

TR 139

Facts

Trust A has been established in terms of the Trusts Act 2001 and has been authorised as a Collective Investment Scheme (the “CIS”) in terms of the Securities (Collective Investment Schemes and Close-end Funds) Regulations of 2008.

The object of the fund is to hold interest in a diversified portfolio of securities in and outside of Africa, excluding Mauritius. The settlor as well as the beneficiaries are non-residents. The Trustee, B, is resident in Mauritius. The CIS manager, C is holder of a GBC 1 license. The custodian is Bank Z of Mauritius. The administration services will be performed in Mauritius by a GBC 1 company.

Points at issue

1. Whether the CIS Trust will be exempt from income tax in respect of that income year in accordance with S46(3) on condition that it continues to qualify under S46(2) and deposits a declaration of non-residence for any income year with the Director-General within 3 months after the expiry of the income year ?
2. Whether distributions to the beneficiaries of the CIS Trust in terms of S46(2) are deemed to be exempt income in terms of Sub-Part B of Part II of the Second Schedule of the Act ?
3. Whether there is no deduction of tax at source on distributions to the beneficiaries of the CIS Trust?

Rulings

1. Non-Resident Trust

Section 46(3) provides that “ *where a trust which qualifies under sub-section (2) deposits a declaration of non-residence for any income year with the Director-General within 3 months after the expiry of the income year, it shall be exempt from income tax in respect of that income year*”.

The income of the CIS Trust will therefore be exempt.

2. Distribution

Section 45A(4) provides that any distribution made to the beneficiaries of a CIS shall be deemed to be dividend. The distribution made by the CIS Trust will therefore be exempt.

3. Deduction of tax at source (TDS)

Since the distribution will be exempt, deduction of tax at source (TDS) will not apply.