

TR 182

Facts

S (hereinafter referred to as “the Scheme”) will be a defined contribution scheme within the provisions of the Private Pension Scheme Act 2012 (PPSA). It will be established by a non-resident settlor and set up as a purpose trust pursuant to Section 19 of the Trust Act 2001. The purpose for which the trustee will hold the trust fund will be to invest the trust fund outside of Mauritius, in order to generate funds that will provide for the payment of retirement benefits to its members. In that respect it will apply for a licence from the Financial Services Commission of Mauritius (FSC), as a private pension scheme under Section 9 of the PPSA.

The Scheme will be a private multi-member international pension scheme and membership will be open to Mauritius residents and non-residents alike. It will not be a scheme for which a deduction will be allowed under Section 22, 23 or 62 of the Income Tax Act (ITA).

It is anticipated that funds transferred from members’ existing pension plans will include funds contributed from employment in the UK. Subsequent contributions will be accepted from or for the benefit of members. Therefore, whilst the Scheme will not be established as an occupational retirement scheme, it is possible that some employers may make contributions for the benefit of employees who are members of the Scheme.

Contribution from or on behalf of members will be segregated administratively into individual members’ accounts and will for the most part be invested in bonds or investment products, often insurance-linked and custom designed for pension plans.

The Scheme will also apply to Her Majesty’s Revenue and Customs (HMRC) in the UK to have it added to the list of Qualified Recognised Overseas Pension Scheme. This will enable the trustee to accept transfers of UK tax relieved funds into the Scheme. UK tax relieved funds will come from UK resident pension schemes by or for the benefit of former UK residents.

Points at issue

1. Whether the Scheme will be exempt from income tax, if it deposits a declaration of non-residence with the Director General?
2. Whether in order to ascertain its net income, the Scheme can apply Section 17 (7) of the Income Tax Regulations 1996?

3. Whether lump sum payments payable (in accordance with the provisions of the Scheme deed) to contributors/members and their beneficiaries, upon death or incapacity of the contributors/members will be subject to tax in Mauritius? Whether pension/annuities payable to the contributors/members and their beneficiaries will be liable to tax in Mauritius?
4. In the absence of any fiscal agency agreement, whether the pension scheme administrator of the Scheme will be held to be a fiscal agent of non-resident members/beneficiaries under Section 82 (1) (C) of the ITA and will have a duty to withhold and remit Mauritian taxes due before remitting funds to resident and non-resident contributors/members and their beneficiaries?
5. Whether Mauritius has taxing rights on payments made from the Scheme to contributors/members or beneficiaries residing in those two countries, Singapore and Malaysia, in the light of the DTA between Mauritius and these two countries?

Ruling

On the basis of the facts provided, it is confirmed that:

1. In accordance with Section 46 of the Income Tax Act , the following conditions must be satisfied for a trust to deposit a declaration of non-residence with the Director-General and be exempt from income tax in an income year :
 - (a) the settlor of the trust must be a non-resident ; and
 - (b) all the beneficiaries appointed under the terms of the trust, must throughout that income year be non-residents.Since the settlor of the Scheme will be a non-resident and membership of the Scheme will be open to Mauritian residents and non-residents alike, it is only in case the Scheme has no Mauritian residents as members in an income year that it will qualify to deposit a declaration of non-residence in that income year and be exempt from income tax.
2. Since the Scheme will be conducting pension business, it is allowed to compute its net income using the basis laid down in Section 17(7) of the Income Tax Regulations 1996.
3. Lump sum payments payable to contributors/members or their beneficiaries will be subject to tax in Mauritius. However, the first 2 million rupees of the lump sum payments may be exempt under item 6(a) of Sub-Part A of Part II of the Second

Schedule to the Income Tax Act, provided the Scheme qualifies as a “superannuation fund” under the definition given in Section 2 of the Income Tax Act.

Pension/annuities payable to the contributors/members or their beneficiaries will be liable to tax in Mauritius.

4. Even in the absence of a fiscal agency agreement, the MRA has the authority to deem the administrator to be an agent of the non-resident members/beneficiaries under Section 82(1)(c) of the Income Tax Act and direct him to withhold and remit tax to the MRA before remitting funds to the members/beneficiaries.

5. (a) **payments made to contributors/members or beneficiaries residing in Singapore**

With respect to payments made to members whose employers have been contributing to the scheme for the purpose of providing a pension plan for them, the provisions of Article 18 of the DTA with Singapore granting taxing rights to Singapore, will apply.

Regarding payments made to other contributors/members or beneficiaries, including those who have transferred funds from UK resident pension schemes, the provisions of Article 22 of the DTA with Singapore will apply. The taxing rights will be for Mauritius since the Scheme will have its permanent establishment in Mauritius.

(b) **payments made to contributors/members or beneficiaries residing in Malaysia**

With respect to payments made to contributors/members or beneficiaries residing in Malaysia, the provisions of Article 17 of the DTA with Malaysia granting taxing rights to Malaysia, will apply.