

TR 163

Facts

Two foreign promoters which are not Mauritian resident wish to set up a Closed End Fund (the « Fund ») licensed under the Securities Act 2005 as a limited partnership under the Limited Partnership Act 2011. The Fund shall be holder of a Category 1 Global Business Licence and shall have its seat in Mauritius. It will hold investments outside Mauritius and all of its income will be from foreign sources.

The General Partner (the “GP”) of the Fund will be a domestic company, incorporated in Mauritius as a private company limited by shares under the Companies Act 2001. The GP shall receive management fees from the Fund and shall not hold any interest in the Fund.

The Limited Partners (the “LPs”) of the Fund will be foreign financial institutions or high net worth individuals who will not be resident in Mauritius.

The Fund will elect to have legal personality under Section 11 of the Limited Partnership Act 2011 and it will not opt to be subject to income tax at 15% under Section 47 (6) of the Income Tax Act 1995.

Points at issue

1. Whether the Fund will be considered as tax resident and whether it will be able to apply and be issued with a tax residence certificate under Section 73 of the Income Tax Act?
2. **In respect of the taxation of the Fund**
 - a. Whether the Fund, as a resident Fund will be liable to income tax?
 - b. Whether the Fund, as a resident Fund will benefit from application of the Double Taxation Agreements (“DTAs”) entered into by Mauritius, even if it is not taxable in Mauritius as it will be “transparent” for tax purposes?
 - c. If the answer to part (b) is yes, whether the revenues received by the Fund will be taxed in accordance with the provisions of the DTAs by any foreign jurisdiction which shall be a party to any DTA?
3. **In respect of the taxation of the LPs**
 - a. Whether the LPs of the Fund which are not Mauritian resident shall be liable to tax in Mauritius on their share of income from the Fund?
 - b. And if the LPs shall not be liable to tax, whether they need to register as taxpayers with the Mauritius Revenue Authority?
4. **In respect of the taxation of the GP**
 - a. Whether the management fees to be received by the GP from the Fund will be taxed at a rate of 15%?

- b. Whether any foreign tax may be deducted by reference to any tax withheld by the foreign jurisdictions in respect of the foreign source income of the Fund, out of which the management fees of the GP will be paid, as the Fund is transparent for tax purposes?
- c. Whether, if the GP holds interest in the Fund in the same manner as a LP, the GP, as a resident company and resident LP would be entitled to claim credit for any foreign tax suffered in the foreign jurisdiction in respect of its share of foreign source income from the Fund?

Ruling

1. The Fund will be considered as a resident société for tax purposes in Mauritius, in accordance with Section 73 of the Income Tax Act. However, being given that the société will elect not to be taxed in Mauritius, the Fund will not be required to submit a return of income under Section 116 of the Income Tax Act. Pursuant to Section 73(3) of the Income Tax Act, no tax residence certificate will be issued to the Fund.
2. As the Fund will make an election under Section 47(6) of the Income Tax Act not to be taxed in Mauritius, the partners are the persons who will be liable to tax and will thus be the appropriate persons to claim the benefits of tax treaties.
3. The non-Mauritian resident LPs will be taxed on their share of income from the société. However, they would not be liable to income tax in Mauritius in respect of their share of income in the Fund being given that the latter will derive income from outside Mauritius. They will be required to register as taxpayers in the event they have taxable income in Mauritius.
4. The GP will be taxable on the management fees at the prevailing income tax rate. No foreign tax suffered by the Fund can be taken as a foreign tax credit against the management fee received by the GP.

In the event the GP holds interest in the Fund, any foreign tax suffered by the Fund may be claimed as a foreign tax credit against income tax payable by the GP on its share of income from the Fund in accordance with the law and appropriate tax treaties in force.