distribute the receivables as dividends to their parent company A.

Points at issue

- a) Whether corporate taxes paid by B Inc in Philippines can be used as underlying tax credit against corporate tax of A?
- b) Whether, in the proportion to its indirect shareholding, corporate taxes paid by D in Philippines, can be used as credit against corporate tax of A?

Rulings

In accordance with Regulation 7 of the Income Tax (Foreign Tax Credit) Regulations 1996, it is confirmed that:

- a) corporate taxes paid by B Inc in Philippines can be used as underlying tax credit against corporate tax of A, and
- b) in the proportion of its indirect shareholding, corporate taxes paid by D in Philippines, can be used as credit against corporate tax of A.

The above ruling is being issued on the understanding that the profits out of which the dividends (i.e the receivables) to be distributed by D and B Inc have actually suffered Corporate Tax in Philippines.