

In the name of His Highness Sheikh Tamim bin Hamad Al Thani,
Emir of the State of Qatar

Neutral Citation: [2023] QIC (RT) 4

IN THE QATAR FINANCIAL CENTRE
REGULATORY TRIBUNAL

Date: 9 November 2023

CASE NO: RTFIC0005/2023

INFINITY SOLUTIONS LLC

Appellant

v

QATAR FINANCIAL CENTRE AUTHORITY

Respondent

DECISION

Before:

Justice Laurence Li SC

Justice Sean Hagan

Justice Yongjian Zhang

Decision

Introduction

1. On 18 April 2023, Infinity Solutions LLC filed an appeal against the decision adopted by the Qatar Financial Centre Authority dated 27 February 2023 regarding the amount of tax owed by the Appellant (the ‘**Decision**’). The Respondent filed a Response on 5 June 2023 which was followed the Appellant’s Reply on 21 June 2023. The submissions continued with a Rejoinder filed by the Respondent on 7 August 2023, followed by a further exchange of written submissions filed by the Appellant and the Respondent on 24 September 2023. At the request of parties, emails dated 25 September 2023 from both the Appellant and the Respondent were also transmitted to the Regulatory Tribunal.
2. The parties invite us to deal with this appeal on the papers. We agree that this is a sensible course. We have carefully considered all the submissions and the materials enclosed therewith. Our decision is as follows.

The Subject Matter

3. The subject matter of this appeal concerns the application of the Qatar Financial Centre Tax Regulations 2020 (the ‘**Tax Regulations**’) with respect to the availability of a concessionary rate of tax (the ‘**Concessionary Rate**’) for the benefit of the Appellant. Article 88(2) of the Tax Regulations provide that, “*a QFC Entity that is a Qatari Owned QFC Entity*” *may elect for its chargeable profits to be charged to tax at the Concessionary Rate*”. Article 89(1) of the of the Tax Regulations sets forth the conditions that must be met in order for a QFC Entity to be qualified as a “*Qatari Owned QFC Entity*” for this purpose. Specifically, the relevant text provides as follows:

(1) A Qatari Owned QFC Entity is an LLC, which throughout the Accounting Periods to which the election referred to in Article 89 relates, fulfils the following conditions –

(a) at least 90% of the Ordinary Share Capital of the LLC is beneficially owned, directly or indirectly, by Persons who are Qatari Nationals;

(b) Persons who are Qatari Nationals are beneficially entitled to at least 90% of any profits of the LLC available for Distribution to equity holders of the LLC;

(c) Persons who are Qatari Nationals are beneficially entitled to at least 90% of any assets of the LLC available to equity holders on a winding up of the LLC; and

(d) it is not an Authorised Firm.

4. Finally, article 153 of the Tax Regulations, which sets forth the Definitions to be relied upon when applying and interpreting the Tax Regulations, includes the following definitions of “*QFC Entity*”, “*Qatari National*”, and “*Person*”:
 - i. “*QFC Entity*” is defined as “*a body corporate, Partnership, individual, unincorporated association, which has been granted, and continues to hold, a QFC Licence, or a trust registered with the QFCA*”.
 - ii. “*Qatari Nationals*” is defined as “*individuals holding, or entitled to hold, a Qatari passport*”.
 - iii. “*Person*” is defined as including “*a natural or legal person, body corporate or body unincorporate, including any Partnership*”.
5. Applying the above provisions of the Tax Regulations, the Respondent’s 27 February 2023 Decision concluded that, “[g]iven the current ultimate ownership structure of Vodafone QSC, [Appellant] did not satisfy the ownership criteria” set forth in the Tax Regulations regarding eligibility for the Concessionary Rate, in light of the requirement that, “*the definition of Persons is limited to individuals who are Qatari Nationals*”. As is acknowledged by the Appellant in the Appeal and as is clear from Appendix 2 of the appeal documentation (which sets forth the Commercial Registration Extract of Infinity Solutions LLC), the Appellant is a wholly-owned subsidiary of Vodafone Qatar P.Q.S.C (‘**Vodafone Qatar**’), which is not a natural person.
6. As a result of this determination, the Decision concluded that the Appellant, not being eligible for the Concessionary Rate, owed additional tax for the year ending 31 December 2020 in the amount of QAR 5,300, plus late payment charges to be paid in accordance with article 143 of the Tax Regulations. The Decision also concluded that, since the Concessionary Rate was claimed for the end of December 2021 Tax Return, the Appellant would also need to amend this return.

The Submissions of the Parties

7. It is fair to say that the Appellant’s arguments as to why it is entitled to the Concessionary Rate have evolved as it has filed its submissions.

8. In its Appeal Notice, the Appellant argued that, since the term, “*Person*”, as defined in article 153 of the Tax Regulations, includes both natural and legal persons, the Decision was incorrect in interpreting the Tax Regulations as requiring that the ownership be limited to individuals (i.e. natural persons). Rather, in the view of the Appellant, the Tax Regulations should have been interpreted to take into account the nationality of the legal person which owns the entity in question. According to the Appellant, since Vodafone Qatar is of Qatari nationality, the conditions for the Concessionary Rate have been satisfied since Vodafone Qatar owns 100% of the Appellant.
9. In its Reply, however, the Appellant acknowledges that a company cannot avail itself of the Concessionary Rate simply by being 100% owned by a Qatari company. It recognizes that, as a result of the plain language of article 89(1), the Qatari Nationality requirement can only be satisfied if, “*individuals holding or entitled to hold a Qatari passport*” constitute at least 90 percent of the beneficial owners of the company claiming the Concessionary Rate. Recognizing this constraint, it developed a new argument, one which sought to establish Concessionary Rate eligibility by securing evidence that at least 90 percent of the beneficial owners of Vodafone Qatar (the parent company of the Appellant) are Qatari individuals. To that end, the Appellant requested the Regulatory Tribunal to issue an order to Vodafone Qatar to provide it with the names of the beneficial owners of Vodafone Qatar in a manner that is consistent with Qatar’s Data Protection Regulations. Notably, in its Reply, the Appellant relied heavily on the definition of beneficial ownership set forth in the General Rule 8(A) of the Qatar Financial Centre Authority Rules 2023, which are applicable to all firms that have received a license from the Qatar Financial Centre Authority. The relevance of this definition to the question of Concessionary Rate eligibility is discussed further below.
10. Finally, in its written submission dated 24 September 2023, the Appellant developed yet another line of argument, one which relies on the fact that a significant percentage of the owners of Vodafone Qatar are statutory entities. In this regard, the Appellant cites article 151 of the Tax Regulation which provides as follows:

The Government of Qatar, local authorities, statutory bodies and any QFC Entity wholly owned by the Government of Qatar or by any of the aforementioned authorities or bodies are exempt from tax under these regulations.

11. The Appellant argues that, “*when the direct owners of the QFC are ultimately governmental bodies, it stands to reason that these entities should be considered Qatari Nationals for purposes of applying Article 89.1(a)*”. Recognizing that only 69.49% of the shareholders of Qatar Vodafone are statutory bodies, the Appellant argues – in the alternative – that at least this percentage should be calculated on the basis of the Concessionary Rate, citing the apportionment rule set forth in article 92 of the Tax Regulations, which read as follows:

Where the Chargeable Profits of a QFC Entity are liable to tax under these Regulations in part at the standard rate and in part at the Concessionary Rate, these profits shall be apportioned on a basis which appears the tax Department to be just and reasonable.

12. In its own submissions, the Respondent has sought to refute the Appellant’s arguments as they have evolved. Having argued in its Response that the “*Qatari Nationals*” requirement set forth in article 89(1) of the Tax Regulations could not be satisfied simply by demonstrating that Appellant’s shareholders are Qatari corporations, the Respondent, in its Rejoinder and its additional written submission, addresses the Appellant’s argument regarding beneficial ownership in two different ways. First, it states that this argument should not be considered by the Regulatory Tribunal because it was not included in the original Appeal. Second, it states that, if the Regulatory Tribunal permits the Appellant’s argument regarding beneficial ownership to be included in the Appeal, this argument should fail for lack of merit. In this regard, it emphasizes that the Appellant’s reliance on the definition of Beneficial Ownership contained in the General Rule is misplaced since that definition serves a purpose that is entirely distinct from that of the relevant provisions of the Tax Regulations. It also argues, inter alia, that the Qatari Nationals requirement set forth in article 89(1) could not be satisfied in this context given the fact that a significant portion of the shareholders of Appellant’s parent company (Vodafone Qatar) are statutory entities that have a public purpose.
13. Finally, in response to the Appellant’s written submission dated 24 September 2023, the Respondent sent an email to the Registrar dated 25 September 2023 (which it requested be transmitted to the Regulatory Tribunal) pointing out that (i) the exemption set forth in article 151 regarding the government, local authorities and statutory bodies cannot apply to the Appellant, and (b) the “*apportionment*” rule set forth in article 92

of the Tax Regulations is also inapplicable since it only applies in the specific circumstances identified in Part 15 of the Tax Regulations.

The Regulatory Tribunal's Analysis

14. Notwithstanding the number of submissions that have been made in this case, we are of the view that the questions to be resolved by this Regulatory Tribunal are relatively straightforward, involving the interpretation of a limited number of provisions of relevant Qatar Financial Centre regulations and a review of documents that are not in dispute.
15. As a threshold matter, the relevant provisions of the Tax Regulations make it clear that, in order to qualify as a "*Qatari-owned QFC Entity*" that may elect for the application of the Concessionary Rate under article 88 of the Tax Regulations, the Appellant must satisfy *all* of the enumerated conditions set forth in article 89(1). The first of these conditions is that, "*at least 90% of the Ordinary Share Capital of the LLC is beneficially owned, directly or indirectly, by Persons who are Qatari Nationals*" (*emphasis added*). As is noted above, article 153 of the Tax Regulations provides a clear definition of what constitutes a Qatari National; namely: "*individuals holding or entitled to hold, a Qatari passport*". Accordingly, in order to demonstrate it meets the first condition of article 89(1), it is not enough for the Appellant to demonstrate that it is wholly-owned by an entity that is established in Qatar (i.e. Vodafone Qatar), which is in effect, the approach taken by the Appellant in the initial Appeal Notice. Rather, it must demonstrate that individuals (i.e. natural persons) holding, or entitled to hold, a Qatari passport are the beneficial owners, directly or indirectly, of at least 90% of the ordinary share capital of the Appellant. The Appellant effectively concedes this point in its Reply.
16. Accordingly, a central question is whether, given the ownership structure of the Appellant, there is a basis to conclude that Qatari individuals holding (or entitled to hold) a Qatari passport are, in fact, the beneficial owners (directly or indirectly) of at least 90% of the ordinary share capital of the Appellant. The Respondent requests that we dismiss this Appeal without considering this issue on the grounds that Appellant did not seek to address this point in its initial Appeal. However, given the clear language of article 89(1), we are the view that this case cannot be resolved without addressing

the question as to whether, with respect to Appellant's ownership structure, there is a basis to conclude that the beneficial ownership threshold has, in fact, been satisfied.

17. In that regard, we note that article 153 of the Tax Regulations does not provide specific guidance as to meaning of “*beneficial*” ownership. Accordingly, we are guided by the general principles of interpretation set forth in article 153 of the Tax Regulations:

(3) These regulations are to be interpreted in keeping with the spirit of the Regulations and with regard to the objective and purpose as well as the letter of the Regulations

(4) The object and purpose of any provision in these Regulations will be derived primarily from the wording of the provision itself and from the context both within both within the Part of the Regulations in which it appears and other related provisions elsewhere in the Regulations.

18. Applying the above principles, the Respondent offers a definition of beneficial ownership that focuses on a concept that is directly related to the objective of fair and efficient taxation; namely, whether the individual in question enjoys the economic benefits of ownership, even if he or she does not hold legal title. In that context, and consistent with the above principles of interpretation, the Respondent cites a number of other provisions of the Tax Regulations that use the same term in the context of an entitlement to receive income or profit.

19. In contrast, the Appellant relies on the definition of beneficial ownership set forth in General Rule 8(A)(2), which requires all Qatar Financial Centre entities, “*to identify and take all reasonable measures to verify its beneficial owners*”. The definition of beneficial ownership set forth in General Rule 8(A)(3) focuses on the “*natural person who ultimately exercises **control** over the QFC entity*” (*emphasis added*), with “*control*” being achieved in a number of ways: a minimum level of share ownership; a minimum level of voting rights; the ability to appoint or remove a majority of the board of directors of the company; or the ability to exercise control over the company's management. Moreover, General Rule 8(A)3(G) provides that, where no natural person has been identified as a Beneficial Owner of a QFC Entity, “*any natural person on whose instructions the QFC Entity is required or is accustomed to act or its senior managing official, is taken to be a Beneficial Owner.*”

20. As explained by the Qatar Financial Centre Authority itself, the purpose of General Rule 8(A) is to “*ensur[e] and enhance[e] transparency by adhering to the legislation on Anti-Money Laundering and Combating Terrorism*”. The objective of ensuring that the integrity of the Qatar Financial Centre is not undermined by money laundering or the financing of terrorism is achieved, in turn, by ensuring that the Qatar Financial Centre has enough information to determine whether a company is “*controlled*” by natural persons that are engaged in this type of criminal activity. While this objective is of critical importance, it is not clear, in our view, that it is as relevant to the objective of the Tax Regulations as the definition proposed by the Respondent.
21. In any event, it is difficult to see how the conditions of article 89(1) of the Tax Regulations can be met in light of the ownership structure of the Appellant. In its written submission, the Appellant points out that “*69.49% of the Appellants profits are owned by statutory bodies*”. Given that statutory bodies are, by definition, established to operate in the public interest, it is not clear how one could identify specific individuals who are the beneficial owners of these entities.
22. In particular, we would note that, included in the above percentage (69.49%), is the single largest shareholder of Vodafone Qatar (the Appellant’s parent company); namely, Vodafone and Qatar Foundation LLC, which, according to Appellant’s Appeal Notice, owns 45% of Vodafone Qatar. According to the Commercial Registration for Vodafone and Qatar Foundation LLC submitted by Appellant as part of its written submissions, this Foundation is entirely owned by the Qatar Foundation for Education Science and Community Development. The Instrument establishing this latter Foundation is also included as part of the Appellant’s written submissions. This Instrument, which is issued and signed by the His Highness Sheikh Hamad Bin Khalifa Al Thani, establishes the Foundation to “*contribute to the scientific advancement in the state of Qatar and provide our citizens with access to science and knowledge*”. The Instrument provides that the Foundation’s capital is QAR 100 million.
23. Given this ownership structure, it would not be reasonable to conclude that individuals holding, or entitled to hold, a Qatari passport are the beneficial owners, directly or indirectly, of at least 90% of the ordinary share capital of the Appellant given the fact that 45% of the shareholding of Appellant’s parent are owned by a Foundation that is established (and fully capitalized) by the government for a public purpose. Perhaps the

Appellant would wish us to conclude that those responsible for managing the Qatar Foundation for Education Science and Community Development should be considered as the beneficial owners by virtue of General Rule 8(A)(3)(G), which, as noted earlier, provides that where no natural person is identified as the beneficial owner, one should effectively deem those managing the entity as being the beneficial owner. However, we do not believe that reliance on this Rule (which, as noted above, is designed to mitigate the risk of a company being used as a vehicle for criminal activity) in the case of the Appellant would be consistent with either the relevant text or the objectives of the Tax Regulations.

24. Indeed, it is perhaps because of the difficulty of characterizing its ownership structure as being consistent with the requirements of article 89(1) that Appellant pursues a new line of argument in its written submissions, one that focuses on the statutory nature of the Appellant's owners. Unfortunately, this approach does not, in our view, provide an alternative basis for the availability of a Concessionary Rate.

25. Article 151, cited above, cannot provide the basis for tax relief because it only provides a tax exemption for "*The Government of Qatar, local authorities, statutory bodies and any QFC Entity wholly owned by the Government of Qatar or by any of the aforementioned authorities or bodies*". Since the Appellant is not wholly-owned by statutory bodies, this provision is not applicable.

26. With respect to the application of the apportionment rule set forth in article 92 of the Tax Regulations, this does not provide a basis for the Appellant to benefit from a Concessionary Rate on the portion of its profits attributable to its statutory owners. The text of article 92 reads as follows:

Where the Chargeable Profits of a QFC Entity are liable to tax under these Regulations in part at the standard rate and in part at the Concessionary Rate, those profits shall be apportioned on a basis which appears to the Tax Department to be just and reasonable.

27. As is clear from the above text, the above apportionment rule only applies in circumstances where a portion of the profits of the QFC Entity in question benefit from the Concessionary Rate. The circumstances where a Concessionary Rate is available are limited to the ones enumerated in Part 15 of the Tax Regulations, one of which is when a QFC Entity is a Qatari Owned QFC Entity, within the meaning of an article

89(1). Since we have concluded that the Appellant is not a Qatari Owned QFC Entity, the Appellant may only benefit from this apportionment rule if it qualifies under any other of the categories enumerated in article 88(1); namely, a QFC Captive Insurer, a Reinsurer or an Investment Manager. The Tax Regulations do not provide a basis for the Concessionary Rate to apply to a QFC Entity simply because, as is the case with the Appellant, it is partially owned by the government or a statutory body.

Conclusion and Disposition

28. In light of the above, we agree with the Respondent's Decision which concluded that (i) the Appellant, not being eligible for the Concessionary Rate, owed additional tax for the year ending 31 December 2020 in the amount of QR 5,300, plus late payment charges, and (ii) that, since the Concessionary Rate was also claimed for the December 2021 Tax Return, this Return would also need to be amended.
29. In accordance with the usual practice of the Regulatory Tribunal, there will be no order as to costs.

By the Regulatory Tribunal,



[signed]

Justice Sean Hagan

A signed copy of this Decision has been filed with the Registry.

Representation

The Appellant was self-represented.

The Respondent was self-represented.