

TR 189

Facts

F was incorporated on 28 December 2012 under the Foundations Act 2012. On 13 August 2013, F was granted a Pension Scheme Licence under the Mauritius Private Pension Schemes Act 2012.

F has been established in order to provide retirement benefits to its beneficiaries. The beneficiaries of F are the members of F and/or their dependants.

It is proposed to amend the Charter and Rules of F, so that it is open to membership for individual beneficiaries who are or were:

- (a) personally resident in Mauritius ;
- (b) not personally resident in Mauritius ; and
- (c) employed.

The actual members of F are all non-resident individuals who were the retired employees of foreign big concerns. These persons have transferred their substantial retirement benefits from their former employers' Pension Scheme in UK to F in Mauritius. The only contributions made to F have been the transfer in values in respect of accrued pension benefits from members' employment. As of date, there is no Mauritian employer as member of F.

Points at issue

- (1) Whether F will be a superannuation fund as defined in Section 2 of the Income Tax Act 1995 (as amended by Section 57(2) of the Private Pension Schemes Act 2012) ?
- (2) Whether the contributions to F made by an employer for the benefit of its employees will be tax-deductible under Section 22 and 61 of the Income Tax Act 1995?
- (3) Whether the income of F will be exempt from income tax under Item 8 of Part 1 of the Second Schedule to the Income Tax Act 1995?
- (4) Whether the lump sum benefits from F exchanged for a pension payable by F will be restricted by Regulation 5(2)(e)(iv)(A) of the Private Pension Scheme (Licensing and Authorisation) Rules 2012 to 25% of the fund held for an individual beneficiary,

where the monthly pension otherwise receivable by that individual is more than Rupees 500 (£110.27 at September 2017) ?

- (5) Whether the first Rupees 2,000,000 of any lump sum benefits within the limit referred to at (4) above will be exempt from income tax in accordance with Item 6(a)(ii) of Sub-Part A of Part II of the Second Schedule to the Income Tax Act, or taxable under Section 10(1)(a)(ii) of the Income Tax Act when received by an individual resident in Mauritius ?
- (6) Whether any pension or annuity provided by F to members not resident in Mauritius will be taxable as income in Mauritius where it has a source in Mauritius and whether the Pensions and Annuities Article of Double Tax Agreements concluded by Mauritius may allocate taxing rights over pensions or annuities to the country of residence of the receiving member?

Ruling

On the basis of the facts mentioned above, it is confirmed that once the proposed amendments are brought to the Charter:

- (1) F will be considered as a superannuation fund in accordance with Section 2 of the Income Tax Act (as amended by Section 57(2) of the Private Pension Schemes Act 2012).
- (2) the contributions made to F will qualify for a deduction under Sections 22 and 61 of the Income Tax Act 1995.
- (3) F will be exempt from income tax under Item 8 of Part 1 of the Second Schedule to the Income Tax Act 1995.
- (4) the MRA is not the relevant Authority to give a ruling on a question relating to the Private Pension Scheme Act 2012. The Financial Services Commission is the appropriate regulatory body to reply to this question.
- (5) the first Rupees 2,000,000 of any lump sum benefits will be exempt from income tax when received by an individual resident in Mauritius. However, any lump sum benefit in excess of Rupees 2,000,000 will be taxable under Section 10(1)(a)(ii) of the Income Tax Act.

(6) as a general rule, pension benefits and annuities payable to former employees who are residents as well as any pension benefits payable to former non-resident employees from a source in Mauritius, will be subject to Mauritius taxation as gross income derived under Section 10(1)(a)(ii) of the Act. The Pensions and Annuities Article of the DTAA in force between Mauritius and the relevant treaty partners will apply to pension benefits payable to non-residents.