Ruling issued by the Assessment Review Committee

UPL Corporation Ltd ("Applicant")

v/s

The Director General, Mauritius Revenue Authority

("Respondent" or "MRA")

ARC/IT/621-17 & ARC/IT/235-20

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On 6 April 2023, the Assessment Review Committee ("ARC") issued its ruling in favor of the MRA with regards to the methodology in computing foreign tax credit.

Executive Summary

- The Applicant holds a Global Business Company licence and is engaged in international trading, investment holding and the provision of management and financial support to group companies.
- The income streams of the Applicant comprise of foreign dividend income and non-dividend income.
- The Applicant has claimed foreign tax credit on its foreign sourced income, using the pooling method.
- The methodology applied by the Applicant for calculating the total foreign tax credit was the actual foreign tax suffered on dividend income was aggregated with the 80% presumed tax credit available on foreign source non-dividend income. The aggregate foreign tax credit calculated was then offset against the total tax liability calculated on all foreign sourced income.
- The methodology adopted by the Applicant was challenged by the MRA on the basis that where the pooling method is used, it needs to apply on all foreign source income.
- In this respect, no distinction should be made among the different items of foreign sourced income derived in an income year when the pooling method is used.
- It was ruled that under the pooling method, actual foreign tax suffered and presumed foreign tax cannot be claimed on the same income.

Analysis

Mauritius domestic laws provide for unilateral relief for double taxation by way of foreign tax credit, under the provisions of Section 77 of the Income Tax Act 1995 ("ITA") and the Income Tax (Foreign Tax Credit) Regulations 1996 ("FTC Regulations").

Under the former tax regime, a company holding a Category 1 Global Business Licence was eligible to claim foreign tax credit against the Mauritian tax liability calculated on foreign source income. The foreign tax credit was equivalent to the higher of the 80% presumed tax credit or actual foreign tax suffered.

In the context of the present case, Section 6 of the FTC Regulations is relevant and provides for the limit on amount of foreign tax credit.

Pursuant to Section 6(1), the amount of credit for foreign tax which may be allowed against Mauritius tax computed by reference to an amount of foreign source income shall be the lower of the amount of foreign tax proved or presumed to have been charged on that income and the Mauritian tax liability computed by reference to that income.

Section 6(3) goes further to provide for the methods to be used to determine the amount of foreign tax credit, which we refer to as the pooling method and the source-by-source method.

Based on the facts of this ruling, the Applicant has used the pooling method to calculate the amount of foreign tax credit. Under the pooling method, the amount of foreign tax credit should be computed by reference to all foreign source income, other than exempt income, in accordance with Section 6(3)(a).

By interpreting the terms "by reference to all foreign source income", it means that all foreign source income should be clubbed together, and each item of the foreign source income should not be considered as distinct from each other. The distinction among each item of foreign source income should instead be made under the source-by-source method in accordance with Section 6(3)(b) which states that "the amount by reference to each item of foreign source income separately".

The pool made up of all foreign source income therefore constitutes "the foreign source income" as interpreted by the ARC.

Therefore, by reading Section 6(3)(a) together with Section 6(1), the phrase "by reference to an amount of foreign source income" refers to the aggregated/pooled amount of all foreign source income.

By applying Section 6(1)(a) therefore, one can claim the amount of foreign tax proved **OR** presumed on "the foreign source income". Therefore, under the pooling method, both the 80% presumed tax and the actual foreign tax suffered cannot be claimed on "the foreign source income".

If we make a parenthesis on the interaction of foreign tax credit with the 80% exemption under the partial exemption regime, Section 77(4) of the ITA clearly states that where partial exemption is being claimed, foreign tax credit cannot be claimed in respect of that income.

Although there is no specific paragraph to deny the claim of presumed tax and actual foreign tax as a credit under the pooling method, the use of the word "or" in paragraph 6(1)(a) does not create any ambiguity in its interpretation.

In addition, the use of the word "or" instead of the word "and" to separate Section 6(3)(a) to Section 6(3)(b) of the FTC Regulations, means that a hybrid or a combination of the pooling and the source- by-source methods cannot be applied on the same income.

Applicant's contention

The Applicant has applied the below three steps in calculating the amount of foreign tax credit:
Step 1: The Applicant opted to compute its foreign tax credit by reference to all foreign source income.
Step 2: The Applicant claimed actual foreign tax credit on dividend income and presumed foreign tax credit on non-dividend income.
Step 3: The aggregate amount of foreign tax credit referred under Step 2 was claimed up to the amount of the Mauritius tax calculated on the foreign income.

According to the ARC, if the Applicant has already opted for the pooling method under Step 1, the exercise of Step 2 is therefore irrelevant, as Step 2 is applicable in the case of the source-by-source methodology.

The Applicant also relied on TR 104 and TR 11.

TR 104 refers to a company which can claim actual foreign tax credit on one foreign source income and presumed tax credit on another source of income under the source-by-source method.

On the other hand, under TR 11, the MRA ruled that under the pooling method, the aggregate of the actual tax paid and deemed tax under Section 9 of the FTC Regulations (i.e. tax sparing credit) can be claimed. The Applicant argued that the same principle should apply to deemed tax under the repealed Section 8(3) of the FTC Regulations.

However, the ARC deemed both TR 104 and TR 11 as inapplicable to the present case.

Concluding remarks

We note that the interpretation of the ARC is consistent with a side matter discussed in the case of Eurofin Ltd v/s The Director General, Mauritius Revenue Authority, where Eurofin Ltd resorted to the pooling method and the MRA did not agree that in a year of assessment Eurofin Ltd could resort to both actual foreign tax suffered and presumed foreign tax under the pooling mechanism. In this case, the MRA was of the view that this can only be done under the source-by-source method.

However, it is worth noting that in the case of tax being spared, which is a presumed tax, the MRA and the ARC are making an exception to the interpretation of Section 6(1)(a) of the FTC Regulations. This is supported by TR 11, where the MRA ruled that the aggregate amount of actual tax paid and presumed tax under the tax sparing provisions should be used under the pooling method.

Based on the ruling of the ARC in the present case and TR 11, it leaves us with an impression that the authorities are interpreting the law in a way which is not necessarily consistent, and which is at the detriment of taxpayers.

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