MAURITIUS REVENUE AUTHORITY

Compilation of TAX RULINGS

(Income Tax and VAT)

JUNE 2025

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INTRODUCTION

Under section 159 of the Income Tax Act 1995 and section 69A of the Value Added Tax Act 1998, taxpayers have the right to request a Tax RULING from the Mauritius Revenue Authority (MRA) for clarification on the application of tax laws to specific transactions or situations. This publication marks the second issue of a compilation of Income Tax and Value Added Tax RULINGs. It covers Income Tax RULINGs number 62 up to number 279, and Value Added Tax RULINGs number 16 to number 118. The first issue published in 2009, covered Income Tax RULINGs numbered 52 to 61, as well as Value Added Tax RULINGs numbered 9 to 15. A better understanding of the interpretation of tax legislations will avoid unnecessary misunderstandings and eventually, help in promoting effective tax compliance.

The Tax RULING Committee of the MRA ensures that all requests for tax RULING from taxpayers, legal advisors, tax professionals, accountants, and others are addressed promptly and effectively. This publication strives at reducing the risk of disagreements and disputes between taxpayers and the MRA; thus, enhancing a clearer understanding of the relevant tax legislations. This reference tool will enable our esteemed stakeholders to easily navigate the comprehensive subject index and access the relevant tax RULINGs.

LIST OF ABBREVIATIONS

AIF	Alternative Investment Funds
ARC	Assessment Review Committee
BEPS	Base Erosion and Profit Shifting
BOI	Board of Investment
CB	Convertible Bonds
CEB	Central Electricity Board
CIS	Collective Investment Scheme
CPS	Current Payment System
CRS	Common Reporting System
DDT	Dividend Distribution Tax
DTA	Double Taxation Agreement
DTAA	Double Taxation Avoidance Agreements
DTT	Double Taxation Treaty
EMEA	Europe, Middle East and Asia region
EOI	Exchange of Information
FA	Finance Act
FMPA	Finance (Miscellaneous Provisions) Act
FSC	Financial Services Commission
FATCA	Foreign Account Tax Compliance Act
FEC	Foreign Exchange Contract
FSP	Foreign service provider
FTC	Foreign Tax Credit
GBC	Global Business Corporation
GBL	Global Business Licence
GN	Government Notice
GP	General Partner
HK	Hong Kong
IAS	International Accounting Standard
IET	Income Exemption Threshold

IPO	Initial Public Offer
IRS	Integrated Resort Scheme
ITA	Income Tax Act
LP	Limited Partner
MOU	Memorandum of Understanding
MQA	Mauritius Qualification Authority
MRAA	Mauritius Revenue Authority Act
MRA	Mauritius Revenue Authority
NHDC	National Housing Development Company Ltd
OECD	Organisation for Economic Cooperation & Development
PAYE	Pay As You Earn
PCC	Protected Cell Company
RPS	Redeemable Preference Shares
SEZ	Special Economic Zone
SPV	Special Purpose Vehicle
TDS	Tax Deduction at Source
TEC	Tertiary Education Commission
TR	Tax RULING
TRC	Tax Residence Certificate
UAE	United Arab Emirates
VAT	Value Added Tax
VATR	Value Added Tax RULING
WOS	Wholly Owned Subsidiary

STRUCTURE OF THE MRA TAX RULING COMMITTEE

The MRA Tax RULING Committee is chaired by the Director-General of the Mauritius Revenue Authority (MRA). The committee comprises of members, including the Directors of the Large Taxpayer Department, Medium and Small Taxpayers Department, Fiscal Investigations Department, Operational Services Department, and Objections, Appeals and Dispute Resolutions Department, as well as Section Heads nominated by them. The Officer-in-Charge of MRA's Legal Services Department also forms part of the MRA Tax RULING Committee. A Technical Officer from the MSTD serves as the Committee's Secretary.

The MRA Tax RULING Committee is mainly responsible for providing guidance on complex tax matters as requested by taxpayers. Thus, it helps to clarify how specific sections of tax legislations should be applied to specific cases or transactions. A taxpayer can apply to the MRA for a tax RULING.

BASIC PROCEDURES TO ISSUE A TAX RULING

The need for a tax RULING emanates when a taxpayer requests the Mauritius Revenue Authority for clarification or confirmation concerning the application of a specific section of the tax laws with regard to a specific transaction. A taxpayer may request a tax RULING from the Mauritius Revenue Authority under section 69A of the Value Added Tax Act 1998 and section 159 of the Income Tax Act 1995, respectively. Copies of the relevant sections from these two pieces of legislation are provided in Appendices A and B for your reference.

The basic steps with regard to the issuance of a Tax RULING can be outlined as follows:

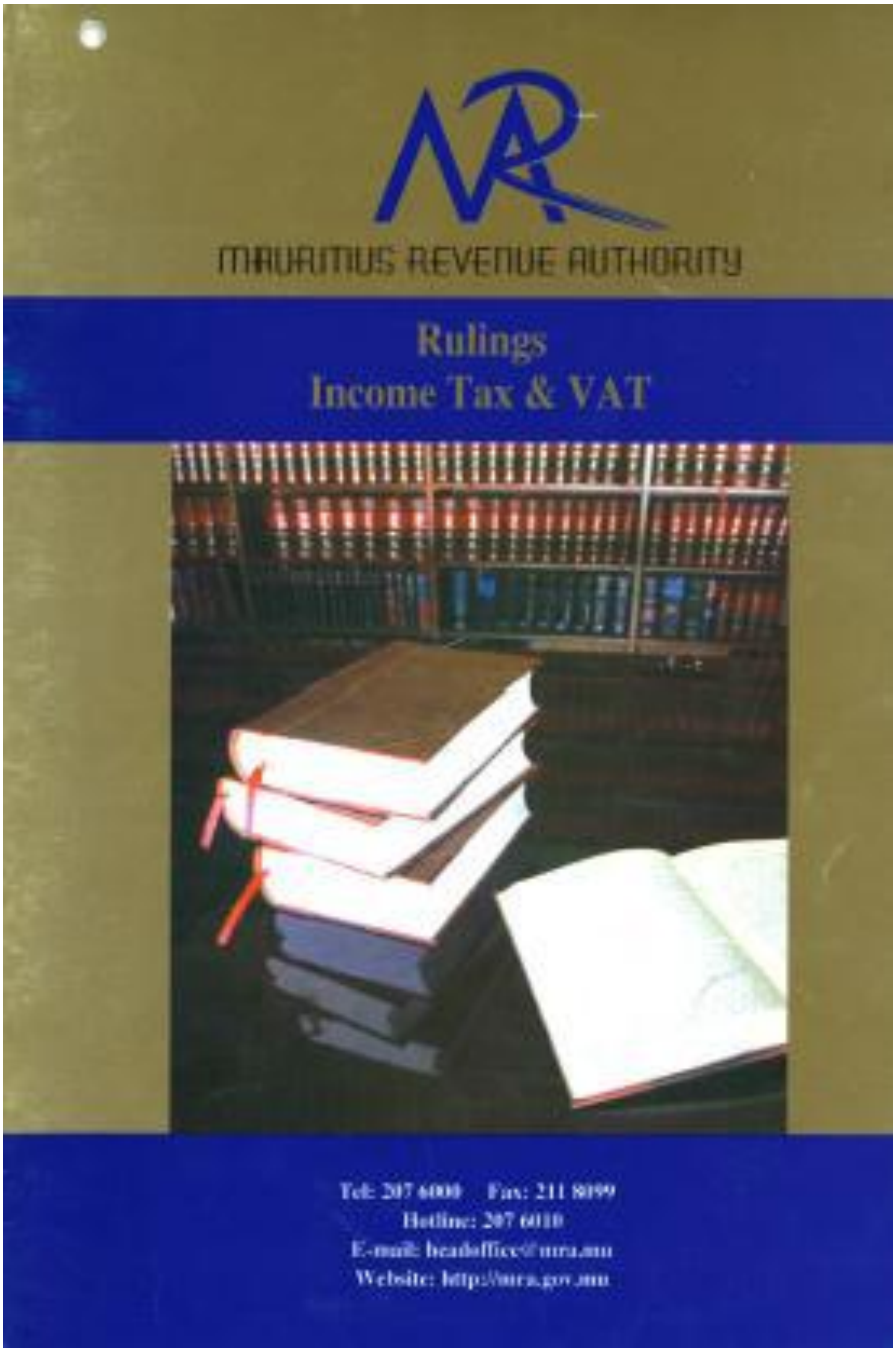
1. Taxpayer prepares the application with all relevant details and the issue in question;
2. The Taxpayer submits the application to the MRA with supporting documents and effects the relevant payment;
3. The application is reviewed and analysed by MRA;
4. MRA issues a formal tax RULING;
5. MRA notifies the taxpayer in writing; and
6. If the taxpayer disagrees or if the MRA believes the RULING needs modification, same can be reviewed; if there is still disagreement, then they may have recourse to legal means.

SOME OTHER ESSENTIAL ASPECTS

- **Secrecy**- The name of the individual or the company is not mentioned in a tax RULING. Alphabets are used to anonymize the names of individuals and companies.
- **Binding Effect-** A tax RULING is binding on the MRA. The taxpayer may agree with the RULING, but he may also disagree with the decision regarding his specific request and the FACTS in his application. At no point is time is a taxpayer bound by a RULING.
- **Limitations:** A tax RULING cannot cover every possible interpretation of tax laws. It relates only to the situations, according to the taxpayer's application.
- **Timeframe:** The exact timeframe can vary, depending on the complexity of the issue. Generally, it is 30 days.
- **Publication:** Besides sending a copy of the RULING to the taxpayer, the tax RULING is published in the Government Gazette and on the MRA website in chronological order.
- **Revocation of a RULING:** The MRA can revoke a RULING and issue a new one. For example, in the past, TR92 was revoked and replaced by TR99.

HISTORICAL OVERVIEW

A first guide on Income Tax and VAT RULINGs was published by the Mauritius Revenue Authority in 2009. The guide covers tax RULINGs which were issued since the setting up of the MRA in July 2006; that is, from Tax RULING 52 up to Tax RULING 61 and VATR 9 to VATR 15. All RULINGs issued are given individual RULING numbers, contain their respective FACTS, the point in issue and their RULINGs.



A first compilation of tax RULINGs was published by MRA in 2009.

FORMAT OF RULINGS

The two types of tax RULING covered in this publication are Value Added Tax RULING and Income Tax RULING. For VAT RULINGs, the abbreviation 'VATR' is followed by a number, which serves to uniquely identify and name each VAT RULING. On the other hand, for Income Tax RULINGs, the abbreviation 'TR' is followed by a number, which is used to uniquely identify and name each income tax RULING. There are three main parts in a tax RULING, namely the FACTS, the point in issue and the RULING. A brief description is as follows:

FACTS- The FACTS indicate the specific details and situations concerning a taxpayer's stance, which is used to gauge how specific section of tax legislations must be applied to that situation.

Point in issue- It is about the precise legal or factual question that the taxpayer is asking for clarification, guidance and interpretation. The taxpayer expects to receive the formal opinion or guidance from the MRA on his/ her main contention.

RULING- It is the official decision on how the MRA interprets and applies a specific piece of legislation in a particular context. The RULING refers to a situation where the MRA issues a decision or guidance related to a specific issue that involves the interpretation or application of tax legislations as per the taxpayer's request.

TR 62

FACTS

C Ltd, a company registered as a Grade A civil engineering contractor, has been awarded a contract for the construction of trunk sewer by an authority for a sewerage project. The main scope of the work under the contract includes the following:

(a) the construction of 450 reinforced concrete manholes along the pipeline route;

(b) the excavation of trenches;

(c) the installation of the pipes into the trenches and the backfill of the trenches after the pipeline has been laid;

(d) the road reconstruction and the reinstatement of services;

(e) any ancillary works required under the contract.

Under the contract, it is agreed that the company will supply all materials and labour required for the project, and subcontract the road reinstatement works.

Point in Issue

Whether in respect of the ‘construction of sewer’ contract in Mauritius, the company is involved in construction activities, pursuant to item 24 of Part IV of the repealed First Schedule to the Income Tax Act, and therefore, liable to tax at the rate of 15% for the year of assessment 2007/08.

RULING

Construction of trunk sewers, which includes activities such as laying of pipes and road reinstatement, is not construction proper, although labelled as 'construction'. This activity would only fall within the meaning of the term 'construction' if it formed an integral part of a construction undertaking, e.g. a building or a road construction project.

The company will , therefore, be liable to tax at the rate of 22.5% and not 15% for the year of assessment 2007/08

TR 63

FACTS

P Ltd, an insurance company, has a number of corporate clients who do not have their own pension schemes. However, they provide a pension benefit by making contributions to the respective Personal Pension Schemes of their employees.

Points in issue

Whether contributions made by an employer to a personal pension scheme, subscribed by an employee,

(i) is an allowable deduction to the employer? or

(ii) is a taxable benefit to the employee?

RULING

The law entitles an employer to claim a deduction in respect of an amount irrevocably paid by him under a superannuation fund which is defined to mean "a fund or scheme established by an employer for the benefit of its employees and approved by the Director-General." The contributions made in this case, though not made under a superannuation fund but to a personal pension fund instead, is nonetheless an expenditure exclusively incurred in the production of gross income of the employer.

The contribution made by the employer to the personal pension scheme of the employee is, therefore, an allowable deduction to the employer under section 18 (1) of the Income Tax Act 1995, provided the following conditions are satisfied:

i. the employee's contribution to the scheme is reasonable, having regard to the grade of the employee and his position in the organization ; and

ii. the contribution is not made by reason of any close connection, existing between the employer and the employee, such as blood relationship, marriage or share-ownership, etc.

On the other hand, the contribution is a taxable benefit in the hands of the employee in accordance with section 10 (2) of the Income Tax Act 1995.

TR 64

FACTS

S Ltd, incorporated in the Netherlands Antilles, is a 100% owned subsidiary of S Ltd Paris, a corporation which has the status of a bank. It proposes to issue a capital guaranteed product, viz Euro Medium Term Note to be distributed through a local bank, referred to as the dealer.

The issue price will be 100% of the Nominal Amount in USD (to be determined) and the term will be for a period of 5 years. The investment is subject to a final redemption which will be an amount that corresponds to the amount initially invested on the issue date, plus the payment of an amount linked to the performance of the underlying, if any. The issuer will redeem the Notes on the maturity date in accordance with the following formula:

Specified Denomination x [100% +Max (0;A% x Averaged Performance)]

(USD 100)

A% represents an amount that would be determined and may have a probable range of 140% to 200%, depending on the market conditions at the time of launch. The underlying used will normally be the indices shown below but other equity benchmarks may be used, provided the total weightings will always equal 100%:

Index Name Exchange Weight

1 S & P 500 New York Stock Exchange 25%

2 Dow Jones Euro - 25%

3 Nikkei 225 Index Tokyo Stock Exchange 50%

Points in Issue

Whether any of the amounts, being either

(i) the repayment of the principal; or

(ii) the payment of the amount linked to the performance of the underlyings (if any)

is subject to income tax, upon remittance to Mauritius.

RULINGs

(i) The repayment of the principal does not constitute an income for the investor within the meaning of gross income under Section 10 of the Income Tax Act 1995, , therefore,and, , therefore,,, is not subject to income tax.

(ii) Based on the FACTS provided, the payment of the amount linked to the performance of the underlying represents a return from an investment and is more in the nature of an interest. Accordingly, any such payment would constitute an income accruing to the investor within the meaning of gross income under sections 2 and 10 of the Income Tax Act 1995.

Please note that the Practice Notes of the MRA on taxation of gains from the sale of shares or other securities does not apply in the present case since a payment on redemption is quite different from a gain on the sale of securities.

TR 65

FACTS

A Mauritian national has taken employment with a construction company resident in Mauritius. He has left for Dubai with all the members of his family and is not expected to return to Mauritius. He has a contract of employment for an indefinite period in Dubai where he performs his duties as supervisor. His salary is paid in Mauritius and is banked in a local bank. He owns a property in Mauritius, viz. an apartment of the NHDC in copropriété with the Mauritius Housing Company Ltd. The property is unoccupied.

Point in issue

Whether it can be confirmed that the Mauritian national who is resident in Dubai is not liable to tax in Mauritius by virtue of Article 15 of the Mauritius-United Arab Emirates Double Taxation Treaty.

RULING

It is confirmed that on the basis of FACTS submitted the Mauritian national is resident in the United Arab Emirates (UAE) , therefore,and, , therefore,, not liable to tax in Mauritius on remuneration derived in respect of the employment exercised in UAE by virtue of Article 15 of the Mauritius-United Arab Emirates Double Taxation Treaty.

TR 66

FACTS

L Ltd, incorporated in Mauritius on 4 December 2007, has not yet started its proposed business activity which will be to provide services consisting mainly of advisory and related services to its parent company in Hong Kong (HK Co) and affiliates in the group.

The group entities will involve the parent company which is in the business of purchasing, processing and selling diamonds and ancillary activities related thereto, and one or more entities in Israël and elsewhere which will buy and distribute the finished products. The HK Co will sell the finished goods principally to a related company in Israël and possibly to other affiliates in the group, but may also sell to third parties.

The HK Co will require the services of L Ltd for back office and high-level advisory services. The back-office services will entail processing invoices and providing administration, financial and management services of a general nature, while high level advisory work will, inter alia, constitute business planning, development, co-ordination, marketing, raw materials sourcing and regional technical support services. The marketing services will be purely of advisory nature and L Ltd will not have the right or ability to bind the HK Co by entering into any contractual agreements on the latter's behalf in respect of any marketing services.

In consideration for such services, L Ltd will earn a service fee which will be set out in a Service Agreement with the HK Co. The fee will be determined on a cost-plus basis which will be at arm's length.

Points in issue

Whether it can be confirmed that -

(a) by reason of L Ltd providing back office and advisory services to the HK Co, any profits arising at HK Co level through its selling activities will not be taxed in Mauritius; and

(b) L Ltd will be taxed only on the net service fees, arising under the Service Agreement with the HK Co.

RULING

(a) It is confirmed that as L Ltd will be providing back office and advisory services, including marketing services of a purely advisory nature, any profits arising to the HK Co through its selling activities performed overseas will not be taxed in Mauritius as these will not constitute income derived from Mauritius under section 74 of the Income Tax Act 1995.

(b) It is confirmed that L Ltd will be taxed in Mauritius only on the service fee arising under the Service Agreement and determined on arm's length principles.

TR 67

FACTS

A company holding a Category 1 Global Business licence, will invest in a subsidiary in France. The subsidiary will not own any immovable property in France.

Points in issue

Whether, in the event of the sale of part or the whole of the shares in the subsidiary in future:

(i) the sale of the shares will fall under paragraph 2 of Article 13 of the DTA between Mauritius and France, i.e. gains from the alienation of movable property, or under paragraph 4 of the Article, i.e. gain from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 of Article 13;

(ii) the gains from the sale of the shares will be taxable only in Mauritius, , therefore,and, , therefore,,, exempt.

RULING

(i) The sale of the shares will fall under paragraph 4 of Article 13 of the Mauritius-France Double Taxation Treaty, i.e. gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 of Article 13.

(ii) The gains from the sale of shares will be taxable only in Mauritius, in accordance with paragraph 4 of Article 13 of the DTA. Since there is no capital gains tax in Mauritius, those gains will not be subject to tax.

TR 68

FACTS

F Ltd is incorporated in Thailand and holds 99.99 % of shares in another Thai company - E, which holds 100% shares in a Singaporean company - D. D holds 95% shares in a first Indonesian investment holding company - C, which in turn holds 73% shares in a second Indonesian investment holding company - B, a publicly listed company on the Indonesian Stock Exchange. B holds 100 % investments in an Indonesian coal mining company - A. This latter company generates income and pays Indonesian corporate income tax at the rate of 30 %.

Z Ltd has a plan to set up a GBL 1 company in Mauritius (MU Co) which will acquire

100% of shares in D from E. Based on the above respective shareholdings, it follows , therefore, that

A will pay dividends to B

B will pay dividends to C

C will pay dividends to D

D will pay dividends to E

E will pay dividends to F

Dividends to be received by B from A and by C from B are exempted from tax under Indonesian tax laws, and so also are dividends receivable by D from C under Singaporean tax laws.

Points in issue

1. Whether corporate taxes paid by A can be used as credit for foreign tax against corporate tax of MU Co, and if so, the extent of the credit;

2. What documents would be required to be produced in respect of corporate tax paid by A in order for MU Co to apply for foreign tax credit against Mauritius tax?

RULINGs

1. It is confirmed that by virtue of regulations 7 (2) and (3) of the Income Tax (Foreign Tax Credit) Regulations 1996, as MU Co will hold directly or indirectly more than 5 % of the shares in D, it will be able to claim as foreign tax credit the underlying tax charged on the income out of which the dividends was paid against its Mauritius tax. The credit to which the company will be entitled will be in proportion of its shareholding in the company paying the dividends.

2. For the purpose of applying for credit in respect of foreign tax and underlying tax against Mauritius tax, MU Co will be required to produce a certificate of its shareholding in D as well as an official receipt from the relevant Tax Authorities in support of the foreign tax paid.

TR69

FACTS

A foreign company Z, proposes to be resident in Mauritius for tax purposes, and will hold 100% shares in Company Y registered in Singapore. The latter company will hold 100% shares in each of two sub-companies, one based in Singapore and another in Cayman Islands. The Singaporean sub-company will hold 70% shares in an operating company A in China while the Cayman sub-company will hold 100% shares in company B, also operating in China.

The operating companies A and B will pay tax at the rate of 15% to 30 % in normal circumstances. However, no tax will be payable by operating company A as it will benefit from a tax holiday period.

Points in issue

(1) Whether or not income tax payable by the operating companies A and B in China, including the tax spared in case of tax holidays, would be available for credit against Mauritius tax payable by foreign company Z after passing through the number of intermediate companies in the proposed structure;

(2) Whether, based on the proposed shareholding structure provided and the Double Taxation Agreement (DTA) between Mauritius and China which provides a special rate of 5 % tax on dividends payable by Chinese companies to Mauritius beneficial owners, company Z can avail itself of the DTA privileges in the capacity of beneficial owner of shares in the Chinese companies;

(3) If answers to (1) and (2) are positive,

(a) what documents would be required in respect of corporate income tax and tax sparing credit of the operating companies A and B for company Z to apply for credit against its Mauritius tax ?;

(b) what documents or evidence would be required for company Z to substantiate its status as 'beneficial owner' of the Chinese companies?

RULINGs

(1) It is confirmed that in accordance with regulations 7 and 9 of the Income Tax (Foreign Tax Credit)Regulations 1996, any income tax, including the tax spared in case of tax holidays, payable by the operating companies A and B in China, would be available for credit against Mauritius tax payable by company Z in the proposed structure;

(2) On the basis of the proposed shareholding structure, as company Z will receive dividends from Singapore and not from China, the taxation of the dividends in Singapore will be governed by the Mauritius-Singapore DTA and not by the Mauritius-China DTA.

In any case it would be for the Chinese Tax Authorities to decide whether the provisions of the Mauritius-China DTA could be applied for the taxation of dividends receivable by company Z;

(3) (a) For the purpose of applying for credit in respect of foreign tax and tax sparing against Mauritius tax, company Z will be required to produce a certificate of its shareholding in the Singaporean company, together with evidence of its shareholding in the operating companies A and B through its investment in the Singaporean and Cayman sub-companies, as well as official receipts from the relevant Tax Authorities in respect of foreign tax paid.

(b) In view of the RULING given at (2) above, the question does not arise.

TR70

FACTS

T Fund Limited holds a category 1 Global Business Licence and has been issued with a Tax Residence Certificate by the Office of the MRA. It invests in India securities or other Vehicles which provide exposure to the Indian Stock Market for capital appreciation and, under an agreement, avails itself of the management services of an investment manager, based in India. The income of the company is stated to consist of dividends and gains from disposal of securities.

Point in Issue

Whether expenses incurred in the production of both dividend income and capital gains on disposal of securities, i.e. expenses that cannot be attributed directly to the sale of shares, would be allowed for income tax purposes?

RULING

Foreign dividend income being taxable, any expenditure which is exclusively incurred in the production of such income would be allowable. However, profit on sale of securities will be either capital gains not subject to income tax or revenue profit which is exempt, being derived by a GBL 1 company. As such, any expenditure incurred in the production of the profit on the sale of securities will not be deductible for income tax purposes.

As regards common expenses, i.e. expenditure incurred in the production of both foreign dividend income and profit on sale of securities, only a part of the expenses will be allowed for income tax purposes, which will be in the same proportion as the amount the foreign dividend income bears to the sum of foreign dividend income and the profit on sale of securities.

TR71

FACTS

B is incorporated as a private company and holds an investment certificate issued by the BOI under the Investment Promotion Act. The company will be engaged in setting up a high-tech 200-bed multi-specialty hospital. The central management and control of B is in Mauritius.

A is incorporated as a public listed company in India and is tax resident in India. Its principal activity as well as those of its subsidiaries and associates, inside and outside India, is to own, operate and manage health care institutions of international standards, and to provide comprehensive health care, related consultancy, management and training services. Under an agreement (LOMA), certain staff members of A will be seconded to B; their emoluments will be borne in full by B and they will report to the Board of B.

Points in Issue

1. Corporate Status

Whether it can be confirmed that

(i) the income derived by B will be exempt from income tax for the first five succeeding income years starting as from the first year of operation;

(ii) should the company incur a loss during the exemption period, the loss would be allowable notwithstanding the provisions of section 26 (1) (b) of the Income Tax Act;

(iii) any loss incurred during the exemption period will be subject to the restriction under section 59 (b) of the Income Tax Act;

(iv) losses attributable to annual allowance in respect of capital expenditure, incurred on or after 1 July 2006, will not be restricted to the five- year time limit, , therefore,and, , therefore,,, available for carry forward indefinitely.

2. Capital Allowances

Transitional Rules

(i) Whether for the purpose of complying with section 153 of the Act, such documents as the supplier's invoice, the construction contract, the leasing agreement and the maintenance contract are sufficient evidences, in as much as, keeping of books and records are concerned;

(ii) Whether it can be confirmed that, in the event the company decides to exercise option, to claim annual allowances under the pre-FA 2006 regime,

(a) this will apply to all class of assets and for the three years of assessment 2007/08,2008/09 and 2009/10;

(b) annual allowance would be available on the construction of the hospital;

(c) the irrevocable notice to be made to the Director-General should at latest be at the time the company submits its return for the year of assessment 2007/08.

Qualifying Expenditure

(a) whether B will be entitled to claim annual allowance at the rate of 5% on the construction of the hospital under the provisions of section 63 of the Act;

(b) whether it can be confirmed that the items of capital expenditure, viz land development, landscaping and horticultural works and earthwork will not attract annual allowances as they are excluded from the definition of "industrial premises" ;

(c) whether it can be confirmed that the capital expenditure incurred by the company in respect of the construction of the road access to the hospital will be eligible for annual allowance.

3. Payments made by B to A

Whether it can be confirmed that:

(i) the payment B will make to A for the services provided by the latter company will be tax deductible under section 57 of the Act;

(ii) the royalty payment B will make to A will be considered as Mauritian source income , therefore,and, , therefore,, taxable in Mauritius at the rate of 15 %;

(iii) any other fees A will receive from B will not be subject to tax;

(iv) B will have to apply TDS on the royalties payable to A at the time of the transfer of such amounts to the latter;

(v) A will have to furnish an annual tax return to the MRA and pay any residual tax at the rate of 5% on the gross amount of royalties as, pursuant to the DTA, the tax rate on the royalties is 15%.

4. Emoluments derived by staff members of A seconded to B

Whether it can be confirmed that the staff members seconded to B will be subject to income tax in Mauritius on their emoluments derived in Mauritius.

RULING

1. Corporate Status

It is confirmed that:

(i) B will be exempt from income tax by virtue of item 13(a) of Sub-Part C of Part II of the Second Schedule to the Act for the five succeeding income years as from the income year it starts its operation;

(ii) in case the company incurs a loss during the period of exemption of its income, the loss will be allowable for deduction and carry forward under section 59 (b) of the Act, in accordance with the provisions of item 13 (b) of Sub-part C of Part II of the Second Schedule to the Act;

(iii) any loss incurred during the exemption period will be subject to the restriction under section 59 (b) of the Income Tax Act;

(iv) losses attributable to annual allowance claimed in respect of capital expenditure incurred on or after 1 July 2006 will not be restricted to the five-year time limit , therefore,and, , therefore,, available for carry forward indefinitely in accordance with section 59 (c) of the Act.

2. Capital Allowances

Transitional Rules

(i) Although the Company would be expected to keep documents for a period of five years, these documents will not be sufficient to comply fully with section 153 (1) of the Act, the provisions of which will need to be satisfied in full in order for a person to be entitled to annual allowance under section 63 of the Act;

(ii) It is confirmed that:

(a) in the event the company decides to exercise option to claim annual allowances under the pre-FA 2006 regime as provided under the transitional provisions of section 161A of the Act, this will apply to all class of assets and be in respect of the three years of assessment 2007/08,2008/09 and 2009/10;

(b) annual allowance would be available on the construction of the hospital under the current provisions of section 63 of the Act;

(c) the irrevocable notice to the Director-General should be made as early as possible but at any rate not later than the due date for the submission of the annual return of the company for the year of assessment 2007/08.

Qualifying Expenditure

It is confirmed that:

(a) B will be entitled to claim annual allowance at the rate of 5 % on the construction of the hospital under the current provisions of section 63 of the Act;

(b) the items of capital expenditure, viz land development, landscaping and horticultural works and earthwork will not attract annual allowances as they are not subject to depreciation under normal accounting principles, in as much as, these are excluded from the definition of “industrial premises” under section 2 of the Act;

(c) capital expenditure incurred by the company in respect of the construction of the road access to the hospital will be eligible for annual allowance at the rate of 5 % on the cost, as the capital expenditure is subject to depreciation under normal accounting principles.

3. Payments made by B to A

It is confirmed that:

(i) the payment B will make to A for the services provided by the latter company will be tax deductible under section 57 of the Act;

(ii) the royalty payment B will make to A will be considered as Mauritian source income

under section 74 of the Income Tax Act , therefore,and, , therefore,, taxable in Mauritius at the rate of 15 %;

(iii) any other fees A will receive from B will not be subject to income tax in accordance with paragraph 1 of Article 22 of the Mauritius -India DTA;

(iv) B will have to apply TDS at the rate of 10 % on the royalties payable to A at the time any amount of royalties is made available to A in accordance with section 111 C (1) of the Act;

(v) A will have to furnish an annual tax return to the MRA and pay any residual tax at the rate of 5% on the gross amount of royalties as, pursuant to the DTA, the tax rate on the royalties specified at paragraph 2 of Article 12 of the Mauritius-India DTA is 15 %.

4. Emoluments derived by staff members of A seconded to B

It is confirmed that the staff members of A seconded to B will be subject to income tax in Mauritius on their emoluments derived in Mauritius in accordance with paragraph 2 of Article 15 of the Mauritius-India DTA.

TR72

FACTS

Company P is a UK Fund Manager appointed under an umbrella agreement to manage a number of investments on the balance sheet of AQ, a UK company. The investments are held all over the world. Company P and AQ are not related companies and do not have common directors.

Company P intends to subcontract the management of some of the investments to a Mauritius company (Company M), and this is permissible under the umbrella agreement.

Company P will meet in London to provide recommendations to Company M which will consider these recommendations to decide whether or not to invest or disinvest. In this respect there will be an agreement between Company P and Company M.

Company M is a wholly owned subsidiary of Company P and holds a GBL 1 licence. It will receive an investment management fee for its services on which it will pay Mauritius income tax. The fee will reflect the management of assets already identified to be managed in Mauritius. Company P is also considering subcontracting management of more or all AQ securities to Company M at a second stage.

Point in Issue

Whether it can be confirmed that as a result of subcontracting of investment management by Company P to Company M, the mere management of part of or the majority or all of the AQ assets by Company M will not create a permanent establishment for AQ and Company P in Mauritius and AQ and Company P will not have any tax filing requirement with the Mauritian Tax Authorities.

RULING

Company P is a Fund Manager and manages the investments of AQ under an umbrella agreement with the latter. Company P and AQ are not related companies. The management of the assets of AQ is subcontracted by Company P to Company M which has the power to act in an independent capacity. It is confirmed that Company M will not be considered as a permanent establishment of either AQ or Company P. Neither Company AQ nor Company P will have to file any tax return in Mauritius with regard to the activities carried out by Company M.

TR73

FACTS

F company Limited has been registered in Mauritius as a foreign company. The company (Head Office) is incorporated in India. The company has been awarded a contract by the Mauritius Ports Authority to construct an oil jetty in Port Louis harbour. The contract is expected to last for a period of 18 months.

The project is managed by personnel delegated from the Head Office. The Head Office has financed the working capital and also made arrangements for the materials, equipment and the workforce for the project to be made available to the branch. The human resource employed on the project is constituted of the following:

(i) personnel from the Head Office to supervise the engineering works, monitor the project and carry out all administrative and accounting functions.

(ii) the workforce which is actually carrying out the project work.

The workforce is supplied by an Indian subcontractor who has to be present in Mauritius for the duration of the contract. The workforce is paid by the Indian subcontractor and receive their remuneration from India.

The Head Office has incurred expenditure on the acquisition of materials in India for exclusive use on the project. Second-hand heavy-duty equipment has also been brought in from India and Europe in respect of which Head Office has incurred transport and freight charges. These equipment will have to be rehauled and returned to their respective locations at the end of the project. In addition, Head office provides service of administrative nature and technical knowhow.

The branch has incurred air transport expenses for and in respect of the technical and administrative staff.

Points in issue

1. Expatriate Staff

Whether

(a) the Indian subcontractor should register with the MRA in respect of the supply of labour for the project.

(b) the members of the workforce are subject to PAYE.

(c) the branch should apply tax deduction at source in respect of the amounts made available to the Indian subcontractor for carrying out works.

(d) the members of the workforce are entitled to income exemption threshold.

2. Cost of Materials

Whether the actual amount expended as the cost of materials which will be wholly and exclusively used on the project is deductible as input cost.

3. Equipment Wear and Tear

Whether wear and tear in respect of second-hand heavy-duty equipment imported from overseas and used on the project can be claimed as annual allowance under section 24 of the Act.

4. Jack Up

Whether the amount paid to subcontractors in India by Head Office for dismantling the jack up used in the project can be claimed by the branch as an allowable expense.

5. Transport of Equipment and Freight Charges

Whether maritime freight and transport charges incurred by Head Office are allowable expenses to the branch.

6. Air Transport Expenses

Whether air transport expenses incurred by the branch for the technical and administrative personnel can be claimed as allowable deductions.

7. Head Office Administrative Expenses and Transfer of Technical Know-how

Whether administrative expenses and services provided for the transfer of know-how by Head Office can be claimed by the branch as allowable expenses.

RULING

1. Expatriate Staff

(a) The Indian subcontractor is making a supply of labour for carrying out works in respect of civil construction and will have a permanent establishment in Mauritius in accordance with Article 5 of the Mauritius-India Double Taxation Agreement (DTA). As it will be liable to tax on income derived from this project, it will have to register with the MRA.

(b) The members of the workforce will be subject to PAYE on their emoluments as it is income derived from their employment in Mauritius in accordance with the provisions of section 74 (1) (a) of the Income Tax Act and liable to tax in Mauritius by virtue of the Mauritius-India DTA.

(c) The branch should apply tax deduction at source in respect of the amounts made available to the Indian subcontractor for carrying out works in respect of civil construction in accordance with sections 111A (1) (k) (ii) and 111B (d) of Sub-Part BA of the Act.

(d) The members of the workforce will be entitled to IET in accordance with section 27

(1) of the Act provided that they are resident in Mauritius during the period of the contract.

2. Business Expenses

(i) Items 2, 3, 5, 6 and 7 will be business expenses wholly and exclusively incurred in the production of gross income and may be claimed by the branch as allowable expenses, but subject to the application of the arm's length principle with regard to such expenditure incurred on its behalf by the Head Office.

(ii) Expenditure incurred on the Jack up(item 4)has been incurred and paid outside Mauritius and cannot be said to be an expenditure wholly and exclusively incurred in the production of gross income for the project in Mauritius , therefore,and, , therefore,, cannot be claimed as an allowable expense.

TR74

FACTS

E Ltd are consultants providing services to insurance companies in respect of

(i) insurance loss adjustment, and

(ii) investigations into suspected fraudulent insurance claims

in addition to other types of services on which tax deduction at source apply.

The principal and associate of the company are Chartered Quantity Surveyors. The fees receivable by the company from insurance companies in respect of the services at (i) and

(ii) are subjected to tax deduction at source by the payers.

Point in issue

Whether it can be confirmed that the services of loss adjustment and/or investigations into suspected fraudulent insurance claims fall outside the scope of TDS under section 111B (e) of Sub-Part BA of the Income Tax Act i.e. specified services under the Fifth Schedule to the Act.

RULING

E Ltd is a company whose principal and associate are registered Chartered Quantity Surveyors and the company provides consultancy services to insurance companies in its capacity as Quantity Surveyor. The services , therefore, fall under the scope of TDS under Section 111B (e) of Sub-Part BA of the Act i.e. specified services under the Fifth Schedule to the Act.

TR75

FACTS

G Inc., a company incorporated in BVI, is proposed to be re-domiciled to Mauritius as a registered domestic company under the Companies Act 2001. It is the ultimate holding company of the following companies in the G group:

G LUX - incorporated in Luxembourg

G Capital S.A - incorporated in Switzerland

G Corporate Services Ltd - incorporated in Mauritius by way of continuation (holds a GBL 1 licence)

G Trust Ltd - incorporated in Mauritius (licensed as a Management company by the FSC)

G Capital Management Ltd - incorporated in Mauritius (holds a GBL 1 licence)

According to the corporate structure of the Group,

G LUX holds 100 % of the shares in G Capital S.A

G LUX holds 100 % of the shares in G Corporate Services Ltd

G Inc. holds 100 % of the shares in G Trust Ltd

G Inc. holds 100 % of the shares in G Capital Management Ltd

Dividends will be paid by each operating company to its holding company which will in turn pay dividends to the ultimate holding company. As a domestic company G Inc. will be subject to tax at the rate of 15% as from year of assessment 2007/08.

Points in issue

1A. Whether it can be confirmed that as the dividend income G Inc. will receive from G LUX is sourced abroad, the company will benefit from foreign tax credit and underlying tax credit, i.e. any dividend withholding tax and any underlying taxes suffered by G LUX S.A and G CAPITAL S.A can be claimed back, and by the application of the foreign tax credit and underlying tax credit the tax liability of G Inc. can be reduced to 0 % if the tax credit (including the underlying tax credit) is equal to or more than 15 %.

1B. Whether it can be confirmed that, as part of the dividend distribution G Inc. will receive from G LUX S.A has a Mauritian source element, dividend received from G Corporate Services Ltd, being a Mauritian source income, will not be treated as ordinary income by G Inc. in its books , therefore,and, , therefore,, be exempt from income tax and no foreign tax credit will be applicable.

2. Whether it can be confirmed that any dividend income received by G Inc. from G TRUST LTD will not be subject to withholding tax and be an exempt income. Also, as this will not be a foreign source income G Inc. will not be able to apply for foreign tax credit and underlying tax credit in respect of this income.

3. Whether it can be confirmed that irrespective of G Capital Management Ltd holding a GBL1 licence, any dividend income received by G Inc. from G Capital Management Ltd will not be subject to withholding tax and be an exempt income. Also, as this will not be a foreign source income, G Inc. will not be able to apply for foreign tax credit and underlying tax credit in respect of this income.

RULING

1A. It is confirmed that as the dividend income G Inc. will receive from G LUX is sourced abroad, the company will benefit from foreign tax credit and underlying tax credit, i.e. any dividend withholding tax and any underlying taxes suffered by G LUX S.A and G CAPITAL S.A can be claimed back, and by the application of the foreign tax credit and underlying tax credit the tax liability of G Inc. can be reduced to 0 % if the tax credit (including the underlying tax credit) is equal to or more than 15 %.

1B. G Inc. will receive dividend income from G LUX S.A. This dividend income cannot be said to be income derived by G Inc. from Mauritius, and is , therefore, not exempt from income tax. It is a foreign source income on which G Inc. will be liable to tax and can apply for foreign tax credit and underlying tax credit.

2. It is confirmed that dividend income received by G Inc. from G TRUST LTD will not be a foreign source income and is , therefore, exempt. G Inc. will not be able to apply for foreign tax credit and underlying tax credit in respect of this income.

3. It is confirmed that dividend income received by G Inc. from G Capital Management Ltd will not be a foreign source income and is , therefore, exempt. G Inc. will not be able to apply for foreign tax credit and underlying tax credit in respect of this income.

TR76

FACTS

L India Holdings, which holds a GBC 1 Licence, is proposing to its investment advisers based overseas an option to acquire shares in the company at a price which will be below market value at the time the option to acquire the shares is exercised. This will constitute part of the consideration for services rendered as investment advisers, and will give rise to a benefit- in -kind to the overseas investment advisers, to whom also capital gains would accrue in case of disposal of these vested shares.

Points in issue

1. Whether the difference between the exercise price and the market value of the shares in question would be taxed on the overseas investment advisers as benefits- in- kind at the time the options are exercised.

2. Whether the profits made on the disposal of the exercised shares vested on the overseas non-resident investment advisers are subject to taxation in Mauritius under the scenarios below:

(i) Investment advisers are based in Treaty Countries;

(ii) Investment advisers are based in Non-Treaty, Third Party Countries

RULINGs

1. It is confirmed that by virtue of section 74 (1) of the Income Tax Act 1995 and paragraph 1 of Article 14 of a Double Taxation Treaty based on the OECD model, the overseas investment advisers would not be liable to tax in Mauritius on the difference between the exercise price and the market value of the shares at the time the option is exercised, as the benefit-in-kind accruing to them will constitute an income derived for proffering independent professional services from overseas and not from Mauritius.

2. It is confirmed that the profits made on the disposal of the exercised shares vested on the overseas non-resident investment advisers in both scenarios, i.e. being based either in Treaty Countries or in Non-Treaty, Third Party Countries, will not be subject to income tax in Mauritius, being given that the investment advisers will not have a permanent establishment for trading in shares in Mauritius.

TR 77

FACTS

M Ltée is a company, incorporated in Mauritius as a private company on 2 October 1985. It is the owner of land of an approximate acreage of 1200 Arpents since 17 March 1986, purchased in several lots on account of the existence of the main road dividing these lots. Out of these owned lands, the company had in the year 2000 extracted 18 Arpents, 75% of which being for the purpose of subdivision and development into residential plots sold to the public under a special scheme, and whereby also 25% was sold to the Government at nominal prices.

It is engaged mainly in sugar cane plantation since 1986, and approximately 50 % of the land, not suitable for cane cultivation, is used for deer farming. It is also, since recently, engaged in the export of monkeys, but this is only ancillary. Though the company's objects include purchase and resale of lands and other property, its primary object has always been the cultivation of sugar cane, and throughout its existence, the company has engaged in agricultural activities. The land was acquired for the purpose of cane cultivation. It was not acquired for the purpose of being sold at a profit. The land is situated in the south-western part of the island which is the driest region, and according to the company, it is not profitable to cultivate sugar cane there, given that the cost of production is constantly rising whilst it is also known that revenue will be decreasing in the near future. For this reason, the shareholders have decided to sell a certain portion of the land.

As it has been found to be practically impossible to sell the land in one lot on account of its size, an area of 419 acres divided into five different lots will be sold to one single purchaser, not related to the company. There is no agreement of any kind with the eventual purchaser, and it is confirmed that the company will not carry out any land development prior to the disposal of the said lands.

Point in issue

Whether the proceeds of the sale will be subject to income tax.

RULING

On the basis of the FACTS given, it is confirmed that the gain on the sale of the five plots of land of a total area of 419 acres will not be subject to tax as it will constitute a gain of a capital nature derived on the realization of a capital asset , therefore,and, , therefore,, outside the scope of section10 of the Income Tax Act 1995.

TR 78

FACTS

V Ltd is a private limited company, incorporated in Mauritius, and has the activity of running a hotel in the island and offers its services to T, a tour operator in Italy. T is the sole proprietor of V Ltd and sends tourists to this company; so, that the latter's turnover is mostly made up of amounts invoiced to the tour operator.

V Ltd has two bank accounts, one held in the Euro currency and the other in the Mauritian currency (MRU). Invoices are issued by V Ltd to T in Euro, and all payments by the latter for amounts invoiced by the company are made in Euro, and subsequently, transferred to the MRU account as and when needed. , therefore,, on account of the fact that payments are received in Euro, exchange gains and losses arise to the company.

Point in issue

At what point in time is a gain or a loss on exchange realized by the company:

a) when the amounts invoiced by V Ltd are settled by T and credited in the Euro account? Or

b) when the amounts in the Euro account are transferred by the company into the Mauritian Rupee account?

RULING

On the basis of FACTS given, the gain or loss on exchange arising as a result of the fluctuation in the rate of exchange is, in accordance with the provisions of section 6 (3)(a) of the Income Tax Act, deemed to be realized by V Ltd on the date on which the amount invoiced to T is settled by the latter.

Where the amount invoiced is remitted in an income year other than the income year in which the transaction occurs, apart from accounting for the gain or loss on exchange at the date of settlement as stated above, any difference on exchange arising as a result of the fluctuation in the rate of exchange between the date of the invoice and the end of the income year in which the invoice is issued, should also be taken into account for income tax purposes by virtue of section 6 (3) (b) of the Act.

Please note that any gain or loss on exchange arising on transfer of the amount from the Euro account to the MRU account should also be recognized and accounted for in the income tax return in respect of the year in which the transfer is made.

The treatment set out in the foregoing paragraphs is also in accordance with the principles laid down by IAS 21.

TR79

FACTS

An individual is contemplating to set up a business as tour operator. A company will be formed for the purpose of undertaking the said business. In carrying the tour operator business, the company will incur expenses, including expenses connected with overseas marketing and trade fairs which qualify for a 200% deduction under the law. It is assumed that, in the event the company will have already started its operations, in the first instance, it will be allowed to deduct the total amount of the overseas marketing and trade fair expenses from its profit and loss account; and to a deduction in respect of the same item of expenditure a second time, when computing its chargeable income for income tax purposes.

Point in issue

Whether it can be confirmed that the tour operator company will be entitled to a 200% deduction in respect of overseas marketing and trade fair expenses.

RULING

It is confirmed that the tour operator company will be entitled to a deduction of 200% of the amount of overseas marketing and trade fair expenses, in accordance with the provisions of section 67A of the Income Tax Act 1995.

TR 80

FACTS

L Investments Ltd is a GBL 1 company incorporated in Mauritius. It holds 100% shares in P Holdings (Pty) Ltd, a company incorporated in South Africa, since November 2002. The only employee and director of the company is Mr T. P Holdings (Pty) Ltd holds 74% of the shares in a subsidiary in South Africa, viz. M (Pty) Ltd, an investment company. The difference, 26% shares are owned by Mr T. A resolution has been passed on December 2002 to transfer the effective management and control of both companies to Mauritius and all operations of the companies are done in Mauritius. By letter dated 20 March 2008, the South African tax authorities (SARS) have been informed of these operations and also requested to remove the companies from the South Africa tax register.

Both companies have 30 September as the date of annual balance of accounts. They do not have taxable income until September 2005, but M (Pty) Ltd is liable to tax since the year to 30 September 2006.

Point in issue

A guidance is sought as to what procedures should be followed to get the companies registered as taxpayers in Mauritius.

RULING

Based on the FACTS provided, being given that P Holdings(Pty) Ltd and M (Pty) Ltd have their effective control and management transferred to Mauritius, they are resident in Mauritius for income tax purposes , therefore,and, , therefore,, liable to tax on their worldwide income. As these companies are not incorporated in Mauritius, it is the obligation of the taxpayer companies to officially inform the Mauritius Revenue Authority that their control and management have been transferred to Mauritius. But this does not seem to have been done.

Under the provisions of section 116 (1) of the Income Tax Act 1995, and subject to other provisions of the law, every company, whether or not it is a taxpayer, has the obligation to submit to the Director-General a return in such manner and in such form as may be approved by him and at the same time, pay any tax payable in accordance with its return.

The Income Tax Act lays the obligation on all companies resident in Mauritius to submit their returns of income within the due date, whether or not they are registered with the MRA or have received a return form from the MRA.

Both companies should , therefore, comply with the requirements of the Income Tax Act with regard to submission of returns of income and payment of tax.

TR81

FACTS

ZM, a limited partnership formed in Cayman Islands, proposes to incorporate a subsidiary in Mauritius (P Ltd) which will hold a Global Business Category 1 Licence. P Ltd will invest in an Indian company which would be engaged in the business of development of a Special Economic Zone (SEZ) in India, under the Special Economic Zones Act. section 80-IAB of the Indian Income Tax Act 1961 allows a deduction in respect of profits and gains derived from development of a SEZ.

Additionally, section 115-O of the said Act grants an exemption to undertakings engaged in the development of a SEZ from dividend distribution tax payable @ 16.995% on distribution of dividends. The Mauritius company will hold 49% interest in the Indian company.

Point in Issue

Whether, in relation to the profits and gains derived by the Indian company from its business of developing a Special Economic Zone in India, P Ltd is eligible for a tax sparing credit under Regulation 9 (1) of the Income Tax (Foreign Tax Credit) Regulations 1996 in respect of Indian profits tax which would otherwise have been payable but for the exemption effectively given as a result of the enactment of section 80-IAB and section 115-O of the Indian Income Tax Act

RULING

Regulation 9 (1) of the Income Tax (Foreign Tax Credit) Regulations 1996 of the Income Tax Act 1995 provides that, where the Director-General is satisfied that provisions have been introduced in the law of a foreign country with a view to promoting industrial, commercial, scientific, educational or other development in that country and that under those provisions income has been exempted from tax which would otherwise have been chargeable to foreign tax, "he shall allow a credit for the amount of foreign tax which would have been chargeable had those provisions not been enacted." A similar tax sparing clause has been provided in the Mauritius-India tax treaty. Section 80-IAB of the Indian Income Tax Act does not satisfy the above conditions since no relief is provided either by exemption of income or by reduction in the amount of income tax payable. However, section 115-O provides for an exemption of tax on distributed profits derived by enterprises operating in a SEZ. In accordance with the provisions of section 115-O of the Indian Income Tax Act 1961, P Ltd will be eligible for a tax sparing credit in respect of the dividend distribution tax which would otherwise have been payable.

The tax sparing credit, however, will be limited to and in the proportion of the share of interest of P Ltd in the Indian company.

TR 82

FACTS

A Ltd holds a Category 1 Global Business Licence, and operates as a collective investment scheme. The preference shares issued by the Company have been categorized as liabilities in the balance sheet, in accordance with International Accounting Standards, and are, , therefore,, debt in nature. In lieu of a performance fee, which is usually an allowable expense, a preference share dividend is declared and payable to the manager, based on the performance of the Company

Point in Issue

Confirmation as to whether preference share dividend should be treated as an allowable expense.

RULING

On the basis of FACTS provided, it is confirmed that dividends paid on the preference shares which have been classified in the balance sheet as a liability in accordance with International Accounting Standards, should be treated as an allowable expense.

TR83

FACTS

ASB (hereinafter referred to as the "Board") has been granted land conversion permit to sell land in order to recover the cost of the Voluntary Retirement Scheme (VRS 1) in the year 2001.The lands were used for sugarcane plantation and have been owned by the Board for a considerable length of time. The Board has never been engaged in property development.

The land for sale was divided into 9 lots after obtaining Land Conversion Permit under Voluntary Retirement Scheme, in accordance with the Sugar Industry Efficiency Act 2001. Two of the lots were sold in 2007 for a total sum of Rs X million odds. The remaining lots have not yet been sold. The Board was directly involved in the conversion, development and parcelling of the land and the only development costs were the survey fees, which were minimal.

The Board has spent some Rs Y million for the VRS scheme, financed by two loans contracted in 2001 and 2005 respectively from a domestic bank, and from its own working capital. The proceeds of the sale are being used to service the debts contracted.

Point in Issue

Whether the surplus realised will be taxable or not.

RULING

On the basis of FACTS provided, as the proceeds are used by the Board exclusively for the implementation of the 2001 Voluntary Retirement Scheme, the surplus realised on the sale of lands will not be taxable, in accordance with item 1 of Sub-Part C of Part II of the Second Schedule to the Income Tax Act.

TR84

FACTS

A company intends to purchase a villa under the IRS scheme which will be financed wholly by an interest-free loan advanced by its sole shareholder. The latter intends to make use of the villa as his residence. It is not intended to be let to others. No business will be carried out by the company, and any surplus of the loan remaining after the purchase of the villa will be deposited in a bank. The interest accruing to the company on any such deposit will be used for paying the maintenance costs of the villa. Also, the interest receivable by the company will be subject to tax without any claim for deduction in respect of expenses incurred for the maintenance of the villa. The company is only a vehicle through which the property is to be purchased and held.

Point in Issue

1. Whether in the above circumstances, the shareholder will be subject to tax whilst residing free of charge in the villa.

2. Whether the company will be subject to tax on an adequate rent; to be determined by the Mauritius Revenue Authority (MRA).

RULING

1. The provisions of section 86A (Benefit to Shareholder) are as follows:

"Where a benefit of any nature, whether in money or money's worth, other than payment of dividend, is made by a company to any shareholder or a relative of the shareholder, the value of that benefit, to the extent that it exceeds the payment, if any, made therefor, shall be deemed to be income referred to in section 10(1)(f) and received by the shareholder or the relative of the shareholder, as the case may be."

On the basis of FACTS provided, whilst residing free of charge in the villa belonging to the company, a benefit is deemed to accrue to the shareholder, which is , therefore, a taxable benefit in accordance with the above provisions.

2. The provisions of section 88 (1) of the Act state that ;

"….where property owned by a company is leased to a shareholder or a relative of a shareholder or to any other person, and the rent is not an adequate rent for the property or the lease makes no provision for the payment of rent, there shall be deemed to be payable under the lease a rent that is equal to an adequate rent for the property, and that rent shall be deemed to be income derived by the lessor-

(a) ....

(b) where no rent is payable under the lease, in respect of such periods as the Director-General determines."

In accordance with the above provisions, the company will be subject to tax on an adequate rent which shall be determined by the MRA.

TR85

FACTS:

Company A, holding a Category 1 GBL licence, has acquired USD 200m bonds having a maturity period of 24 months and bearing interest at the rate of 10% p.a payable quarterly from a resident of the People's Republic of China (The Issuer). It has invested in the bond as a mechanism to acquire shares in the Initial Public Offer (IPO) vehicle at a more advantageous price. Obtaining the shares was the sole objective of making the investment in the bonds. The other salient FACTS and terms of the bonds are thus:

- Company A funded the purchase by issuing equity of USD 5m and an overseas loan of USD 195m from one of its shareholders at 9.5% p.a interest payable quarterly.
- The issuer will repay the bond by cash or by the transfer of shares in another overseas company (Company B/The IPO Vehicle) in which the issuer has substantial interests.
- If the obligations are extinguished as above, Company A will derive a premium depending on the timing of the transfer.
- The purpose of the premium is an inducement to Company A to commit early to the investment in the form of bonds and allowing its name to be used in marketing the shares in the IPO vehicle to other investors.
- If Company A receives shares, it may, in due course, sell them at the prevailing price, which may result in a profit.
- Company A may also sell the bonds at market price, resulting in a profit or loss.
- In line with IAS 39, Company A will record the bond as a non-current asset in its Balance Sheet and will periodically recognize mark-to-market adjustments in its financial accounts to reflect the fair value of the stocks.

Point in Issue

- Whether interest paid by Company A on the USD 195m loan will be deductible against income received and whether the interest margin of 0.5% will be considered to be compliant with the arm's length principle?
- Whether the premium/gain derived by Company A on exchange of shares in Company B is exempt from income taxation in Mauritius?
- Whether, the premium paid by the Issuer on retirement of the bonds to Company A will be exempt from taxation in Mauritius, if the bonds are repaid in cash?
- Whether gains derived by Company A from sale of the Company B shares shortly after conversion will be exempt from taxation in Mauritius?
- Whether gains derived by Company A from sale of bonds prior to their maturity or early redemption, will be exempt from income taxation in Mauritius?
- Whether the mark to market adjustments that will be recognised under IAS 39 in Company A's accounts will be considered capital in nature and thus not subject to taxation?

RULING

(a) Any expenditure incurred on interest in respect of capital employed exclusively in the production of gross income specified in section 10(1)(b), (c) or (d), of the Income Tax Act as the case may be will be allowed as a deduction in accordance with section 19 of the Act.

Regarding the issue of arm's length, MRA will not rely solely on interest margin to decide whether the arm's length principle is being adhered to. Other factors as laid down in section 75 of the Act will also be considered in the application of the arm's length test to arrive at a reasonable amount of net income that would normally be expected from this type of activity undertaken by Company A.

(b)&(c) On the basis of the FACTS provided, and having regard to the risk taken by Company A, the rate of interest applicable on the bonds considered as a reasonable commercial interest rate under the current economic environment and the fact that Company A is acting as a force of attraction for other prospective investors, it is ruled that premium/gain derived by Company A either on exchange of shares in Company B or paid in cash is of a capital nature and not subject to tax.

(c) Gains derived by Company A from the sale of shares are exempt from income tax by virtue of Item 8 of Sub-part C of Part II of the Second Schedule to the Income Tax Act.

(d) Gains derived by Company A from the sale of bonds prior to their maturity or early redemption is exempt from income tax as in (d) above.

(e) The mark to market adjustments under IAS 39 will not be subject to taxation as in (d) above inasmuch as the gain is not yet realised.

TR86

FACTS:

The Directors of a Category 1 GBL company wish to transfer the registration of the company to another jurisdiction in accordance with section 301 of the Companies Act 2001. On re-registration of the company, it will cease to be Mauritius resident and will forego its Global Business Licence. The assets of the company comprise quoted and unquoted investments.

Point in Issue

(a) Whether the migration will be treated as a cessation of business in Mauritius and deemed disposal of the investments?

(b) If deemed disposal applies, whether:

(i) the transfer of the assets will be taxable?

(ii) any capital gains arising will be considered as 'exempt income' and whether there will be an implication of 'expenditure incurred in the production of income'?

(iii) there will be any other tax implications on the re-registration of the company?

RULING

(a) The migration will be treated as a cessation of business in Mauritius as the company will be removed from the register of companies and the transfer of the quoted and unquoted investments will be treated as deemed disposal.

(b) (i) By virtue of Item 7 of Sub-part C of Part II of the Second Schedule to the Income Tax Act 1995, gains or profits derived from the sale of units or of securities by a company holding a Category 1 Global Business Licence is exempt from income tax.

(ii) By virtue of section 26(1)(b) of the Income Tax Act, no deduction shall be made in respect of any expenditure or loss to the extent to which it is incurred in the production of income which is exempt income.

(iii) There will be no other tax implication in Mauritius on re-registration of the company in another jurisdiction. However on deregistration in Mauritius, the company has an obligation to:

- furnish to each employee, within 7 days, a Statement of Emoluments and Tax Deduction for such period as appropriate;
- submit forthwith, a return of income for the period ending with the cessation of the business; and
- pay any tax due by the company.

TR87

FACTS:

G, an Indian company is incorporated in Mauritius, holds a GBL 1 licence.

Appointed as Investment Manager, it provides investment advisory services to an Indian closed-ended fund, incorporated in Mauritius and holding a GBL 1 licence. In addition to a fixed advisory or management fees ranging between 1.5% to 2% it earns from the Fund, it may get a variable element alongside the investors in the economic benefits of the Fund, in accordance with the distribution waterfall which sets out how the proceeds from the sale of investments should be distributed between the investors and the Advisor.

The Fund has two classes of shares, viz: Preference Shares and Management Shares.

The Preference Shares are issued to investors who commit capital in the Fund and take the risks. G holds Management Shares which are of a nominal amount of USD 10 in the Fund, and is not entitled to receive any dividend. In case of winding up, it will receive the nominal paid up value of the Management Shares, after holders of Preference shares will have received the nominal paid up value of the Preference Shares.

The Fund has subscribed for units in an Indian Trust, a contributory trust incorporated in India. The Indian Trust has, in turn, made direct equity investments in Indian companies. The Indian Trust has remitted proceeds from divestments to the Fund by way of redemption of the units subscribed. In accordance with the constitutive documents of the Fund, the allocation of the redemption proceeds representing the cost of the units and any capital gains from the transaction is as follows:

(i) return of the cost of capital contributed by the shareholders in the Fund ;

(ii) an additional amount (a preferred return) to the Fund's shareholders to be calculated at an annual rate of 9% compounded semi-annually on all capital contributions from the time of drawdowns; and

(iii) the balance of divestment proceeds in the ratio of 80% to the Fund's shareholders and 20% to G.

G may be entitled to a share of 25% of the preferred return at (ii) above varying between 6% and 9%; and in addition to this preferred return, a 20% share in the allocation of the balance of divestment proceeds.

Point in Issue

Whether the allocation of the redemption proceeds of the units to G will qualify either as exempt income or capital gains, and hence, not be taxable in Mauritius.

RULING

Unlike other investors who commit capital in the Fund, G holds Management Shares which are of a nominal amount of USD 10, which do not entitle it to dividends. It cannot , therefore,, in the circumstance, be said that the allocation of the redemption proceeds represents a capital gain in the hands of G. The amount receivable by G is in fact remuneration for the advisory and management services it provides to the Fund, and is , therefore, subject to tax in Mauritius, in accordance with section 10 of the Income Tax Act 1995.

TR88

FACTS:

A Limited is incorporated in Mauritius as a domestic company and has its registered office in Port Louis. Its sole shareholder and director is a UK national resident in Mauritius. The company will be engaged in arranging for the purchase of commodities from suppliers worldwide and its resale to clients overseas. For that purpose, under an agreement, A Limited will act as an agent for a UK company (the Principal) by offering procurement services from Mauritius. The agreement will not constitute any association, partnership, joint venture or other relationship.

For the purpose of this operation, 'procurement services' has been defined in the Memorandum of Agreement entered into between the UK company and A Limited to mean as acting for the Principal, opening and operating a bank account, co-ordinating the purchase and shipment of commodities, clearance of commodities from Customs & Excise in the respective countries of the suppliers and customers, arranging for payments to suppliers and receiving payments from customers, placing orders, entering into correspondences, invoicing and the preparation of all documentation relative to conducting the supply of commodities.

A Limited has made arrangements with a local clearing and forwarding agent to oversee trans-shipment of goods both by air or sea routes from suppliers to clients. All transactions and settlements on supplies and sales will be undertaken on the Agent's name (A Limited). The latter will manage funds on behalf of the Principal and maintain accounting records in Mauritius to disclose all such transactions in its books. Billing to customers will be initiated from here. Also, Board meetings will be conducted in Mauritius.

As consideration for acting as Agent on behalf of the Principal, A Limited will receive an amount equal to 8% of the gross profit on the transactions, and this will be used as the tax base to calculate its tax liability, if any. Any profit remaining shall belong to the Principal and will be repatriated to the United Kingdom where it will be subject to UK tax laws. The income of 8% pertaining to A Limited will be calculated at the end of the financial year and will be based on the accounting profit made out of the above transactions. The accounting profit will be determined by using the generally acceptable accounting principles and standards.

Point in Issue

Whether:

1. the way of determining the tax base for computing the tax liability of A Limited is acceptable;

2. A Limited will receive deduction for all the business expenses and disbursements.

RULING

1 & 2. For the purpose of determining the chargeable income and tax liability of A Limited, the MRA will apply the arm's length test and allow such business expenses to which it will be entitled, in accordance with section 57 of the Income Tax Act 1995.

However, being given that A Limited will be acting as a dependent agent for and on behalf of the UK company, it will constitute a permanent establishment in respect of the latter. The UK company will , therefore, be taxed on the profit attributable to the permanent establishment.

TR89

FACTS:

S is a GBC 1 company, and its main activities are the licensing of IPRs (intellectual property rights), manufacture of pharmaceutical products under licence and the purchase of patents and generic medicines for distribution, all carried out overseas. It maintains an office in Mauritius which acts as operational headquarters and employs local as well as expatriate staff. For the expatriate staff, S pays relocation expenses equivalent to one month's salary as part of their contract of employment to enable the employees to shift to Mauritius with their personal belongings.

Point in issue

Whether the relocation expenses paid by S

(a) while the staff is still overseas;

(b) to the staff on reaching Mauritius but *before* obtaining an occupational permit from Government; or

(c) to the staff on reaching Mauritius and *after* obtaining an occupational permit from Government is a benefit in kind on which tax is payable in Mauritius.

RULING

On the basis of FACTS provided, the relocation expenses payable by S to the expatriate staff equivalent to one month's salary as part of their contract of employment for enabling them to shift to Mauritius with their personal belongings fall within the meaning of emoluments as defined in section 2 of the Income Tax Act. The payment thus constitutes emoluments receivable by the expatriate staff in each of the above circumstances, , therefore,and, , therefore,, subject to income tax by virtue of the provisions of section 10 (1) (a) of the Act.

TR90

FACTS:

H has been incorporated in Mauritius as a private company, and holds a GBL 1 Licence to carry out investment holding activities. No investments to-date, however, have been made by the Company. It has uninvested cash in its bank account in Mauritius, and earns interest thereon at commercial rates. It has no other income from any other source and incurs usual business operating expenses.

Points in issue

Confirmation that

(a) interest income earned by the Company on its uninvested cash would not be considered as exempt income for the purposes of section 26 of the Income Tax Act and GN 140 of 2003;

(b) the Company would be allowed to carry forward its tax losses for set-off against future taxable income in five subsequent income years;

(c) in the event that the Company derives both taxable income (e.g. dividends), exempt income (e.g. gains from disposal of shares) and interest income on uninvested cash from its Mauritian bank account in future, such interest income would not be taken into account for the purposes of applying the formula set in GN 140 of 2003 to calculate the quantum of unauthorized deductions.

RULINGs

(a) Item 3 (b) of Sub-Part B of Part II of the Second Schedule to the Income Tax Act provides that the interest payable on a call and deposit account held by a corporation holding a GBL 1 Licence with any bank under the Banking Act 2004 is exempt. It is , therefore, clear that the *interest income earned by the Company on its uninvested cash* in a bank account in Mauritius should be treated as exempt income.

(b) It is confirmed that the Company would be allowed to carry forward its tax losses for set-off against future taxable income in five subsequent income years in accordance with the provisions of section 59 (b) of the Income Tax Act. However, these tax losses would not include any expenditure or loss incurred in the production of interest income referred to above, given that expenditure or loss incurred in the production of income which is an exempt income is not deductible by virtue of the provisions of section 26 (1) (b) of the Act.

(c) In view of the RULING given at (a) above, in the event the Company derives both taxable income (e.g. dividends) and exempt income (e.g. interest income and gains from disposal of shares) such exempt income would be taken into account for the purpose of applying the formula set out under GN 140 of 2003 of the Act to calculate the quantum of unauthorized deductions.

However, in accordance with regulation 8(2) of the Act, no proportion of the common expenditure will be disallowed where the proportion of exempt income to total gross income is 10 per cent or less.

TR91

FACTS:

X is a private limited company incorporated and domiciled in Mauritius, and is engaged in property development for the benefit of companies within a Group. It holds an appropriate licence as land promoter and property developer from the relevant authority. Y is another private limited company incorporated and domiciled in Mauritius and operates a chain of supermarkets throughout the island. X and Y are wholly owned subsidiaries of Z and are both VAT registered.

All land and buildings belonging to X are presently rented to Y under an operating lease. The Management of X is considering the sale of all X's properties to Y. The capital expenditure incurred by Y will be exclusively incurred in the production of gross income.

Points in issue

1. In case the disposal of the land and buildings by X is treated in accordance with section 21 (7) (a) of the VAT Act, whether-

> (a) the profit arising on disposal of the said assets in the books of X will be treated as a capital gain; and
>
> (b) the credit for input tax will be allowed as a deductible expense for the purpose of corporate tax.

2. Whether Y will be able to claim capital allowances on the amount attributable to the buildings?

RULING:

1. It is confirmed that the sale of land and buildings is subject to VAT in view of item 48 (b) of the First Schedule to the VAT Act which reads as follows:

- *for any other purposes except land with any building, building or part of a building, apartment, flat or tenement together with any interest in or right over land, sold or transferred by a VAT registered property developer to a VAT registered person.*
- *On the basis of the RULING given above, the issues raised do not arise*.

2. It is confirmed that Y will be entitled to claim annual allowance on the amount attributable to the buildings, in accordance with the provisions of section 24 of the Income Tax Act 1995.

TR 92

FACTS

A Ltd is a Mauritian freeport operator engaged in clearing, freight forwarding and other associated activities. It is 100% owned by B Ltd a Mauritian company holding licence as third party freeport developer engaged in handling, storage, transhipment of frozen fish, and rental of building. X is a foreign company registered in the United States of America and is a client of A Ltd and of D Ltd, a Mauritian company which operates a fish processing plant.

X purchases fish from Y, a foreign company registered in Taiwan and which has a subsidiary in Mauritius, namely C. The latter purchases fish from fishing vessels for resale, and is also a client.of A Ltd. Fish purchased by X is subsequently sent to D Ltd for processing and thereafter the value-added finished product is forwarded to X, its rightful owner in USA, or to other destinations chosen by the latter. The whole transaction of the purchase and re-export of fish is carried out under the control of the freeport zone of Mauritius. Fish offal is sold by D Ltd to G and H, two Mauritian companies which treat fish offal and produce fish meal which is sold to animal feed producers. All the Mauritian companies referred to above form part of the same Group of Companies.

The whole Customs transaction is handled by A Ltd within the Mauritian Freeport zone by preparing the appropriate Customs Declaration Form to which are allocated a Customs Procedure Code (CPC) for each specific transaction, in accordance with Customs procedures. On the Customs Declaration form A Ltd has to appear as an importer and exporter of fish when in substance it is only an independent facilitator and a clearing and forwarding agent for X. Its only income is the fees it receives from different clients or parties to the transactions for handling the product.

Point in issue

Whether, in view of the Customs Declaration Form, A Ltd will be considered as the purchaser and seller of fish and deemed to derive income as such under section 5 of the Income Tax Act, , therefore,and, , therefore,, liable to income tax?

RULING

On the basis of information provided to the effect that the fish is actually owned by X, and on the understanding that A Ltd does not operate as a dependent agent for X but is only acting as a facilitator and clearing and forwarding agent for X, it will be liable to income tax only on the fees it derives in that capacity. It will , therefore, not be considered as the purchaser and seller of fish.

TR 93

FACTS

P Ltd is a company engaged in the distribution of petroleum products, and has a distribution network which comprises various retail outlets spread all over the island. In respect of a few recent retail outlets, the company has had to bear the cost of the access road to and exit from the retail outlets. The roads are set up either on leased property or form part of public roads.

Points in issue

(i) Whether the initial costs of the roads are eligible for annual allowance?

(ii) Whether the future costs of maintaining the roads are allowable expenses?

RULINGs

(i) The provisions of section 24 (1) (a) of the Income Tax Act apply to capital expenditure incurred on the acquisition, construction or extension of commercial premises, while the provisions of section 24 (1) (f) apply to "the acquisition or improvement of any other item of a capital nature which is subject to depreciation under the normal accounting principles. "

The access roads to and exit from the retail outlets do not form part of the commercial premises of the company and are also not capital expenditure of a nature which is subject to depreciation under normal accounting principles. The initial costs of the roads are , therefore, not eligible for annual allowance.

(ii) It is confirmed that the future costs of maintaining the roads will be allowable as a deduction in the accounts of the Company, in accordance with the provisions of section 18 of the Income Tax Act.

TR 94 (Replaced by TR 99)

FACTS

K Limited is a company incorporated in Mauritius and holds a Category 1 Global Business Licence. It invests in securities in India and has percentage holding in Indian companies which is less than 5%. It derives dividend income from the Indian companies; and on payment of dividends, Dividend Distribution Tax (DDT) is payable to the tax authorities.

Point in issue

Whether K Limited is eligible to claim the DDT as a credit against Mauritius tax payable.

RULING

It is confirmed that K Limited is eligible to claim the DDT as a credit against Mauritius tax payable, in accordance with the provisions of regulation 3 of the Income Tax (Foreign Tax Credit) Regulations 1996. DDT is regarded as a direct tax paid on dividends receivable by the shareholder.

TR 95

FACTS

P (the Company) is a company registered and incorporated in Mauritius. It carries on business as promoter and distributor of pharmaceutical products. The Company has incurred expenditure to secure intellectual property as set out below:

1. During June 2008, USD 338,024,265 to acquire X intangible assets.
2. During April 2003, USD 8,028,090 to acquire Y intangible assets.
3. During April 2008, USD 12,856,189 - an upfront royalty payment to acquire the right to use Z intangible assets, with regular payments thereafter.
4. During December 2008, USD 26,225,000 - an upfront royalty payment to acquire the right to use G intangible assets, with regular payments thereafter. The Company has assessed the intangible assets at 1 and 2 above to have an indefinite useful life and is , therefore, not amortizing these assets yet. It is of the view, however, that it is inevitable at some point in the future the indefinite life assessment will be reviewed, and that events and circumstances will no longer support an indefinite useful life. At that point the assessment will be changed to a finite useful life assessment and the assets will become subject to amortization in terms of normal accounting principles. The Company is , therefore, of the view that the expenditure incurred to acquire these assets must be allowed to be deducted at the prescribed rate from the date the assets would be first available for use in terms of section 24 of the Income Tax Act.

As regards the intangible assets at 3 and 4 above, the Company has assessed their finite useful life to be 25 years. In its books of accounts, the Company has already recognized a deferred tax liability equal to the deductions in respect of these assets. In other words, if it were to dispose of the assets, it would recoup the deductions allowed, and this recoupment is already recognised as a deferred tax liability. The Company is , therefore, of the view that the upfront expenditure incurred to acquire these assets must be allowed to be deducted at the prescribed rate in terms of section 24 of the Income Tax Act.

Points in issue

Whether it can be confirmed that –

(i) in respect of each of the items 1 to 4 , the Company may claim annual allowance on the cost of expenditure incurred to acquire the intangible assets in terms of section 24 of the Act, notwithstanding that currently for accounting purposes the assets at items 1 and 2 are regarded by the Company as having an indefinite useful life, and are thus not amortized in terms of normal accounting principles, but will be changed to a finite useful life assessment in the future and become subject to amortization in terms of normal accounting principles.

(ii) the annual allowance rate of 5% per annum on cost is acceptable.

a.

RULINGs

(i) It is confirmed that by virtue of the provisions of section 24 of the Income Tax Act, the Company will be entitled to claim annual allowance on the capital expenditure incurred to acquire the intellectual property rights as follows:

(a) in respect of items 1 and 2 , from the date the intangible assets will be considered to have a finite useful life and thus become subject to amortization in terms of normal accounting principles.

(b) in respect of items 3 and 4, since the time they are first available for use.

(ii) It is confirmed that the annual allowance rate of 5% per annum on cost is acceptable, in accordance with item 8 of the Second Schedule to regulation 7 of the Income Tax Regulations 1996.

TR 96

FACTS

X Ltd is incorporated and registered in Mauritius and holds a GBL I Licence. It owns 100 % share in Y Ltd, a company resident in Hong Kong which in turn holds 100% share in Z Ltd, another company registered in Mauritius holding a GBL 1 Licence. Z Ltd owns 70 % share in A Ltd, a company incorporated in China.

In accordance with the above shareholding structure, the dividends flow is as follows: A Ltd (China) pays dividends to Z Ltd (Mauritius)

- Z Ltd pays dividends to Y Ltd (Hong Kong)
- Y Ltd pays dividends to X Ltd (Mauritius)
- Y Ltd has not suffered any tax on dividends received from Z Ltd, and the dividends flow from Y Ltd to X Ltd is free of withholding tax.

Point in issue

Whether X Ltd (Mauritius) is entitled to underlying foreign tax credit in respect of dividends received indirectly from A Ltd (China) by virtue of Regulation 7 of the Income Tax (Foreign Tax Credit) Regulations 1996 (GN 80 of 1996) although Z Ltd (Mauritius), one of the payers of dividend, is a GBL I company ?

RULING

Regulation 7 (2) of the Income Tax (Foreign Tax Credit) Regulations 1996 lays down that a company resident in Mauritius can make a claim for underlying tax where it has received dividends from a company not resident in Mauritius which "*has itself received a dividend, from another company not resident in Mauritius...* ", provided that the company paying the dividend holds directly or indirectly not less than 5% of the share capital in that company.

As Y Ltd (Hong Kong) has received dividends from Z Ltd, which is a company resident in Mauritius, X Ltd will not be entitled to claim underlying tax credit, in respect of dividends received indirectly from A Ltd (China) through the intermediary Y Ltd, in accordance with the above regulation.

TR 97

FACTS

Z, a company incorporated in Mauritius as a private company, holds a GBL 1 Licence. It employs professionals, mainly expatriates of different nationalities, who provide consultancy services to Y, another GBL 1 company, and to all companies under the portfolio of this latter company with respect to the day-to-day management and general administration. Y is an investment holding company based in Mauritius with offshore portfolio companies.

Certain employees of Z have `professional permit' pursuant to Part III of the Investment Promotion Act 2000, and the rest hold `occupational permit' issued under section 9A of the Immigration Act. These employees carry out work outside Mauritius. Presently all employees have been seconded to the portfolio companies of Y, based in various African countries outside Mauritius.

Point in issue

Whether the expatriate employees of Z are subject to income tax in Mauritius.

RULING

As the expatriate employees of Z are based outside Mauritius and their services are wholly performed outside Mauritius, they are not subject to income tax in Mauritius, in accordance with the provisions of section 5 of the Income Tax Act.

TR 98

FACTS

A major multinational operating in the technological industry worldwide is proposing to set up a Category 1 Global Business Licence company (Company A) in Mauritius for investment in Country X. Company A will hold 100% stake in the investee company (Company B) to be situated in Country X and which will in turn set up operations in that country to manufacture technology-related products. Given the substantial amount of foreign direct investment involved and the likely impact on its economic, industrial and commercial development, Country X has entered into a Memorandum of Understanding (MOU) with the multinational to, inter-alia, refund 100% of the corporate income tax to be paid by Company B in Country X for a period of 10 years.

Under the provisions of the accounting standard to be adopted by Company B, the income tax refund will be treated as income and will be subject to income tax in the next accounting period; and the "additional" tax suffered in that accounting period will also be refunded as part of 100% refund of corporate tax referred to above.

Points in issue

Whether it can be confirmed that -

(a) Notwithstanding a corresponding refund/amount of tax suffered in the first year being refunded in the subsequent year, Company A can claim the underlying tax credit, and/or;

(b) Company A will be allowed to claim tax sparing credit in respect of the income tax refunds received by Company B, and in the affirmative;

(c) the relevant extract, certified and apostilled, of the MOU will be sufficient to substantiate the claims.

RULINGs

(a) It is confirmed that Company A can claim the underlying tax credit on the corresponding amount of income tax refunded in respect of a year which will be treated as income in the subsequent year, by virtue of the provisions of regulation 7(1) of the Income Tax (Foreign Tax Credit) Regulations 1996.

(b) It is also confirmed that Company A will be allowed to claim tax sparing credit in respect of the income tax refunds received by Company B, on the understanding that the agreement reached through the MOU by Country X with the multinational is tantamount to provisions having been introduced in the law of Country X with a view to promoting industrial, commercial and economic development in that country, pursuant to regulation 9 (1) of the above Regulations.

(c) It is confirmed that for the purpose of regulations 8 and 9 of the Income Tax (Foreign Tax Credit) Regulations 1996), the relevant extract, certified and apostilled, of the MOU will be sufficient to substantiate the claims.

(d) Notice is hereby given that RULING TR 94 issued by the MRA and published in the Government Gazette No. 99 of 7 November 2009 is hereby revoked as from this date and replaced by a new RULING TR 99 as shown hereunder.

TR 99

FACTS

K Limited is a company incorporated in Mauritius and holds a Category 1 Global Business Licence. It invests in securities in India and has percentage holding in Indian companies which is less than 5%. It derives dividend income from the Indian companies; and on payment of dividends, Dividend Distribution Tax (DDT) is payable to the tax authorities.

Point in issue

Whether K Limited is eligible to claim the DDT as a credit against Mauritius tax payable.

RULING

DDT, being tax paid out of the profits/reserves of the company declaring dividend, cannot be considered as a withholding tax suffered by the recipient of the dividend. In fact, the liability to DDT rests with the paying company and not with the shareholder.

DDT will , therefore, be treated as an underlying tax in accordance with the provisions of regulation 7 of the Income Tax (Foreign Tax Credit) Regulations 1996.

TR100

FACTS

A Ltd is engaged in the provision of management services, including financial and human resource services to related companies. B Ltd which operates a Beach Resort Hotel is a related company in which A Ltd holds shares, representing 23% of the total shares. A Ltd derives management fee from B Ltd as a consideration for the service it provides to this company under a management agreement. There is, however, no formal written management agreement between the two companies.

Pursuant to a restructuring exercise, the management agreement between the two companies has terminated and consequently B Ltd has to compensate A Ltd. The compensation has been computed at some Rs 203 m and is based on an independent valuation. The consideration for the compensation will be by way of shares, so that B Ltd will issue new shares to A Ltd.

Points in issue

Confirmation that pursuant to the termination of the management agreement between A Ltd & B Ltd -

a) the compensation payment that will be made by B Ltd (by way of issue of new shares) should be treated as capital income to A Ltd , therefore,and, , therefore,, should be outside the tax net.

b) in the event the compensation payment is capitalized in the books of B Ltd for accounting purposes and is depreciated, annual allowance at the rate of 15 % would be available to B Ltd on a straight-line basis.

RULINGs

a) FACTS provided show that there did not exist between the two companies a formal written contract agreement requiring the mandatory payment of compensation in the event of its termination, nor the amount thereof. Also, the management fee derived by A Ltd from B Ltd did not constitute a substantial part of the income of A Ltd for provision of such services to related companies, so that the termination of the said agreement did not fundamentally affect the structure of its business. It cannot , therefore, be confirmed that the compensation receivable by A Ltd is a capital receipt , therefore,and, , therefore,, outside the tax net. It is a receipt of revenue nature constituting gross income under section 51 of the Income Tax Act, , therefore,and, , therefore,, subject to tax.

b) On the basis of the RULING given at (a) above no annual allowance will be available to B Ltd.

TR 101

FACTS

A (the "Fund") will be established as a limited partnership formed under the laws of the Province of Ontario, Canada. Under the Canadian Tax Act, a partnership does not have legal capacity and is not treated as a separate legal person. The Fund would , therefore, not be subject to income tax in Canada. Partners of the Fund who are tax resident in Canada would, however, be liable to tax in Canada on their share of profit from the Fund.

The Fund will seek to achieve long-term capital appreciation through investing directly or indirectly in a balanced portfolio of investments generating income and capital gains in medium-sized enterprises, or having their principal operations in south-east Asia. Certain investments will be made by the Fund through a Singapore holding vehicle. The Singapore holding company will be wholly owned by the Fund for purposes of investing into portfolio companies. The Singapore holding company will be managed and operated from Singapore by a Singapore management company.

The Fund will not derive income from Mauritius and will not invest in shares, debentures or other securities in Mauritius. All the income it will derive will be derived from Singapore or, where investments are made by the Fund directly, from other target countries in south-east Asia.

The General Partner of the Fund will be a Cayman Islands exempted limited company. The officers and directors of the General Partner will be Mauritius-resident and its board meetings will be held in Mauritius. The General Partner will be entitled to delegate powers to a manager, provided that the management and conduct of the activities of the Fund shall remain the sole responsibility of the General Partner and all decisions relating to the selection and disposal of the Fund's investments shall be made exclusively by the General Partner.

The Manager of the Fund will be established as a limited company under the laws of Mauritius and will apply for a GBL 1 Licence with the Financial Services Commission. It will operate from Mauritius and its board will mainly comprise Mauritius-resident directors. Board meetings of the Manager will be held in Mauritius. The persons who will be directors on the board of the Manager will be different from those on the board of the General Partner. It will, under a management agreement entered into with the General Partner, provide portfolio management services for the benefit of the Fund including investigating, analysing, structuring and negotiating potential investments, monitoring the performance of portfolio companies and effecting the disposal of investments. The Manager will receive an annual management fee payable by the Fund.

Points in issue

Confirmation that -

1) the Fund would be treated as a société for tax purposes in Mauritius;
2) the Fund would be treated as a resident société for tax purposes in Mauritius;
3) the partners of the Fund who are not tax resident in Mauritius would not be liable to income tax in Mauritius in respect of their share of income in the Fund.

RULINGs

It is confirmed that-

1) the Fund would be treated as a société for tax purposes in Mauritius, in accordance with the definition given to the term in section 2 of the Income Tax Act.
2) the Fund would be treated as a resident société for tax purposes in Mauritius in accordance with the definition assigned to the term in section 73 (c) (ii) of the Act.
3) the partners of the Fund who are not resident in Mauritius would not be liable to income tax in Mauritius in respect of their share of income in the Fund, being given that the Fund will not derive any income from Mauritius.

Please note, however, that the Manager of the Fund will be liable to income tax on the fees it will derive from Mauritius, in accordance with the provisions of section 5 (1) of the Act. The General Partner will on the other hand be liable to income tax in respect of the share of income the Fund will derive from Singapore or from other target countries, as it will be resident for tax purposes in Mauritius.

TR 102

FACTS

X Ltd (the Company) has been incorporated in Mauritius as a company holding a GBL 1 Licence. The principal activity of the Company is investment holding, and it actually holds the majority of the shares of a bank in Indonesia. Its main income from the bank is dividend, and it suffers tax at source in that the bank pays tax in Indonesia prior to distributing dividend. The Company normally distributes the majority of its reserve to its holding company, Y Ltd, which is also incorporated in Mauritius and holds a GBL 1 Licence. However, due to future investment opportunities the Company has changed its strategy, and instead of paying dividend to its holding company funds will be transferred to the latter on a refundable basis. The main reason for doing so is that the Company can call back these funds to invest elsewhere as it may seem good.

Points in issue

1) Whether any interest received by the Company for advance made to its holding company is taxable?

2) If the interest income is taxable, whether tax suffered on income derived from the bank in Indonesia or from any other foreign source is deductible against tax liability on the interest income?

3) Whether all types of income, derived from investment made in companies incorporated outside Mauritius, are taxable in the case of the Company?

RULINGs

It is confirmed that -

1) the interest income derived by the Company for advance made to its holding company is taxable in accordance with the provisions of section 51 of the Income Tax Act.

2) the tax suffered by the Company on income derived from the bank in Indonesia or from any other source is not deductible against its tax liability on the interest income derived from the local source.

3) all types of income derived by the Company from investment made in companies incorporated outside Mauritius are taxable. It is also confirmed that in respect of such income the Company will benefit from foreign tax credit in accordance with the provisions of the Income Tax (Foreign Tax Credit) Regulations 1996.

TR 103

FACTS

A Ltd intends to set up a wholly owned Mauritius subsidiary, B Ltd (the Company), which will be incorporated in Mauritius and hold a GBL 1 Licence. The Company will be the 100% beneficial owner of a US trust which will be engaged in aircraft leasing. Currently a Bermuda company is the beneficiary of the trust. The nature of the trust will be similar to that of a bare trust in that the beneficiary, i.e. B Ltd, will be considered the owner of the aircraft for US tax purposes. The Company will have full control on the aircraft with power to instruct the trustee, and the interests and rights of the trust will be transferred to the Company when it will have been set up.

The US trust will lease an aircraft from a Cayman Island company under a finance lease, and the principal and interest payments will be payable to this latter company. The US trust will lease the aircraft on operating lease to a South African airline company for a period of 10 years. The sole income of the US trust will consist of rental income from the South African airline company. It will not derive any income from Mauritian source.

Points in issue

Confirmation as to whether -

1) the US trust will be considered as transparent for Mauritius tax purposes so that the finance lease will be treated as if entered into between the Cayman Island company and B Ltd, and the operating lease entered into between B Ltd and the South African airline company;

2) B Ltd may claim treaty benefits under the Mauritius-South Africa Double Taxation Agreement;

3) B Ltd will be entitled to claim capital allowances on the aircraft which would be leased by the trust to the South African airline company as if it had itself purchased the aircraft on finance lease, and the rate of capital allowances will be 100% of cost.

RULINGs

(i)&(ii) The US trust will, for all intents and purposes, be considered as a company in accordance with the Income Tax Act, , therefore,and, , therefore,, no issue of transparency for tax purposes arises. B Ltd will be the beneficial owner of the US trust, , therefore,and, , therefore,, will not be concerned with the Mauritius-South Africa Double Taxation Agreement. As such, it will be liable to tax on any distribution it will receive from the trust.

(iii) As B Ltd will not be involved in any leasing activities but will receive distribution income from the US trust, it will not be entitled to any capital allowances.

TR 104

FACTS

S (the Company) is a company incorporated in Mauritius and holds a Category 1 Global Business Licence. The principal activities of the Company are investment holding and the provision of management services. It receives management fees, marketing fees, development fees and dividend income from Seychelles, Tanzania and other foreign countries.

Points in issue

1) Whether a source of income can be determined by reference to the type of income, so that in the case of the Company management fees will be regarded as one source of income and marketing fees another source? Also, whether source of income can be determined by reference to a particular country, so that total income from Tanzania will be regarded as one source and total income from Seychelles another source?

2) Whether for a particular year of assessment, the actual tax suffered on one foreign source income can be claimed as foreign tax credit and a presumed foreign tax of 80% on a second source of income?

RULINGs

1) It is confirmed that source of income can be determined either by reference to the type of income or to the country from where the income is derived.

2) It is confirmed that on the basis of the above RULING, for a particular year of assessment, the Company can claim the actual tax suffered on one foreign source income and a presumed tax credit of 80% on a second source of income, in accordance with the provisions of regulations 6 (3)(b) and 8 (3) of the Income Tax (Foreign Tax Credit) Regulations 1996, provided that credit for actual tax suffered does not exceed the amount of Mauritius income tax payable on that foreign source income, as laid down by regulation 6 (1) of the aforementioned Regulations.

TR 105

FACTS

M Limited (the Company) is a private company incorporated and domiciled in Mauritius, and holds a Category 1 Global Business Licence. It receives dividend income, subscription fees, management fees, satellite fees and other fees from Nigeria, Ghana, Kenya, Tanzania and Zambia.

Points in issue

1) Whether a source of income can be determined by reference to the type of income, so that in the case of the Company dividend income, subscription fees, management fees, satellite fees and other fees will each be regarded as a source of income? Also, whether source of income can be determined by reference to a particular country, so that the aforesaid income from one country will be regarded as one source and the same income received from another country regarded as another source?

2) Whether for a particular year of assessment, the actual tax suffered on one foreign source income can be claimed as foreign tax credit and a presumed foreign tax of 80% on a second source of income?

3) Whether, in case the Company opts to compute the amount of credit for foreign tax by reference to all foreign source income derived by it in accordance with regulation 6 (3) (a), the amount of credit shall be the higher of 80% of Mauritius tax payable and the actual foreign tax suffered on that income?

RULINGs

1) It is confirmed that source of income can be determined either by reference to the type of income or to the country from where the income is derived.

2) It is confirmed that on the basis of the above RULING, for a particular year of assessment, the Company can claim the actual tax suffered on one foreign source income and a presumed tax credit of 80% on a second source of income, in accordance with the provisions of regulations 6(3)(b) and 8(3) of the Income Tax (Foreign Tax Credit) Regulations 1996, provided that credit for actual tax suffered does not exceed the amount of Mauritius income tax payable on that foreign source income, as laid down by regulation 6(1) of the aforementioned regulations.

3) In case the Company opts to compute the amount of credit for foreign tax by reference to all foreign source income derived by it in accordance with regulation 6 (3) (a), it is confirmed that the amount of credit shall be the higher of the actual foreign tax suffered or 80% of the Mauritius tax chargeable with respect to all foreign source income, provided that credit for actual tax suffered does not exceed the amount of Mauritius income tax payable on all the foreign source income, as laid down by regulation 6(1) of the aforementioned regulations.

TR 106

FACTS

An international company, Company A registered in South Africa employs a direct selling approach to bring its products to market. It wishes to enter into a "Depot partnership" arrangement in Mauritius. For that purpose, a Mauritian company (Company B) has been incorporated as a domestic company to act as an agent of Company A for selling and distributing the products in Mauritius on behalf of the latter. It has Mauritian resident directors and shareholders who are independent of and distinct from the directors and shareholders of Company A.

Company B will import Company A's products into Mauritius and sell these on a commission basis to network marketing agents who will have independent contractor status, i.e. they will purchase the products for their own use or for on-selling, and will not be employees either of Company A or Company B.

The products will be manufactured by Company A in South Africa and delivered to Company B, which will monitor stock levels of the products before delivery to network marketing agents. Company B will issue invoices and also collect payment for the products it sells on behalf of Company A. It will then remit the proceeds of sales to Company A, thus deriving a commission based on the sales. Under the proposed model, at no time, will ownership of the products pass to Company B.

Points of Issue

Whether, under the partnership arrangement between Company A and Company B it can be confirmed that Company A does not have a business presence, i.e. a permanent establishment in Mauritius, , therefore,and, , therefore,, not liable to tax in Mauritius?

RULINGs

On the basis of FACTS provided, and since the activities of Company B will be performed wholly or almost wholly on behalf of the Company A, it cannot be said to be an agent of independent status acting in the ordinary course of its business. As the FACTS submitted also indicate that the Company B will issue invoices and collect payments for the products sold on behalf of Company A, Company A shall be deemed to have a permanent establishment in Mauritius in respect of any activities which the Company B will undertake on its behalf, by virtue of the provisions of paragraph 5 of Article 5 of the Mauritius–South Africa Double Taxation Agreement.

Accordingly, Company A will have a business presence in Mauritius , therefore,and, , therefore,, liable to tax in Mauritius.

TR 107

FACTS

PPP Fund, (the Fund) together with its non-resident partners (the Partners) will set up a special purpose vehicle (Mauritius SPV), organised as a partnership under the laws of Mauritius. The Fund and its Partners will be non-tax resident in Mauritius.

The Mauritius SPV will acquire a 15% to 17.5% equity interest in S Ltd, a partnership organized under the laws of Norway. S Ltd currently holds varying equity interest in companies located in Benin, Gabon, Ghana, Gibraltar, Liberia, Sierra Leone, Tanzania and Togo.

The Fund will set up a holding company H Ltd, a company resident in Mauritius with a Category 1 Global Business Licence to own its shareholding in the Mauritius SPV.

Points of Issue

Whether the Mauritius SPV will be considered as a resident société?

If the Mauritius SPV is treated as a transparent entity, whether share of income of H Ltd in the Mauritius SPV will be deemed to be foreign source income in the hands of H Ltd, and whether H Ltd would be eligible for credit in respect of any foreign tax suffered in the African countries or the presumed 80% tax credit?

If the Mauritius SPV holds a GBC 1 Licence and opts to be liable to tax, whether the Mauritius SPV will benefit from the 80% presumed tax credit or the actual tax suffered to set off against the Mauritian tax payable?

If the Mauritius SPV opts to be liable to tax at 15 %, whether the distribution by Mauritius SPV to H Ltd is exempt from any Mauritian tax?

Whether the non-resident partners of the Mauritius SPV will be taxable in Mauritius on their share of income in the Mauritius SPV derived outside Mauritius?

RULINGs

It is confirmed that -

1) the Mauritius SPV will be considered as a resident société for tax purposes in Mauritius, in accordance with the definition given to the term in section 73 of the Income Tax Act.

2) since the Mauritius SPV will be considered as a resident société, and since it will derive income solely from sources outside Mauritius, the share of income of its associate H Ltd will be deemed to be foreign source income. Accordingly, H Ltd will be entitled to claim credit for foreign tax suffered in the African countries or the presumed 80% tax credit.

3) if the Mauritius SPV holds a GBC 1 Licence and opts under section 47(6) of the Act to be liable to tax, it will benefit from the 80% presumed tax credit or the actual tax suffered to set off against the Mauritian tax payable in accordance with the provisions of regulations 3 and 8 of the Income Tax (Foreign Tax Credit) Regulations 1996.

4) if the Mauritius SPV opts to be liable to tax at 15 %, the distribution of income will be treated as dividend which is exempt from Mauritian tax in accordance with the provisions of Sub-Part B of Part II of the Second Schedule to the Act.

5) the non-resident partners of the Mauritius SPV would not be liable to income tax in Mauritius in respect of their share of income in the Mauritius SPV, being given that the latter will derive income from outside Mauritius.

TR 108

FACTS

P Ltd and its subsidiaries are engaged in the operation and management of hotels. Both P Ltd and its Mauritian subsidiaries require cash for their current operating activities. P Ltd is not in a position to raise any external debt as a result of the collaterals already provided to third party banks and its existing financial obligations.

It is proposed that the existing shareholders of P Ltd will provide the appropriate level of funding through convertible bonds (CB), which will be listed on the Stock Exchange of Mauritius and convertible after three years. Any CB that has not been converted will be redeemed by P Ltd after seven years. The income from the CB, referred to as the "CB interest" will be computed as to the aggregate of the Prime Lending Rate and 1.5%.

The funds raised from the CB will be applied towards the trading operations of P Ltd and its operating subsidiaries. For administrative convenience, P Ltd will issue the CB and then apply same in accordance with the requirements of its operating subsidiaries. The operating subsidiaries will be funded in one of the following ways:

- Interest bearing loans
- Convertible Bonds
- Redeemable Preference Shares
- Equity; or
- Zero Coupon Bonds

Interest Bearing loans

P Ltd is not a financing company and as such, the income from the loans to the subsidiaries would be the same as the CB interest that P Ltd would incur. However, to ensure that P Ltd is remunerated for the services it provides for arranging the whole financing structure, the interest income on the loans would be computed as to the aggregate of the Prime Lending Rate and 1.5015%.

Convertible Bonds

P Ltd is not a financing company and as such, the income from the secondary CB would be the same as the CB interest that P Ltd would incur. However, to ensure that P Ltd is remunerated for the services it provides for arranging the whole financing structure, the income from the secondary CB will be computed as to the aggregate of the Prime Lending Rate and 1.5015%.

Point of Issue

Whether the tax treatment applicable to each of the proposed funding methods of the funds raised by P Ltd from the CB can be confirmed.

RULING

1. Interest bearing loans

On the basis of FACTS given and, on the understanding, that the interest rate is at arm's length, it is confirmed that where P Ltd funds the Mauritian subsidiaries through the 'interest bearing loans', the interest income will be fully taxable in accordance with the provisions of section 10(1) (d) of the Income Tax Act 1995. It is also confirmed that the CB interest will be fully deductible, subject to the provisions of section 19 of the Act.

2. Convertible Bonds

It is confirmed that in the event P Ltd itself funds the Mauritian subsidiaries through CB ("the secondary CB"), on the understanding that the interest rate is at arm's length, the income derived by P Ltd would be fully taxable and the interest incurred fully deductible as ruled above. In the event the secondary CB is converted into equity shares, however, the CB interest would be disallowed.

3. Redeemable Preference Shares

It is confirmed that, subject to the conditions of the issue of the Redeemable Preference Shares (RPS), the distribution on the RPS will be considered, in accordance with the Statement of Practice (SP 6/10) issued by MRA, as dividend or interest.

4. Equity

It is confirmed that in case of the funding through equity investments, P Ltd will derive dividend income from subsidiaries which will be exempt from corporate tax, subject to the distribution satisfying the definition of "dividends" under section 2 of Part 1 of the Act. In such case the CB interest would not be deductible, and any expenditure incurred in the production of exempt dividends would be disallowed in accordance with the provisions of section 26 of the Act.

5. Zero Coupon Bonds

It is confirmed that interest receivable by P Ltd on the zero-Coupon Bonds will be subject to tax on accrual basis in accordance with section 5 of the Act.

TR 109

FACTS

'A' is a trust administered by C Ltd (the Company) in its capacity as a trustee. All the beneficiaries of 'A' appointed as to date, as well as the settlor are non-residents of Mauritius, and none of the assets of the trust are located in Mauritius. 'A' has for each and every year up to date filed a declaration of non-residence with the MRA, under section 46(3) of the Income Tax Act.

'B' is a charitable trust administered by the Company and is a trust registered with the MRA, thus benefiting from income tax exemption. The Company would like to appoint 'B' as a new beneficiary to ‘A’, so that 'B' would be entitled to the distributions made by 'A'.

Point of Issue

Whether the appointment of 'B' as a new beneficiary to 'A' would affect the tax status of 'A', and if yes, whether 'A' would still be exempt from income tax under section 46 (3) of the Act?

RULING

On the basis of FACTS given, as 'B' has been registered by the MRA as a charitable trust, it is , therefore, a trust which is resident in Mauritius under the Trusts Act 2001. In order for 'A' to benefit from the exemption provided under section 46(3) of the Act, it must satisfy the condition laid down under subsection (2)(b) (i) of the above section, i.e. "all the beneficiaries of the trust are, throughout an income year, non-residents."

With the appointment of 'B' as a new beneficiary which is resident in Mauritius, not all the beneficiaries of the trust will be non-residents. Since 'A' will not qualify under subsection 2 of section 46, it will , therefore, not benefit from the exemption under section 46 (3) of the Act.

TR 110

FACTS

A Ltd is a private limited company incorporated and domiciled in Mauritius. It is engaged in the processing of by-products from fishing and canning industries for the production of animal feed. B Ltd, another private limited company incorporated and domiciled in Mauritius, is engaged in the processing of tuna loins and its by-products. B Ltd is the principal supplier of raw materials of A Ltd. Both A Ltd and B Ltd are wholly owned by C Ltd.

Management is considering the transfer on a going concern basis of all activities actually carried out by A Ltd to B Ltd, the objective being to benefit from synergies which will:

- enhance production efficiency and effectiveness
- mitigate production, administrative and financial costs
- improve the use of financial resources amongst others

The above scheme will not give rise to loss of employment but will rather facilitate the mobility of human resources within the operations. Following the transfer, A Ltd will cease all its activities and will eventually be wound up.

Point of Issue

a) whether A Ltd will be allowed to transfer its tax losses to B Ltd as per section 59A of the I.T Act?;

b) whether B Ltd will be able to carry forward the tax losses indefinitely as per section 20(2) of the I.T Act?

RULING

a) Subsection 1 of section 59A of the I.T.Act (Transfer of loss on takeover or merger) provides for the transfer of the tax losses from a company (the acquiree) to another company (the acquirer) under such conditions relating to safeguard of employment which require the approval of the Minister. As the above conditions have not been satisfied, the transfer of the losses of A Ltd to B Ltd will not be allowed.

b) In view of the RULING given above, the question does not arise.

TR 111

FACTS

A Ltd (the "Fund") and B Ltd ("Associate Fund") constitute limited liability partnerships which were set up under the laws of Guernsey. The Fund and the Associate Fund invest in parallel in terms of a co-investment agreement between them. The limited partners of the Fund and Associate Fund comprise various South African and non-South African resident entities. The limited partners of the Fund are not M group entities, i.e. they are third party investors. The limited partners of the Associate Fund are C Limited, an employee trust and various employees.

The general partner of both the Fund and the Associate Fund is D Ltd, a company which is 100% owned by C Ltd, a wholly owned subsidiary of E, a company listed on the London Stock Exchange.

Capital Structure

It is proposed that a company, G be incorporated in South Africa and capitalized as follows:

- The Fund will hold one ordinary voting share.
- Pursuant to the alternative investment clause in the partnership agreement of the Fund /Associate Fund;
- all the Fund's South African resident limited partners (third party investors) will invest directly in a specific class of non-redeemable preferred shares (A Pref Shares) in G;
- the Fund's non-South African resident limited partners (third party investors) will, through an intermediary company (H) incorporated and tax resident in Guernsey, invest in A Pref Shares in G;
- the Associate Fund will through H indirectly invest in a second specific class of non-redeemable preferred shares (B Pref Shares) in G;
- D Ltd will, through H, indirectly invest in a third specific class of non- redeemable preferred shares (C Pref Shares) in G

The A, B and C Pref Shares will have the following terms:

- the shares will be bought back by G after 8 years. This represents the term of G's underlying investment. In addition, the holder will have the right to require G to buy back the shares;
- dividends will be paid with reference to a formula of which the interest received by G on its underlying investment, i.e. the loan, will be issued to each of the A, B and C Preference Shares. It is anticipated that the borrower of the loan from G will pay interest quarterly and, accordingly, G will pay preference share dividends on a quarterly basis as well. The terms of the A, B and C Preference Shares will require that dividends be paid in accordance with the formula referred to above. As such, the directors would not have discretion as to whether to declare dividends on the A, B and C Preference Shares;
- The price at which the shares will be bought back will be the sum of the subscription price and any dividends which were due but remained unpaid (i.e. accrued dividends) at date of buy-back. The holder, , therefore,, has a contractual right through the buy-back arrangement to dividends from G; and
- for accounting purposes, the Preference Shares will be reflected as a liability on the balance sheet of G, and any preference share dividends which are declared and paid will be accounted for in the income statement of the issuer as a finance cost.

Activities of G

G will utilize the funding so raised to advance an interest-bearing loan to a third party South African resident. The loan will have a floating interest rate between 15 - 29% for the first two years, and thereafter, the floating interest rate will become fixed. The loan will be repaid in 2018 and will be subordinated. The sole business of G will be to advance the loan to the South African resident.

Location of Central Management and Control

D Ltd forms part of the M Group which operates in the Financial Services Industry. Another division of the group, namely the group's banking arm has existing operations in Mauritius and D Ltd intends to utilize the existing presence in Mauritius by appointing, inter alia, one or two directors from this part of the group, which directors are located in Mauritius to the Board of G. In addition, it is intended that additional Mauritius resident directors be appointed to the Board of G. No South African resident directors will be appointed to G's Board. Furthermore, all Board meetings will be held in Mauritius, strategic decisions will be taken in Mauritius, an auditor and company secretary will be appointed in Mauritius and the implementation of the decisions will take place in Mauritius. As such, G will have all its world activities managed and controlled in Mauritius.

As a result of the above, G will be registered as a foreign company as set out under section 276 of the Companies Act 2001. G does not intend to apply for a Global Business Licence.

<u>Point of Issue</u>

1) Whether -

a. G would be considered as a tax resident in Mauritius and benefit from the double taxation avoidance agreement between Mauritius and S. Africa; and
b. G will be issued a tax residency certificate by the Mauritius Revenue Authority?

2) Whether preference share dividends that would be paid on A, B and C Pref. Shares will be treated as interest/finance cost in Mauritius and be deductible for Mauritius tax purposes?

3) Confirmation that there will not be any withholding tax implications in Mauritius on payment of the Preference share dividends or the ordinary share dividends by G.

<u>RULING</u>

1) (i) On the basis of FACTS submitted, since G will have its central management and control in Mauritius, it will qualify as a company resident in Mauritius in accordance with our domestic legislation, viz. the provisions of section 73(1)(b) of the Income Tax Act. It will also be resident in South Africa by reason of being incorporated in South Africa. , therefore,, therefore,, as it will be a resident of both Mauritius and South Africa, its residence status for the purposes of the Mauritius-South Africa DTA will have to be determined in accordance with the tie-breaker clause of Article 4(3) of the above treaty.

(ii) In the light of the RULING given above, a tax residence certificate may be issued to G certifying that it is resident in Mauritius, subject to the condition that G shall, at all times, be able to demonstrate that its central management and control is in Mauritius.

2) On the basis of FACTS given, the A, B and C Pref Shares would be classified as long-term liability in the balance sheet of G, and since the distribution that would be made on these shares does not satisfy the definition of "dividends" in section 2 of the Income Tax Act, it will be treated as interest, , therefore,and, , therefore,,, deductible for income tax purposes.

3) It is confirmed that there will be no withholding tax implications in Mauritius on payment of dividends on the ordinary shares by G. As regards the distribution on the Pref Shares, it will be treated as interest, and it will not be subject to tax deduction at source in accordance with the provisions of Sub-Part BA of the Act, given that the recipients of such interest are non-residents. However, in accordance with section 111K (2) of the Act, G will have to submit to the Director-General a statement in respect of each payee, where such aggregate interest payable exceeds Rs. 50,000.

TR 112

FACTS

A GLOBAL PENSION (the "Trust") has been set up as a trust under the Trusts Act 2001. The "Trust" is a pension benefit plan that is licensed by the Financial Services Commission as a Retirement Benefit Scheme, pursuant to section 14 of the Financial Services Act 2007.

B (Mauritius) Ltd, a Mauritius resident company, is the settlor of the "Trust". Other members, worldwide, will contribute to the "Trust" and receive distributions therefrom as per the trust deed.

C (Mauritius) Limited (the "Trustee"), a Mauritius resident company, has been appointed as the trustee of the "Trust", and D (the "Pension Manager"), a Mauritius resident insurance service provider, has been appointed as the pension manager.

The pension manager shall undertake the following activities:

a. undertaking, pursuant to a contract or other arrangement, the management of the funds and other assets of the "Trust" for the purposes of investments;

b. providing consultancy services of the investments of the Trust;
c. reporting or disseminating of information concerning the assets available for investments.

The assets of the "Trust" will be invested worldwide, and the revenue of the "Trust" will consist of dividends, interests from bank deposits, and potential capital gains from disposal of shares.

Point of Issue

1) Whether the "Trust" will be considered as resident for tax purposes in Mauritius and, if in the affirmative

2) what will be the taxation treatment of the "Trust" in Mauritius?

3) whether the "Trust" will be eligible to claim credit for foreign taxes paid on its foreign source income?

4) in the event the "Trust" obtains a Category 1 Global Business Licence -

(i) whether the "Trust" will be eligible to claim a presumed tax credit of 80% of the Mauritius tax chargeable with respect to its foreign source income?

(ii) what will be the tax treatment of the gains that the "Trust" will derive from disposal of shares/investments?

5) Whether the distributions made out of the Trust to the members/beneficiaries, as and when the distributions become due under the trust deed, will be subject to tax in Mauritius?

RULING

1. (a) On the basis of FACTS given, it is confirmed that the "Trust" meets the criteria of a resident trust under section 73(d) of the Income Tax Act, , therefore,and, , therefore,, liable to income tax on its chargeable income in accordance with the provisions of section 46 of the Act.

(b) It is also confirmed that as a resident trust, the "Trust" will be entitled to claim credit for foreign tax paid on its foreign source income, in accordance with the provisions of section 77 of the Act.

(c) It is confirmed that in the event the "Trust" obtains a Category 1 Global Business Licence, it will be treated as a qualified corporation and be eligible to claim a presumed tax credit of 80% of the Mauritius tax chargeable with respect to its foreign source income, in accordance with regulation 8 of the Income Tax (Foreign Tax Credit) Regulations 1996. Also, the gains derived from disposal of shares/investments will be exempt from income tax, in accordance with item 8 of Sub-Part C of Part II of the Second Schedule to the Act.

2. It is confirmed that since the definition of "company" in the Act includes a trust, any distribution by the "Trust" will not be a deductible item for the "Trust", and will be treated as exempt from income tax in the hands of the beneficiaries in the same manner as "dividends."

TR 113

FACTS

B Ltd (the Company) raises part of its capital by borrowing money from some of its shareholders, i.e. through shareholder loans. Such loans are unsecured, are repayable at call and carry interest at an annual rate ranging from 6% to 7%, depending on the average prevailing bank rates available to the Company. For the purpose of the RULING application, the shareholders are referred to as "loan at call shareholders" and are assumed to be tax resident in Mauritius.

Following confirmation received from the MRA in 2007 to the effect that the Company has the obligation to apply tax deduction at source (TDS) in accordance with Sub-Part BA of Part VIII of the Act on the interest income receivable by the said shareholders, the Company has been applying TDS on the interest paid and remitting the relevant amount of income tax to the MRA.

The Finance (Miscellaneous Provisions) Act 2010 has, inter alia, brought the following changes to the Act:

a) For the purpose of TDS under section 111C, the threshold of the aggregate amount of deposit in Part II of the Sixth Schedule has been raised from Rs 2,000,000 to Rs 5,000,000, and the rate of tax under Part I of the Schedule revised from 15% to 10%.

b) interest payable on a savings or fixed deposit accounts held by an individual, a société or a succession with any bank or a non-bank deposit taking institution under the Banking Act is now exempt;

c) introduction of the "solidarity income tax", applicable to a resident individual.

Point of Issue

1) Whether the Company should continue to apply TDS at the new rate of 10% on interest paid to its shareholders where the corresponding shareholders' loan amount exceeds Rs 5,000,000?

2) Whether the interest received in the hands of the "loan at call shareholders" from the Company will qualify for exemption from income tax under item 3 (c) of Sub-Part B of Part II of the Second Schedule to the Act, assuming that their total income for the purpose of "solidarity income tax" does not exceed Rs 2,000,000?

3) If the answer to question 2 above is in the negative, at what rate should "loan at call shareholders" pay income tax?

4) Whether the "loan at call shareholders" who have a total income in an income year not exceeding Rs 2,000,000, including interest income received from the Company are liable to solidarity income tax?

5) If the answer to question 4 above is in the negative, at what rate should "loan at call shareholders" pay income tax on such interest income?

6) Whether the "loan at call shareholders", who have a total income in an income year exceeding Rs 2,000,000 which includes interest income received from the Company on the shareholders loan that does not exceed Rs 5,000,000, are liable to solidarity income tax on the interest income received from the Company?

7) If the answer to question 6 above is in affirmative, at what rate should "loan at call shareholders" pay income tax on such interest income received?

8) If the answer to question 6 above is in the negative, at what rate should "loan at call shareholders" pay income tax on such interest income received?

9) Whether the "loan at call shareholders" who have a total income in an income year exceeding Rs 2,000,000, including interest income received from the Company on the shareholders loan

which exceeds Rs 5,000,000, are liable to solidarity income tax on the interest income received from the Company?

10) If the answer to question 9 above is in affirmative, at what rate should "loan at call shareholders" pay income tax on such interest income received? Whether the Company should apply TDS on the interest paid to the "loan at call shareholders", and if so at what rate?

11) If the answer to question 9 above is in the negative, at what rate should "loan at call shareholders" pay income tax on such interest income received? Whether the Company should apply TDS on the interest paid to the "loan at call shareholders", and if so, at what rate?

RULING

1) It is confirmed that the Company should continue to apply TDS at the rate of 10% on interest paid to the "loan at call shareholders", in accordance with the provisions of section 111C of the Act.

2) It is confirmed that the interest received in the hands of the "loan at call shareholders" from the Company will not qualify for exemption from income tax under item 3(c) of Sub-Part B (A)of the Second Schedule to the Act, given that the interest receivable by the shareholders is from loan advanced to the Company, and not from "a savings or fixed deposit account held with a bank or a non-bank deposit taking institution under the Banking Act."

3) On the basis of the RULING given at 2 above, it is confirmed that the rate of tax applicable on the interest income is 15%.

4) It is confirmed that the "loan at call shareholders" who have a total income in an income year not exceeding Rs 2,000,000, including interest income received from the Company, are not liable to solidarity income tax, in accordance with the provisions of Sub-Part AA of the Act.

5) Following the RULING given at 4 above, it is confirmed that the rate of tax applicable on the interest income is 15%.

6) The interest income received does not fall within the meaning of 'specified exempt income' as defined under section 16A of the Act and accordingly, it is confirmed that the "loan at call shareholders" are not liable to solidarity income tax on the interest income received from the Company.

7) The answer to question 6 above is not relevant. The "loan at call shareholders" should pay income tax at the rate of 15% on the interest income received.

8) The answer to question 6 above is not relevant. The "loan at call shareholders" should pay income tax at the rate of 15% on the interest income received.

9) Please refer to RULING given at 6 above.

10) The answer to question 9 above is not relevant. The "loan at call shareholders" should pay income tax at the rate of 15% on the interest income received and the Company shall apply TDS at the rate of 10% on the interest paid to the "loan at call shareholders."

11) The answer to question 9 above is not relevant. The "loan at call shareholders" should pay income tax at the rate of 15% on the interest income received and the Company shall apply TDS at the rate of 10% on the interest paid to the "loan at call shareholders."

TR 114

FACTS

C Ltd is a private limited company incorporated and domiciled in Mauritius. It holds a GBL 1 Licence and a freeport developer licence, and is engaged in the construction and repairs of ships.

The shareholding of the company is made up as follows:

D Ltd 50%

F Ltd 50%

F Ltd holds a GBL 1 Licence and does not possess immovable property. C Ltd holds substantial long-term leasehold rights with the Mauritius Ports Authority, and in order to carry out its business, it has been undertaking land reclamation and construction of immovable structures. These assets have been recorded at historical cost and are being depreciated over the minimum lease period of the land.

F Ltd intends to sell its 50% shareholding in C Ltd. D Ltd will acquire some of the shares and will subsequently control C Ltd. The remaining shares will be sold to newcomers, i.e. new shareholders.

Point of Issue

1) What shall constitute the "proceeds" as stipulated in section 10A(3) of the Income Tax Act?

2) What shall, in the opinion of the Director-General, constitute acceptable values of immovable property under section 10A(9)(c) of the Act?

3) Are gains derived from disposal of leasehold rights subject to tax under section 10A? If yes, how shall the proceeds be assessed in respect of share transfer?

4) How do we assess the original cost of the leasehold rights under section 10A(3)?

5) Whether, for the purpose of assessing the 95% threshold under section 10A(9) (d) –

a. the value of leasehold rights (which is not recognised in the balance sheet) shall be included in the total assets?

b. the open market value shall be used in respect of the immovable property recorded at historical cost?

6) Whether gains on immovable property will be taxed on the shares giving control to D Ltd or on the whole 50 % shares disposable?

7) Whether in the event that D Ltd and the others will acquire 100% shares in F Ltd, the transaction will give rise to gains from immovable property?

RULING

1. It is confirmed that the value of the shares representing the value of the immovable property with leasehold rights at the time of transfer of the shares held by F Ltd in C Ltd will constitute the proceeds under section 10A (3) of the Income Tax Act.

2. It is confirmed that for the purpose of section 10A the open market value of the immovable property with leasehold rights as may be determined by a sworn property valuer may constitute an acceptable value, unless the Director-General is dissatisfied with the value of the immovable property, in which case he shall determine the value thereof in accordance with section 10A(9)(c).

3. It is confirmed that leasehold rights constitute "interest in immovable property" as laid down in section 10A(1), , therefore,and, , therefore,,, gains derived from disposal thereof are subject to tax in accordance with the provisions of the aforesaid section. It is also confirmed that, unless the value is correctly reflected in the statement of financial position at the time of transfer of shares, the proceeds shall be the open market value of the property as may be determined by a sworn property valuer.

4. For the purpose of section 10A(3), the original cost of the leasehold rights shall be the value of the leasehold rights at the inception date plus any related costs incurred thereon. In case the value of the leasehold rights is not available, the value shall be determined in accordance with the provisions of section 10A(8).

5. (i) It is confirmed that leasehold rights include interests in immovable property, , therefore,and, , therefore,,, in terms of section 10A(1) of the Act, for the purpose of assessing the 95% threshold under section 10A(9)(d), the value of leasehold rights even if not recognised in the balance sheet shall be included in the total assets of the company.

(ii) It is confirmed that, in view of the provisions of subsections 9(b) and (c), the open market value of the immovable property with leasehold rights shall be used to determine the value of the immovable property disclosed in the financial statements.

6. As F Ltd will sell the whole of its 50% shares to D Ltd and to other shareholders, gains will be taxed not only on the shares giving control to D Ltd but on the whole of the shares that would be disposed of, in accordance with the provisions of section 10A(9)(a) of the Act.

7. Since F Ltd does not own any immovable property, in the event D Ltd and the others will acquire 100% shares in F Ltd, section 10A of the Income Tax Act will not apply, i.e. the transaction will not give rise to any gains from immovable property, pursuant to the provisions of subsection 9(a) of the above section.

To note that 'immovable property' is not defined in the Act. However, as mentioned in the guide issued by the MRA "interest in immovable property" comprises any rights relating to such property.

TR 115

FACTS

Mr. Z invested in Bank Bonds on 9 September 2005. The bank paid him interest earned on the bonds from the date the investment was made up to 31 December 2009 (date of maturity of the Bonds). Before payment of the interest due, tax deduction at source (TDS) was appropriately applied pro-rata for the period 1 October 2006 to date of maturity, and the income tax deducted remitted to the MRA. When filing his return for the year of assessment 2010 Mr. Z calculated and paid income tax on the whole amount received as interest.

Point of Issue

Whether the amount paid as income tax for the period 9 September 2005 to 30 June 2006 can be claimed back?

RULING

Pursuant to item 3(e) of Part III of the Second Schedule to the Income Tax Act only interest on such bonds bearing interest at progressive or variable rate and issued by the Bank of Mauritius was exempt from income tax until 30 June 2006. On the basis of FACTS given, the amount of income tax paid in respect of the period 9 September 2005 to 30 June 2006 cannot be claimed back as these were not bonds issued by the Bank of Mauritius.

TR 116

FACTS

A Ltd (the company) is a GBL 1 Company incorporated in Mauritius and is authorised to operate as a Collective Investment Scheme (CIS) Manager by the Financial Services Commission. It is licensed to provide both investment management and advisory services to fund entities and other investment managers respectively. It is the CIS Manager to the following Funds in addition to B Ltd and C:

1. D

2. E

3. F

4. G.

Entities (i) to (iii) are Mauritius based funds and entity (iv) is a Jersey registered fund. The Company also provides investment advisory services to the following entities:

1. H, a Singapore based entity; and

2. J, a Mauritian based CIS Manager.

In accordance with its strategy and plan to continuously look for and build up its business, the Company has targeted and acquired the investment management contracts of an existing GBL 1 CIS Manager, K Limited, which acted as CIS Manager to two Mauritian based GBL 1 Funds, namely B Ltd and C.

The transaction was carried out by the Company through the acquisition of K Limited and its holding company R Limited and, after the amalgamation and consequential dissolution of the other two companies; the Company remained as the sole surviving entity.

Following conclusion of the transaction, the Company had successfully expanded its business operations with two additional investment management contracts with B Ltd and C respectively. This, in turn, contributed to generating additional income streams for the Company. The Company incurred sizeable professional fees in connection with the crystallisation of the transaction, including costs of legal counsel, tax advisors and various other service providers. It also secured a long-term interest-bearing loan to finance the acquisition/amalgamation and transaction costs. An upfront arrangement fee was also payable in respect of the loan agreement.

Point of Issue

Whether, for the purposes of determining the chargeable income of the Company, the following expenses would qualify as deductible expenses:

a) professional fees incurred in connection with acquisition/amalgamation;

b) interest payable on the loan contracted; and

c) arrangement fee paid to secure the loan.

RULING

a) On the FACTS provided, the professional fees in connection with, and the arrangement fee paid to secure a loan to finance the acquisition/amalgamation of K Ltd and its holding company R Ltd by the Company are expenses of a capital nature, , therefore, and, , therefore,, do not qualify as deductible expenses from the gross income of the Company for the purpose of computing its chargeable income, in accordance with the provisions of section 26 (1) (a) of the Income Tax Act.

b) However, since the purpose of the loan was to finance the acquisition/amalgamation transaction, thereby benefiting the business of the Company by generating additional income, the interest incurred thereon constitutes an expenditure on capital employed exclusively in the production of gross income under section 10(1)(b), , therefore, and, , therefore,, qualifies as a deductible expense in accordance with the provisions of section 19(1) of the Act.

TR 117

FACTS

A is a limited company that was incorporated in Mauritius, and its central management and control is also in Mauritius. The Company proposes to transfer its registration to Cyprus so that subsequent to its transfer it will be deemed to be a Cypriot incorporated company. Subsequent to the transfer, however, the central management and control of the Company will continue to be in Mauritius, and the effective management of the Company would be in Mauritius in terms of the Cyprus/ Mauritius double taxation agreement.

Point of Issue

Whether it can be confirmed that -

a) the Company would continue to be tax resident in Mauritius;

b) the Company's corporate tax affairs would be unaffected as a result of the proposed transfer; and

c) the proposed transfer should not have any Mauritian corporate tax implications.

RULING

On the basis of FACTS given, it is confirmed that

a) the Company would continue to be tax resident in Mauritius since -

- its central management and control will be in Mauritius in accordance with the definition of "resident" under section 73(b)(ii) of the Income Tax Act; and
- its effective management will be situated in Mauritius, in accordance with Article 4(3) of the Cyprus/Mauritius double taxation agreement (DTA).

b) and c) the Company's corporate tax affairs would be unaffected as a result of the proposed transfer in so far as regards –

- its liability to income tax on its Mauritian source and its world-wide income;
- its entitlement to foreign tax credit on foreign sourced income, in accordance with the provisions of the Income Tax (Foreign Tax Credit) Regulations 1996; and
- any other provisions of the Income Tax Act 1995 and the Cyprus/Mauritius DTA.

TR 118

FACTS

D is an individual intending to set up a company ("X") to be incorporated in Mauritius. The company will hold a Category 1 Global Business Licence and will do business with other Mauritius incorporated companies which hold GBC 1 Licence.

Point of Issue

Whether the income derived by "X" from the GBC 1 Companies will be classified as *"foreign source income"?*

RULING

In the case of a corporation holding a Category 1 Global Business Licence under the Financial Services Act, *"foreign source income"* as defined in section 2 of the Income Tax Act means income which is not derived from Mauritius and includes *"income derived from its transactions with non-residents or corporations holding a Global Business Licence."*

On the FACTS provided, it is , therefore, confirmed that the income derived by "X" from business carried on with other Mauritius incorporated companies holding a GBL 1 Licence will be classified as foreign source income.

TR 119

FACTS

S is a corporation organized under the laws of country A and is a global leader in the design and supply of passport personalisation systems (the System) in country A and worldwide. The System constitutes the equipment and the software.

Background FACTS

1. In 2004, S and the Government of Mauritius, duly represented by the Commissioner of Police (CP), entered into a contract (the 2004 Contract) for the supply of passport booklets and the design and supply of a new passport System for the Government of Mauritius. The 2004 Contract included the supply of passport printing equipment, readers, customized holographic film and ink ribbon, training of Passport & Immigration Office (PIO) personnel in the operation of the System, and maintenance services.

2. Under the 2004 Contract, S was responsible for importing the System and the diffeent components as the Government of Mauritius did not wish to be involved in the importation and clearance of these items. Under the Contract, S was also authorized to subcontract or delegate the supply of services and tangible components to third parties, with the prior approval of the CP. In accordance with the terms of the Contract , therefore,, S hired the services of R Ltd, a Mauritius-based independent agent, to provide customs clearance services for the goods on consignment *in favour of S* and to deliver such goods to the CP as well as providing maintenance services (the Subcontract).

3. Both the 2004 Contract and the Subcontract expired on 29 June 2009, but have been extended by the parties, as they negotiated follow-on contracts at the CP's request.

4. S had not submitted any income tax and VAT returns to MRA on the grounds that it had not carried out any business in Mauritius, and has not made any taxable supplies in Mauritius. The MRA, however, reached the conclusion that income accruing to S from the whole 2004 Contract was subject to income tax and the supplies were taxable supplies. Subsequently, the income tax and VAT assessments made on S were settled by the Government of Mauritius by virtue of a clause to that effect in the Contract.

5. Prior to the 2004 Contract expiring, the CP expressed the wish for its renewal in order to obtain the necessary support for the issue of passports and the operation of the System by the PIO. The 2004 Contract is proposed to be renewed by the parties with terms and conditions substantially different from the original Contract, as stated in the proposed new contracts.

6. Under the proposed new contract between S and the CP (the 2011 Contract):

- the CP will be the importer of the passport booklets, passport printing equipment, readers, customized holographic film and ink ribbon. S will have no responsibility whatsoever to deliver any of the components to the CP in Mauritius. In other words, the CP will be responsible for clearing all the items from Customs and pay all taxes and duties on importation;
- the System implemented under the 2004 Contract will continue to be run in Mauritius by the CP/ PIO, and not by S;
- S will have no office or staff in Mauritius to perform any part of the 2011 Contract;
- a three-way Contract (the 2011 Maintenance Contract) is proposed to be signed between S, R Ltd and the CP for the provision of certain spare parts and maintenance and technical support directly to the CP.

7. Under the proposed 2011 Maintenance Contract between G, R Ltd and the CP:

- R Ltd will be the first-tier supplier of technical support and spares, and S will be the second-tier service provider. Any secondary support by S will be provided online through phone, fax, teleconference and emails;
- if it should be determined by all three parties that a visit by S to R Ltd or CP's principal operating site is necessary, S will agree to make such visit, provided that S will not make more than two short trips per calendar year to Mauritius. Since the secondary support will be provided online, the visit of S's staff to Mauritius and the activities, if any, undertaken by them in Mauritius will be merely auxiliary in nature.
- S will invoice R Ltd directly for any spare parts, online secondary support and for any on-site trips exceeding two.
- R Ltd will be responsible to pay any duties and taxes on any import of spare parts;
- R Ltd will be responsible to account for VAT on any supplies made and pay any taxes on income arising under the (*Maintenance*) Contract.

<u>Point of Issue</u>

a) Whether S will be subject to income tax in Mauritius on export of goods to the CP under the 2011 Contract?

b) Whether S will be subject to income tax on income arising from the supply of spares and on online secondary support under the 2011 Maintenance Contract?

<u>RULING</u>

On the basis of FACTS submitted, it is confirmed that -

a) S will not be subject to income tax on the export of goods to the CP under the 2011 Contract, as the activity will not constitute *"income derived from any business carried on wholly or partly in Mauritius"* in accordance with the terms of section 74(1)(c) of the Income Tax Act.

b) S will not be subject to income tax on income arising from the supply of spares and on online secondary support under the 2011 Maintenance Contract, as this will not constitute *"income derived from any contract carried on wholly or partly performed in Mauritius"* in accordance with the terms of section 74(1)(d) of the Income Tax Act.

TR 120

FACTS

A Ltd is a company incorporated and registered in Mauritius since July 2004. It is a subsidiary of the French group X based in France, specialised in language teaching through telephone and internet in France, making use of its software "*Cyberteacher*". A Ltd which is specialised in language teaching on the European market has entered into a contract with X for the use of the latter's software with private enterprises and individuals. It holds an investment certificate under the ICT scheme for the setting up of a call centre to provide e-learning services and is, as such, engaged in the export of services.

The activities of A Ltd comprise production and sale of tutored e-learning language teaching services destined to students throughout the world as well as back-office services. The languages taught are mainly English, French and Spanish, and not less than seven languages in all may be taught. The mode of teaching is currently through the telephone, and through Skype in the case of the English language.

For the purpose of carrying out its activities and to drive prospective clients to its websites, A Ltd incurs marketing and advertising expenses. Two modes of advertising are in use, off-line and on-line. Off-line advertising comprises use of bill-boards, media and seminars whereas on-line advertising is done through the internet. More than 99% of the advertising is done in Europe.

Point of Issue

Whether A Ltd is entitled to deduct from its gross income twice the amount of the expenditure incurred in respect of marketing and promotional expenses under the provisions of section 67A of the Income Tax Act?

RULING

Section 67A of the Act provides that *"a company engaged in tourism and export activities may deduct from its gross income twice the amount of any expenditure incurred in that income year on overseas marketing, export promotion..., overseas advertising and preparation of tenders for the export of goods and services*."

On the basis of FACTS provided, any off-line marketing and advertising carried out overseas through the use of media, billboards and seminars would qualify as deduction under the above provisions of the Act. However, advertising carried out through the internet which is an access available to anybody both locally and abroad cannot be said to be *'overseas marketing and advertising'* , therefore,and, , therefore,, will not qualify for deduction under the above provisions.

TR 121

FACTS

D Private Limited (the Company) is incorporated in Mauritius and holds a Category 1 Global Business Licence. The company is engaged in investment holding and shipping activities. It has acquired vessels (tugboats and barges) which have been registered under Mauritian flag. The vessels are rented out to foreign companies and ply in the Indian coastline, Persian Gulf and South East Asia and will not sail in Mauritian waters. The company will appoint nationals/citizens of Philippines, Indonesia, Singapore and India as crew members on a contractual basis and none of the crew members will perform any part of their duties from Mauritius.

Point of Issue

a) Whether the crew members will be considered as resident for income tax purposes in Mauritius?

b) Whether the crew members employed by the company will be subject to tax (PAYE) in Mauritius on the income they will receive from the company?

c) Whether the company will have to be registered as an employer for PAYE purposes in Mauritius?

RULING

a) In accordance with the provisions of section 73(a) of the Income TaxAct 1995, the crew members will be non-residents for income tax purposes.

b) The crew members employed by the company, being non-residents, will not be subject to tax in Mauritius on income derived from any employment, the duties of which are performed wholly or mainly outside Mauritius.

c) In case the company employs residents of Mauritius, it will have to be registered as an employer for PAYE purposes.

TR 122

FACTS

The company is incorporated in UK and intends to seek a listing on the London Stock Exchange. It will become the new holding company of a multinational conglomerate having interest across the globe. It has already obtained confirmation from the HMRC that by reason of its incorporation, it is tax resident in UK.

The group is undergoing management restructure and will have its Head Office in Mauritius, its board meetings will be held in Mauritius and all its key business decisions will be taken in Mauritius.

Point of Issue

a) Whether the company will bet tax resident in Mauritius?

b) Whether a Tax Residence Certificate (TRC) will be issued to the company on an annual basis?

RULING

a) The company will be tax resident in Mauritius in accordance with section 73(b) of the Income Tax Act 1995 on condition that it has its central management and control in Mauritius.

b) Concerning TRC the company will be required to apply to this office on an annual basis and TRC will be issued provided the company shows that its central management and control is in Mauritius and gives an undertaking that all conditions necessary for it to be treated as having its place of effective management in Mauritius are at all times complied with.

TR 123

FACTS

B Ltd is a company incorporated and registered in Mauritius. It services clients in that it sends its employees, comprising both Mauritians and foreigners, to work for such clients in Africa.

In the case of the Mauritian employee sent to work abroad, he stays abroad for eleven consecutive months and the salary is paid into a Mauritian Bank account. As regards the foreigner, he does not reside in Mauritius at all and his salary is paid in a Mauritian Bank account in his name. The foreigner accesses the Mauritian Bank account and uses the salary in any part of the world that he wants to.

Point of Issue

Whether the Company should withhold income tax from the emoluments of the Mauritian employee and the foreign employee?

RULING

On the FACTS provided, the Mauritian employee is a resident of Mauritius and is, , therefore,, liable to tax in Mauritius in respect of his worldwide income to the extent that any foreign income is remitted to Mauritius. As the emoluments are paid in a Mauritian bank account in his name, the emoluments are deemed to be derived by him by virtue of section 5 of the Income Tax Act. The Company should , therefore, withhold income tax from the emoluments of the Mauritian employee and remit same to the Director-General in accordance with the provisions of section 93 of the Act.

As regards the foreign employees, they are not resident in Mauritius and are, , therefore,, not liable to tax in Mauritius on the emoluments derived from outside Mauritius although paid into a bank account in Mauritius. No withholding of income tax should, , therefore,, be made from their emoluments.

TR 124

FACTS

ABC Trust, hereinafter referred to as the applicant holds a Category 1 Global Business Licence and is also authorised by the FSC to operate as a Collective Investment Scheme. The applicant is resident in Mauritius and liable to tax here whereas its settlor and beneficiaries are non-residents of Mauritius.

The applicant is considering a restructure whereby a Category 1 Global Business Licence company will be added as the sole beneficiary of the applicant instead of the existing non-resident beneficiaries.

After the restructure, the applicant will continue to be a tax resident of Mauritius and will have a single beneficiary, i.e. the Holding Company, which will, itself, be held by the original beneficiaries of the applicant.

Following the restructure, the applicant will be making distributions only to the Holding Company, instead of the non-resident beneficiaries.

Point of Issue

Whether the distributions by the applicant to the new company will be deemed to be dividends and hence dealt with as exempt income in the hands on the company?

RULING

Dividends or other distributions paid by a company holding a Global Business Licence under the Financial Services Act to another company holding a Global Business Licence under the Financial Services Act will constitute exempt income in accordance with the current provisions of the Income Tax Act.

TR 125

FACTS

The ABC group has a collective investment scheme in Botswana called the ABC Unit Trust Scheme (Scheme). The Scheme, comprising several portfolio funds, is established by way of a Trust in Botswana and is regulated by the Non-Bank Financial Institutions Regulatory Authority (NBFIRA). The group intends to 'move' the Scheme from Botswana to Mauritius by winding down the Scheme and establishing a Collective Investment Scheme (CIS) in Mauritius that mirrors the structure and investment objectives of the Botswana Scheme. As part of its migration process, the scheme will seek to:

- Establish a trust in terms of the Trust Act, 2001;
- register the trust as a CIS;
- Register the CIS as a Category 1 GBL trust; and
- Appoint a CIS manager; a custodian trustee and a managing trustee as required per the relevant legislations.

Point of Issue

Whether the entity will be governed by section 45A (CIS) of the Income Tax Act 1995 or can it be considered as a non-resident trust under section 46 (Trust) of the Income Tax Act 1995?

RULING

On the basis of information contained in your application, it is ruled that the proposed Collective Investment Scheme will be governed by section 45A of the Income Tax Act 1995.

You may wish to note that Category 1 Global Business Licences are issued to resident corporations only.

TR 126

FACTS

ABC is a trust established in Mauritius and its objective is to generate medium to long term capital growth from its investments for distribution to its beneficiaries which include a number of charities and philantrophics. The sole trustee of ABC is XYZ Trustees, a resident corporate trustee, whereas the settlor and all the beneficiaries of ABC are non-residents of Mauritius. ABC deposits a declaration of non-residence with the MRA on an annual basis and, accordingly, avails of income tax exemption in Mauritius under section 46 (3) of the Income Tax Act 1995.

ABC is presently considering consolidation of all its charitable and philantrophics activities through a new trust to be set up in Mauritius to achieve greater efficiency in its operations. The new trust will be settled by XYZ trustees, as trustee for ABC. In addition, all the beneficiaries of the new trust will be non-residents of Mauritius. Accordingly, the ultimate beneficiaries of ABC will still remain non-residents of Mauritius despite the interposition of the new trust in Mauritius.

Point of Issue

a) Whether the new trust will be eligible to deposit a declaration of non-residence under section 46(3) of the Income Tax Act and be exempted from tax; and

b) Whether ABC will still be eligible to deposit a declaration of non-residence and be exempted from income tax in Mauritius under section 46(3) of the Income Tax Act following the addition of the new trust as an additional beneficiary.

RULING

a) The new trust will be considered as a resident of Mauritius under section 73(d) of the Income Tax Act as the trust will be administered in Mauritius and a majority of its trustees are resident of Mauritius.

b) ABC will no more be eligible to deposit a declaration of non-residence as one of its beneficiaries (the new trust) will be considered as a resident of Mauritius.

TR 127

FACTS

ABC is a Protected Cell Company (PCC) incorporated with limited liability and holds a Category 1 Global Business License issued by the Financial Services Commission. It is governed by the Companies Act 2001 and the Protected Cell Companies Act 1999. The PCC is only available to Expert Investors and has been authorised by the Financial Services Commission as an Expert Fund.

POINTS AT ISSUE

a) If a particular cell (Cell A) of a PCC has insufficient cellular assets to pay any particular income tax due under the Income Tax Act 1995, can the Mauritius Revenue Authority recover the income tax due by Cell A from any other cell of the PCC?

b) Alternatively, can the MRA recover the income tax due by Cell A only from the corresponding cellular assets of Cell A?

RULING

In accordance with section 48(2) of the Income Tax Act 1995, where a cell of a protected cell company owes income tax, the Director General of the MRA may have recourse to assets of any cell as well as non-cellular assets of the PCC.

TR 128

FACTS

A Ltd, hereinafter referred to as the applicant is a company holding a Category 1 Global Business License (GBC1) and is tax resident in Mauritius. Its main activity is investment holding. The applicant has 100% shareholding in both B Inc and C Inc. C Inc has 26% interest in D. C Inc is also an investment holding company. Accordingly, the main source of income of C Inc is dividend income. Both B Inc and D pay tax in Philippines. The business activity of B Inc is to employ people for D which owns a power plant and sells electricity generated. C Inc received dividend from D over several financial years. The profit out of which dividend was distributed by D to C Inc has been subject to income tax in Philippines. C Inc in turn loaned the dividend income to affiliates of A and they appeared as receivables in the books of C Inc. Some of the loans are interest free and some are interest bearing. The retained earnings of C Inc are made up of mainly dividend from D and some of the affiliates of A. B Inc also loaned money to some of the affiliates of A and suffered corporate tax in Philippines. Now, both C Inc and B Inc intend to distribute the receivables as dividends to their parent company A.

POINTS AT ISSUE

a) Whether corporate taxes paid by B Inc in Philippines can be used as underlying tax credit against corporate tax of A?

b) Whether, in the proportion to its indirect shareholding, corporate taxes paid by D in Philippines, can be used as credit against corporate tax of A?

RULINGs

In accordance with regulation 7 of the Income Tax (Foreign Tax Credit) Regulations 1996, it is confirmed that:

a) corporate taxes paid by B Inc in Philippines can be used as underlying tax credit against corporate tax of A, and

b) in the proportion of its indirect shareholding, corporate taxes paid by D in Philippines, can be used as credit against corporate tax of A.

The above RULING is being issued on the understanding that the profits out of which the dividends (i.e. the receivables) to be distributed by D and B Inc have actually suffered Corporate Tax in Philippines.

TR 129

FACTS

XYZ, hereinafter referred to as 'the Company', is incorporated in Dubai and has a Bunker Barge time charter contract with a Mauritius company to operate within the Mauritius port limits and in any part of the world for carrying marine fuel oil and marine gas oil. The Company is the owner of the Bunker Barge, 'The Vessel', which has all the certificates and licenses to operate within the Mauritius port limits. The Vessel is registered in Mauritius. The risk of operating the Vessel remains with the Company whereby the Company has to properly insure the Vessel, has to ensure it is maintained and is in good sailing condition. The Company provides and pays the crew.

POINT AT ISSUE

Whether the income derived in Mauritius by the Company is exempt from income tax by virtue of Item 9 of Sub-Part C of Part II to the Second Schedule of the Income Tax Act, given that it is the registered owner of a foreign vessel?

RULING

Income derived by the Company from the rental / lease / time charter of the Vessel does not fall under Item 9 of Sub-Part C of Part II to the Second Schedule of the Income Tax Act and is , therefore, liable to tax in Mauritius in accordance with section 10(c) of the Act. The Company is not considered to derive income **from the operation of the vessel**, as required by law.

TR 130

FACTS

A Ltd is a company holding a Category 1 Global Business Licence and is a tax resident in Mauritius. Its main activity is investment holding. A Ltd subscribed in B Ltd, a company incorporated in the Cayman Islands in 2006.

At 31 December 2006, A Ltd held mandatory convertible preferred shares at par value US$ 0.01 per share. In May 2008, the preferred shares were converted into common shares.

Subsequently, B Ltd became listed on the Hong Kong Stock Exchange in 2009. As part of the arrangement, the pre-listing investors, including A Ltd, were guaranteed a minimum return by B Ltd's chairman upon disposal of their shares if the company's shares fell below HK$ 3.50 within a year of listing.

A Ltd thus received an amount of US$ 39 million as guarantee payment during the financial year end 31 December 2010, given that B Ltd's share price fell to HK$ 3.14 in 2010. Subsequently, in November 2010, the company had disposed of its shareholding held in B Ltd.

POINT AT ISSUE

Whether the guarantee payment received by A Ltd will be treated as a non-taxable item?

RULING

On the basis of the information given, it is confirmed that the guarantee payment of US$ 39 million received by A Ltd is not subject to tax since it is of a capital nature.

Please note that any expenditure incurred in connection with the guarantee payment is not an allowable deduction in accordance with sections 18 and 26 of the Income Tax Act.

TR 131

FACTS

X Ltd belongs to a multinational software group and sells software products to the entire Europe, Middle East and Asia region (EMEA) which includes the territory of Mauritius. X Ltd maintains no permanent establishment, has no tax presence and does not carry on business in or within Mauritius. X Ltd software sales throughout EMEA are contracted, performed and billed from Ireland.

X Ltd sells its products to Mauritian Distributors who, in turn, sell them to resellers here and each Mauritian Distributor acts for its own account, is not a dependent agent of X Ltd, is not doing business solely for X Ltd and is totally independent from X Ltd.

There are three licensing options in which X Ltd's products are sold and exported to Mauritius, viz:

a) Retail

Sale of software products as individual packaged products also referred to as 'boxed products' or 'full packed products'. Distributors do not have any right to use, reproduce, open the packaging or otherwise modify the retail product. The end-user licence agreement is entered into electronically, separately and directly between X Ltd and the end-user upon activation of the software.

b) Volume Licensing

Sale of software products for use by multiple users in a single organization or enterprise.

Distributors do not have any right to reproduce or otherwise modify the software products; they simply acquire the software product and on-sell to the customers. The software licence agreement is entered into separately and directly between X Ltd and the customer.

c) Original Equipment Manufacturing

Sale of software products for the purpose of installation and integration into hardware items such as personal computers, which are manufactured by independent third parties. The manufacturer is given a version of the software and has the right to reproduce the software in its hardware or PC. The Original Equipment Manufacturing agreement calls for the Distributors to pay for a 'royalty' to X Ltd for each instance where they have loaded particular software into a machine.

POINT AT ISSUE

Under what category, either 'business profits' or 'royalty', does each of the above sales fall?

RULING

It is hereby confirmed that:

a) proceeds from the sale of Retail products and Volume Licensing respectively are characterized as sale of copyrighted articles and treated as business income;

b) proceeds from the sale of softwares to Original Equipment Manufacturers for the purposes of installation and integration in hardware items are characterised as a sale of copyright rights and treated as royalty income subject to Mauritius withholding tax.

TR 132

FACTS

A Ltd is a company incorporated in the British Virgin Islands and is not resident in Mauritius. It aims to provide internet related services in Mauritius and overseas. Its first project is a real estate portal which will offer services to real estate agencies and companies both local and overseas. Users will be able to post their advertisements on the web site. The server hosting the web site is located in the United States. There is no contract between the company and the server operator and fees to the latter are paid yearly through bank transfer.

The revenue of the company will be from advertising fees paid by the real estate agencies and companies, both local and overseas, which advertise on the web site. The company does not charge any commission on business transactions concluded via the web site. The site only provides information with regard to properties available for rent and sale. Users cannot place any orders or transact through the web site.

Marketing of the web site will be done both online and offline. Online marketing will be done mainly through e-mails and offline marketing made in local newspapers which will be VAT registered persons. The company will have no physical presence in Mauritius with respect to the operation of the business.

POINTS AT ISSUE

Whether the income derived from the internet related services would be subject to corporate tax.

RULING

The income from the activities of the company through the web site will not constitute *'income derived from any business carried on wholly or partly in Mauritius'* in accordance with the provisions of section 74(1)(c) of the Income Tax Act. Hence, the company will not be subject to corporate tax in Mauritius.

TR 133

FACTS

ABC is a company incorporated in UK and it carries out banking business through a branch in Mauritius, hereinafter referred to as Company Z. The branch is duly registered in Mauritius as a foreign company and holds a banking licence under the Banking Act. D Ltd is a Mauritian incorporated company and is wholly owned by ABC.

Company Z and D Ltd have approved a scheme under which D Ltd would undertake the banking business currently being operated by Company Z from both a commercial and legal standpoint. The scheme has been presented to the Bankruptcy Division of the Supreme Court in the form of a petition in accordance with sections 261 to 264 of The Companies Act. The implementation of the scheme would involve the transfer of the whole of the current business of Company Z to D Ltd and the latter shall issue shares to ABC in consideration for the transfer of the business.

POINTS AT ISSUE

Whether the implementation of the scheme will give rise to any corporate tax consequences under the Income Tax Act.

RULING

On the basis of the FACTS given, there will be no corporate tax on transfer of the business. The provisions of section 56 of the Income Tax Act will apply.

TR 134

FACTS

X Ltd is a company incorporated on 14 August 2008 in Jersey. It has a holding of 49.5% of the shares in Y Company, a Mauritius domestic company. Y is engaged in property development and also holds land and properties in Mauritius.

X is held by a fund (an English limited partnership) which is managed by Z. The latter wishes to transfer the incorporation and tax residence of X from Jersey to Mauritius (i.e. to re-domicile X from Jersey to Mauritius, or continue the company in Mauritius).

POINTS AT ISSUE

1. Whether any tax liability would arise in Mauritius, with regard to its 49.5% shareholding in the domestic company, on the transfer of incorporation and tax residence of the company from Jersey to Mauritius;

2. Whether any tax liability would arise in Mauritius, following the registration of the company in Mauritius, on the disposal of its 49.5% shareholding in the domestic company in one lot or in several lots; and

3. Whether the decision at points (1) and (2) would be different should the company obtain a Category 1 Global Business Licence from the FSC.

RULING

On the basis of FACTS given, it is confirmed that:

1. There would be no income tax implication on the registration and continuation of the company incorporated in Jersey as a company in Mauritius. The provisions of section 56 of the Income Tax Act will apply.

2. In line with the Practice Note dated 30 October 2006 issued by the Mauritius Revenue Authority on "Taxation of gains from sale of shares or other securities", any gains or profits derived from the disposal of investment held in the domestic company for a period of at least 6 months would be treated as capital gains and hence would not be subject to income tax.

3. Should the company obtain a Category 1 Global Business License from the FSC, the decision given at point (1) above would not be affected. However, regarding the decision at point (2), the timing for the disposal of the shares would not be relevant, given that any gains or profits derived from the sale of the shares would be exempt from income tax in accordance with the provisions of item 7 of Sub-Part C of Part II of the Second Schedule of the Income Tax Act.

TR 135

FACTS

The Income Tax Act was amended by the Finance Act 2006 to restrict the exemption from income tax of gains or profits derived from the sale of units or of securities only to a company holding a Category 1 Global Business Licence issued under the Financial Services Act 2007. Consequent to the amendment, a Practice Note was issued on the 30 October 2006 to give guidance on the tax treatment of gains derived from the sale of shares or other securities.

POINTS AT ISSUE

The question is whether the definition of "securities" for the purposes of the Practice Note is the same as in the Securities Act 2005.

RULING

The meaning of "securities" for the purposes of interpretation and application of the Practice Note is the same as the meaning given to "securities" in section 2 of the Income Tax Act.

TR 136

FACTS

B Limited holds a GBC 2 licence, issued by the Financial Services Commission under the Financial Services Act 2007. In accordance with the Act, no trade or activity is carried out within Mauritius, and all such activity of the company is based outside the country. The management and control of the company is exercised in Mauritius. The company has a registered agent in Mauritius, and the directors of the company are resident in Mauritius.

POINTS AT ISSUE

1. whether the GBC 2 company will have any income tax obligations in Mauritius; and

2. whether in the above scenario which can also apply to a foreign-based (offshore) entity, i.e. not having any trading activity or a permanent establishment in Mauritius, the entity will have any income tax obligations.

RULING

On the basis of FACTS given, it is confirmed that the GBC 2 company will have no income tax obligations in Mauritius in accordance with Item 19 of Part 1 of the Second Schedule to the Income Tax Act which gives an exemption status to all holders of GBC 2 licence holders.

As the second issue raised by you is based on an assumption, we regret to inform you that we are unable to give you a RULING on that issue.

However, you may wish to note that apart from a GBC 2 company, any company whose central management and control is being exercised from Mauritius is considered to be resident in Mauritius under the provisions of section 73(1)(b) of the Income Tax Act and is , therefore,, liable to Mauritius income tax on its worldwide income.

TR 137

FACTS

A is a domestic partnership registered in Mauritius under the Mauritius Limited Partnership Act 2011. The General Partner is B, a company registered in Seychelles. The Limited Partners are C, a company registered in Seychelles and individuals, non-resident in Mauritius who are yet to be appointed. A has a Mauritian based Registered Agent, D. A carries activities mainly overseas.

POINTS AT ISSUE

a. Whether the General Partner and the Limited Partners will be liable to pay any tax on the income and capital in Mauritius;

b. Whether the registered agent will be liable to pay any tax in Mauritius;

c. What tax effects would an application for a GBC 1 licence by A have on the General Partner, the Limited Partners and the Partnership as a whole and whether the General Partner and the Limited Partners would be liable to pay the 3 % net tax in Mauritius.

RULING

On the basis of information given by you, this is to confirm that:

a. being given that both the General Partner and the Limited Partners are non-resident in Mauritius, any income derived by A from overseas will not be taxable in their hands. The General Partner and the Limited Partners will be liable to pay income tax on their share of income derived from A only to the extent that the income is derived by A from Mauritius.

b. the registered agent, D, being resident in Mauritius will be liable to pay tax on income derived from Mauritius and from overseas.

c. as regards item (c) above, we are unable to give a RULING as it is based on a hypothetical situation.

TR 138

FACTS

X hereafter referred to as the “company” operates a casino and gaming machines. The Finance (Miscellaneous Provisions) Act 2011 (“FMPA 2011”) repealed Item 5 of Sub-Part C of the Second Schedule (the “relevant item”) to the Income Tax Act 1995 (“ITA 95”) so that income derived from the operation of a casino and gaming machines is no longer exempt from income tax. Pursuant to section 21(6) of the FMPA 2011, the commencement date of the amendment is 01 October 2011.

POINTS AT ISSUE

a. Gross income accruing from which date is subject to corporate tax?

b. How is chargeable income to be computed in the year of the amendment?

c. How are annual allowances to be computed in the year of the amendment and in subsequent years?

RULING

a. Pursuant to the FMPA 2011 which provides for the amendment to be effective as from 01 October 2011, any gross income that accrues from the operation of a casino and gaming machines as from 01 October 2011 is no longer exempt from corporate tax. Hence, gross income derived up to 30 September 2011 would be exempt while gross income derived thereafter would be taxable.

b. The chargeable income in the year of amendment shall be computed by apportionment of allowable deductions, including annual allowance, between the exempt period and the taxable period. However, expenses directly attributable to the production of gross income from the operation of the casino and gaming machines in each period shall be allocated to that period without apportionment. Only expenses indirectly attributable to the production of gross income of both periods need to be apportioned in a fair and reasonable manner.

c. The company would be able to claim capital allowance on assets acquired prior to the amendment (that is, assets acquired prior to 01 October 2011). The base value, however would not be the cost of the assets but the carrying value of the assets after taking into account capital allowances for each year of use. On disposal of the assets, the company will compare the proceeds from disposal with the written down value of the assets to ascertain any balancing charge/balancing allowance. However, in the year of disposal, balancing charge/allowance shall be time-apportioned to reflect the amount thereof attributable to the period of use of the asset during which taxable income was derived. The written down value of the assets would be the cost of the assets after deducting all the annual allowances attributable to the period of use of the assets.

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.

2. Deduction of tax at source (TDS)

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

TR 140

FACTS:

A is a Category 1 GBL company and is a licenced reseller of life insurance policies to individuals in various countries in Africa.

It is being proposed that a Trust be set up in Mauritius which would hold the said life insurance policy on trust for the Settlor's beneficiaries with the Settlor himself acting as the protector of the trust.

The Settlor as well as the beneficiaries will be non-residents of Mauritius. The Trustees will be the Settlor, someone nominated by the Settlor and a licenced management company which will act as qualified trustee. The Beneficiaries will be the surviving family of the Settlor.

The Trust is used as a fast and efficient mechanism to distribute the proceeds of the life insurance policy when it matures as opposed to the time-consuming settlement of an estate in certain jurisdiction, thus ensuring the prompt wellbeing of the deceased's beneficiaries.

POINTS AT ISSUE

a) Would the Trust be deemed to receive chargeable income as defined under the Income Tax Act if, at its maturity:

(i) the policy's cash payment is made directly to the Beneficiaries from the insurance company under the instruction of the Trustees? or

(ii) the policy's cash payment is paid to the Qualified Trustee's client account in Mauritius before being distributed to the Beneficiaries?

b) What would be the filing obligations of the Trust during the term of the policy and at its end?

RULINGs

a) The proceeds of a life insurance policy on maturity or on death of the insured do not constitute a taxable income under section 10 of the Income Tax Act.

b) The Trust will have an obligation to furnish a return of income under section 116 of the Income Tax Act unless it deposits a declaration of non- residence for any income year with the Director-General within 3 months after the expiry of the income year under section 46(3) of the Act.

TR 141

FACTS

T is registered as a foundation under the Foundations Act 2012 and is licensed as a private pension scheme under the Private Pensions Act 2012.

The Foundation has been established to provide retirement benefits to individual beneficiaries who are: -

(i) personally, resident in Mauritius; or

(ii) not personally, resident in Mauritius; and

(iii) either employed or self-employed.

The Foundation is a defined contributions scheme which expects to receive contributions from employers, employees and self-employed individuals who can be either resident or non-resident of Mauritius.

It is understood that the Foundation is not a superannuation fund as defined in the Income Tax Act. Consequently, employers' contributions will not be tax deductible under the Act while same will be taxable as a benefit in the hands of the relevant employees.

POINTS AT ISSUE

1. Confirmation that contributions to the Foundation made by an employer for the benefit of its employees are not tax-deductible under section 22 of the Income Tax Act ("the Act").

2. Following the repeal of sections 29 and 32 of the Act, confirmation that contributions to the Foundation made by an individual beneficiary are not tax-deductible.

3. Whether the benefits provided by the Foundation as a licensed private pension scheme in respect of employees who are current or former employees will be treated as pensions or lump sums or annuities, within section 10(1)(a)(ii) of the Act.

4. The tax treatment under the Act of the pension benefits provided by the Foundation to the beneficiaries.

RULINGs

1. As the Foundation is not a superannuation fund as defined in the Act, the contributions made by the employer to the Foundation are not tax-deductible under section 22 of the Act.

2. The Act does not provide for the deductibility of contributions made by an individual beneficiary to the Foundation.

3. Benefits provided by the Foundation in respect of employees who are current or former employees will be treated as pension benefits (pensions or lump sum or annuities) under section 10(1)(a)(ii) of the Act.

4. As a general rule, pension benefits payable to former employees who are *residents* as well as 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/Pension and Annuities article of any applicable Mauritius DTAA will apply to pension benefits payable to non-residents.

TR142

FACTS

B Ltd has invested in C, a company in Mozambique. B Ltd is a GBL1 company incorporated in Mauritius and holds 49% of the share capital in C. Even if the B Ltd owns only 49% of the share capital, the shareholder's and investment agreement has conferred 100% economic control over the company in Mozambique. To finance the construction of an 80,000 cubic meter oil terminal, B Ltd granted two loans to C which are as follows:

1) Senior Facility Loan

(a) Amount: USD 27,000,000

(b) Rate of Interest: Libor + 4.25%

(c) Repayment date: 1 October 2015

2) Subordinated loan

(a) Amount: USD 17,500,000

(b) Rate of Interest: Libor + 4.25%

(c) Repayment date: Year 2018

According to a shareholder's agreement dated 30 June 2005, C must announce an annual dividend of 33% of the total value of the financial loan outstanding at the end of the fiscal year. The dividend has been capped at USD 17,500,000. The financial loan outstanding as at 31 December 2012 amounted to USD 24,750,000.

POINTS AT ISSUE

1) Whether the dividend threshold will be considered as capital income and not subject to tax in Mauritius.

2) In the event the MRA rules that the dividend threshold is in the nature of income and thus taxable, can the company elect to tax the dividend threshold on a realised basis, that is, when the dividend threshold is actually received.

RULING

1) The dividend cannot be considered as capital income as it falls under section 10(1)(d) of the Income Tax Act.

2) The company cannot elect to declare the dividend when it is actually received. The dividend should be declared on an accrual basis. It will thus be taxed in the year when it is accrued in the financial statement.

TR 143

FACTS

B, a domestic company incorporated in Mauritius, is a wholly owned subsidiary of a Swedish company. The domestic company intends to make a distribution in kind of the shares it holds in D, a subsidiary company incorporated in Nigeria.

In that context, B would make a normal declaration of dividend, that is, a distribution made out of the retained earnings of the company. The payment of the dividends would be in kind, that is, instead of cash, the Swedish company would obtain shares that B holds in D.

POINTS AT ISSUE

1. Whether the definition of "dividend" under the Income Tax Act includes the "dividend in kind" as described above.

2. If the definition of "dividend" under the Income Tax Act does not cover the "dividend in kind", whether the dividend paid by the Mauritian company will be exempt from income tax in Mauritius.

RULING

1. It is confirmed that the distribution to be made out of the retained earnings of the company, in shares which the company holds in its subsidiary, would fall within the definition of "dividends" under section 2 of the Income Tax Act, if it satisfies all the conditions imposed by that section.

   It is, however, to be noted that should the arm's length value of the shares exceed the amount of the dividends payable, the excess would not qualify as dividends, but would rather fall under section 86A as benefit to the shareholder and be taxable as "any other income" referred to in section 10(1)(g), subject to the relevant provisions of the Mauritius-Sweden Double Taxation Agreement.

2. In view of the RULING given at (1) above, the question at (2) above does not arise.

TR144

FACTS

L is a commercial fishing company in Australia operating a fleet of deep-sea fishing vessels.

L is proposing to enter into a joint-venture arrangement (‘Joint Venture’) with a Mauritius crew partnership (‘MU Partnership’) for the purposes of their deep-sea fishing activities, whereby M would provide crewing services and L, the fishing vessels.

The MU Partnership would have a Managing Partner (‘MP’) based in Australia and the remaining partners would consist of crew members from Australia, Mauritius, New Zealand and South Africa. The crew members would consist of both physical and corporate bodies.

Under the terms of the Joint Venture, L and the MU Partnership would be entitled to a defined share of catch. Each partner of the MU Partnership would then earn a share of profit based on a percentage of the sales proceeds from the MU Partnership share of the catch less agreed expenses.

The MU Partnership would be responsible solely for the supply of adequately trained and qualified crew to operate and command the vessel, while L would be responsible for the supply and management of the vessel, logistics comprising of off-loading of the catch, crew changes, refuelling, re-stocking of food and necessary repair work; marketing, administration and accounting. A local independent agent in Mauritius will be subcontracted to handle customs clearance, vessel unloading and loading of the catch onto ship for shipment to customers.

L would operate three fishing vessels, which are all on the Australia Register of Ships and their home port is in Australia. Two of the vessels will fish exclusively in the Australian Fishing Zone and the third vessel will fish predominately in the same Australian Fishing Zone but in addition will do some fishing in international waters.

POINTS AT ISSUE

1. Whether the Joint Venture would be deemed to be non-resident in Mauritius.

2. Whether the MU Partnership would be deemed to be non-resident in Mauritius.

3. Confirmation that L would be deemed to be non-resident in Mauritius.

4. Source of income of the Joint Venture and the MU Partnership.

5. The taxability of the Joint Venture and the MU Partnership in Mauritius.

6. Filing requirements of the Joint Venture, the MU Partnership and non-resident partners of the MU Partnership.

RULING

1. According to Item 1(c)(ii) of section 73 of the Income Tax Act 1995, a resident société *''includes a société which has at least one associate or associé or gérant resident in Mauritius''*. Since the MU Partnership would have an associate resident in Mauritius, it would , therefore, qualify as a resident société.

2. Since the MU Partnership would qualify as a resident société, the Joint Venture would also be considered to be a resident société in accordance with Item 1(c)(ii) of section 73 of the Income Tax Act 1995.

3. In accordance with section 73(b) of the Income Tax Act 1995, since L is not incorporated in Mauritius and does not have its central management and control in Mauritius, the company would not be resident in Mauritius.

4. Since the vessel would be operating in Mauritian waters ''for the purposes of off-loading the catch, crew changes, re-fuelling, re-stocking of food and undertaking necessary repair work'', the income derived by the Joint Venture would be treated as Mauritian source in accordance with the relevant provisions of section 74 of the Income Tax Act.

5. The partners of the Joint Venture and the MU Partnership would , therefore, be liable to tax in Mauritius on their share of income in the Joint Venture and the MU Partnership. L would be liable to tax on its share of income from the Joint Venture.

6. The Joint Venture and the MU Partnership being considered as resident sociétés will have to file their returns. The resident and non-resident partners of the MU Partnership will have to file their returns to declare their share of income in the MU Partnership. L will also have to file its return to declare its share of income from the Joint Venture.

TR 145

FACTS

W, a multinational engaged in the fishing industry, wishes to promote a major project in the Mauritian fishing industry. It will involve the acquisition of fishing vessels for the purposes of fishing tuna, and processing same into fish products, primarily for exports.

The project necessitates the establishment of several companies in Mauritius for the various segments of the production chain. X, a private limited company, will be incorporated in Mauritius with a Category 1 Global Business Licence (GBL 1) and several Special Purpose Vehicles ('SPVs') will be incorporated in Mauritius as private limited companies, each holding a Category 2 Global Business Licence ('GBL 2').

W, along with other investors, shall invest in X for the purposes of financing the acquisition of the fishing vessels. The acquisition shall be effected through the SPVs, each a subsidiary of X. Each vessel will be held by one distinct SPV. In addition to the investments from X, each SPV shall seek a loan from banking institutions in Mauritius and overseas for the purposes of acquiring their respective fishing vessel.

Once the vessels are operational, each SPV will lease their respective vessel to Y, a company incorporated in Mauritius and holding a GBL 1 licence. The SPVs will enter into a bareboat lease agreement with Y for that purpose. The fishing activity, primarily on the high seas will be carried out by Y.

Each SPV will receive ship rental income from Y under the bareboat agreement. It is expected that each of X and SPVs will be managed and controlled from Mauritius, with a majority of Mauritian resident directors in office, as well as board meetings and banking transactions carried out in Mauritius.

All the voting shares of X and the SPVs will be held by Z, a Category 1 Global Licence company which will also be managed and controlled in Mauritius, with a majority of Mauritian resident directors. However, since Z will itself be wholly owned by foreign investors, X and the SPVs will not be under the effective control of citizens of Mauritius.

POINTS AT ISSUE:

1. Whether the SPVs will be exempt from income tax in Mauritius.
2. Whether the SPVs shall not have any income tax obligations in Mauritius.
3. Whether Y shall not be required to withhold tax at source on the rent payable to the SPVs.
4. Whether the fact that the management and control of the SPVs shall be in Mauritius will neither alter the tax-exempt status of the SPVs nor their income tax obligations in Mauritius.
5. Whether the SPVs will not be deemed as tax transparent vehicles with the consequence that the rental income becomes subject to income tax at the level of X.
6. Whether by virtue of the tax-exempt status, the provisions of the Income Tax Act relating to income tax assessments shall not apply to the SPVs.

RULING:

1. According to Item 9 of Sub Part C of Part II of the Second Schedule of the Income Tax Act ***'Income derived by the registered owner of a foreign vessel from the operation of the vessel shall be exempt from income tax'***. Since the income derived from the operation of a vessel includes income obtained from the charter of such vessel, the SPVs will derive exempt income.

2. In the light of the above, the question of giving a RULING on the other issues raised in the application does not arise.

TR 146

FACTS

K is a company incorporated in Mauritius under the Companies Act 2001 as a Protected Cell Company ("PCC"). It is held by the K Trust which is set up in Mauritius.

The company holds a Category 1 Global Business Licence ("GBL 1") and carries out the repackaging of assets originated from a variety of frontier markets into capital markets securities for distribution to foreign lenders interested in taking exposure to frontier markets-based credit or equity risk.

The company invests in financial markets (both shares and debts). The company issues Eurobonds in the capital market to finance the acquisition of debt instruments. Each cell of the company holds investment which are specific in terms of geography (that is, different countries) or type of investments (e.g. bonds, derivatives, etc.)

Frontier markets include all emerging markets except Mauritius. Moreover, most of the business of the company originates from international lenders.

All the interest received by the company from these financial assets is repaid to the Eurobond owners ("lenders") in full. There is no margin applied on the interest income received from the investment when repayment is made to the lenders. The company is not related to either the investees or the lenders. The company will be receiving a management fee for operating K's structure.

POINTS AT ISSUE

a) Whether interest income of the company will be considered as foreign source and is chargeable to income tax.

b) Whether interest expense of the company will be fully deductible on the basis that it generates taxable income and will not be characterised as dividend.

c) Whether specifically to this investment flow, there is no tax payable in Mauritius on the interest since the interest expense will be fully set off against interest income.

d) Whether the interest income from investment and the interest payment to the lenders will be considered to be arm's length and no adjustment will be required to either the interest income or the interest payment.

RULING

a) The interest income earned by the company qualifies as foreign source income as per section 2 of the Income Tax Act.

b) The interest expense of the company will be fully deductible as per section 18(1) of the Income Tax Act.

c) Interest paid to a non-resident not carrying on any business in Mauritius by a corporation holding a GBL 1 licence is exempt as per Sub Part B of Part II of the Income Tax Act.

d) As regards the fourth issue, we cannot, at this stage confirm that transactions are being carried out at arm's length and that no adjustment will be made.

TR 147

FACTS

M and K referred to hereunder as “the companies” are two companies which have the same beneficial owner. Both companies intend to enter into a lease agreement with P for a period of 10 years and incur major expenses of more than Rs 20 m in respect of accommodation of new offices.

The lease agreement between the landlord and the lessee will provide that all the assets will be transferred to the landlord upon the termination of the occupation of the premises. The companies intend to enter into an agreement so that only one company will bear all costs initially, and then split the costs and apportion the assets equally. The estimated breakdown of the cost is as follows:

	Rs
Ceiling	1,500,000
Drywall Partitioning	2,500,000
Flooring	1,800,000
Lighting	500,000
Air Conditioners	2,000,000
Electrical and data wiring	1,800,000
IT	3,500,000
Flush doors	450,000
Decoration	500,000
Move out cost	500,000
Furniture	5,000,000
TOTAL	**20,050,000**

POINTS AT ISSUE

1. Whether the assets can be split equally and capital allowance can be claimed by companies on the different cost components at the following rates:

	Capital Allowance
Ceiling	**5%**
Drywall Partitioning	**5%**
Flooring	**5%**
Lighting	**20%**
Air conditioners	**35%**
Electrical and data wiring	**20%**
IT	**50%**
Flush doors	**20%**
Decoration	**20%**
Furniture	**20%**

2. Whether the companies will be entitled to a balancing allowance in the event that the companies leave the premises before the end of the lease term and transfer the assets to the landlord?

RULING

1. It is confirmed that M and K will be entitled to claim capital allowances on that part of the capital expenditure attributable to each of the company as per the terms of the agreement, provided the expenditure is incurred exclusively in the production of gross income.

The rate of annual allowance will be in accordance with the Second Schedule of the Income Tax Regulations 1996. However, the expenditure incurred on the components forming part of the building, such as ceiling, drywall partitioning, flooring, lighting, electrical and data wiring, flush doors and decoration will constitute a premium payable on property. Consequently, annual allowance will be allowed thereon at the rate of 5% in accordance with Item 8 of the Schedule.

2. In the event the companies leave the premises before the end of the lease term and transfer the assets to the landlord there would be an adjustment which would result in either a balancing charge or a balancing allowance in accordance with the provisions of section 24(5)(b) of the Income Tax Act.

TR 148

FACTS

A and B are both Mauritian incorporated companies which hold Category 1 Global Business Licences (GBL 1) under the Financial Services Act 2007. A and B own 99 % and 1 % respectively of the share capital of C, an Irish resident company. A and B also hold 1 % and 99 % respectively of the share capital of D, an entity incorporated in the Netherlands.

In the year 2007, C sold the shares it held in E, a Zambian company to its sister company, D for Euro 221 million. No payment was effected by D at the time of sale and the transaction was reflected as a loan from C to D. D now holds 81.6 % shares in E.

Prior to the year 2007, any dividend received by C from E was distributed to its shareholders, A and B.

Between the years 2008 and 2013, D repaid Euro 37.7 million to C. The loan repayment was funded by D out of dividend income received from E and enabled C to distribute dividends to A and B.

The group proposes to proceed as stated below: -

(i) transfer the net assets of C to A and B through a share buy-back followed by the liquidation of C; and

(ii) sell the shares held by D in E to B at an estimated price of Euro 252 million which represents the fair market value followed by the liquidation of D. Once D is liquidated, B would directly own 81.6% of the shares in E.

POINT AT ISSUE

Whether profits realised by A and B as a result of the proposed buy-back of C and the proposed liquidation of D fall outside the tax base of each respective company.

RULING

On the understanding that there are no retained earnings in the hands of C and D which could potentially be distributed as dividend to B and A, we consider that any profit realised by A and B as a result of the buy-back of C and the liquidation of D is outside the tax base of each respective company.

TR 149

FACTS

A citizen and resident of Switzerland, hereinafter referred to as “the Person”, is owner of various assets such as cash, bonds and a house in Switzerland. All the wealth and income of the Person have been subjected to the domestic taxes in Switzerland.

The Person is planning to acquire a house under the Integrated Resorts Scheme in August 2014 and settle in Mauritius in the year 2015. The Person’s actual house will be sold and capital gains tax on the sales proceeds will be paid in Switzerland. The acquisition of the house in the IRS will require funds to be transferred directly from Switzerland to Mauritius in the year 2014.

After settling in Mauritius in 2015, the Person’s wealth and income already subjected to tax in Switzerland will be transferred to a bank in a tax-free country. For the purpose of meeting living and other personal expenses and probable acquisition of other assets in Mauritius, money will be transferred from the bank in the tax-free country to Mauritius on a regular basis.

POINT AT ISSUE

Whether upon becoming a Mauritian resident, the net income received from the disposals of the Person’s wealth which has been already taxed in Switzerland and banked in a tax-free country, will be subject to Mauritian income tax when transferred to Mauritius on a regular basis?

RULING

The proceeds from the disposal of assets already taxed in Switzerland, banked in a tax-free country and transferred to Mauritius on a regular basis will be considered as capital and not income falling under section 5 of the Income Tax Act. As such the remittances will not be taxable.

However, in case income derived from the capital invested in bank or elsewhere in the tax-free country, such as interest, dividend etc., is remitted to Mauritius, it will constitute income falling under section 5 of the Income Tax Act and will be taxable in Mauritius.

TR 150

FACTS

X, holder of an Indian passport and resident in the United Arab Emirates also holds Caymanian Status which is equivalent of being Caymanian. He is currently in the process of searching for a high-end residential property in Mauritius with the intention to purchase same within the next month or so. He and his family intend to reside in Mauritius either in aggregate of 183 days or more in each income year and/or aggregate of 270 days or more over three (3) years.

X is the sole shareholder and sole director of Y, hereinafter referred to as “the Company”. The Company has Subsidiaries in India, USA, Europe, Middle East and South East Asia. The principal activity of the Group is manufacture, marketing and distribution of herbal products to over 90 countries including Mauritius. The Company’s principal income is derived from profit sharing and dividends distributed by the Company’s Subsidiaries after payment of due taxes in their respective countries.

The Company is incorporated in the Cayman Islands as an exemptcompany with limited liability. Its central management and control are effected by a team of highly qualified professionals amongst others including a Global CEO, Global CFO, Executive Director and a Principal Herbalist. The professionals are currently based out in the Dubai International Centre, UAE and the Cayman Islands. All board meetings of the Company will continue to be held outside of Mauritius and all its funds will continue to flow through bank accounts outside of Mauritius.

POINTS AT ISSUE

1. Whether the Company will qualify to be « resident » in Mauritius if X stays in Mauritius either in aggregate of 183 days or more in each income year and/or aggregate of 270 days or more over three (3) years.

2. Whether any dividends, income and any proceeds earned by X as a result of his investments in the Company and which will not be remitted to Mauritius shall be subject to any taxes in Mauritius.

RULING

On the basis of FACTS submitted, it is confirmed that:

1. in accordance with the provisions of section 73(1)(b) of the Income Tax Act, the Company will not qualify to be « resident » in Mauritius even if X stays in Mauritius either in aggregate of 183 days or more in each income year and/or aggregate of 270 days or more over three (3) years as the Company is neither incorporated in Mauritius nor is its central management and control being exercised in Mauritius.

2. any dividends, income and proceeds earned by X, as a result of his investments in the Company and which will not be remitted to Mauritius shall not be subject to Mauritian income tax.

TR 151

FACTS

B is a company registered in the United States. It provides an innovative new education-to-employment training model designed to provide companies in East Africa with the globally competitive staff they need to thrive. It holds the copyright (intellectual property rights-"IPR") to the education-to-employment training model.

B through its wholly owned subsidiary in Kenya called C, provides career-focused higher education and training.

B has previously partnered with D and has been commissioned to develop and implement a project to analyse and develop large scale employment bridge model in Kenya.

D is a foundation (stichting) incorporated under the laws of the Netherlands with its seat in Amsterdam, Netherland. It is a charitable foundation that oversees F's global philanthropy to improve the lives of children living in extreme poverty. F's profits provide D with financial resources to undertake and manage all global F's social and philanthropic efforts.

B would like to establish a Category 1 Global Business License company (GBC1) in Mauritius ("B Mauritius"). The ownership structure of B Mauritius will be held by four US nationals. The founders do not envision contributing in any significant capital themselves in B Mauritius before D's grant other than paying a nominal value for the shares of B Mauritius.

The D grant will be the source of significant initial capital for B Mauritius.

The funding received from D is planned to be disbursed as follows:

> (a) to acquire between 10% to 90% in B Kenya from B United States. The remaining holdings will in all likelihood go to a local partner resident in Kenya; and
>
> (b) the balance of the grant funds will be loaned by B Mauritius to B Kenya. The loan amount would be about $300K/quarter with an interest rate no greater than 3%.

The main purpose of B Mauritius will be:

> (i) to act as a regional holding company for B Kenya and future subsidiaries in East Africa and will undertake similar initiatives;
>
> (ii) to receive grant funding from D and disburse funds as per above.
>
> (iii) to hold certain intellectual property rights (copyright) in the employment bridge model which it will license to B Kenya.

The proposed grant would be provided by D to B Mauritius in two instalments. B Kenya will use the grant funding to start up the new employment bridge model and related product offerings as well including undergraduate degree-bearing programs and corporate training.

POINT AT ISSUE

Whether the grant funding received by B Mauritius from D will be treated as a capital receipt and hence not taxable in Mauritius?

RULING

On the basis of the FACTS submitted, the grant funding received by B Mauritius from D would not be included in the gross income of the company by virtue of section 51 of the Income Tax Act.

However, it is to be noted that the company would be subject to income tax on dividend from foreign source, interest and royalty income.

TR 152

FACTS

Company A (a company to be incorporated in Mauritius which will hold a Category 2 Global Business Licence) ("Co A") issues a convertible debenture ("CD") of ZAR 500 million to Company B (a company to be incorporated and to be listed in Mauritius on the SEM, and which will hold a Category 1 Global Business Licence) ("Co B").

The terms of the CD are as follows:

- Interest accrues at 8% per annum on the CD over a 5-year period but is only paid on redemption;
- Capital and accrued interest on the CD is paid at the option of Co A after 5 years either:

o in cash; or

o the issue of shares in Co A ("the Shares").

Co B will , therefore, realise its investment ("the Disposal") either through:

- redemption of the CD in cash by Co A; or
- sale of the CD or the shares by Co B.

The CD and the interest earned on the CD will be disregarded for accounting purposes and will be reflected as a share investment ("the Investment"). The carrying value of the investment will be either at:

- Fair value; or
- Amortised cost

with any changes in the value being reflected as a profit or loss in the income statement.

POINTS AT ISSUE

a) Whether the proceeds realised on the disposal of the CD or Shares will be treated as a capital gains realised by Co B? or

b) Whether Co B will be subject to income tax in Mauritius on the proceeds realised on the disposal of the CD or Shares?

RULING

a) Section 5(2)(a) of the Income Tax Act 1995 provides that *"income shall be deemed to be derived by a person when it has been earned or has accrued"*. In the light of the foregoing, though the interest is accrued and is only payable on redemption, Company B will be subject to income tax on the yearly interest accrued.

b) Company B being holder of a Category 1 Global Business Licence, the net gain on the disposal of the investment (excluding the accrued interest) will not be subject to tax in accordance with Items 7 and 8 of Sub-Part C of Part II of the Second Schedule to the Income Tax Act 1995.

TR 153

FACTS

K is incorporated in Mauritius as a domestic company. It has entered into a loan facility agreement with L, a UK resident company with 100% indirect interest in K. As per the loan facility agreement, L agreed to make advances to K up to an overall maximum facility of MUR 10 billion bearing interest at 8%.

K's main activity is to hold investments in M and N (both Indian incorporated companies) and has used the facilities made available by L to finance the acquisition of these entities. During the past years K has been incurring tax losses and has not been able to repay the facilities and interest accrued as per the terms of the loan agreement.

K has been accruing interest expenses which have been treated as deductible in its annual tax returns as per the provisions of section 19 of the Income Tax Act.

As K has been making losses since its incorporation and is not in a position to settle the interest accrued and capital facilities advanced by L to date, it is now contemplating to waive some of the interest payable and convert the loan portion into equity.

POINTS AT ISSUE

1) Whether the waiving of interest claimed in the books of K will be subject to tax?

2) Whether unrelieved losses brought forward will be available for offset against future income including the income arising from reversal of accrued interest?

3) The tax implications if L releases K from its obligations of the loan capital facilities in consideration for an issuance of ordinary share capital in K.

RULING

1) Since the accrued interest had been treated as deductible expenses for tax purposes in the company's returns for the previous years, the interest waived will be taxable upon reversal.

2) The losses carried forward will be available for set off against future income and the income arising from the waiving of interest subject to the limit of 5 succeeding years stipulated in section 20(1) (b) of the Income Tax Act.

3) The conversion of the capital portion of the loan facilities into equity being a capital transaction will not be subject to tax under the Income Tax Act.

TR 154

FACTS

V was registered in Mauritius as a category Global Business License (''GBC1'') company on 12 January 2006 under the name of W with its registered address at Port Louis, Mauritius. V is a wholly owned subsidiary of the X group whose main activity is investment.

V currently has an effective shareholding of 37.06% in Y, a South African based company acquired in July 2011 at a cost of ZAR 4.1 bn.

V intends to dispose of all its investment in Y to Z, a publicly traded South African based company. The effective date of the disposal is expected around late March 2015/April 2015. The consideration for a minimum total amount of ZAR 26.4 bn for the disposal of Y will be settled as follows:

- Cash consideration of ZAR 15bn; and
- Shares in Z for a minimum value of ZAR 11.4 bn that is 200m shares at a guaranteed price of ZAR 57 per share.

The Z shares which were acquired as part of the disposal proceeds from the sale of Y will be disposed of and the proceeds may be reinvested when better investment opportunities are identified.

POINTS AT ISSUE

1. Whether the gain on disposal of shares in Y is capital gain or exempt income?

2. Whether the gain on disposal of shares in Z, received as part of the sales consideration for Y, is capital gain or exempt income?

3. Whether the expenses directly or indirectly attributable to the gain on disposal of shares in Y and Z will be tax deductible or not?

RULING

1. The gains derived from the disposal of the shares in Y will be treated as capital gain.

2. Where the shares in Z are held for a period of more than 6 months, the profit realised will be regarded as capital gain. Gains or profits derived from the sale of shares by a company holding a Category 1 Global Business Licence is an exempt income by virtue of item 7 of Sub-Part C of Part II of the Second Schedule to the Income Tax Act.

3. Expenses directly attributable to non-taxable income will not be allowable while expenses

indirectly attributable to the gain on disposal will be disallowed on a proportionate basis.

TR 155

FACTS

M is a private company incorporated in Mauritius on 31 December 2010. The Company is holder of a Category 1 Global Business License (GBC1) under the Financial Services Act 2007. The principal activity of M is that of an investment holding entity and it holds private equity investments in Bangladesh. M is a wholly owned subsidiary of N, a company based in the Cayman Islands.

M wishes to sell its Bangladesh investments and the funds received from the sale of the investments will be repatriated to its shareholders, N, by way of dividend distribution or repayment of loan.

POINTS AT ISSUE

1) Whether the profits on sale of the investments in Bangladesh will be subject to tax in Mauritius?

2) Whether the repatriation of funds by M to its shareholders in Cayman Islands by way of dividend distribution will be subject to tax in Mauritius?

3) Whether the repatriation of funds by M to its shareholders in Cayman Islands by way of loan repayment will be subject to tax in Mauritius?

RULING

1) The profits on sale of the investments in Bangladesh will be exempt from income tax in Mauritius by virtue of item 7 of Sub-Part C of the Second Schedule to the Income Tax Act.

2) The repatriation of funds by M to its shareholders in Cayman Islands by way of dividend distribution will be exempt from income tax in Mauritius pursuant to the exemption provisions under item 1(a) of Sub-Part B of the Second Schedule to the Income Tax Act.

3) The repatriation of funds by M to its shareholders in Cayman Islands by way of loan repayment is of capital nature and will not be subject to income tax in Mauritius. It is understood that any interest payable with the loan repayment is also exempt from income tax under item 4 of Sub-Part B of Part II to the Second Schedule of the Income Tax Act.

TR 156

FACTS

S, a limited liability company, incorporated in Mauritius in July 2005, acquired properties in September 2012 from an unrelated party. The properties were built prior to 1 July 2006. The consideration was based on a valuation report prepared by a professional valuer.

The property portfolio was, in the income year of acquisition, subsequently transferred to a wholly-owned subsidiary company, T (the company) which was incorporated in Mauritius under the Companies Act 2001 on 5 March 2012, as a private company limited by shares. The transfer was made at the same value as acquired by S. No annual allowance was claimed by S on the buildings transferred.

POINTS AT ISSUE

1. Whether the company can deduct annual allowance on the commercial premises which were built prior to 1 July 2006.

2. Whether annual allowance is available on the fair value of the commercial premises at date of acquisition.

RULING

On the basis of the FACTS provided, it is confirmed that:-

1. The company is eligible to claim relief in respect of annual allowance on the commercial premises which were built prior to 1 July 2006 and transferred to the company in the income year ended 30 September 2013.

2. Annual allowance is available on the base value of the buildings in accordance with the

provisions of section 24(6) of the Income Tax Act.

TR 157

FACTS

K is a domestic trust created by a deed of settlement under the provisions of the Trusts Act 2001.The settlor of K is L, a private limited liability company incorporated under the laws of England and wales. K is administered in Mauritius by M, a resident company.

The trustees of K are both resident and non-resident persons. The majority of the trustees are resident in Mauritius.

The members of K would be individuals, resident of Mauritius, non-resident individuals and non-resident pension schemes which are funded by contributions from non-resident individuals.

K was granted a Private Pension Scheme Licence issued by the Financial Services Commission (FSC) pursuant to section 9 of the Private Pension Scheme Act 2012 (PPSA).

The pension scheme which K operates is not a superannuation fund as defined in the Income Tax Act nor an occupational pension scheme.

K is a defined contribution pension's scheme which would receive contribution from members and K provide pension benefits (i.e. pension, annuity and lump sum payments) to the beneficiaries of the Scheme.

The beneficiaries of K are the members of the Scheme and/or their dependents.

POINTS AT ISSUE

1. Confirmation that K is a domestic trust and is licensed by the Financial Services Commission to provide pension scheme benefits.

2. Whether the same or substantially the same tax relief available under the system of taxation of personal income in Mauritius is available to members of the Scheme, irrespective of the residency of the members.

3. Whether K is established in Mauritius and the latter has a double taxation agreement with UK in force that contains provisions as to exchange of information and non-discrimination.

4. Whether a contribution or transfer to K made by an individual member is eligible for any tax relief or tax deductibility to the members, irrespective of the member's residency.

5. Whether for the purposes of determining the net income of the pension business:

(i) the valuation of the liability of the pension scheme at the beginning of the income year and its liability at the end of the income year, as required under regulation 17(7) of the Income Tax Regulations 1996, can be assessed by the Board of Trustees rather than by an actuary; and

(ii) that the liability at the end of the income year will be the addition of the contribution received during the income year with the liability at the beginning for the income year, such that, the overall effect is nil for the purposes of calculating the net income of the pension business under the provisions of regulation 17(7) of the Income Tax Regulations 1996 (i.e. Liability at the beginning + Contribution received - Liability at the end of the income year = Nil).

6. Whether the pension benefits provided by K will be treated as pension, lump sums and annuities under the Mauritius income tax law.

7. Whether the pension benefits paid by K would attract tax at the applicable tax rate of 15% for both resident and non-resident members of the Scheme.

8. Whether there exists any tax relief for benefits paid to members who are non-resident in

Mauritius, irrespective of when the members joined the Scheme or the period of time for which they were a member of the Scheme, and whether the same condition holds for resident members.

RULING

1. On the basis of FACTS given and the Pension Scheme Licence produced from the Financial Services Commission, it is confirmed that K, created by a deed of settlement on 25 August 2014, is a resident trust under section 73(d) of the Income Tax Act and is licensed by the Financial Services Commission to operate a pension scheme under the Private Pension Schemes Act 2012.

2. Under the system of taxation of personal income in Mauritius, tax reliefs are available to residents only.

3. The status of K in Mauritius is as mentioned in RULING 1 above. It is also confirmed that Mauritius has in force a Double Taxation Agreement with UK and the treaty contains articles, dealing with exchange of information and non-discrimination.

4. The Income Tax Act does not provide for the deductibility of contribution or transfer to K made by an individual member, whether resident or not.

5. The net income of the pension scheme has to be ascertained in the same manner as any other pension business as provided under regulation 17(7) of the Income Tax Regulations 1996. The liability of the pension scheme at the beginning of the income year and at the end of the income year must be assessed in accordance with an actuarial valuation.

6. The pension benefits (pensions or lump sums or annuities) provided by K will constitute gross income in the hands of the beneficiaries under sections 10(1)(d) of the Income Tax Act.

7. Pension benefits paid by K to both resident and non-resident members would be subject to income tax at the rate of 15%. However, in the case of non-resident members, the provisions of the Pensions/ Pension and Annuities article of any applicable Mauritius DTA will apply.

8. As mentioned in RULING 2 above, only resident members will be entitled to tax reliefs. These members will be entitled to reliefs in respect of income exemption threshold, interest relief and relief for Medical or Health Insurance Premium under sections 27, 27A and 27B of the Income Tax Act.

TR 158

FACTS

H is raising fund to finance its operating and investment activities. Three types of instruments are to be issued for that purpose. They are as follows:

1) Convertible Bonds

2) Convertible Preference Shares A

3) Convertible Preference Shares B

The "Convertible Bonds" are secured floating rates notes with a tenor of 10 years; the return consists of yearly cumulative interest based on the aggregate of the repo rate and a margin. The bond will rank:

- junior, in all material respects, to the existing senior lenders and existing noteholders;
- *pari passu* without any preference among themselves; and
- senior to (i) any unsecured creditors of the Issuer and (ii) to holders of all classes of share capital of the Issuer.

The "Convertible Preference Shares 'A' are unsecured equity instrument with no liability on the issuer to repay capital. The dividend is based on the aggregate of the repo rate and a margin that depends on the level of retained earnings and will step up by 2% p.a. as from tenth anniversary of the issue date. The issuer may in its absolute discretion, as from the tenth anniversary of the issue date, redeem or buy back the preference shares. The redemption/buyback proceeds may, at the absolute discretion of the Issuer, take the form of either cash or ordinary shares of the issuer at the Discounted Value.

The shareholder will receive cumulative preference dividend, based on the repo rate and a margin that will depend on the level of the distributable profits of the issuer. The issuer may in its absolute discretion, as from the 5th anniversary of the issue date, redeem or buy back the preference shares. The redemption/buyback proceeds may, at the absolute discretion of the Issuer, take the form of either cash or ordinary shares of the issuer at the Discounted Value.

For the three types of instruments, the conversion is at the option of the shareholder, and this can occur on the third, fifth and seventh anniversary of the issue at the Discounted Value. The three types of instruments are also to be listed within three months of the issue date.

POINTS AT ISSUE

i. Whether the interest payable on the Convertible Bonds will be an allowable expense for H?

ii. Whether in respect of both categories of Preference Shares, the dividend will be treated as an unauthorised deduction and exempt in the hands of the recipient?

RULING

i. Being given that the proceeds of the Convertible Bonds will be used to fund the Operating and Investing activities of the company, the interest paid thereon qualifies as an allowable deduction under section 19(1) of the Income Tax Act.

ii. As in the case of ordinary shareholders, dividend paid to preference shareholders is a distribution which depends on the availability of retained earnings. Unlike interest, dividend paid to preference shareholders in the present circumstances is not a cost incurred in the production of gross income. Hence it is an unauthorised deduction and is exempt in the hands of the recipient in accordance with section 7 and item 1(a) of Sub-Part B of Part II of the Second Schedule to the Income Tax Act.

TR 159

FACTS

Mr. X is a French national qualified as a Barrister-at-law in France. The latter proposes to establish a fixed place of business in Mauritius to conduct professional services of an independent character as a "Professional introducer". For this purpose, Mr. X will apply for an occupational permit with the Board of Investment under the scheme "self-employed" and shall have an office space in Mauritius from where he will conduct his professional activity. Mr. X will derive income from the conduct of his professional services from Mauritius only.

POINTS AT ISSUE

1) Whether the income generated from the professional services of an independent character will be taxed in Mauritius at the rate of 15% on the basis of section 5 (1)(a) of the Income Tax Act 1995.

2) Whether on the basis of Article 14 of the Double Taxation Avoidance Convention between the Republic of France and Mauritius, the income which is attributable to the fixed base from which the income shall be derived may be taxed in Mauritius despite the fact that Mr. X is a resident of France.

RULING

In accordance with paragraph 1 of Article 14 of the Double Taxation Avoidance Convention between the Republic of France and Mauritius, the income which is attributable to the fixed base in Mauritius will be taxable in Mauritius at the rate of 15% on the basis of section 5(1)(a) of the Income Tax Act 1995 despite the fact that Mr. X is a resident of France.

TR 160

FACTS

B Ltd (the ‘’company’’) is a private company incorporated on 11 August 2014 and registered for VAT with effect from 01 October 2014. Its objective is to organise and promote a professional local football league at the elite level in Mauritius. In so doing, it will significantly improve quality of local football, organise professional league matches, having full-time paid players, committed and dedicated to football forming a professional league, attract talented young players who can aim for a career in professional football and produce a respected national team.

The company’s business plan provides for revenue generation from different sources including sponsors, advertising fees, and from the organisation of professional football leagues matches in Mauritius. The Company will then use these funds to provide financial resources to football clubs to meet the salaries of the full-time football players. In return, the clubs will perform a number of matches and football players will play as a full-time profession.

POINTS AT ISSUE

What will be the income tax treatment in respect of each of the following items?

(i) Sponsorship fees

(ii) Advertising in stadium

(iii) Sale of football match tickets

(iv) Sale of specialised football magazine

(v) Sale of rights of television broadcasting of football matches

(vi) Receipts upon transfer of football players to a foreign football club

(vii) Payments to football clubs to meet the players’ salaries

RULING

1. The items as per (i) (vi) will be subject to income tax by virtue of section 51 of the Income Tax Act 1995.

2. Payments made by the company to football clubs in order to meet the players’ salaries will be an allowable expense in accordance with the provisions of section 57 of the Income Tax Act 1995.

TR 161

FACTS

X, [hereinafter referred as the “Company”] was incorporated in Mauritius as a private limited liability company and holds a Category 1 Global Business Licence issued by Financial Services Commission (“FSC”) to operate a Closed-End Fund. Its business activity is to make equity and equity-related investments in Africa. The shareholding of the company is broad-based, constituting primarily of institutional investors based outside Mauritius.

The Company has a significant interest in Y (thereafter referred as the “Underlying Partnership”), a limited partnership registered in Jersey, Channel Islands. The Underlying Partnership holds investment in several companies incorporated in Mauritius, each holding a Category 1 Global Business Licence issued by FSC (collectively as the “Mauritian SPVs”). The Mauritian SPVs, in turn, hold investments in African based countries, directly or indirectly.

The Underlying Partnership has a tax transparent status in Jersey. It is exempt from income tax under the domestic tax laws applicable in Jersey. However, its limited partners are subject to income tax on their respective share of profits, in their own country of residence.

The Mauritian SPVs being investment holding entities, are expected to derive the following two streams of inflows from their business activities:

(i) Foreign dividend income ; and/or

(ii) Capital gains on disposal of shares.

The Underlying Partnership, in turn, is expected to derive the following two streams of inflows from the Mauritian SPVs:

(i) Dividend income; and/or

(ii) Capital gains arising from the buy-back of shares held in Mauritian SPVs.

The Company is expected to be attributed a share of profits from the business activities of the Underlying Partnership, the taxability of which will be determined by the income tax legislation and framework prevailing in Mauritius.

POINT AT ISSUE

What will be the income tax implications in Mauritius to the Company on its share of profits derived from the Underlying Partnership?

RULING

The profits derived by the Company from the Limited Partnership will retain their characteristics. Hence, the Company’s share of profit originating from dividend income earned by the Underlying Partnership from the Mauritian SPVs would be exempt income by virtue of items 1(a) and 2 of Sub-Part B of the Second Schedule to the Income Tax Act.

As regards the Company’s share of profit originating from gains on disposal of shares earned by the Underlying Partnership from the Mauritian SPVs, they would be exempt from income tax by virtue of item 7 of Sub-Part C of the Second Schedule to the Income Tax Act.

TR 162

FACTS

Z is a company incorporated in Germany. It has been awarded a contract by a Chinese contractor for the execution of sub-contractor works in Mauritius. In this connection, the German company has set up a branch as a foreign company in Mauritius for the execution of the construction works. The branch is provided support services from the head-quarter in Germany. The branch constitutes a permanent establishment (PE) under the Mauritius-Germany DTA.

POINTS AT ISSUE

In view of the new Authorised OECD Approach (AOA) on attribution of profits to permanent establishments (that is, the new Article 7 of the OECD Model Tax Convention on Income and on Capital as it reads on 22 July 2010), the questions are:

(a) Whether all income generated by the construction project is taxable fully in Mauritius according to the Double Taxation Agreement between Germany and Mauritius and the Mauritius Income Tax Act 1995.

(b) Whether it can be confirmed that the company which is a foreign company will be taxable on its profits in Mauritius and the OECD approach on attribution of profits to permanent establishments is ranked lower in order of precedence than the Mauritius Income Tax Act and is , therefore, not binding in this particular case.

RULING

(a) The German company is taxable in Mauritius on all its income generated by the construction project in Mauritius in accordance with the Double Taxation Agreement between Mauritius and Germany.

(b) The German company will be taxable in Mauritius on the profits attributable to the branch and the relevant provisions of the treaty existing between Mauritius and Germany will apply for determining the profit attributable to the Mauritius branch.

TR 163

FACTS

Two foreign promoters, who are not Mauritian residents, 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.

TR 164

FACTS

X is Zimbabwe's sole fixed telecommunication services provider that is 100% owned by the Government of Zimbabwe.

Following a court judgment, Y, a company incorporated in the Netherlands, became a judgment creditor of X for a sum of EUR 14,573,289.11 with interest as at 24 May 2014, due to a default of banking facilities contracted in or about 1997.

Since X was unable to meet its obligation vis-à-vis Y, the latter seized the shares of X held in Z (Mauritius) and was in the process of auctioning these shares in 2014 to recover its debt.

Prior to engaging in the sales of the shares, Y requested X for an immediate payment of EUR 3 million, in exchange for a full and final settlement, which X accepted in order to avoid foreclosure of its shares in Z (Mauritius). Both entities entered into a settlement agreement on 23 May 2014.

However, X was unable to raise the sum of EUR 3 million for payment to Y. AB, a company incorporated in Mauritius, offered to provide the EUR 3 million to X in exchange of a payment of USD 15,239,741 by the latter to BC. The amount of USD 15,239,741 was to be payable by X to AB in instalments over 5 years in accordance with a payment schedule as per the judgment dated 23 May 2014.

POINT AT ISSUE

Whether the profit on debt settlement can be considered as capital gain by AB?

RULING

The EUR 3 million is a loan/an advance made by AB to X to enable the latter to settle its debt with Y. The loan/advance of EUR 3 million is repayable over 5 years. The difference between EUR 3 million and USD 15,239,741, being the amount repayable over 5 years, represents interest falling under section 10(1)(d) of the Income Tax Act, which is subject to income tax. It cannot , therefore, be considered as a capital gain.

TR 165

FACTS

A and B, hereinafter collectively referred as AB, currently have on secondment from C ("the Employer"), four (4) international assignees ("IA") who are foreign nationals.

The terms and conditions of employment of the IAs with the Employer remain unchanged while they are on secondment to the Mauritian entities

a) Relocation : Shipment of personal effects

As part of the IA benefits package, AB will cover the costs of the packing, shipping, associated temporary storage and in-transit insurance for moving the assignee's personal household effects from one country to another in connection with the assignment.

The costs relating to the shipment of personal effects and warehouse storage are either paid by AB or recharged to AB where the home country has incurred these costs.

b) Relocation : Flights to and from Assignment

AB meets the cost of one-way airfares and associated travel and hotel accommodation expenses for the IA and accompanying family members travelling to and from the host location at the commencement and completion of the assignment.

c) International Medical Benefits

ABC Group provides international medical insurance cover to all assignees, partners and dependent children. The above cover is provided under the ABC Group International Health Scheme. The Group International Health Scheme is underwritten by Z International and all premiums are paid by the ABC Group.

Currently, the premiums borne by the ABC Group are not recharged back to AB. Any refund for medical expenses to the IAs is handled directly by Z International and there is no involvement from AB.

IAs are entitled to benefits under the medical scheme irrespective of their performance in Mauritius, and the premiums paid are not claimed as a deduction by AB.

d) Deferred Shares Awards

ABC Group operates a Share Plan and a Cash Plan (collectively the "Plans") which are umbrella plans under which conditional awards (typically restricted share units, "RSUs") are granted to certain employees. Awards made under the Plans most commonly include deferred bonuses or other discretionary deferred share awards ("Deferred Awards").

Deferred Awards are typically structured as conditional awards of shares in ABC Holdings PLC, but may also be a deferred cash award or a cash-settled conditional share award. Whilst the Awards are granted on a particular date (for deferred bonuses the grant date will be shortly after the end of the relevant performance year), participants do not have any legal rights to the shares or to the cash payment until a later date when the Deferred Awards vest (the date when the participant is entitled to the shares or cash payment).

During the vesting period (i.e. between the time when the Awards are granted to the participants and when they vest) the participants do not have the right to vote, receive dividends or transfer the rights to the Awards. All Awards are subject to continued employment with ABC Group and can be subject to certain other performance conditions during the vesting period. The shares delivered following vesting may also be subject to a sale restriction for a period after the date the Awards vest, but they are generally no longer subject to any risk of forfeiture beyond the vest date. No amount of cash or shares are delivered to employees prior to the vest date.

Where employees move to or from Mauritius, AB will bear the costs of the awards on a pro-rata basis between grant and vest. If an employee leaves Mauritius prior to grant of a Deferred Award, AB will bear no costs in respect of that award.

POINTS AT ISSUE

Confirmation that -

1. payment of the costs of the packing, shipping, associated temporary storage and in-transit insurance for moving the assignee's personal household effects from one country to another in connection with the assignment is not a taxable benefit in the hands of the IAs, and is not subject to PAYE.

2. payment of airfares and associated travel and hotel accommodation expenses for IAs and their accompanying family members at commencement and completion of the assignment is not a taxable benefit in the hands of the IAs.

3. insurance premiums paid by the ABC Group on behalf of the IAs are not taxable in the hands of the IAs in Mauritius and refund of medical expenses to the IAs under the International Health Scheme operated by Z International will not be taxed in the hands of the IAs.

4. where the participants have worked outside Mauritius during the vesting period of awards, the basis for taxing restricted shares in Mauritius should be sourced by reference to services rendered in Mauritius during the vesting period.

5. the basis for computing the taxable amount in respect of shares vested to ABC Group employees will be the closing price of the shares on public stock exchange on the date of vesting or the amount of cash payment made available to the IAs in lieu of shares.

RULING

On the basis of FACTS given above, it is confirmed that:

1) the relocation cost in connection with shipment of personal effects and flights to/ from Assignment is not considered as a taxable benefit in kind , therefore,and, , therefore,, not subject to PAYE as it is not in return for services rendered in the course of the performance of the duties of the employment of the IAs in Mauritius.

2) the insurance premiums paid by the ABC Group on behalf of the IAs are taxable in the hands of the IAs in Mauritius whereas the refund of medical expenses to the IAs under the International Health Scheme operated by Z International will not be taxed in the hands of the IAs.

3) since the entitlement to the shares or the cash payment is conditional on continued employment with the ABC Group during the vesting period, and is based, at times, on performance criteria attained during the vesting period, the taxable amount in respect of the Awards will be pro-rated based on the period of employment in Mauritius.

4) the basis for computing the taxable amount in respect of shares vested to ABC Group employees will be either the closing price of the shares on public stock exchange on the date of vesting or the amount of cash payment made available to the IAs in lieu of shares.

TR 166

FACTS

Z was incorporated in the Republic of Mauritius on 16 August 1993 under the Companies Act 1984 as private company with limited liability. The company holds a Freeport Licence from the Board of Investment (BOI) and is engaged in freeport activities. For the year ended 30 June 2015, 32% of the total revenue is derived from physical trading and the remaining 68% of revenue from paper trading.

Physical trade involves importing goods from countries like China, Indonesia, Malaysia to the Freeport Zone in Mauritius. These imported products pertain mainly to candles, seasoning condiments, stationery and cosmetic products and are stored in rented freeport space. These products are later exported to destinations like Madagascar and Comoro Island.

The company also deals in paper trading which relates to the importation of products such as wheat flour, tyres, stainless steel, kitchen items, fabrics, stationery and batteries from countries like India, China, Japan, Korea and Dubai. These goods are then exported to destinations like Madagascar, Tanzania, Johannesburg, Durban and Mombasa without being transited to Mauritius.

The company rents an office space at Rose-Hill where all administration work is carried out. There are 3 permanent employees. It does not possess any fixed assets and does not have any foreign offices. Foreign agents work for the company and receive commission in return.

POINT AT ISSUE

Whether receipts from paper trading are taxable or not for the following periods:

- Period before 1 July 2003;
- Period starting 1 July 2003 and ending on 30 June 2011;
- Period after 30 June 2011.

RULING

On the basis of FACTS given above, it is confirmed that:

(i) as the concept of « paper trading » did not exist prior to 1 July 2003, it was not considered to be a freeport activity under the Freeport Act 2001. Hence receipts from paper trading prior to 1 July 2003 was taxable.

(ii) based on section 161A(13) of the Income Tax Act, receipts derived from paper trading between the period 1 July 2003 and 30 June 2011 is exempt from income tax.

(iii) in accordance with section 49(1) of the Income Tax Act, income derived by a freeport operator after 30 June 2011 from the paper trading activities as described in the FACTS is exempt from income tax .

TR 167

FACTS

Mr M, a Swiss national intends to set up a Foundation under the Foundations Act 2012 for the benefit of a class of beneficiaries residing in France. The Foundation shall apply for a Category 1 Global Business Licence as well as for a Tax Residence Certificate under section 73 of the Income Tax Act in respect of the Double Taxation Convention between Mauritius and France since distributions would be made to residents of France.

The Foundation shall also pursue charitable objects.

POINTS AT ISSUE

1. Whether the Foundation shall be treated as a company in accordance with section 2 of the Income Tax Act for income tax purposes?

2. Whether the Foundation shall be entitled to access the Double Taxation Convention between Mauritius and France?

RULING

1. In accordance with section 2 of the Income Tax Act, a company includes a Foundation. The Foundation shall, , therefore,, be treated as a company for income tax purposes.

2. The Foundation shall also be entitled to treaty benefits from the Double Taxation Convention between Mauritius and France, provided that it does not deposit a declaration of non-residence with the Director-General in respect of any income year as provided under section 49A of the Income Tax Act.

TR 168

FACTS

Mr D is a French national who is tax resident in Mauritius. He receives dividends of Euro 10 million from K, a company resident in Mauritius and holding a Category 1 Global Business Licence.

POINTS AT ISSUE

1. Whether K is required to pay corporation tax or any other tax on the dividends being distributed?

2. Whether Mr D is subject to income tax or any other tax on the dividends received from K?

3. The applicability of section 7(3) of the Income Tax Act and whether same can be applicable to Mr D.

RULING

On the basis of FACTS given above, it is confirmed that :

1. the distribution of dividends by K to Mr D is exempt from income tax in accordance with item 1 of Sub-Part B of Part II of the Second Schedule to the Income Tax Act.

2. any dividend received by Mr D from a resident company is exempt from income tax in accordance with item 1 of Sub-Part B of Part II of the Second Schedule to the Income Tax Act.

3. Section 7(3) of the Income Tax Act is not applicable to Mr D since dividends are exempt by virtue of item 1 of Sub-Part B of Part II of the Second Schedule to the Income Tax Act.

Under section 7(3) of the Income Tax Act, where emoluments, dividends and interest are paid by a body of persons or persons who are exempt from tax or out of income exempt from income tax, such income (emoluments, dividends and interest) is not exempt from tax by virtue of the provisions of this section. This means that such income will be exempt from income tax only if there are provisions elsewhere in the Income Tax Act to exempt such income.

TR 169

FACTS

T Ltd is a company engaged in the development and distribution of software solutions. It has a significant number of employees based in Mauritius and all of its clients are currently located abroad. T Ltd forms part of a larger group of companies which are also involved in software development, maintenance and marketing (together the "Group"). In view of the expansion of the Group's activities (including the development of software by other Group companies which are not resident in Mauritius), T Ltd is looking to restructure the activities in Mauritius such that all the business conducted outside Mauritius are carried out through a company holder of a Category 1 Global Business Licence (hereinafter referred to as "T International").

With the restructuring, T Ltd will continue to carry out all activities conducted in Mauritius, namely development of software programmes, licensing of software to clients, ongoing (offsite) maintenance of the software and BPO activities.

T Ltd's revenues will consist of a monthly licence fee for the usage by the client of the software and a monthly maintenance fee for the ongoing servicing of the software in respect of non-BPO activities. As regards its BPO activities, it will receive a one-off implementation fee and a monthly operation fee.

On the other hand, T International will be marketing software abroad in return for an introducer's fee, payable by the client. Furthermore, T International will be conducting the implementation phase, which consists mainly of the on-site training of the software at the client's premises.

There will be a tripartite licensing, implementation and servicing agreement between the client, T Ltd and T International which will set out the different fees to be paid by the client to the two companies in respect of non-BPO activities.

All of T International's revenues will be derived from abroad since all of its clients are resident outside Mauritius.

POINT AT ISSUE

Whether T International should be able to claim the deemed foreign tax credit on its foreign source income pursuant to regulation 8(3) of the Income Tax (Foreign Tax Credit) Regulations 1996?

RULING

Given that T International will hold a Category 1 Global Business Licence, it is confirmed that it will be entitled to claim the presumed foreign tax credit under regulation 8(3) of the Income Tax (Foreign Tax Credit) Regulations 1996 on its foreign source income.

TR 170

FACTS

B Ltd (the “Company”) is a company which was incorporated in Mauritius. The company’s objects as stated in its Business Registration Card are to carry out “real estate activities on a fee or contract”. The Company has been incorporated with the sole purpose of acquiring an immovable property in Mauritius under the Integrated Resort Scheme (“IRS”). The Company does not undertake any commercial activity in Mauritius and its main purpose is not the acquisition and sale of immovable properties.

The Company is wholly owned by Mr and Mrs XYZ who are French residents and who hold 50 % shareholding each. Neither of the shareholders are property dealers. The purchase of the IRS property was financed out of the personal savings of the shareholders and is in the form of a loan made by the shareholders to the company. The shareholders intended to settle in Mauritius at the time of acquiring the property and have travelled to Mauritius four times since the acquisition of the property, spending an average of 2-3 months during each visit.

The shareholders have decided to sell the Property for personal reasons and for this purpose they will sell all their shares in the Company holding the Property.

POINT AT ISSUE

Whether the gains or profits derived by the shareholders from the sale of shares in the Company will fall within the ambit of paragraph 6(a) and paragraph 6(b) of Article 1 of the Protocol dated 9 March 1990 to the Convention between France and Mauritius?

RULING

On the basis of the above-mentioned FACTS, it is confirmed that the gains or profits derived by the shareholders from the sale of the shares in the Company fall within the ambit of paragraph 6(a) and paragraph 6(b) of Article 1 of the Protocol dated 9 March 1990 to the Convention between France and Mauritius. As the gains or profits constitute capital gains, they will not be subject to income tax in Mauritius.

TR 171

FACTS

U Limited is a company incorporated in Mauritius and is holder of a Category 1 Global Business Licence. It has started its operation in the business of acquiring and holding financial instruments in overseas jurisdictions and the net result at 31 March 2016 is a loss.

The company has royalty obligation payments to non-residents for the use or right to use Sigma Squawk facility, Stellar Software Licence, etc.

The company has incurred a gross loss in its first year of operation but will derive gross income in subsequent years from foreign sources. The company does not have any Mauritian source income.

POINT AT ISSUE

Whether the royalty paid by the company qualifies for the exemption under item 5 of Sub-Part B of Part II of the Second Schedule to the Income Tax Act.

RULING

Based on the above FACTS, it is confirmed that the royalty will qualify for the exemption as laid down under item 5 of Sub-Part B of Part II of the Second Schedule to the Income Tax Act.

TR 172

FACTS

M, ("the Foundation") was set up under the Foundations Act 2012. The business and affairs of the Foundation shall be managed by a board of councillors (the "Foundation Council") which consist of the following councillors:

1. Mr. N, a Swiss citizen (resident for tax purpose as per section 73(1) of the Income Tax Act);

2. Mr. B, a French citizen (resident for tax purpose as per section 73(1) of the Income Tax Act);

3. Mr. V, a Swiss citizen (not resident for tax purpose).

The Foundation intends to pay its councillors a gross annual remuneration of:

1. Mr. N - Euro 35,000

2. Mr. B - Euro 5,000

3. Mr. V - Euro 50,000

The councillors will perform duties similar to those of a director.

POINT AT ISSUE

Whether PAYE is applicable on the remuneration payable to the council members?

RULING

On the basis of FACTS mentioned above, it is confirmed that as the councillors will perform duties similar to those of a director, PAYE is applicable at 15% on the remuneration payable to the council members by virtue of section 96(3) of the Income Tax Act.

TR173

FACTS

Q Ltd was a public company incorporated in Mauritius. Its main shareholder was W Ltd which was holding 48.7% shares in Q Ltd. An amalgamation proposal was made and approved by the shareholders. Hence, Q Ltd ceased to exist and W Ltd became the amalgamated company as from 1 July 2016. Apart from W Ltd, the other shareholders of Q Ltd were:

	Shareholding
E Ltd	10.90%
R Ltd	13.80%
Members of the public	26.60%

According to the terms and conditions of the amalgamation process, E Ltd, R Ltd and members of the public were allotted 4.8277 shares for each share held in Q Ltd. Q Ltd had a number of wholly owned subsidiaries which had tax losses. Hence, after the amalgamation, since W Ltd was the surviving company, it became the holding company of the subsidiaries which have remained separate entities. All shareholders of Q Ltd were finally shareholders of W Ltd.

POINT AT ISSUE

Whether after the amalgamation of Q Ltd and W Ltd, the subsidiaries of Q Ltd can carry forward losses unrelieved at time of amalgamation or incurred for the year of assessment 2016/2017?

RULING

In accordance with regulation 19(5) and (6) of the Income Tax Act, the criteria for the carried forward of losses is that the shareholding of a company at the end of the income year in which the loss is incurred must not have changed by more than 50% when compared to the shareholding at the end of the income year in which the loss is to be relieved.

Based on the above FACTS, regulation 19(5) and (6) of the Income Tax Act are being complied with. Hence, after the amalgamation of Q Ltd with and into W Ltd, unrelieved tax losses of the subsidiaries or losses incurred by them for the year of assessment 2016/17 may be carried forward under section 59(b) of the Income Tax Act.

TR 174

FACTS

G Limited is a company incorporated in Mauritius and holds a Category 1 Global Business Licence. Its principal activities are the provision of trade financing services, procurement of goods, freight, group treasury management and administrative services.

G Ltd is a subsidiary of H Limited, a company incorporated in Mauritius. H Ltd holds a Category 2 Global Business Licence and is ultimately owned by I Ltd a company listed on the Johannesburg Stock Exchange.

The board of directors of H Ltd decided to acquire 75% of the share capital of a German company. G Ltd entered into a Foreign Exchange Contract (“FEC”) to hedge the group’s exposure in relation to the above acquisition. The hedge was entered into on behalf of H Ltd and I Ltd. There is no written contract between G Ltd and H Ltd for securing the FEC as G Ltd is the treasury of the group of which forms part H Ltd.

G Ltd surrendered the FEC to I Ltd so as to enable I Ltd to capitalize H Ltd by way of issuing additional share capital to I Ltd. The capitalisation proceeds were applied to the settlement of the acquisition consideration. The surrender of the FEC at market value gave rise to a gain.

POINT AT ISSUE

Whether the gain arising on the FEC entered by G Ltd should be treated as exempt as per the Second Schedule to the Income Tax Act?

RULING

On the basis of the FACTS mentioned above, the gain on the FEC has accrued to H Ltd and I Ltd which are not taxable in Mauritius. On the other hand, for arranging the FEC, G Ltd would be deemed to have received an arm’s length fee which is taxable in Mauritius.

TR 175

FACTS

N is a fund established by the General Assembly as a Subsidiary Organ and integral part of an international organisation to provide for retirement, death, disability and related benefits for the staff of the organisation and the other organisations admitted to membership in the Fund. N is not an entity separate from the organisation; it does not have a legal personality separate from the organisation.

For more than a decade N has been investing in the equity markets in Mauritius. The investments were made through a discretionary Africa Emerging Market Equity external fund. As of March 31, 2016, N had an investment of USD xxx million invested in the discretionary Africa Emerging Market Equity Fund.

The Convention of the Privileges and Immunities of the organisation ("Convention") was adopted by a Resolution of the General Assembly. Mauritius acceded to the Convention on 18 July 1969. The Convention provides that the organisation, its assets, income and other property shall be exempt from all direct taxes".

N has no business presence in Mauritius and consequently no permanent establishment in Mauritius.

POINTS AT ISSUE

1. Whether N, as a Subsidiary Organ of the organisation, qualifies as an exempt body of person under item 20 of Part 1 of the Second Schedule to the Income Tax Act 1995?

2. Whether any income derived by N in Mauritius by way of dividend, interest, capital gains and other income that may arise as a result of its investment actions are exempt from taxes?

RULING

On the basis of the FACTS mentioned above, it is confirmed that -

1. N Fund, as a Subsidiary Organ of the UN, is an exempt body of person under item 20 of Part 1 of the Second Schedule to the Income Tax Act 1995; and

2. any income derived by N Fund in Mauritius by way of dividend, interest, capital gains and other income that may arise as a result of its investment actions will be exempt from income tax.

TR 176

FACTS

R is tax resident in UK. It is a UK registered not-for-profit body corporate and is registered as a Scottish Charity. It offers degree programmes.

T Ltd is a company incorporated in Mauritius and is engaged in the provision of educational services. It is registered with the Tertiary Education Commission (“TEC”) but not registered with the Mauritius Qualification Authority (“MQA”) in Mauritius. R is not registered either with the TEC or the MQA.

R and T Ltd are not related entities. They have entered into an Agreement whereby they will collaborate to provide higher education to students in Mauritius and, in particular, to facilitate learning to enable students to attain degrees which are conferred by R as the sole awarding body.

The services provided by R to T Ltd and the corresponding fees under the terms of the Agreement are as follows:

Services by R to T	**Corresponding fees**
Preparation of teaching material, meetings with associate lecturers from T Ltd, hosting events, visits to Mauritius, approval of events, meetings with regulatory bodies in Mauritius, 2 weekly strategic meetings over Skype and weekly operational meetings over Skype.	Academic start up support fees.
The supply of undergraduate degree course material and services.	A per student per annum charge which will cover services like access to R’s student online systems, access to library systems, student registration and administration services, graduation and brand.
The provision of an online platform to students for e-learning (module delivery, library access, online students’ registration, assessment monitoring).	A per student per annum charge which will cover services like access to R’s student online systems, access to library systems, student registration and administration services, graduation and brand.
The provision of fly-in-fly-out staff (both teaching and non-teaching staffs), for a period of less than six months, to Mauritius for Academic Delivery and Quality Assurance purposes. The Quality Assurance services will be provided as an integral part of the educational services provided by R to T Ltd.	Academic delivery and quality assurance fees which will be invoiced on a cost-plus basis.
Non-teaching staffs will be mainly carrying Quality Assurance activities but there are also staffs involved in skills transference (technical staff for lab setups). There may also be visits relating to the management of the contract.	Academic delivery and quality assurance fees which will be invoiced on a cost-plus basis

Online support, some teaching, assessment boards, Quality Assurance oversight and assessment marking will be provided from the UK by R.	Academic delivery and quality assurance fees which will be invoiced on a cost-plus basis

R will not receive any allocation of the Mauritius student tuition fees, either directly from students themselves or collected by T Ltd on behalf of R and repatriated to R.

The degree programmes will be delivered by T Ltd with the collaboration of R. The first year of the degree programmes will be delivered solely by R and the second, third- and fourth-year degree programmes will be provided by both R and T Ltd. However, in the case where T Ltd cannot deliver the correct level and skills of staff during the first year of the degree programme, R will take delivery and charge T Ltd a higher rate for same.

An academic year consists of 3 trimesters. Each trimester lasts an average of 15 weeks. The company estimates that the fly-in-fly-out staff (teaching and non-teaching staff) provided by R will stay in Mauritius for durations not exceeding 2 weeks in each trimester during academic years 2016/2017 and 2017/2018. As regards year 2018/19, the duration will be 2 weeks for the first and third trimester, and 3 weeks for the second trimester. Overall the fly-in-fly-out staff will spend no more than 3 weeks in Mauritius in any trimester.

The degree programmes will be accredited by R. In case T Ltd wishes to collaborate with a Third Party to extend its portfolio of Programmes, it should discuss same and obtain the decision/ agreement of R within 30 days prior to engaging with the Third Party.

The delivery model of T Ltd will be a blended service with part of the degree being delivered online to students via e-learning and partly by face-to-face teaching. T Ltd will maintain at its own expenses appropriate offices, teaching facilities, equipment, administration facilities and systems as may be necessary for the effective performance of its duties under the Agreement. With regards to the use of brand, publicity and promotions, R will grant T Ltd the non-exclusive, revocable personal licence for the use of its trademarks. However, written consent should be obtained by T Ltd before using same.

T Ltd will allow R and its authorized representatives, at any reasonable time, to have access to the teaching premises for the purpose of ongoing assurance and confirmation of the academic environmental to support the delivery of the Programmes. Delivery of teaching service will be at the premises of T Ltd.

POINTS AT ISSUE

1. Whether R will be subject to income tax in Mauritius?

2. Whether R will be subject to Tax Deduction at Source (“TDS”) in Mauritius?

3. Whether payments made to R with relation to the services like access to GCU’s student on-line systems, access to library systems, student registration and administration services, graduation and brand will be considered as a royalty payment made by T?

4. Whether employees of R coming to Mauritius for periods not exceeding six months to deliver courses with regards to the degree programmes will be subject to PAYE in Mauritius?

5. Whether R should be VAT registered in Mauritius?

6. Whether reverse charge should be applicable on the services provided by R to T Ltd?

RULING

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

1. Having regard to the time spent by the fly-in-fly-out staff of R in Mauritius and the absence of a fixed place of business in Mauritius, R will not have a permanent establishment in Mauritius and will not be subject to tax in Mauritius.

2. Since R will not have a permanent establishment in Mauritius, TDS will not be applicable on the payments made by T Ltd to R.

3. Payments made to R with relation to the services like access to R's student on-line systems, access to library systems, student registration and administration services, graduation and brand will not be considered as a royalty payment made by T but will be treated as business profits. Moreover, since R will not have a PE in Mauritius, the payments will not be subject to tax in Mauritius.

4. In the event that the fly-in-fly-out staffs from R are tax resident in UK, they will be exempt from tax in Mauritius in accordance with Article 15(2) of the Double Taxation Avoidance Agreement between UK and Mauritius and will not be subject to PAYE in Mauritius.

5. R will not have any obligation to apply for VAT registration in Mauritius since educational services provided in Mauritius is an exempt supply by virtue of item 16(a) of the First Schedule to the VAT Act.

6. Since educational services is an exempt supply in Mauritius, reverse charge will not apply.

TR 177

FACTS

Mr N, an Irish national, and Mr B, a British national, are both currently residing in Zimbabwe. They were the shareholders of various companies involved in financial services (money remittance services) and technology services/licencing including a company called C Ltd, a private company incorporated in South Africa. N and B each held 25% of the ordinary shares in C Ltd.

During the year 2014, N and B were approached by a private equity group called P who was interested in acquiring a stake in the businesses owned by N and B.

It was agreed between the parties before the acquisition took place that a separate holding company, H Ltd is established in Mauritius to consolidate and own all the financial services and technology subsidiaries that are involved in money remittance services owned by N and B. The parties also reached a consensus that there will be no existing liabilities at the level of H Ltd once consolidation of the subsidiaries is completed.

H Ltd was incorporated in Mauritius by N and B. H Ltd holds a Category 1 Global Business Licence and the shareholders were R Ltd and T Ltd, two companies incorporated in Nevis, each with a 50% ownership in H Ltd.

The ultimate beneficial owners of R Ltd and T Ltd are N and B respectively.

On 22 December 2014, M Ltd, a company holding a Category 1 Global Business Licence and the holding vehicle for P acquired a stake of 35.2 % in H Ltd from R Ltd and T Ltd for a total consideration of USD 14 million.

On 3 February 2015, N and B entered into a sale of shares agreement in terms of which they both sold their 25 % shareholding respectively in C Ltd to H Ltd. Since no payment was effected, the transaction was reflected in the accounts of H Ltd as a loan of ZAR 12,210,000 due to N and B. However, this transaction which took place after 22 December 2014, the date of acquisition of shares in H Ltd by P, was contrary to the consensus reached by all parties that no liabilities should exist at the level of H Ltd.

N and B now wish to cancel the loan between themselves and H Ltd by waiving the outstanding loan to H Ltd.

POINTS AT ISSUE

Whether the waiver of the loan by N and B would constitute taxable income in the hands of H Ltd?

RULING

On the basis of FACTS provided, it is confirmed that the waiver of the loan would not constitute taxable income since the loan was taken for acquiring a capital asset in the form of investment in C Ltd.

TR 178

FACTS

Qualifying employees of X Limited, including non-Mauritian citizens who are relocated to Mauritius, so that, their legal and economic employer is X Ltd, are entitled to join a 'share scheme' operated by K Ltd, the holding company of X Ltd. The share scheme is typically administered outside Mauritius and provides the employees of X Ltd a certain right pertaining to the shares of K Ltd. K Ltd is resident in South Africa and is a public company whose shares are listed in South Africa.

K Ltd operates two schemes, namely the Equity Growth Scheme (“EGS”) and the Share Incentive Scheme (“SIS”).

The Equity Growth Scheme

Under the Equity Growth Scheme (“EGS”), the employees receive Participation Rights (“PR”), subject to certain conditions being met. The conditions may include the number of years of employment with any company forming part of the SBGL group.

The PR is converted into shares at the time the employee exercises the rights. The number of shares that he would be entitled to is determined on the basis of a specified methodology/formula which takes into account the market price of the share at the time the PR is awarded and the market price of the share at the time he exercises his rights. At that time, the employee may receive no shares at all should the market price at the date of exercise be lower than the market price of the share at the date of the award of the PR.

The employee is entitled to the shares, if any, free of any charge. At the time the employee exercises his rights, he does not receive the shares to which he is entitled but rather the shares are disposed of by the administrators of the Scheme at the market price prevailing at that date.

The employee receives the cash value/the proceeds of the sale of the shares less the brokerage fees he is required to pay under the Scheme.

The Share Incentive Scheme

Under the Share Incentive Scheme (“SIS”), a qualified employee receives an option to purchase shares of K Ltd at an agreed price. An employee is only able to participate in the SIS if he has been employed by X Ltd for at least 5 years. The SIS is made up of 2 alternatives:

a. *Purchase alternative*

Under the purchase alternative, the employee has the option to purchase a number of shares on a future date at a predetermined price and is under the obligation to acquire the shares at the agreed price on that date. At the exercise date, the employee is required to dispose of the shares.

b. *Option alternative*

Under the option alternative, a qualified employee has the option to purchase a number of shares on a future date at a predetermined price and can elect whether to acquire the shares on the exercise date. The employee can choose the date on which the shares should be disposed of.

POINTS AT ISSUE

(1) Whether the gains realised on the disposal of the shares, under the Equity Growth Scheme, should be subject to income tax in the hands of the employee?

(2) Whether, under the Share Incentive Scheme, either under the Purchase alternative or the Option alternative, the acquisition of the shares at a price lower than their market value at the exercise date gives rise to a taxable benefit in the hands of the employee?

RULING

On the basis of the aforesaid FACTS, it is confirmed that:

(1) A benefit arises at the time the employee exercises his rights under the Equity Growth Scheme. The value of the benefit is the proceeds from the sale of the shares less the brokerage fees. The employee is entitled to the 'cash' realised on the disposal of the shares, i.e. the proceeds of the sale less brokerage fees, by virtue of his office or employment and hence, the amount received constitutes employment income. , therefore,, the employee is liable to income tax thereon in view of the provisions of section 10(1)(a)(i) of the Income Tax Act.

(2) The excess of the market price of the share over the agreed price, at the time the employee acquires the share under the Share Incentive Scheme, is a benefit in kind to the employee and is taxable under section 10(1)(a)(i) of the Income Tax Act.

TR 179

FACTS

R Ltd is holder of a Category 1 Global Business Licence. It entered into a loan agreement with Bank X (the “Lender”) on 23 November 2015. The Lender is incorporated in China and is a government-owned entity. The Lender is also indirectly a 40% shareholder of R Ltd.

As per the terms of the Loan Agreement, the Lender shall charge R Ltd interest twice a year in accordance with the interest rate.

POINT AT ISSUE

Whether interest arising in Mauritius and derived by the Lender will be exempt from withholding tax in Mauritius as the Lender is a governmental body.

RULING

On the basis of FACTS provided, it is confirmed that interest paid by R Ltd to the Lender is exempt from income tax in Mauritius by virtue of item 4(a) of Sub-Part B of Part II of the Second Schedule to the Income Tax Act. Hence, R Ltd will not be subject to any withholding tax in Mauritius.

TR 180

FACTS

A is a private company incorporated in Mauritius. A holds a Category 1 Global Business Licence ("GBC 1") and is tax resident in Mauritius. The principal activity of A is investment holding and it currently holds a 99.99% investment in B, a company incorporated and tax resident in Thailand, and 100% in C, a company incorporated in Singapore.

B was incorporated as a limited company in Thailand and is engaged in the business of providing information technology and e-commerce marketing services. B was granted rights and privileges as a promoted industry under the Investment Promotion Act to support commerce and investment business and to be a regional headquarters ("ROH"). The ROH regime is a special scheme set up by the Board of Investment ("BOI") to attract foreign and local investment for the promotion of the economic and social development and security of Thailand. Under this regime, B enjoys a reduced rate of corporate tax. Furthermore, a company under the ROH regime also benefits from exemption on withholding tax on dividend it distributes to its foreign shareholders, otherwise payable at 10%.

POINT AT ISSUE

Whether A can claim underlying tax credit and withholding tax credit under the tax sparing credit?

RULING

Based on the above FACTS, it is confirmed that A will be entitled to claim foreign tax credit for the amount of withholding tax and underlying tax spared in respect of dividend receivable from B for set-off against its Mauritian tax payable on its foreign source income.

TR181

FACTS

A is a private company limited by shares and holder of a Category 1 Global Business Licence issued by the Financial Services Commission.

The shareholding structure of A is as follows:

- Shareholding of A
  - 15,333 shares held by H, a company registered under the laws of Bahamas and
  - 1 share held by C.
- Shareholding of H
  - 3,899,999 shares held by B, a company registered under the laws of Barbados; and
  - 1 share held by C.
- Shareholding of B
  - 11,694,702 shares held by E, a company registered under the laws of the Netherlands.
- Shareholding of E
  - 99% of the shares of E are held by F, a company registered under the laws of Jersey and
  - Remaining 1% of the shares of E is held by G, a company registered under the laws of Jersey
- Shareholding of F
  - 100% shares of F held by G

H intends to transfer all the shares it holds in A to E. Upon dissolution and/or striking off of

H and/or B, all the surplus assets will be distributed E.

POINTS AT ISSUE

1. Whether A is entitled to carry forward unrelieved losses from the past five years upon the transfer of all H shares held in the Company to E?

2. Whether A can carry forward the losses unrelieved from the past five years upon the dissolution and /or striking off of H and/or B and the distribution of all the surplus assets to E?

RULING

On the basis of the above FACTS, it is confirmed that pursuant to section 59(b) of the Income Tax Act and in accordance with regulation 19, A can carry forward the unrelieved tax losses from the past five years -

1. upon the transfer of all H shares held in A to E; and

2. upon the dissolution and/or striking off of H and/or B and the distribution of all the surplus assets to E.

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 wilI 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.

TR 183

FACTS

X is an international energy company engaged in the exploration, production and marketing of natural gas. X was incorporated in Mauritius as a private company and it holds a Category 1 Global Business Licence. X has a wholly owned subsidiary in Jersey registered under the name of Y Limited. Y has a branch which derives income in Tanzania.

The gross income of Y for the years 2008 to 2016 amounting to USD 77.289 million represents the profits of the Tanzanian Branch, except for an amount of USD 128,357 which is interest income from Jersey for the year 2016. The profits from the Tanzanian Branch are not taxable in Jersey. However, the Branch is subject to tax at 30% in Tanzania and has paid tax amounting to USD 56.666 million on the income derived from Tanzania for the years 2008 to 2016.

Y wishes to pay a dividend of USD 77.289 million to X. The dividend receivable by X is taxable in Mauritius at the rate of 15% and the company is entitled to foreign tax credit.

POINT AT ISSUE

Whether X is entitled to underlying foreign tax credit in respect of dividends received from Y by virtue of Regulation 7 of the Income Tax (Foreign Tax Credit) Regulations 1996?

RULING

Based on the above FACTS and on the understanding that the provisions of section 77 of the Income Tax Act are satisfied, it is confirmed that with regard to dividends receivable from Y on which X is taxable in Mauritius, X is entitled to foreign tax credit on account of tax paid in Tanzania on profits out of which such dividends are paid.

TR 184

FACTS

M was incorporated on 20 September 2017 and its sole shareholder is Mr N.

The company contemplates to acquire a vessel that will be used to:

(a) transport commodities such as raw sugar for refining or coal, from foreign countries to Mauritius ("activity A");

(b) transport commodities such as refined sugar, from Mauritius to foreign countries ("activity B"); and/or

(c) transport certain commodities between foreign countries only ("activity C").

The vessel will be registered in Mauritius and the company will not be engaged in any fishing activities.

Its surplus cash may generate interest income. The company may also have foreign interest income.

Whilst its core business activities will initially be the transport of coal and related products for sugar milling companies in the Indian Ocean region, it will ensure that it is able to adapt itself so that it can transport any other commodity. This may require modification to the vessel and the company may have to incur capital expenditure at a later date.

The company will initially be funded by equity from Mauritian tax-resident shareholders, corporate and non-corporate. Given the magnitude of the proposed project and depending on its performance and expansion strategy, the company may also in the future have foreign shareholders with the long-term objective of becoming a Mauritian-based shipping company of international repute. However, the control of the company will remain with Mauritian tax residents.

It is very likely that the company will fund part of the cost of acquisition of the vessel through a loan from a South African ("SA") commercial bank.

The company may also have to undergo repairs outside Mauritius, whilst it would prefer to have such repairs being done in Mauritius.

POINTS AT ISSUE

(i) Corporate tax treatment of the income from transport of goods

a. Whether income derived by the company from Activity A, B or C is exempt from tax?

b. Whether the income of the company will be exempt from Corporate Social Responsibility (“CSR”)?

c. Whether upon the acquisition of a second vessel by the company, the tax treatment of the income from the second vessel will depend on the country in which the vessel is registered and the activities undertaken by the vessel in question?

(ii) Corporate tax treatment of interest income

a. Whether to the extent that the interest income is incidental to the core activities of the company, the interest income should also be exempt from tax?

b. Whether in case the interest income is found to be taxable, any foreign tax suffered on the interest income will qualify for foreign tax credit (“FTC”) and any unutilised FTC can be offset against CSR?

c. Whether any foreign exchange gain or loss on the interest income would be disregarded for tax purposes?

(iii) Tax treatment of interest to the bank

a. Whether interest incurred on loan taken from a South African bank to finance capital expenditure in connection with the vessel is a non-allowable expense for tax purposes?

b. Whether the rate applicable for TDS on interest paid to South Africa is 10 % in accordance with Article 11(2) of the tax treaty between Mauritius and South Africa?

c. Whether the effective rate for TDS should be computed at one-ninth of the interest payment where the company agrees that it should bear the TDS?

(iv) Foreign exchange difference on interest and capital repayment to the bank

a. Whether for purposes of the TDS mechanism, the foreign exchange rate prevailing on the date the interest is paid should be applied?

b. Whether foreign exchange gain or loss on the interest and capital repayment to the bank should be disregarded for tax purposes since it relates to the acquisition of the vessel?

(v) Impact of the OECD/G20 BEPS project

a. Whether, given that the core-income generating activities referred to in paragraph F of Part III of Chapter 4 of the BEPS Action 5 Report will be performed in Mauritius, the employees of the company will be taxed on their employment income in Mauritius?

b. Whether the corporate tax regime that currently applies to the company should not pose any international tax issue and whether the company should be considered as a ‘qualified person’ within the Multilateral Convention signed by Mauritius on 5 July 2017?

RULING

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

(i) Corporate tax treatment of the income from transport of goods

a. Income derived by the company from Activity A, B or C is exempt from tax by virtue of item 10 of Sub Part C of Part II of the Second Schedule to the Income Tax Act.

b. The company will be exempt from CSR to the extent that it derives exempt income.

c. Since the second vessel will not fall within the definition of a foreign vessel as laid down in section 2 of the Income Tax Act, the tax treatment of the income from the second vessel will depend on the activities undertaken by the vessel and whether it is a local vessel registered in Mauritius.

(ii) Corporate tax treatment of interest income

a. The interest income would be subject to tax.

b. Any foreign tax suffered on interest income can be offset against tax on foreign source income and any unutilized FTC can be set off against CSR pertaining to foreign source income.

c. any foreign exchange gain or loss on the interest income would be considered for tax purposes.

(iii) Tax treatment of interest to the bank

a. Interest incurred on loan taken from a South African bank to finance capital expenditure in connection with the vessel is not an allowable expense by virtue of section 26 (1) (a) of the Income Tax Act.

b. The rate applicable for TDS on interest paid to South Africa is 10 % in accordance with Article 11(2) of the tax treaty between Mauritius and South Africa.

c. Where the company agrees that it should bear the TDS, the effective rate for TDS should be computed at one-ninth of the interest payment.

(iv) Foreign exchange difference on interest and capital repayment to the bank

a. For purposes of the TDS mechanism, the foreign exchange rate prevailing on the date the interest is paid should be applied.

b. The foreign exchange gain or loss on the capital repayment to the bank should be disregarded for tax purposes since it relates to the acquisition of the vessel.

(v) Impact of the OECD/G20 BEPS project

a. The employees of the company will be taxed on their employment income in Mauritius.

As regards confirmation of whether the corporate tax regime that currently applies to the company would not pose any international tax issue or whether the company would be considered as a ‘qualified person’ within the Multilateral Convention signed by Mauritius on 5 July 2017, these issues are beyond the scope of section 159 of the Income Tax Act.

TR 185

FACTS

H is a private company incorporated in Mauritius. It holds a Category 1 Global Business Licence and is tax resident in Mauritius. The principal activities of H are investment holding and it currently owns 64.89% in B, a company incorporated and is tax resident in Uganda.

B is an electric energy generating company operating a power station in Uganda.

In accordance with the Uganda Income Tax Act, the income of B derived from the hydro power project is exempt from income tax from 01 July 2017 to 30 June 2022. This exemption was granted as part of the effort of the government to reduce the cost of electricity with a view to promoting economic development in Uganda.

POINT AT ISSUE

Whether H is entitled to claim tax sparing credit in respect of dividend receivable from B against the Mauritius tax imposed on such income?

RULING

On the basis of the above, it is confirmed that H is entitled to claim tax sparing credit in respect of dividend receivable from B in accordance with the provisions of regulation 9 of the Income Tax (Foreign Tax Credit) Regulations 1996 and Article 24(3) of the DTAA between Mauritius and Uganda.

TR 186

FACTS

F is a private company incorporated in Mauritius with liability limited by shares and holds a management licence issued by the Financial Services Commission ("FSC").

F was acquired on 1 January 2017 by S. The acquisition of F was effected through a newly incorporated wholly owned subsidiary of S, M which is registered in Mauritius as a private company. The business activity of M is to act as the parent company of F and F Trustees, a related company.

The agreement for the sale and purchase of the entire issued share capital of F and its trustees makes mention of sale of shares only. However in accordance with IFRS 3, the consideration paid for the acquisition of F is broken down in the accounts of M into three components, namely -

(i) The Net Assets Value of F;

(ii) Contract and Customer Intangibles; and

(iii) Goodwill.

Hence each identifiable asset forming part of the purchase consideration has been recorded separately in the books of M. According to IAS 38, identifiable assets having a finite life are subject to amortisation. The *"contract and customer intangibles"* have been assessed with a finite life of 6 years.

It is proposed to merge F and M where F will be the surviving company for the following reasons -

> (i) the *"contract and customer intangibles"* are recorded in the books of M and the income generated by that asset is recorded in F ;
>
> (ii) because the asset is recorded in one company and the income in another company, the transaction has given rise to a commercial and accounting mismatch which is against the matching concept; and
>
> (iii) following the merger, F will amortise the *"contract and customer intangibles* "over its useful life.

POINT AT ISSUE

Whether F will be entitled to claim annual allowance at the rate of 5% on the cost of the *"contract and customer intangibles"* under section 24 of the Income Tax Act and Income Tax Regulations 1996?

RULING

MRA is of the view that there is no commercial and accounting mismatch of assets and income in view of the following:

M has purchased the shares of the shareholders of F. F has continued as a going concern without any change in its operations. Only the shareholders have changed. F is providing management services to its customers. In exchange for the management services, F is entitled to receive a fee which is accounted as revenue in its Income Statement. The contracts are between F and the customers. The change in shareholders has changed nothing in the business of F. The customers will continue to transact with F and they have no contractual relationship with M.

M is receiving dividends in return for the shares purchased in F. It is entitled to amortise the component of the purchase consideration for the shares which is represented by *"contract and customer intangibles"* under normal accounting principles. However, since dividend is an exempt income, it will not be entitled to annual allowance by virtue of sections 24 and 26 of the Income Tax Act.

The merger is, in our view, being used as a medium to transfer the intangible assets from M to F, the origin of which is in F itself and same could not previously be recognised in the books of F in accordance with paragraph 63 of IAS 38, which prohibits the recognition of internally generated intangible assets.

In the circumstances, F will not be entitled to claim annual allowance on the *“contract and customer intangibles”* under section 24 of the Income Tax Act and the Income Tax Regulations.

TR 187

FACTS

C and D are two wholly owned subsidiaries of Z, a company incorporated in the British Virgin Islands.

Both C and D are incorporated in Mauritius. D is registered as a joint venture law firm with the Attorney General's Office in Mauritius whereas C holds a management licence from the Financial Services Commission.

As at 31 March 2017, Z has advanced interest-free loans to the tune of USD 1,904,462 and USD 702,132 to D and C respectively to support their operating expenses over the years. C has also advanced interest-free loans amounting to USD 1,886,171 as at 31 March 2017 to D.

In their Income Tax returns for the year ended 31March 2017, D and C have declared tax losses and tax payable of Rs 66,392,624 and Rs 741,919 respectively.

The following transactions will take place to amend the existing group structure:

(i) D will deregister as a law firm and amend its business activity to that of secretarial services;

(ii) The current outstanding balance of loans due to Z by D (USD 1,904,462) and C (USD 702,132) will be converted into shares of D and C issued to Z;

(iii) C receivables of USD 1,886,791 in D will be converted into shares of D, issued to C; and

(iv) Z will transfer all its D shares to C at nominal value such that D becomes the wholly owned subsidiary of C;

Once the new structure is in place, Z will dispose of its stake in C to third parties.

POINTS AT ISSUE

Whether there are any income tax implications -

(i) on the proposed restructuring of the group: and

(ii) upon disposal of the shares of C after the restructuring?

RULING

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

(i) Regarding the income tax implications on the proposed restructuring of the group -

a. the MRA considers that the interest-free loan advanced by C to D is not at arm's length by virtue of section 75 of the Income Tax Act; and

b. D will not be allowed to carry forward any loss in accordance with section 59 of the Income Tax Act.

(ii) The disposal of the shares in C will not be subject to tax since it is of a capital nature.

TR 188

FACTS

S, a company incorporated under the laws of Mauritius and tax resident in Mauritius, will enter into an agreement with K, a company registered in United Arab Emirates ("UAE") as a Free Zone Limited Liability Company, to carry out the refurbishment, renovation and major repair works to the existing buildings owned by S.

S will also enter into a separate contract with the same K for the design and construction of residential villas in Mauritius.

In order to finance the development projects of refurbishments and construction of villas, S will contract loans from F. The latter company is tax resident in UAE and can avail from treaty benefits under the Double Taxation Agreement ("DTAA") between Mauritius and UAE.

The conditions of the loans, including the rate of interest to be charged will be at arm's length. S, K and F are all related companies within the same Group the ultimate beneficiary of which is the Investment Corporation of Dubai, the principal investment arm of the Dubai Government.

POINT AT ISSUE

Whether S can claim the interest payable to F as a tax-deductible expense under section 19 of the Income Tax Act?

RULING

On the basis of the FACTS mentioned above, S will be entitled to claim the interest payable to F

as a tax-deductible expense by virtue of section 19 of the Income Tax Act.

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.

TR 190

FACTS

M will be the promoter of an external pension scheme ("EPS") under the Private Pension Schemes Act 2012 ("PSSA 2012"). In that respect, an EPS application shall be made in accordance with section 12 of the PPSA 2012. Pursuant to section 9 of the aforesaid Act, the EPS shall hold a Category 1 Global Business Licence ("GBL") under the Financial Services Act 2007 ("FSA 2007").

The EPS will be established as a trust under the Trusts Act 2001 ("TA 2001") with Mauritian trustees. A Pension Scheme Administrator licensed by the FSC under Part IV of the FSA 2007 will be established in Mauritius, employing Mauritian based individuals, and the membership of the EPS will be confined to non-residents whose economic activities are wholly outside Mauritius. Individuals who would advance funds to the EPS will be individuals who will not be tax resident in Mauritius. The EPS will also provide pension benefits (comprising pensions/annuities/lump sum benefits) to non-residents and/or their beneficiaries on retirement, disability or death, as the case may be.

The EPS will be a defined contribution scheme within the provisions of the PPSA 2012 offering membership to non-resident members who may be either employed or self-employed, and whose membership will not be sponsored by their employers. The EPS will not be comparable to a conventional occupational pension scheme. It will also not be a superannuation fund set up for the benefits of employees of a Mauritian employer.

The EPS will accept contributions from non-resident members and pay pension benefits to non-resident members and /or their beneficiaries on retirement, disability or death, as the case may be. To this extent, the EPS will accept capital contributions from non-resident employees and contributions for the benefit of non-resident members from their employers, and the latter may or may not be resident in Mauritius. It will also accept transfers from existing non-resident pension plans for the benefit of its non-resident members.

The EPS will invest members' contribution in global investments comprising deposits, shares, bonds, debentures, collective investment schemes and similar global securities. The investments will accordingly be invested internationally.

The effective place of management of the EPS and the Mauritian pension administrator will be in Mauritius.

POINTS AT ISSUE

(1) Whether the EPS will be exempt from income tax in Mauritius?

(2) Whether pension benefits (comprising pensions/annuities/lump sum benefits) paid to the non-resident members and/or their beneficiaries on retirement, disability or death, as the case may be, will be considered to be Mauritian source income subject to income tax in Mauritius?

(3) Whether the EPS will be required to comply with the Mauritian income tax obligations to withhold income tax under the Pay As You Earn - ("PAYE") system?

(4) What will be the income tax treatment of any Mauritian sourced pension benefit paid to an individual who is resident in a treaty partner country?

RULING

On the basis of the FACTS mentioned above, it is confirmed that:

(1) as the EPS will not be a superannuation fund set up for the benefits of the employees of an employer, its income will not be exempt from income tax under Item 8, Part 1 of the Second Schedule to the Income Tax Act. However, as the EPS will be a trust established under the Trusts Act 2001, holder of a Category 1 Global Business Licence and its beneficiaries will be non-resident individuals, its income will be exempt upon filing a declaration of non-residence for each income year under the provisions of section 46(3) of the Income Tax Act.

(2) pension benefits (comprising pensions/annuities/lump sum benefits) paid to the non-resident members and- /or their beneficiaries on retirement, disability or death, as the case may be, will be considered to be Mauritian source income subject to income tax in Mauritius in accordance with section 10(1)(a)(ii), section 10(1)(d) and section 74(1)(b) of the Income Tax Act 1995. The pension benefits paid will also not fall within the ambit of the exemption provided in section 46(4) of the Income Tax Act, as regulation 17, sub-section (7)(c) of Income Tax Regulations 1996 provides that payment of such benefits will be considered as a recurrent expenditure and will be deductible in ascertaining the net income of a pension business.

(3) Subject to paragraph (4) below –

(a) the EPS will be required to comply with the Mauritian income tax obligations to withhold income tax under the PAYE system for pensions falling under section 10(1)(a)(ii) of the Act.

(b) the recipients of pensions falling within section 10(1)(d), may make a request to apply PAYE in accordance with section 93(2)(b) of the Income Tax Act.

(4) 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. However, any Mauritian sourced pension benefit paid to an individual who is resident in a country with which Mauritius has not signed a DTAA will be subject to Mauritius taxation as gross income derived under section 10(1)(a)(ii) and 10(1)(d) of the Act.

TR 191

FACTS

G is a private company incorporated in Mauritius in June 2018. G will be involved in creative and innovative activities, geared towards the development of Intellectual Property (IP) assets in Mauritius, mainly in the virtual gaming and betting industry. G, in Mauritius, aims to be a self-sufficient development hub where the latest ideas and innovations in the gaming sector can be produced and brought to life.

G's product teams have outlined the concepts for 5 new products/features which currently do not exist in the market. G will be tasked with developing the concepts and turning them into fully operational products and features. The products will be developed and maintained by G in Mauritius. The IP rights will be registered in Mauritius and the ownership of such products will exclusively belong to G.

To help in the development process of the 5 innovative products, G will employ highly experienced coding developers and gaming technical officers from Europe. These people will be highly qualified in the IT and gaming sector. To support these people, G will hire talents locally in Mauritius. G plans to employ 20 full-time employees in its IT department in Mauritius which includes:

- 1 Chief Technology Officer
- 4 Senior Developers
- 10 Junior Developers
- 3 Graphic Designers
- 2 Project Managers

Once the products are ready in Mauritius, they will then be distributed through current and prospective gaming operators overseas in Europe and Africa. G will enter into provider Agreements with the different operators and will be remunerated on a revenue share basis.

POINT AT ISSUE

Whether the income of G will be exempt from income tax for a period of 8 income years in accordance with Items 34(a) and 34(b) of Sub-Part C of the Second Schedule to the Income Tax Act which reads as follows:

"34(a) Subject to sub-item (b), the income of a company set up on or after 1 July 2017and involved in innovation-driven activities for intellectual property assets which are developed in Mauritius.

(b) The exemption shall be for a period of 8 income years as from the income year in which the company started its innovation-driven activities."

RULING

On the basis of the FACTS submitted, it is noted that:

- G was set up in Mauritius after 1 July 2017;
- G is going to develop 5 new products which currently do not exist on the market;
- the activities of G will generate IP assets in Mauritius;
- G will be the exclusive owner of the IP rights of the products which it will develop in Mauritius and will be registered in Mauritius;
- G will have substance in Mauritius as all software development will be done in Mauritius through a team of 20 IT Professionals who will all be in Mauritius and whose ideas will be incorporated in gaming products developed in Mauritius.

Based on the above, the activities of G would fall under the provisions of Items 34 (a) and 34(b) of the Sub-Part C of the Second Schedule to the Income Tax Act and hence, be exempt from income tax for a period of 8 income years as from the income year in which G starts its innovation-driven activities.

TR 192

FACTS

G is a private company incorporated in Mauritius and holds a Category 1 Global Business License ("GBC1"). G is engaged in holding of investments, ownership and commercialisation of Intellectual Property ("IP") rights and enters into license agreements with affiliates for the manufacture and commercialisation of pharmaceutical products, manufacturing and distribution of pharmaceutical, over-the-counter and infant nutritional products.

G is involved in the transactions mentioned below:

Transaction 1

G acts as a guarantor for the loans raised by its related parties by either signing bank guarantee documents, or offering G's assets as guarantee for the bank loans raised by the related parties.

G charges a guarantee fee to the related parties for acting as guarantor. Furthermore, it also has to pay guarantee fee to the banks for the issue and maintenance of the guarantee documents.

Transaction 2

G has contracted a loan from F, a related company incorporated in South Africa. The principal activity of F is to provide financing services to its related parties.

F entered into a Facility Agreement with several banks and out of which a percentage of the funds received were lent by F to G. F incurred and as applicable, will continue to incur over the term of the loan various fees such as utilisation fees, arrangement fees, participation fees, commitment fees, commission fees, and service fees (collectively referred to as "the Fees") in relation to the Facility Agreement. F recharges to G as applicable over the term of the loan the Fees incurred in the proportion determined by benchmarking exercises.

The loan contracted from F will be used by G for the following purposes:

- to refinance G's existing loan facilities; existing loan facilities were mainly for IP acquisitions;
- to finance Permitted Acquisition which include acquisition of securities, business or undertaking; and /or
- for general corporate purposes.

POINTS AT ISSUE

Transaction 1

1. Whether the guarantee fee that G charges to its related parties will be subject to tax;

and

2. Whether the guarantee fee payable by G to the banks will be treated as deductible for tax purposes?

Transaction 2

1. Whether the Fees paid by G to F will be treated as deductible for tax purposes?

RULING

Based on the FACTS mentioned above, it is confirmed that:

Transaction 1

1. The guarantee fee which G charges to its related parties should be at arm's length and will be subject to tax.

2. The guarantee fee paid by G to the banks will be deductible for tax purposes, provided the expenditures are exclusively incurred in the production of the company's gross income in accordance with section 18 of the Income Tax Act.

Transaction 2

1. The Fees payable by G to F should be at arm's length and will be deductible for tax purposes, provided the expenditures are exclusively incurred in the production of the company's gross income in accordance with section 18 of the Income Tax Act.

TR 193

FACTS

L is licenced by the Financial Services Commission (“FSC”) as an external pension scheme holding a Category 1 Global Business Licence under the Private Pension Schemes Act 2012. L is set up as a Trust through a declaration of Trust and is a defined contribution scheme. The trustees of L are resident in Mauritius. L allows only non-residents to join as members and its main objective is to provide pension benefits to its beneficiaries. The pension benefits may be in the form of a pension, a compensation, gratuity or allowance payable to a beneficiary and includes a retirement benefit, a death benefit, disability benefit or such other allowance as may be specified in the Rules.

The beneficiaries can be the members as well as persons nominated by the members or entities set up by the Trustees to receive the benefits when they are due. L offers various investment choices to the members and pursues a unique investment program with respect to each investment choice. L’s assets are principally invested in foreign markets and the level of return is not guaranteed and depends on the performance of L. L’s prudent written investment policy as approved by the trustees has been filed with the FSC. L provides various pension benefit options to its members at retirement.

POINTS AT ISSUE

(i) Whether L will be resident for tax purposes in Mauritius?

(ii) Whether L will be exempt from payment of tax if it deposits a declaration of non-residence within 3 months of its financial year end?

(iii) Whether L is subject to tax in Mauritius?

(iv) Whether L can apply for a Tax Residence Certificate and claim credit for foreign taxes paid on foreign source income?

(v) Whether gains derived by L from the disposal of shares/investment will be subject to tax?

(vi) Whether the distributions made out of L to the members/beneficiaries, as and when the distributions become due under a Declaration of Trust will be subject to tax in Mauritius?

RULING

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

(i) L will be resident in Mauritius in accordance with section 73(1) (d) of the Income Tax Act.

(ii) L is entitled to file a declaration of non-residence in accordance with section 46(3) of the Income Tax Act since it has been set up as a trust, holds a Category 1 Global Business Licence and its beneficiaries will be non-residents. Once such a declaration is deposited within 3 months after the expiry of the income year, it shall be exempt from payment of income tax in respect of that income year.

(iii) L does not fall within the definition of a superannuation fund as laid down in section 2 of the Income Tax Act since it was not set up for the benefit of employees of an employer. As such, it is not an exempt body by virtue of item 8 of Part I to the Second Schedule; hence it will be subject to tax in Mauritius, unless it deposits a certificate of non-residence as mentioned at paragraph (ii) above.

(iv) L is entitled to apply for a Tax Residence Certificate and claim foreign tax credit in accordance with section 77 of the Income Tax Act, if it does not file a declaration of non-residence.

(v) Gains derived by L from the disposal of securities/investment falling within the ambit of items 7 and 7B of Sub-Part C of Part II of the Second Schedule to the Income Tax Act will be exempt.

(vi) Distributions made out of L in the form of pension benefits (comprising pensions, annuities and lump sum) to non-residents members and/or their beneficiaries, as the case may be, will be considered to be Mauritius source income subject to income tax in Mauritius in accordance with section 10(1) (d) and section 74(1) (b) of the Income Tax Act. The pension benefits paid will thus not fall within the ambit of section 46(4) of the Income Tax Act.

TR 194

FACTS

M applied for the Mauritian Diaspora Scheme on 1 May 2017. On 10 August 2017, the Board of Investment issued a Mauritian Diaspora Registration Certificate as a professional to M.

M derives rental income and income from his profession.

POINT AT ISSUE

Whether the total income derived by M as a member of the Mauritian Diaspora under the Mauritian Diaspora Scheme prescribed under the Investment Promotion Act will be exempt from income tax?

RULING

On the basis of the FACTS mentioned above, it is confirmed that by virtue of Item 27 of Sub Part C of Part II of the Second Schedule to the Income Tax Act as amended by the Finance Act 2017, and the certificate dated 10 August 2017 issued by the then Board of Investment, only the professional income derived by M will be exempt from income tax. The rental income derived by M will not fall within the ambit of the exemption.

TR 195

FACTS

B is incorporated in Mauritius and holds a management licence issued by the Financial Services Commission. It provides trust and corporate services in Mauritius and acts as an Authorised Trustee for trusts administered in Mauritius.

B forms part of a group comprising:

(a) T

T is incorporated in Nevis and provides professional trustee services for trusts formed under Jersey or other foreign laws (excluding Mauritian law). The Settlors and beneficiaries of the trusts are not resident in Mauritius.

Each trust is the sole shareholder of a separate C. Each client of T has its own trust and C.

(b) S

S is incorporated in Nevis and provides administration services for C and trusts mentioned at (a) above.

(c) W

W is incorporated in Nevis and provides investment portfolio management services to the trusts and C mentioned at (a) above.

(d) H

H is incorporated in Bahamas and is the group holding company for S, T, W and B. The executive directors of T, C, S, W and H are not tax resident in Mauritius. The board directors of S, T and W meet outside Mauritius where key operational and investment decisions are taken.

The proposed transaction involves:

(i) the transfer of trusteeship, administration services, investment portfolio management services of several trusts formed under foreign laws from T, S, and W, to B; and

(ii) the resignation of existing board of directors of C and the appointment of B as the new corporate director of those companies.

On the completion of the proposed transaction, the sole trustee and administrator of the trust and corporate services will be B in Mauritius and the central control and management of C will take place in Mauritius.

POINTS AT ISSUE

(i) Whether the Trusts formed under Jersey law will be considered as tax resident in Mauritius on the basis that the sole trustee, B is tax resident in Mauritius and B will administer the Trusts from Mauritius?

(ii) Whether the Trusts will be required to register for income tax purposes in Mauritius and pay income tax at the rate of 15 % on their foreign source income?

(iii) Whether C incorporated under the laws of A will be considered as tax resident in Mauritius on the basis of having their central management and control in Mauritius?

(iv) Whether C will be required to register for income tax purposes in Mauritius and pay income tax at the rate of 15 % on their foreign source income?

(v) Whether for purposes of the Common Reporting Standard ("CRS"),

(a) the Trusts will be required to report any reportable accounts as a Financial Institution that is managed by B?

(b) C will be considered as passive Non-Financial Entities , therefore,and, , therefore,, will not be required to report any reportable accounts as a Financial Institution?

RULING

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

(i) The trusts will be considered as resident in Mauritius by virtue of section 73(1)(d) of the Income Tax Act as the sole trustee will be resident in Mauritius and the trust will be administered in Mauritius.

(ii) Each trust will be required to apply for a Tax Account Number at the Mauritius Revenue Authority and file income tax returns. The trusts will be liable to income tax on their chargeable income at the rate specified in Part IV of the First Schedule.

(iii) C will be considered as tax resident in Mauritius by virtue of section 73(1)(b) of the Income Tax Act since their central management and control will be in Mauritius.

(iv) C will be required to apply for a Tax Account Number at the Mauritius Revenue Authority and file income tax returns. They will be liable to income tax on their chargeable income at the rate specified in Part IV of the First Schedule.

As regards POINT AT ISSUE (v), the Trusts and C will have to decide on the basis of all FACTS and circumstances whether for purposes of the CRS, they should be classified as Financial Institutions and be required to report any reportable accounts.

TR 196

FACTS

F, together with its sub-funds (collectively N) is an investment fund domiciled in the Cayman Islands, managed globally by U.S. based Q and affiliated investment management firms (together J). J was founded in 1989 by E, who, together with affiliated entities, remains the ultimate owner.

J undertakes investment management activities, including determining the strategic direction of the J, making discretionary investment management decisions, overseeing group risk management, generally executing all trades undertaken by N, management of collateral, portfolio valuation, and support services, such as capital raising and investor relation. J is contemplating entering into an arrangement with a Mauritian Investment Manager.

The Mauritius Investment Manager will be wholly owned by Q and will be appointed by Q to manage a portion of the investment portfolio of N outside Mauritius, pursuant to one or more Sub-Management agreements. For the avoidance of doubt, it is currently contemplated that the Mauritius Investment Manager will only manage the investment portfolio of N.

The Mauritius Investment Manager will provide management and advisory services to N and will have discretionary powers to carry out certain trading activities on behalf of N, subject to the investment strategies, policies, risk guidelines and investment restrictions of N and J. The Mauritius Investment Manager will be authorised to provide the services detailed above to N by way of sub-delegation from Q through one or more Sub-Management Agreement.

The Mauritius Investment Manager will have a dedicated office in Mauritius and will initially employ one Portfolio Manager (“PM”). The PM will likely have an analyst or analysts, based either in Mauritius or an affiliated K. The scale of resources within the Mauritius office may grow as the level of activities increase. The PM will be resident in Mauritius and his primary responsibility will be to trade on behalf of the non-resident funds and manage his team. The PM will be allocated a specified amount of capital to trade listed securities and associated derivatives and will be subject to risk oversight and supervision from senior professionals of J.

The Mauritius Investment Manager will receive management and performance fees for the management and advisory services provided to the investment manager / non-resident funds. The terms of the service agreement will be in accordance with the OECD transfer pricing guidelines which will be consistent with other similar arrangements and investment strategies of the non-resident investment funds.

The management and performance fees will be subject to corporate tax in Mauritius.

N are all non-resident investment funds and are comprised of the master fund, domiciled in the Cayman Islands and a number of sub-funds domiciled in different jurisdictions, including Luxembourg and Singapore, amongst others. For avoidance of doubt, none of N are Mauritius incorporated or tax resident funds.

N principally invest in the public equity, fixed income, commodities and derivatives markets across the globe as advised by Q and its numerous affiliated foreign investment managers. Notwithstanding the management activities performed by the Mauritius Investment Manager in Mauritius, N will continue to be centrally managed and controlled outside of Mauritius since the overall corporate governance of N will be taken in the jurisdictions where the funds are domiciled and/or where J has its primary office locations. N will continue to hold board meetings in various foreign countries and the records of N will be retained at the N’s foreign offices.

POINTS AT ISSUE

Whether the N may be deemed to derive income in Mauritius through the Mauritius Investment Manager's discretionary trading activities in Mauritius and whether the N will be subject to tax in Mauritius?

RULING

Based on the FACTS mentioned above, it is noted that the N will not have Mauritian source income, and will not be centrally managed and controlled from Mauritius. It is confirmed that N will not be deemed to derive income in Mauritius , therefore,and, , therefore,,, will not be subject to tax in Mauritius.

TR 197

FACTS

V and W are tax residents in Mauritius by virtue of section 73 of the Income Tax Act and are the settlors and beneficiaries of X and Y respectively.

X and Y are resident in Jersey and are administered from Switzerland. The trustee of each trust is a company incorporated under the laws of the Island of Nevis.

X and Y each own 100% shares in C and D respectively. C and D are non-resident companies and are incorporated in Nevis.

Each company owns 25.5% of a GBC entity in Mauritius, namely E which is a money transfer service company.

E owns subsidiaries in several other offshore jurisdictions.

The proposed transaction consists of:

(i) the migration of C and D to Mauritius.

C and D will be incorporated in Mauritius as GBC companies and their effective management and control will be in Mauritius. This migration will result in inward capital assets remittances into Mauritius.

(ii) the sale by C and D of the shares they each hold in E.

The proceeds from the E shares will result in payment of dividends by C and D to the non-resident trusts, that is, X and Y which will in turn distribute dividends to their respective beneficiaries, that is V and W who are both resident in Mauritius.

POINTS AT ISSUE

(i) Whether distributions from X and Y to V and W will be subject to income tax at 15% plus an additional solidarity levy on the balance of the dividend income exceeding the prescribed threshold in any given year?

(ii) Whether, in the event V and W elect to receive their distributions in bank accounts which are outside of Mauritius, such receipts will be regarded as being received in Mauritius for income tax purposes?

(iii) Whether in case V and W elect to utilise funds received in their offshore bank accounts to invest in capital assets, which in turn generate capital gains later upon disposal, whether this amount would be included in “gross income”?

(iv) Whether the remittance of capital into Mauritius upon C and D redomiciling will be subject to tax in the hands of each company? Furthermore, whether the disposal of such equity after re-domiciling would be subject to income tax?

(v) Whether the sale of E’s shares by the C and D will have any prejudicial tax consequences in Mauritius?

RULING

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

(i) (a) Where the distributions made by X and Y to V and W are remitted to Mauritius, the distributions will be subject to income tax at the rate of 15%.

(b) Any amount of distribution exceeding 3.5 million rupees will be subject to solidarity levy by virtue of section 16C of the Income Tax Act.

(ii) In the event V and W elect to receive their distributions in bank accounts which are outside of Mauritius, such receipts will not be regarded as being received in Mauritius for income tax purposes. However, in case such receipts are remitted to Mauritius, they will be subject to tax in Mauritius.

(iii) In case V and W elect to utilise funds received in their offshore bank accounts to invest in capital assets, which in turn generate capital gains later upon its disposal, such capital or capital gains would fall outside the scope of income tax and hence, will not be taxable in Mauritius.

(iv) The remittance of capital into Mauritius as a result of the re-domiciling of C and D would not give rise to any tax liability. The sale of shares held by C and D in E would be considered as capital gains and would thus not be amenable to income tax in Mauritius.

(v) The sale of the E shares by C and D would give rise to either capital gains which are not amenable to tax or capital losses which do not qualify as deduction under the Income Tax Act.

TR 198

FACTS

Mr F, a South African national lives in Mauritius since February 2017. In July 2018, F acted as settlor to T, a trust formed under the Cayman Islands Trust law.

All beneficiaries of T including Mr F are tax resident in Mauritius since January 2018.

The factors enumerated in section 60 (2) of the Trust Act 2001 are not applicable to T.

S, a company formed under the Cayman Islands Company law acts as trustee of T.

POINTS AT ISSUE

(i) Whether T is a trust, recognised under the laws of Mauritius and, as such, falls within the definition of Trust under the Income Tax Act?

(ii) Whether T shall be considered as tax resident in Mauritius by virtue of section 73 of the Income Tax Act?

(iii) Whether T shall have any obligation to file tax returns in Mauritius and pay any tax accordingly?

RULING

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

(i) T is a trust recognised under the laws of Mauritius since the factors enumerated in section 60(2) of the Trust Act 2001 are not applicable to that trust.

(ii) T will be considered as tax resident in Mauritius in accordance with section 73(d) of the Income Tax Act since the settlor was resident in Mauritius at the time the instrument creating the trust was executed.

(iii) T shall be liable to income tax by virtue of section 46(1) of the Income Tax Act and shall have to file income tax returns accordingly.

TR 199

FACTS

P is a Category 1 Global Business Company offering investment management and advisory services.

A is a Category 1 Global Business Company involved in investment holding activities as per a defined Investment Guideline.

P is in the process of being appointed as the investment advisor of A and the advisory services shall include the following:

(i) Identifying potential new investment opportunities;

(ii) Providing regular feedback in relation to the performance and liquidity of A’s various investments;

(iii) Rendering specific investment research, advice and related advisory services;

(iv) Assisting with due diligence investigations and reviews;

(v) Recommending which investments or follow up investments are to be made or disposed of;

(vi) Providing advice on any terms and conditions imposed in relation to investments;

(vii) Preparing transaction documents and appointing external advisors where necessary; and

(viii) Managing issue allotment and allocation of shares and facilitating loans.

A will derive foreign source income in the form of dividend and interest as well as capital gains or loss upon realisation of the investment.

POINTS AT ISSUE

Whether the advisory fees to be charged by P to A shall be considered as an allowable deduction against the gross income of A in A’s tax return?

RULING

On the basis of FACTS provided, it is confirmed that advisory fees which are exclusively incurred in the production of gross income other than gross income specified in section 10 (1) (a) of the Income Tax Act will qualify as allowable deduction in accordance with section 18(1) of the Act.

Thus, the proportion of advisory fees attributable to non-taxable income including capital gains would not be allowed.

TR 200

FACTS

A was registered in Mauritius by way of continuation on 12 August 2009 as a private company limited by shares. It holds a Category 2 Global Business Licence ("GBL 2") and carries out investment holding activities through its subsidiaries, in United Kingdom and Singapore.

Further to the amendments brought by the Finance Act 2018 to the Financial Services Act 2007 and the Income Tax Act 1995, A is contemplating conversion of its legal regime from a GBL 2 into a company holding a Global Business Licence.

A holds a 100% shareholding in B, a company incorporated in Singapore. B operates in the financial services industry of Singapore and provides fund management and investment advisory services to Investment Funds based in, as well as outside, Singapore.

While the standard income tax rate in Singapore stands at 17%, B has applied to the Monetary Authority of Singapore ("MAS") and obtained a tax incentive award under Singapore's Financial Sector Incentive (Fund Management) Scheme for Fund Managers, a scheme put in place for the promotion of fund management activities in Singapore.

Under this tax incentive award which is granted for five-year renewable periods, B is eligible for a concessionary tax rate of 10% on income from its qualifying activities, that is, fund management and investment advisory activities, subject to the satisfaction of prescribed conditions. Its income from other sources is taxed at the standard Singapore tax rate of 17%.

POINT AT ISSUE

Whether A, upon the conversion of its legal regime from a GBL 2 company to a company holding a Global Business Licence, will be eligible to claim credit for foreign tax suffered in the form of tax sparing relief in respect of dividend received from B?

RULING

Based on the FACTS of the case, it is confirmed that in accordance with regulation 9 of the Income Tax (Foreign Tax Credit) Regulations 1996, A will be entitled to a tax sparing credit on the dividend received from B provided that this dividend is paid out of the income derived from qualifying activities under the Singapore's Financial Sector Incentive (Fund Management) Scheme for Fund Managers.

TR 201

FACTS

S is a company registered in Canada and is engaged in gold and base metal mining. Following the merger of S with P, a Jersey based company operating in the same industry, with effect from 1 January 2019, Y was appointed President and Chief Executive Officer ('CEO') of S for the new merged operations

S currently has operations in Canada, United States of America, Argentina, Chile, Peru, Dominican Republic, Mali, Senegal, Cote d'Ivoire, Democratic Republic of Congo, Zambia, Mozambique, Saudi Arabia and Australia

S recently incorporated a Mauritius holding company, RRM, to hold certain of its Africa based interests and to remunerate, Y on a month to month basis. It is intended that Y's employment contract, for his role as CEO of 5, is to be with RRM which will pay his salary into his offshore account, currently in Jersey. Costs incurred by RRM to accommodate for Y's salary costs will be recharged to S.

Y, who is a South African citizen, currently owns and resides in a house in Mauritius under the Integrated Resort Scheme ('IRS'). The IRS house is Y's permanent place of residence where he and his wife have been residing for the past ten years.

Due to the international nature of his employment, Y travels extensively and returns to Mauritius throughout the year from various countries.

As CEO, Y has ultimate responsibility for the group's operations in all the aforementioned countries and for interfacing with major investors in the key investor markets of Canada, United States and Europe. Consequently, his duties will often be carried out via electronic media across international borders and airports depending on his schedule and travel requirements or whilst returning home to Mauritius.

It is expected that Y will spend approximately one to two months at his home in Mauritius over the course of any tax year. Some of this time will be on annual leave whilst other time will be spent working on various aspects of S's global operations.

POINTS AT ISSUE

I. (a) Whether only the portion of Y's emoluments from Mauritius-based performance will be taxed in Mauritius?

(b) Whether emoluments derived by Y (and paid in his Jersey account) from performance of employment duties abroad will be taxable in Mauritius only on remittance.

2. Whether the recharge of Y's salary costs can be made to S at cost?

RULING

On the basis of FACTS provided: -

1. It is confirmed that –

   (a) in accordance with sections 73 and 74 of the Income Tax Act, Y will be subject to tax on emoluments derived from performance of duties whilst physically in Mauritius. For that purpose, the length of stay includes the date of arrival, date of departure, non-business days and annual leave spent in Mauritius.

   (b) in accordance with section 5 of the Income Tax Act, emoluments derived by Yin respect of duties performed abroad and paid in his Jersey account will be taxable in Mauritius only on a remittance basis.

2. The recharge of Y's salary cost made to S must satisfy the arm's length principles in accordance with section 75 of the Income Tax Act.

TR 202

FACTS

D was incorporated in Mauritius on 12 November 2014, holds a Category 1 Global. Business Licence and carries out investment holding activities. It invests principally in listed securities and debt instruments in India and Indian businesses. D is 100 % owned by E, another company holding a Category 1 Global Business Licence. D and its parent are referred to as the "Group".

The Group has invested in T, a public limited company incorporated in India, with an operational presence in India and Egypt. T also manufactures caustic soda, calcium chloride, chloromethanes, refrigerant gases, industrial salt and specialty chemical intermediates.

E holds a 30% equity shareholding in T while D has invested in 19,902 fully redeemable non-convertible secured debentures of 1NR 1,000,000 each of T.

The above debentures are listed on the Wholesale Debt Market segment of the Bombay Exchange ("BSE") and have a maturity date of 22 April 2023.

The debentures have the following terms:

- Coupon rate of 3 % per annum, compounded annually, and payable at the time of redemption; and
- 10 % redemption premium payable upon redemption of the debentures, such that it provides an aggregate yield of 13% compounded annually

In D's books, the debentures have been recorded at an estimated fair value since acquisition in accordance with the International Financial Reporting Standards.

In September 2018, D entered into an agreement with T for the debentures held by D to be either redeemed by T or alternatively sold to an affiliate of T by 30 June 2019, that is, prior to its maturity date, at a consideration equivalent to the principal amount of the debentures with all outstanding coupon interest payments and the redemption premium.

A significant proportion of the proceeds from the redemption or sale of the debentures will be distributed by D to E to enable the latter to invest in additional shares of T, thereby increasing its equity stake from 30 % to 42.9 %.

POINT AT ISSUE

Whether gains derived by D, in terms of the redemption premium, from either the disposal of the debentures to an affiliate of T or the redemption of the debentures by T prior to their maturity, will be exempt from income tax in Mauritius?

RULING

Based on the FACTS provided, the redemption premium represents income falling under section 10 (d) of the Income Tax Act and is subject to tax at the rate of 15 %.

TR 203

FACTS

K holds a global business licence. K. is engaged in the activity of financing green energy projects in India. It , therefore, acts as a pure funding vehicle. K raises funds from overseas lenders in USD which are then on-lent in INR to companies involved in green energy projects. The funds raised in USD are used to purchase Masala bonds from green energy companies based in India. The Masala bonds are denominated in INR. K will , therefore, be deriving interest from the Masala bonds in INR and paying interest in USD. K is engaged in financing activities and is thus exposed to two main financial risks namely:

- Credit risk; and
- Foreign currency risk.

Since K is dealing in two different currencies and reimbursement of the loan must be made in USD, K is exposed to high foreign currency risks. In order to minimise the potential adverse effects of unfavourable exchange rates between USD and INR, K entered into currency swap agreements to hedge against foreign exchange fluctuations. The swap agreements have been concluded at arm's length and all swap counterparties are unrelated. The purpose of the hedging instrument is to prevent a business Joss and K is not involved in any speculation activities. The hedge against foreign exchange fluctuations would either result in a hedging cost or hedging income.

POINTS AT ISSUE

1. Whether the entire hedging costs paid on foreign currency swap agreements to mitigate foreign currency risks is deductible?

2. Whether hedging income earned on foreign currency swap agreements is subject to tax?

RULING

On the basis of the FACTS mentioned above, it is confirmed that:

1. The nature of the business undertaken by K necessitates hedging activities. Hedging is a tool for risk management and risk minimisation. Fluctuation in exchange rate may have adverse effect on the profitability of K. Hedging against such fluctuations is considered as a business expense and is an allowable deduction under section 18 of the Income Tax Act.

2. Hedging, in the present case is incidental to the borrowing and lending activity. , therefore,, any income derived from the hedging business is taxable under section 10(1)(b) of the Income Tax Act.

TR 204

FACTS

V is a public company limited by shares. V owns and operates several hotels in Mauritius, Seychelles and Morocco. V also has land available for development in Mauritius, Seychelles and Morocco (the "Land Bank™). The Land Bank includes land for property development currently undertaken in Morocco by F. F is a private company established in Morocco and is a wholly owned subsidiary of V.

V has set up a wholly-owned subsidiary: G, a Mauritian company, to concentrate on property development. V intends to transfer the Land Bank to G: it will also transfer its investment in F to G. The investment and proposed restructuring exercise in so far as it concern F is described below.

V would distribute its investment in G to its shareholders by way of dividend in specie. Subsequent to the distribution, V and G along with their respective subsidiaries or associates, as the case may be, would be two distinct companies with separate and distinct business activities. G would engage the required property development specialists, enabling V to focus on its hotel operations.

V has since the inception of F's property development project injected capital into F by way of equity and current account receivable. The receivable component is made up of:

(i) funds transferred from V to F ("the intercompany financing"); and

(ii) project related expenses borne on behalf of F. V recharged the project related expenses to F at cost plus 5% so that the total amount recharged by V formed part of its gross taxable income.

V in its books initially recognized —

1) equity investment in F ; and
2) current account receivable from F.

These two components are assessed for impairment annually for financial reporting purposes.

V has gradually reclassified the current account receivable from F into investment (quasi equity): over the last two years, all the receivables from F have been reclassified as investment (quasi equity) by V in accordance with the relevant accounting standard. F, however, still accounts a payable in favour of V instead of equity.

<u>The carrying value of the total investments in F is made up of:</u>

- Original value of equity investment
- Current account: reclassified into quasi equity
- Gross value e
- Total Impairment

V has accounted the impairment losses as unauthorized deductions for income tax purposes.

V would transfer its total investments in F at its existing carrying value to G.

V would also give G the rights to receive any future refund of current account payables recognized in the books of F. F will continue to recognize V as the creditor in its books as it is onerous and financially unfeasible to register a change of creditor from V to G in Morocco. F will , therefore, continue to account the payable in favour of V, and V will surrender the rights to the receivable to G by executing a proper deed with G in accordance with the Moroccan and Mauritian laws. A share transfer form would be executed under the Moroccan laws such that V would no longer be the shareholder of F.

V would record the following in its income statement:

(i) the ‘refund’ relating to the transfer of debt receivables will be accounted as ‘other income’.
(ii) the cession of debt receivable to G will be accounted as ‘other expenses’

G will account for the cession of debt receivable from V as ‘other income’ in its income statement.

POINTS AT ISSUE

V

(a) Whether the ‘refund’ relating to the transfer of debt receivable will be considered as capital in nature , therefore,and, , therefore,,, outside the purview of the Income Tax Act?

(b) Whether the other expenses arising on account of cession of debt receivable to G will be treated as an allowable deduction?

G

Whether the other income arising on account of cession of debt receivable by V will be considered as capital in nature , therefore,and, , therefore,,, outside the purview of the Income Tax Act?

RULING

Based on the above FACTS of the case it is confirmed that:

In the books of V:

a) the refund is in relation to a debt and is capital in nature ; and
b) the other expenses are in connection to the cession of debt receivable to G and will not be an allowable deduction for income tax purposes.

In the books of G, the other income arising on account of cession of debt receivable by G will be capital in nature and will not be subject to income tax.

TR 205

FACTS

X will be incorporated as an investment holding company in Mauritius and will hold a Global Business licence.

C will be registered as a Limited Partnership in Mauritius and will hold a Global Business Licence and a CIS Manager licence. It will be a tax transparent entity and all its limited partners will be non-resident Egyptian individuals. It will also hold shares in X.

B, a resident company holding a Global Business Licence will act as the General Partner of C. It will also hold interest in C.

C will provide investment management/advisory services to X in return for fees which include incentive/performance fees.

POINTS AT ISSUE

i. Whether fees received by C from X will be regarded as "foreign source income"?
ii. Whether the share of income paid by C to B will be treated as exempt income?
iii. Whether the non-resident limited partners of C have an obligation to file tax returns in respect of their share of income from C?

RULING

Based on the FACTS provided above, our stand is as follows-

i. as the investment management/advisory services will be provided in Mauritius by C to X, the fees received by C will be regarded as Mauritian source income in accordance with the provisions of section 74 of the Income Tax Act.
ii. the share of income derived by B from C will be subject to tax in Mauritius by virtue of section 47(2) of the Income Tax Act.
iii. the share of income of the non-resident limited partners from C will be Mauritian source income and will be treated as gross income under section 10(1)(b) of the Income Tax Act. The non-resident limited partners will , therefore, have an obligation to file their income tax returns in Mauritius as provided under section 112 of the Income Tax Act.

d.
e.
f.
g.

TR 206

FACTS

Z is a domestic company whose main activity is the breeding and selling of primates to A only.

The shareholder of Z is A which holds 100% shareholding of Z. The main activity of A consists of breeding and export of primates.

Z intends to transfer its stock which is made up of Bearer Biological Assets ("BBAs") and Consumable Biological Assets ("CBAs") to A

BBAs are defined as breeders and do not have any increase in value. CBAs are defined as Babies and Growers which mature at the age of 24 months. These monkeys are then exported to laboratories outside Mauritius.

The stock of the Z has been valued at fair value less costs to sell in accordance with IAS41. Accordingly, both companies have in their accounts revalued their stock each year and any increase in the stock has been reflected in the chargeable income of the respective companies.

POINT AT ISSUE

Whether Z can transfer its stock to A at 'fair value less costs to sell' as declared in the accounts of Z for the year ended 31 December 2018?

RULING

Based on the above FACTS, Z should transfer its stock at 'fair value less costs to sell' on the day of the transfer in accordance with section 14(4) of the Income Tax Act and not on the balance sheet date.

TR 207

FACTS

V is tax resident in Mauritius as from the income year ended 30 June 2019. Before her relocation to Mauritius in August 2018, she was residing in the United Kingdom. She holds dual citizenship in South Africa and United Kingdom.

V is the beneficiary of T, a trust established under the laws of Island of Guernsey and administered in Jersey. T is tax resident in Jersey. Its Trust Fund comprises of the following assets:

(i) investment in P, a company registered in the British Virgin Islands; and
(ii) loan receivable from P funded out of an initial settlement of the settlor of T

The Trust Fund is held in primary discretionary trusts as to both capital and income for the benefit of the beneficiaries.

The Trustees are in the process of liquidating T and as such the shares held in P will be disposed and the Loan will be repaid. Subsequently, V will receive a distribution from the capital account of T in her capacity as the beneficiary of T.

The distribution to the V will be made up of the following:

(i) the capital amount of the Loan receivable (representing the initial trust capital); and
(ii) the balance will represent the gain on liquidation of P.

Post distribution, T will be wound up. T will remit the distribution either in the Mauritian bank account of V or in her foreign bank account.

POINT AT ISSUE

Whether the capital distribution received by V, in her capacity as the beneficiary, and remitted to Mauritius will be taxable in Mauritius?

RULING

Based on the FACTS mentioned above, our RULINGs are as follows:

(i) the distributions made to V out of the capital amount of the Loan receivable from P will constitute a remittance of a capital nature into Mauritius. As there is no capital gains tax in Mauritius, the remittance will not be taxable in Mauritius.
(ii) any accumulated net profit of P forming part of the assets of T that will be distributed to V will not be a distribution of capital nature. Hence, the remittance of such accumulated net income will be taxable in Mauritius.

TR 208

FACTS

C was incorporated with the aim of offering services such as consultancy and supply of labour internationally by employing skilled and specialised Mauritians and /or foreigners (**the "Employees")** to perform work abroad under a contract of employment of determinate and indeterminate duration. The Employees working abroad will be officially hired under a first contract of employment with C and seconded for duty to its overseas corporate clients.

The Employees will initially live and work mainly in Madagascar with a full-fledged work/residence permit. They will be engaged in the manufacturing and /or distribution of biscuits, yoghurt and other consumer goods.

The Clients will apply for work/residence permits of the Employees in their host countries respectively. C will pay the salaries of the Employees. C will then invoice the Clients for consultancy services. The Employees will receive a living allowance and a housing allowance directly from the Clients under a second contract in Madagascar.

The salaries of the Mauritian employees seconded abroad under the first contract of employment will be banked in their respective bank accounts held in Mauritius. The salaries of the non-Mauritian employees will be banked in their respective bank accounts held abroad.

POINTS AT ISSUE

1. Whether the income of the Mauritian and non-Mauritian employees of C performing work abroad will be subject to PAYE in Mauritius?

2. Whether the Employees of C will be entitled claim an income exemption threshold under section 27 of the Income Tax Act?

3. Whether C will have any obligation to register as an employer with the MRA?

4. Whether C will have to declare information and particulars of the non-Mauritian employees for the purpose of the Return of Employees ("ROE")?

5. Whether the salaries paid by C to the Employees working abroad will be allowed as a deductible expense?

RULING

On the basis of the FACTS mentioned above, we are of the view that-

1. The salaries remitted in Mauritius by the Mauritian employees under the first contract of employment will constitute income derived from Mauritius. , therefore,, the income of the Mauritian employees performing work abroad will be taxable in Mauritius and subject to PAYE. The Mauritian employees will have to submit an annual return of income and where income tax has been paid on the income in the country where the duties have been performed, they may claim credit in respect thereof.

As the salaries of the non-Mauritian employees performing duty abroad will not be remitted in Mauritius, such salaries will not be taxable in Mauritius , therefore,and, , therefore,, not subject to PAYE in Mauritius.

2. The Mauritian employees having their permanent place of abode in Mauritius will qualify as resident and will be entitled to income exemption threshold. The question of income exemption threshold to the non-Mauritian employees does not arise.

3. As a person responsible for the payment of the emoluments of its employees, C will have an obligation to register as employer with MRA.

4. C will have to declare information and particulars of the non-Mauritian employees in its annual

Return of Employees (ROE).

5. The salaries paid by C to the employees working abroad comprised in the claim for consultancy services invoiced to the clients will be allowed as deductible expenses.

TR 209

FACTS

G is a UK registered not-for-profit body corporate and is registered as a Scottish Charity. It offers degree programs.

P is a company incorporated in Mauritius and is engaged in the provision of educational services. It is registered with the Tertiary Education Commission ("TEC") in Mauritius but not registered with Mauritius Qualification Authority ("MQA"). G is not registered either with the TEC or the MQA.

G and P are not related entities. They have entered into an Agreement whereby G and P will collaborate to provide higher education to students in Mauritius and, in particular to facilitate learning to enable students to attain degrees which are conferred by G as the sole awarding body.

Delivery of teaching service will be at the premises of P.

The Agreement will span over 12 years for the delivery of the following degree Program (s):

- BA (Hons) Business Management
- BA (Hons) Social Sciences
- BSc (Hons) Computing
- BSc (Hons) Applied Psychology

The first year of the degree programs will be delivered solely by P and the second, third- and fourth-year degree programs will be provided by both G and P. However, in the case where P cannot deliver the correct level and skills of staff during the first year of the degree program, G will take delivery and charge P a higher rate for same.

An academic year consists of 3 trimesters. Each trimester lasts an average of 15 weeks. It is estimated that overall the fly-in-fly-out staff of G will spend no more than 3 weeks in Mauritius in any trimester

The delivery model will be a blended service with part of the degree being delivered online to students via e-learning and partly by face-to-face teaching. P will maintain at its own expenses appropriate offices, teaching facilities, equipment, administration facilities and systems as may be necessary for the effective performance of its duties under the Agreement.

P will allow G and its authorized representatives, at any reasonable time, to have access to the teaching premises for the purpose of ongoing assurance and confirmation of the academic environment to support the delivery of the Programs.

The Agreement between G and P further provides for, inter alia the following -

- G will have ultimate responsibility and discretion in respect of the award of qualifications to students.
- All Programme Documents and teaching materials or content provided by P for the purpose of delivering the programme (s) will be reviewed and approved by G prior to use of the same on the Programme(s).
- Both G and P recognize that the financial arrangements applicable to the Programme will be monitored and reviewed by both parties throughout the Term. Any changes required to the financial arrangements as a result of any monitoring or review activity will be discussed and agreed in writing by both Parties before implementation by the Parties without prejudice to the remainder of the Agreement.

- The Parties recognise and agree that all publicity and promotional activity relating to all programs and awards offered or made in its name, including the Programmes or use of G's Trade Marks, service marks, trade names, logos or other references to G or other indicia is subject to final approval of G and P shall not issue any such public information or undertake any such publicity or use G's Trade Marks, service marks, trade names, logos or make other references to G or other indicia, without the prior written consent of G. P shall not publicize the Programs in any way without the prior written consent of G.

- The Parties recognize and agree that all publicity and promotional activity relating to the Programmes (whether or not reference is made to the G) is subject to final approval of G.

- P will develop and operate an educational institution which will conform to the standards already in practice at G. The programme management structure specified in the programme documents will be developed (recognizing the different organizational structures and personnel of P) to maintain the university's quality assurance standards.

- P shall recruit academic staff that, in the reasonable opinion of G, shall be appropriately qualified to support the delivery of the Programmes to the standard set out in G Quality Enhancement and Assurance Handbook.

- G will provide to P the current generic role profiles for academic staff and where applicable the specific role profiles for the Programmes which can be used by P when developing the role profiles of their academic staff.

- G will ensure that external examining procedures for the Programme are comparable to those of internal programme and that these are applied in accordance with the system set out in the University Assessment Regulations.

- The Parties recognize and agree that the admission requirements and acceptable entry qualifications for students joining the Programmes shall be set by and be at the sole discretion of G. The final decision as to whether a student is accepted onto each Programme rests solely with G.

- The Parties recognize and agree that the responsibility and control for the production of degree parchments and academic transcripts for students exiting the Programmes rests solely with G.

According to the Financial Arrangements between the Parties, G will invoice P for two types of costs each year, namely –

(i) Separately billable amounts ; and

(ii) Per student per annum charge.

The separately billable amounts are to be agreed annually ahead of the start of the academic year.

POINTS AT ISSUE

1. Whether G will be subject to income tax in Mauritius?
2. Whether G will be subject to Tax Deduction at Source (“TDS”) in Mauritius?
3. Whether payments made to G with relation to the services like access to G’s student on-line systems, access to library systems, student registration and administration services, graduation and brand will be considered as a royalty payment made by P?
4. Whether employees of G coming to Mauritius for periods not exceeding six months to deliver courses with regards to the degree programs will be subject to Pay As You Earn (“PAYE”) in Mauritius?
5. Whether G should be VAT registered in Mauritius?
6. Whether reverse charge should be applicable on the services provided by G to P?

RULING

On the basis of the FACTS provided: -

1. G is conducting business in Mauritius on the premises of P for the delivery of degree programmes, the award parchment of which bears the signatures of the authorities of G only as the sole awarding body. G will , therefore, be considered to have a permanent establishment in Mauritius and will be subject to income tax in respect of the income it derives from the delivery of the degree programmes in Mauritius.

2. G will not be subject to TDS in Mauritius. It will have to submit an annual return of income declaring the income derived and the related allowable deductions.

3. In the light of the reply to question (1) and (2), the issue of royalty does not arise.

4. Since G will have a Permanent Establishment in Mauritius, Article 15 of the DTAA between UK and Mauritius will apply regarding the taxation of the teaching staff of

5. G. In accordance with sections 2 and 82(1)(c) of the Income Tax Act, G will be declared to be an absentee and P will be deemed to be an agent of the absentee respectively. P will be required to operate the PAYE system in respect of the lecturers sent by G. Being given that Article 15 is subject to Article 21 which provides for an exemption period of 2 years, the lecturers who qualify for the exemption may submit an income tax return on the due date and claim refund of the tax deducted under the PAYE system.

6. G will not have any obligation to apply for VAT registration in Mauritius since educational services provided in Mauritius is an exempt supply by virtue of item 16(a) of the First Schedule to the Value Added Tax Act.

7. Being given that G will have a Permanent Establishment in Mauritius and educational services are exempted from VAT, the question of reverse charge does not apply.

TR 210

FACTS

C, a company incorporated in Mauritius has received an order from D, a company based in Zimbabwe. Owing to foreign exchange controls in Zimbabwe, D has suggested that the order be channeled through M.

M currently holds a Category 1 Global Business License under the Financial Services Act and forms part of the same group of companies as D. M will report each transaction as a purchase of goods from C and a corresponding sale to D but the goods will not be subject to any process by M.

For purposes of the Bill of Lading, the shipper and the consignee will be C and D respectively. The terms of the shipment will be Free on Board. The goods will leave the warehouse of C and will be loaded directly to a ship such that M will not take any physical possession of the goods. However, on the Customs declaration, M will appear as the exporter and D will be the importer.

C will receive cash from M and the trade debt of M will be settled by its holding company. D and M have certain financial arrangements whereby the trade debt of D from M will be settled over a period of time.

POINT AT ISSUE

Whether the sales made by C to M will qualify for the 3% tax rate on export of goods?

RULING

Based on the above FACTS, C will be selling goods to M, a company incorporated in Mauritius. Consequently, the sales to M will not be a transaction falling under section 44B of the Income Tax Act and will be subject to tax at the rate of 15%.

TR 211

FACTS

E is a UK registered not for profit body corporate and is a Scottish charity. It is tax resident in the UK and it delivers degree programmes.

P is a company incorporated in Mauritius and is engaged in the provision of educational services. It is registered with the Tertiary Education Commission **("TEC")** and Mauritius Qualification Authority **("MQA")** in Mauritius.

E and P which are not related entities have entered into a Collaboration Agreement whereby they will collaborate to deliver a degree programme in International Hospitality Management ("the Programme") to students in Mauritius.

The course will run over 2 years. Each year will comprise of 3 trimesters. E will supply the undergraduate degree course materials. The tutors will comprise of local tutors appointed by P as well as 3 members of E's staff who will teach in Mauritius for a total of 30 days per year.

Overall fees for the Programme in Mauritius will be collected by P. E will invoice P 50% of the overall fees. E will not contract directly with the Mauritius students.

The Collaboration Agreement between E and P is for an initial term of 5 years and may be renewed before the expiry of the term. The Agreement provides inter alia, for the following: -

- The degree Programme will be dispensed on the premises of P, which will have to maintain at its own expense appropriate offices, teaching facilities equipment, administration facilities and systems.
- E will have the responsibility for ensuring academic standards and quality assurance of the Programme. In particular –
    - E will ensure that all procedures and decisions relating to the Programme provided under the Agreement are based on E's Regulations which are systematic and open to scrutiny.
    - E will ensure that the academic standards of all awards provided under the Agreement are compatible with relevant benchmark information recognised within the United Kingdom.
    - The qualification conferred at the end of the Programme will be equal in academic standing to that conferred on successful completion of the same or comparable internal E programmes.
    - Both E and P recognise that the final responsibility and accountability for the academic standards of the Programme, or any element of the Programme, rests with E.
    - Both E and P recognise that final responsibility and accountability for quality assurance arrangements applicable to the Programme, or any element of the Programme, rests with E.
- Both E and P recognise that final accountability for the submission requirements and acceptable entry qualifications for students joining the Programme and the final decision as to whether a student is accepted rests with E.
- Both E and P recognise that final responsibility and accountability for the control and accuracy of all public information, publicity and promotional activity relating to all programmes and awards offered or made in its name, including the Programme or use of any E logo, name or indicia rests with E and P shall not issue any such public information or undertake any such publicity or use any E logo, name or other indicia, without prior written consent and approval of E.

- Both E and P recognise that final responsibility for the issue and control of award certificates, diploma supplements and transcripts associated with the Programme rests with E.
- Both E and P recognise that information provided to prospective students and to those registered on the Programme must be comparable with that given to internal E prospective or registered students.

POINTS AT ISSUE

1. Whether E will be treated as having a Permanent Establishment in Mauritius?
2. Whether E staff coming to Mauritius would be subject to PAYE?
3. Whether social security contributions are applicable for E staff sent to Mauritius?

RULING

On the basis of FACTS mentioned above,

1. The Collaboration Agreement between E and P will span over several years and goes beyond the supply of course materials and three teaching staff for 30 days per academic year. Having regard to the many features or elements of a partnership business which is evident from the terms of the collaboration agreement, E will be considered to be conducting business in Mauritius on the premises of P. E will , therefore, be treated as having a Permanent Establishment in Mauritius.
2. As E will have a Permanent Establishment in Mauritius, Article 15 of the DTAA between UK and Mauritius will apply regarding the taxation of the teaching staff of E. In accordance with sections 2 and 82(1)(c) of the Income Tax Act, E will be declared to be an absentee and P will be deemed to be an agent of the absentee respectively. The Partner will be required to operate the PAYE system in respect of lecturers sent by E. Being given that Article 15 is subject to Article 21 which provides for an exemption period of 2 years, the lecturers who qualify for the exemption period of 2 years, the lecturers who qualify for the exemption may submit an Income Tax return on the due date and claim refund of the tax deducted under the PAYE system.
3. E staff in Mauritius will not be required to pay social security contributions.

TR 212

FACTS

C is a company incorporated in Mauritius and is engaged in the BPO/ICT sector by providing computer consultancy and computer facility management.

In the United States and Canada, C is listed on the stock exchange and all employees in different geographies can buy shares at a discounted price under the “Employee Stock Purchase Plan” whereas Management are granted shares as part of their remuneration under the “Gift Stock Purchase Plan”.

POINTS AT ISSUE

i. Whether under the Employee Stock Purchase Plan, the taxable amount in the hands of the employees is the value of the discount they have benefitted on acquisition of the shares or the difference between the price paid for the share and the price the share was disposed of?

ii. Whether under the Gift Stock Purchase Plan, the taxable amount in the hands of the management staff is the value of the share at the time it was granted to them or the value the share was disposed of?

RULING

On the basis of FACTS mentioned above,

i. The employees will be taxed under the Employee Stock Purchase Plan on the amount of discount they have benefitted at the time they purchased the shares. Any gain between the market value of the share at time of acquisition and the market value at time of disposal will be capital in nature and, , therefore,, will not be subject to income tax.

ii. The management staff will be taxed under the Gift Stock Purchase Plan on the value of the shares at the time they accepted the shares. Any gain between the market value of the share at time of acceptance and the market value at time of disposal will be capital in nature and, , therefore,, will not be subject to income tax.

TR 213

FACTS

Z is a company incorporated in Mauritius and holds a Global Business Licence. Z equally holds an Investment Adviser (Unrestricted) Licence issued by the Financial Services Commission (the "FSC").

The principal activity of Z is to act as an Investment Advisor and authorized to manage, under a mandate, portfolios of securities and give advice on securities transactions though printed materials or any other means. Z will also facilitate partnerships, acquisitions and investments.

POINTS AT ISSUE

i. Whether Z, by virtue of holding an Investment Adviser (Unrestricted) Licence from the FSC, will benefit from a tax exemption in respect of 80% of its income?

ii. Whether the tax exemption applies to all income derived by Z or only to income covered by the Investment Adviser Licence?

RULING

On the basis of FACTS mentioned above, it is confirmed that Z being holder of an Investment Adviser licence issued by the FSC will be eligible to claim the partial exemption as per item 41(a) of Sub-Part C of Part II of the Second Schedule to the Income Tax Act provided it carries out its core income generating activities relating to Investment Advisory services in Mauritius and it satisfies all the other prescribed conditions relating to the substance of its activities as laid down in Regulation 23D of the Income Tax Regulations 1996.

Where all the required conditions are met, the above exemption will apply only to income derived from investment advisory services offered by Z.

TR 214

FACTS

L is incorporated in Mauritius and it currently holds a Global Business Licence and a Credit Finance Licence issued by the Financial Services Commission (FSC). L is engaged in the business of leasing equipment to customers under an Ijarah Finance Scheme (the "Ijarah Finance Scheme").

Ijarah Finance Scheme is an Islamic financing technique used to finance the acquisition of assets on terms compliant with the principles of Shariah. In an Ijarah transaction, the financing party would typically purchase property desired by its client and then lease it to the client for a lease fee. Some Ijarah transactions give the client the right (but not the obligation) to purchase the asset at or before the end of the lease term.

The structure of such Ijarah Finance Scheme of L is as follows-

- The customer identifies the equipment it requires and makes an application for finance at L;
- L performs a due diligence on the customer prior to approving the application;
- Once the application is approved, L requests authorisation from a Shariah Board. The Shariah Board certifies the Islamic financial products as being Shariah-compliant in accordance with the Islamic Law;
- L purchases the required equipment and appoints an agent to get the equipment delivered to the customer's premises;
- L leases the equipment directly to the customer under a lease agreement. The lease agreement will be based on the concept of Ijarah and all the rules of an Ijarah will be applicable;
- L will charge the customer a lease fee. The lease fee will comprise of –
    (i) a capital element (the capital repayment); and
    (ii) (ii) an effective return element (the finance income);
- At the end of the lease term, the customer has the option to either purchase the equipment from L or return the equipment to L. The Ijarah financing agreement is equivalent to a normal finance lease agreement; and
- L leases equipment directly to the final customer and there is no sub-lease agreement.

The customers of L are not tax resident in Mauritius and they are not related to L.

POINTS AT ISSUE

1. Whether the effective return element of the lease fee will be treated as interest income and the capital element as principal repayment for the purposes of the Income Tax Act?
2. Whether the effective return will be treated as interest income for the purposes of section 10 of the Income Tax Act and item 7 of Sub-Part B of Part II of the Second Schedule to the Income Tax Act?

RULING

On the basis of FACTS mentioned above,

1. the effective return element of the lease fee under the Ijarah financing arrangement will be treated for income tax purposes as gross income derived from the leasing business. Repayment of the principal is not taxable.

2. the effective return element of the lease fee, although for accounting purposes may be characterised as interest income, will constitute the gross income of L for income tax purposes arising from the company's Shariah-compliant business of leasing equipment. Hence, it will be treated as gross income under section 10(1)(b) of the Income Tax Act rather than section 10(1)(d) of the Income Tax Act. Consequently, the income derived by L from its leasing business activities will not be treated as interest income for the purposes of item 7 of Sub-Part B of Part II of the Second Schedule to the Income Tax Act.

TR 215

FACTS

D is incorporated in Mauritius on 20 October 2004 and holds a Category 1 Global Business Licence. The principal activity of D is that of investment holdings.

D is wholly owned by T, a company registered in the United States of America (“**USA”**).

D currently holds 99.998% of the shares of S, a company incorporated in the Republic of India. The shares were acquired on 9 December 2004.

D proposes to transfer all its shareholding in S to its holding company T in USA. The transfer of the shares will be *cum div*.

For the purposes of ascertaining the ‘gain’ resulting from the transfer of the shares, the value of the shares of S will be based on its fair market value.

POINT AT ISSUE

Whether the ‘gain’ resulting from the transfer of the shares held in S will be treated as exempt for income tax purposes in Mauritius?

RULING

On the basis of FACTS mentioned above, it is confirmed that ‘gain’, exclusive of any dividends payable at the date of transfer, arising on the transfer of the shares in S will be exempt from income tax by virtue of the provisions of item 7 of Sub-Part C of the Second Schedule to the Income Tax Act. Such dividends, if any, will be liable to income tax in Mauritius.

TR 216

FACTS

M is incorporated in Mauritius on 20 October 2004 and holds a Category 1 Global Business Licence. The principal activity of M is that of investment holdings.

M is wholly owned by P, a company registered in the United States of America (**“USA”**).

M currently holds 49.998% of the shares of R, a company incorporated in the Republic of India. The shares were acquired on 23 January 2008.

M proposes to transfer all its shareholding in R to its holding company P in USA. The transfer of the shares will be *cum div*.

For the purposes of ascertaining the ‘gain’ resulting from the transfer of the shares, the value of the shares of R will be based on its fair market value.

POINT AT ISSUE

Whether the ‘gain’ resulting from the transfer of the shares held in R will be treated as exempt for income tax purposes in Mauritius?

RULING

On the basis of FACTS mentioned above, it is confirmed that ‘gain’, exclusive of any dividends payable at the date of transfer, arising on the transfer of the shares in R will be exempt from income tax by virtue of the provisions of item 7 of Sub-Part C of the Second Schedule to the Income Tax Act. Such dividends, if any, will be liable to income tax in Mauritius.

TR 217

FACTS

H is incorporated in Mauritius on 20 October 2004 and holds a Category 1 Global Business Licence. The principal activity of H is that of investment holdings.

H is wholly owned by E, a company registered in the United States of America (**"USA"**).

H currently holds 99.998% of the shares of N, a company incorporated in the Republic of India. The shares were acquired on 9 December 2004.

H proposes to transfer all its shareholding in N to its holding company E in USA. The transfer of the shares will be *cum div*.

For the purposes of ascertaining the 'gain' resulting from the transfer of the shares, the value of the shares of N will be based on its fair market value.

POINT AT ISSUE

Whether the 'gain' resulting from the transfer of the shares held in N will be treated as exempt for income tax purposes in Mauritius?

RULING

On the basis of FACTS mentioned above, it is confirmed that 'gain', exclusive of any dividends payable at the date of transfer, arising on the transfer of the shares in N will be exempt from income tax by virtue of the provisions of item 7 of Sub-Part C of the Second Schedule to the Income Tax Act. Such dividends, if any, will be liable to income tax in Mauritius.

TR 218

FACTS

F is incorporated in Mauritius on 5 October 2005 and holds a Category 1 Global Business Licence. The principal activity of F is that of investment holdings.

F is wholly owned by V, a company registered in the United States of America (“**USA”**).

F currently holds 99.998% of the shares of X, a company incorporated in the Republic of India. The shares were acquired on 26 October 2006.

F proposes to transfer all its shareholding in X to its holding company to V, USA. The transfer of the shares will be *cum div*.

For the purposes of ascertaining the ‘gain’ resulting from the transfer of the shares, the value

of the shares of X will be based on its fair market value.

POINT AT ISSUE

Whether the ‘gain’ resulting from the transfer of the shares held in X will be treated as exempt for income tax purposes in Mauritius?

RULING

On the basis of FACTS mentioned above, it is confirmed that ‘gain’, exclusive of any dividends payable at the date of transfer, arising on the transfer of the shares in X will be exempt from income tax by virtue of the provisions of item 7 of Sub-Part C of the Second Schedule to the Income Tax Act. Such dividends, if any, will be liable to income tax in Mauritius.

TR 219

FACTS

S is a French citizen residing in Mauritius. He is the holder of a residence permit for retired non-citizen issued on 07 December 2018 and which has been renewed until 03 December 2028. He is the owner of an apartment in Mauritius where he resides with his spouse, and which he considers to be his main residence. His two children are living in Mauritius; his son T is the managing director of N and his daughter is the owner of B since 2009. S has been present in Mauritius for more than 183 days during the year ended 30 June 2020.

During the income year ended 30 June 2020, S derived pensions under the French social security legislation and income from immovable property situated in France.

During the coming income year ending 30 June 2021, S will be present in Mauritius for more than 183 days with his spouse and he will continue to derive pensions under the French social security legislation and income from immoveable property situated in France.

POINTS AT ISSUE:

1. Whether S would be qualified as a resident in Mauritius during the income year ended 30 June 2020?
2. Whether the pensions paid to S under the French social security legislation in France and income derived from immovable property in France during the income year 30 June 2020 are subject to income tax in Mauritius and whether he will have to file an income tax return in Mauritius for the income year ended 30 June 2020?
3. Whether the pensions under the social security legislation received in France and income derived from immovable property in France during the year ended 30 June 2020 will be subject to income tax in Mauritius when repatriated to Mauritius?
4. Whether S will be qualified as a resident in Mauritius during the income year ending 30 June 2021?
5. Whether the pensions paid to S under the French social security legislation and the income derived from immovable property in France during the income year ending 30 June 2021 will be subject to income tax in Mauritius?

RULING

On the basis of FACTS mentioned above,

1. It is confirmed that S would be resident in Mauritius by virtue of section 73 of the Income Tax Act for the income year ended 30 June 2020 as he has been present in Mauritius for more than 183 days. He would also be resident in Mauritius by virtue of Article 4 of the DTAA between Mauritius and the Republic of France as his centre of vital interest is in Mauritius. As a resident he will be entitled to the treaty benefits under Article 1 of the DTAA.
2. In accordance with Article 18 of the DTAA, pensions paid to S under the French social security legislation are taxable only in France. , therefore,, the pensions paid to S under the French social security legislation during the income year ended 30 June 2020 will not be subject to income tax in Mauritius.

In the event that S has paid income tax in France on his income derived from immovable property situated in France during the income year ended 30 June 2020, such income will be exempt from income tax in Mauritius under Article 24 of the DTAA between the Republic of France and Mauritius.

However, S will be required to file an annual return of income in Mauritius in accordance with section 113 of the Income Tax Act.

3. Pensions derived by S under the French social security legislation will not be taxable in Mauritius when remitted to Mauritius.

Income from immovable property situated in France will be exempted in Mauritius when remitted, provided that it has been subject to tax in France.

4. S will be considered to be resident in Mauritius for the year ending 30 June 2021 as well for the same reasons as per paragraph 1 above.
5. Paragraph 2 above will equally apply to the pensions paid to S under the social security legislation in France and the income derived from immovable property in France during the income year ending 30 June 2021.

TR 220

FACTS

D is a company incorporated in Mauritius and is engaged in the ICT sector. It is wholly owned by K and its ultimate holding company is H, a publicly traded company on the New York Stock Exchange since April 2018.

H offers various options for employees and management to buy its shares for cash and/or on credit. For instance, H awards a facility plan whereby management ("managers") in Mauritius are granted stock options on credit, that is, at the time of acquisition of these shares, no money is disbursed. However, upon disposal of the said shares, the cost price of these shares has to be paid back to H. When H grants the option, the managers must acknowledge acceptance online to the terms and conditions on the E-Trade Securities platform and then the shares belong to them.

It is further confirmed that the shares cannot be disposed/ transferred to another person and the managers have the option to accept or reject the shares within a period of one year, Further, the managers will only be able to dispose the shares after one year and will receive, in Mauritius, the difference between the selling price and the cost price of the shares after deduction of charges.

POINTS AT ISSUE

(i) With regard to the management option, whether the gain realised on the sale of the shares is a taxable income?

(ii) Whether a normal bank interest rate on the share value at purchase has to be accounted for?

RULING

On the basis of FACTS mentioned above,

(i) Any gain between the market value of the shares at the time the option is exercised and the cost price of the shares will be revenue in nature , therefore,and, , therefore,, will be subject to income tax.

(ii) Any gain between the market value of the shares at time the option is exercised and the market value at time of disposal will be capital in nature , therefore,and, , therefore,, will not be subject to income tax.

(iii) The credit provided by H is similar to an interest free loan provided by an employer to its employee. As such, the taxable fringe benefit will be in accordance with section 10(2)(d) of the Income Tax Act 1995 and regulations 34 of the Income Tax Regulations 1996. The monthly taxable benefit for interest free loan or loan at reduced rate is specified in the Second Schedule to the Income Tax Regulations which as at date, stands as follows:

'Difference between the amount of interest for the month, calculated at 2 per cent per annum above the repo rate, prevailing at the end of that month, and the amount of interest paid in that month.'

Notice is hereby given that RULING TR 221 issued by the MRA and printed in the Government Gazette No. 8 of 23 January 2021, is hereby being republished as follows:

TR 221

FACTS

B was employed as Chief Executive Officer of C by virtue of a contract of employment for a period of five years with effect as from 27th March 2003.

On 15th September 2005, C terminated the contract of employment of B without giving any reasons for the termination relying on clause 14.1 of the contract of employment, which provides that "*your employment may be terminated by you or by C by giving 6 months' notice to the other party*".

B lodged a claim for severance allowance before the Industrial Court of Mauritius, which on 12th June 2007, found that B was not entitled to claim severance allowance on the ground of unjustified dismissal The RULING also made mention that B could seek redress before the ordinary court under the provisions of the Civil Code.

B lodged a plaint with summons before the Supreme Court claiming damages and prejudice that he has suffered as a result of a breach of contract. The Court, having found that B failed to establish his case for breach of contract or for unfair dismissal, dismissed the said plaint on 1st July 2015.

Subsequently, B lodged an appeal against judgment dated 1st July 2015. On 25th March 2019, the Court of Appeal: -

(i) reversed the judgment of the learned trial judge dismissing the plaint;

(ii) directed the latter to find B's case proved; and

(iii) remitted the case to him to decide on the quantum of damages to be awarded

On 25th October 2019, the Supreme Court delivered a judgment in terms of the settlement reached between B and C, which is as follows:- *"**The Defendant in this matter, C, has pursuant to the present action agreed to pay to the plaintiff, B the sum of Rs.9,080,009 rupees in full and final settlement of all claims arising out of his***

former employment with C a.00s a result of this amount being paid. The parties confirm and acknowledge that they have no further claim of whatsoever nature against each other be it past, present or future, actual or contingent, arisen or yet to arise, out of the employment of B at C under its former name. B also acknowledges and undertakes that any data information or documents which came to his knowledge or are to his knowledge pursuant to his employment to the bank shall be kept confidential at all times. In the light of the settlement reached, they have also agreed that each party shall bear their own costs of the present matter."

B received payment of a net amount of Rs.8, 275,000/- in November 2019, after payment of Rs.805, 000/- as Counsel professional fees.

POINT AT ISSUE

Whether B will be entitled to the exemption amounting to Rs.2, 500,000/- provided under

item 6 of Sub-Part A of Part II of the Second Schedule to the Income Tax Act?

RULING

On the basis of above-mentioned FACTS, it is noted that B and C reached an out-of-court settlement following a claim for damages and prejudice suffered as a result of a breach of his contract of employment and such payment does not fall within the ambit of **item 6 of Sub-Part A of Part II of the Second Schedule to the Income Tax Act**.

, therefore,, B will not qualify for exemption on the first Rs.2,500,000/- of the aggregate amount received.

Furthermore, B will not be allowed to claim deduction in respect of the Counsel professional fees amounting to Rs.805,000/- as this expenditure has not been wholly, exclusively and necessarily incurred in the performance of the duties of his office or employment.

TR 222

FACTS

L was incorporated in Mauritius on 18 October 2016 and holder of a Category 2 Global Business Licence. On 28 November 2017, L changed its status to a Category 1 Global Business Licence.

The principal activities of L are to act as an investment holding company in the forestry sector in Mozambique and trading operation for sourcing and onward sale of wood sourced from various forestry concessions held in African countries.

During the year ended 31 December 2019, L issued preference shares to third party investors and these preference shares were subsequently bought back by M, the immediate and ultimate holding company.

M presently holds 2 classes of shares: ordinary shares and preference shares in its wholly owned subsidiary, L. M intends to relinquish/walk away from the preferences shares. For the purposes of this relinquishment, L will debit the preference shares account and credit the Profit and Loss Account.

POINT AT ISSUE:

Whether the amount credited in the Profit and Loss Account in respect of the relinquishment of the preference shares would be subject to tax?

RULING

On the basis of the FACTS provided, the relinquishment of the preference shares will alter the capital structure of L. The amount credited to the Profit and Loss Account being capital, would , therefore, not constitute a taxable income for L.

TR 223

FACTS

B was incorporated on 22 February 2013 in Mauritius as a domestic company with its central management and control in Mauritius. B is tax resident and VAT-registered in Mauritius.

B is held by C, a company incorporated in the British Virgin Islands, and ultimately held by D, a company based in Jersey having tax residency in the UK. D is engaged in the provision of online payment solutions.

B is engaged in the information technology sector and mainly performs research and development (**"R&D"**) activities related to online payment solutions for D. B currently has 83 employees who have been involved in the development of the Third Party Processing (**"TPP"**) software in the prior years and now assist with ongoing maintenance, updates and integrations in respect of the platform to be able to comply with regulations but also meet the demands of merchants.

In 2018, the D implemented a group wide change to their accounting policies under the IFRS accounting standards. These accounting standards allow for the costs incurred to develop internal-use software to be capitalised to the extent the benefit will be delivered over a number of years. The software platform is the result of the joint R&D activities of B and F. Accordingly, the identified software platform development costs incurred in Mauritius have been capitalised in the books of B. B has claimed annual capital allowance on the capitalised intangible asset at the rate of 5% on cost.

The market value of the Mauritius IP is in the range of USD 35m – USD 50m, and the intangible assets will be transferred at book value.

B has not made any disposal of the Mauritius IP as of date

D is undertaking a restructuring project seeking to simplify its international IP strategy in order to own all IP in one territory and has , therefore, decided that it will transfer all IP that is currently owned outside the United Kingdom to the United Kingdom.

As part of the restructuring, a new entity of D, F will be set up in the UK and intends to acquire the business of B including a software platform ("Mauritius IP/intangible asset") partly developed in Mauritius.

The proposed transfer of the Mauritius IP is mainly driven by the fact that most of the technological development is now being led out of the UK from where the future ongoing development and exploitation of the IP will be led from. Also, the most senior resources of the Group are based in the UK and the workforce based in the UK is several times that of B. D has slowly built a strong presence in Europe during the past years and found that they have access to both a greater pool of potential customers and skilled workforce in Europe to further drive their growth as a technology company.

At the time of acquisition of the Mauritius IP from B, F will neither have a taxable presence nor a permanent establishment in Mauritius. The transfer of the IP will legally take place at net book value.

F will register a branch in Mauritius in the future to further support its R&D activities after employees are transferred from B to F. In other words, the Mauritius Branch will act as an R&D centre and shall provide R&D service to its head office in the UK. Depending on future needs and success of Mauritian operation, the Mauritius Branch may also provide R&D services to other non-resident sister companies in the future.

The Mauritius Branch of the UK-headquartered entity will be remunerated at arm's length

and its remuneration is likely to exceed MUR 6m annually.

POINTS AT ISSUE

1. Whether the gain arising from the transfer of the Mauritius IP from B to F will be considered as capital gain and hence not subject to income tax in Mauritius?
2. Whether the transfer of Mauritius IP should fall within the ambit of section 24(6) of the Income Tax Act and hence no balancing charge or allowances need to be computed? If not, whether the amount of consideration received further to the transfer of IP should be limited to the cost of the Mauritius IP capitalised in the books of B for the purpose of computing balancing charge as per section 24(5)(a) of the Income Tax Act ?

RULING

On the basis of the FACTS mentioned above -

1. the gain arising from the transfer of the Mauritius IP from B to F is capital in nature and hence is not subject to income tax in Mauritius.
2. the transfer of the Mauritius IP from B to F does not fall within the ambit of section 24(6) of the Income Tax Act and has to be dealt with in accordance with section 24(5)(a) of the Income Tax Act.

TR 224

FACTS

V is engaged in the Oil and Gas industry and has operations in 14 countries across the world. V operates through entities based principally in Bahamas for both the exploration /production segment and the services segment. Within the services segment, an important proportion of the business relates to the bareboat leasing of maritime assets to other group entities in Africa. The maritime assets which are leased are as follows:

(i) Barge

(ii) Floating storage offloading

(iii) Anchor handling tug supply

(iv) Multicat; and

(v) Jack-up drilling/Self elevating platform

V intends to set up new entities in Mauritius (W). Each W will hold a Global Business Licence (**"GBL"**) issued by the Financial Services Commission. The maritime assets will be transferred to the entities in Mauritius. W will thus be engaged in bareboat leasing of the maritime assets to other group entities. The assets will not be registered in Mauritius.

POINTS AT ISSUE

(i) Whether the five types of maritime assets will qualify as *'ship'* for the purposes of application of the provisions set out in the Mauritius Income Tax Act?

(ii) Whether the W will be eligible to claim an 80% exemption on bareboat leasing income to be derived from the leasing of the five types of maritime assets pursuant to item 42 of Sub-Part C of Part II of the Second Schedule to the Income Tax Act, subject to satisfaction of substance requirements?

RULING

On the basis of FACTS mentioned above, it is confirmed that:

1. The five maritime assets and the activity mentioned above will qualify as *'ship'* and will be considered as "ship leasing" respectively.

2. In accordance with item 42 of Sub-Part C of Part II of the Second Schedule to the Income Tax Act, W will be subject to 80% partial exemption provided that they satisfy the conditions as prescribed in regulation 23D of the Income Tax Regulations 1996, which reads as follows:

“The exemption shall, for the purpose of item ...., 42(b),…… of Sub-part C of Part II of the Second Schedule to the Act, be granted provided the company -

(i) *carries out its core income generating activities in Mauritius;*

(ii) *employs, directly or indirectly, an adequate number of suitably qualified persons to conduct its core income generating activities; and*

(iii) *incurs a minimum expenditure proportionate to its level of activities.”*

TR 225

FACTS

N is a South African tax resident individual and he is the effective settlor and principle beneficiary of a trust. The trust is originally established on 8 March 2011 in the Island of Jersey.

- The trust instrument was signed at the time N was tax resident in South Africa.
- The trust holds cash, listed investments and equity funds.
- The current trustees of the trust are tax resident in the Isle of Man and it is administered in the Isle of Man.
- N intends to leave South Africa and relocate to Mauritius permanently.
- Post his relocation to Mauritius, and on becoming a tax resident in Mauritius, N shall donate additional assets to the trust. These additional donations will be made from assets held by N in South Africa and other foreign jurisdictions.

POINT AT ISSUE

Whether the trust shall be considered as tax resident in Mauritius once N becomes a tax resident in Mauritius, and he donates additional funds from his assets held in South Africa and other foreign jurisdictions to the trust?

RULING

On the basis of FACTS mentioned above and in accordance with section 73(1)(2) of the Income Tax Act, the trust is not considered to be tax resident in Mauritius given that the settlor of N was not resident in Mauritius at the time the instrument creating the trust was executed.

TR 226

FACTS

C is based in the Bahamas and forms part of the D group of companies.

D is engaged in the oil and gas industry, with exploration and production operations across the world, including the following countries in Africa: Congo Republic, Democratic Republic of Congo, Gabon and Cameroun.

The entities operating in Africa are currently held by intermediate holding companies in the Bahamas.

D is now considering either to re-domicile the intermediate holding companies in Mauritius or to set-up new entities in Mauritius to take-over the investment holding functions.

The Mauritius-incorporated companies would hold the majority shareholdings of the operating entities ("**Op Co**"). Each of the Mauritius entities ("**Hold Co**") would be expected to hold a Global Business Licence (**"GBL"**) to be issued by the Financial Services Commission.

Hold Co, as tax residents of Mauritius, will be subject to income tax in Mauritius at the rate of 15% on dividend received from the respective **Op Co**. However, they will be eligible to claim:

(i) either an 80% partial exemption on the foreign dividends to be received from **Op Co** under the provisions of the Income Tax Act, provided relevant substance requirements are satisfied; or

(ii) ~~(ii)~~ credit for foreign taxes suffered on the foreign dividends in **Op Co** jurisdictions in the form of withholding tax, underlying tax and / or tax sparing relief, under the provisions of the Income Tax Act and the Income Tax (Foreign Tax Credit) Regulations 1996, whichever is more beneficial.

Op Co in each of the African countries exploit oil and gas concessions and are subject to tax either on the basis of local tax legislations or based on specific one-to-one agreements entered with the respective African Governments.

A Production Sharing Contract (**"PSC"**) is entered into by **Op Co** with the relevant African government. Such a contract/agreement between the relevant government and Z finds its legal basis under appropriate revenue legislations in the relevant African countries which may provide for a Mining Royalty and corporate income tax to be paid ***in-kind*** through the delivery of specific quantity of oil barrels to the respective government tax authorities.

Under such a PSC, the relevant government gives **Op Co** the right to explore a specific area (i.e. a concession) in search of oil or gas deposit. Once oil or gas is discovered, subject to completion of formalities with the relevant governments, exploitation of the concession is initiated.

Cost stop

During the exploration stage, all the exploration costs are borne by **Op Co**. However, when production is initiated, a part of the oil/gas production is allocated to reimburse both the exploration and exploitation costs to **Op Co**. This is termed in technical jargon as "Cost Oil" or "Cost Gas" and is capped at a fixed percentage of the hydrocarbon production level, a level called the “Cost Stop” and defined in the contracts.

Profit Oil

The surplus of hydrocarbon production, after deduction of the Mining Royalty payment to the relevant government and the Cost Oil or Cost Gas to **Op Co** is called the Profit Oil and is shared between **Op Co** and the relevant government at agreed proportions. The share of the relevant government is named “State Profit Oil”. Where the Cost Oil or Cost Gas is higher than the Cost Stop, the unrecovered costs of **Op Co** are usually carried forward to subsequent years.

The valuation of such profit is ascertained through a mechanism agreed with the relevant African government. In this connection, the relevant government determines an Official Price of the hydrocarbon which in practice is an average of the hydrocarbons sales of the relevant period. This Official Price is also referred to as the Agreed Selling Price.

Excess Oil

Where the Cost Oil is lower than the Cost Stop, the difference, i.e. the Excess Oil, is shared between **Op Co** and the relevant government at agreed ratios that may differ from that of the Profit Oil.

Super Profit Oil

The contracts may also provide for a threshold of the Official Price, known as “High Price”**.** Where the ‘Agreed Selling Price’ is higher than the ‘High Price’, the profit generated by the excess is referred to as the Super Profit Oil and is shared between the relevant government and **Op Co** using a different sharing ratio from that used for the allocation of the Profit Oil. The share of the relevant government is referred to as the "State Super Profit Oil".

Payment in-kind

Op Co is required to pay to the relevant government: a Mining Royalty and the corporate income tax. The corporate income tax may be included in and covered by the State Profit Oil. The Mining Royalty and State Profit Oil may be paid ***in-kind*** in terms of oil barrels.

Royalty fees are payable, in kind, at values representing agreed percentages of gross revenue (e.g. 15% of gross revenue). As regards corporate income tax, called "Tax Oil" when included and covered in the State Profit Oil / Super Profit Oil, it is paid by **Op Co** *in-kind* (in terms of oil barrels or gas volumes) at the applicable rate of corporate income tax.

The Mining Royalty and the State Profit Oil/State Super Profit Oil (including the corporate income tax when included and covered in the Profit Oil/Super Profit Oil) are paid on a monthly basis. **Op Co** submits monthly provisional tax returns to the relevant tax authority to account for the tax payments.

, therefore,, the Tax Oil is not paid separately by **Op Co** but is included in the government's

share of the Profit Oil and Super Profit Oil.

In **Op Co** books, the share of **Op Co** Profit Oil and/or Super Profit Oil is considered to be net of taxes and is normally grossed up in the financial statements prepared and audited under the applicable accounting standards.

The annual tax returns of **Op Co** are also submitted to the relevant tax authorities based on the above-mentioned principles. The annual tax returns are appropriately stamped, dated and signed by the relevant tax authority.

POINTS AT ISSUE

(i) Whether, in respect of foreign dividends to be received by X from **Op Co**, **Hold Co** will be eligible to claim credit for underlying tax suffered, under the Income Tax Act and the Income Tax (Foreign Tax Credit) Regulations 1996, against their respective Mauritius tax liabilities, on the basis of the corporate income tax (i.e. Tax Oil) suffered by **Op Co** ***in-kind*** in the relevant African countries; and

(ii) in the affirmative, whether it would be sufficient to substantiate the claim for the above-mentioned underlying tax credit on the basis of the following documentary evidence:

(a) Certificate of confirmation of shareholding from the secretary of **Op Co** confirming the percentage of shareholding held by **Hold Co** in **Op Co**;

(b) Copies of audited financial statements of **Op Co**; and

(c) Copies of **Op Co** annual tax returns filed in the relevant African countries, duly stamped and signed by the relevant tax authorities?

RULING

On the basis of the FACTS provided -

(i) the corporate income tax paid *in-kind*, in terms of barrels of petrol, falls within the meaning of 'foreign tax' as defined in the Income Tax Act. , therefore, **Hold Co** will be entitled to claim credit for the underlying tax suffered in accordance with the provisions of the Income Tax (Foreign Tax Credit) Regulations 1996 provided they have not claimed partial exemption on the foreign dividends received; and

(ii) in support of its claim under (i) above, **Hold Co** will be required to produce, for the purposes of the provisions of regulations 7 and 8 of the Income Tax (Foreign Tax Credit) Regulations 1996, documentary evidence as follows:

(a) Certificate of confirmation of shareholding from the Secretary of **Op Co** confirming the percentage of shareholding held by **Hold Co** in **Op Co**;

(b) Copies of **Op Co** annual tax returns filed in the relevant African countries –

(i) duly stamped and signed by the relevant tax authorities; and

(ii) showing separately the amounts of the State Profit Oil/State Super Profit Oil and the Corporate Income Tax.

(c) Copies of audited financial statements of **Op Co**; and

(d) Certificate from the relevant foreign tax authorities in respect of the monetary value of the Corporate Income Tax paid *in-kind*.

TR 227

FACTS

D is a private company limited by guarantee. It was incorporated in Mauritius in November 2016 and currently it holds a Category 2 Global Business Licence. D will no longer hold such licence by 30 June 2021 and it will apply to the relevant authorities so that it may be converted into a domestic company. It is a non-profit making association for the African infrastructure sector. D is financed by subscriptions from its members and by contributions from private sources, including grants. Its members are leading project developers, investors and development finance institutions.

D seeks to promote and enable project development activities in Africa by creating an eco- system and platform that will foster continuous dialogue amongst its members, standardize project development template documents and serve as a policy advocacy platform for the industry with a view to advance the development of more bankable projects in Africa.

X, a management company in Mauritius, is D's secretary and one amongst its ten Board Directors is resident in Mauritius while the other nine Directors are based in South Africa, Nigeria, Belgium, United Kingdom, Netherlands and Germany.

The objects and objectives for which D is established are in respect of the development of infrastructure projects in Africa and to represent the interests of its members.

Distribution by way of dividend, bonus or profits to members of D is prohibited.

In the event of dissolution, the remaining property of D will be distributed to its members pro-rata to the amount guaranteed.

POINT AT ISSUE

Whether the subscriptions from members and grants received are subject to income tax irrespective as to whether D is a company which holds a Category 2 Global Business Licence or it is converted to a domestic company eventually?

RULING

On the basis of the FACTS mentioned above, it is ruled that the subscriptions and grants received by D are not subject to income tax.

TR 228

FACTS

G is incorporated in Mauritius and it holds a Category 1 Global Business Licence. The principal activity of G is that of investment holding.

G is listed on a foreign stock exchange and various non-resident directors (**"Directors"**) are entitled to director fees.

The Board of G wishes to compensate the Directors by granting them Restricted Stocks (**"RS"**).

Particulars of the RS will be as follows:

(i) on the grant date, a certain number of RS, determined by the value of the grant divided by the fair market value of the stocks at the date of the grant ("RS Value"), will be granted to the Directors by way of a letter of grant, which will not involve any transfer of stocks in the name of the Directors until the Period of Restriction expires or lapses;

(ii) the Directors will have no right to vote or be entitled to dividends on the RS during the Period of Restriction;

(iii) after the expiry of the Period of Restriction of 18 months, if a Director is still a member of the Board, RS granted will be considered as earned by the Director and the full number of stocks will be transferred in the name of the Directors;

(iv) in addition, if any of the Directors voluntarily leaves G without cause during the 18 months period, the Period of Restriction will lapse and the said Director will earn and be entitled to stocks pro-rata the time he/she has served as Director;

(v) However, if any of the Directors is removed with cause during the Period of Restriction of 18 months period, the said Director will lose all his or her entitlement to the RS granted and no stocks will be transferred to him/her.

In line with US GAAP, G will amortize the RS Value (computed as per Black-Scholes method of valuation) over the full Period of Restriction of 18 months by accruing and charging to its quarterly income statement three eighteenth of the RS Value.

For the purpose of calculating its chargeable income for an income year, G will disallow all provisions that have been made in respect of amortized RS Value.

POINT AT ISSUE

Whether PAYE on the RS granted to Directors will apply on the date the Period of Restriction expires or lapses and be calculated on the fair market value of the stocks on that date and not at the end of every quarter based on three eighteenth of the RS Value?

RULING

On the basis of FACTS mentioned above, it is confirmed that PAYE on the RS granted to Directors shall apply on the date the Period of Restriction expires or lapses, i.e. when the Directors are entitled to the RS and be calculated on the market value of the RS on that date.

TR 229

FACTS

B is registered as a law firm under the Law Practitioners Act and is in the business of providing legal services to domestic and international clients.

B has 300 ordinary shares currently in issue and these will be consolidated into 3000 ordinary shares in accordance with the Companies Act. Thirty will remain as ordinary shares and 2,970 will be reclassified as Redeemable Participating Shares. The 30 ordinary shares and 2,970 Redeemable Participating Shares shall be held in equal proportion by the existing shareholders.

An existing shareholder is entitled to request B to purchase his Redeemable Participating Shares at a value determined by an independent valuation at the material time (the current value is USD 700 per share based on an independent valuation report dated 13th January 2021).

A new shareholder may join B and will be entitled to Redeemable Participating Shares at the value as determined by an independent valuer at the material time.

The Redeemable Participating Shares are not freely transferable, and can only be purchased

by or sold to a third party, subject to shareholders' approval.

In accordance with International Financial Reporting Standards (IFRS), redeemed shares will be paid out of equity (stated capital plus retained earnings).

POINT AT ISSUE

Is there income tax payable by the shareholders in connection with the redemption of Redeemable Participating Shares?

RULING

Based on the FACTS provided, the redemption proceeds received by the existing shareholders are considered to be a benefit to shareholders in accordance with section 86A of the Income Tax Act and will, , therefore,, be subject to income tax.

TR 230

FACTS

P is a company incorporated in Mauritius and it holds a Global Business Category 1 License issued by the Financial Services Commission. P also holds a valid Tax Residence Certificate issued by the Director-General, Mauritius Revenue Authority, under section 73 of the Income Tax Act.

P is engaged in investment holding activities, licensing and franchising of media rights and trade in infotainment products and services.

P enters into licensing agreements to acquire the rights to broadcast contents and channels from different content providers worldwide and provides content aggregation services in the broadcasting and TV cable industry including Over-The-Top and Video On Demand services. P enters into content or channel contracts with the content providers in its own name and capacity. The content providers are independent third parties and hence, are not related, whether directly or indirectly, to P. Under the licensing agreements entered into with the content providers, P has the right to sub-license the Licensed Rights to its affiliated company in the territory of Singapore.

P has sub-licensed the Licensed Rights to Q, a related company incorporated in Singapore, in consideration for a royalty fee equivalent to the actual license costs plus 10% mark-up. P also derives revenue from third party customers. P and Q are both 100% owned by R, a public listed company in Singapore. The Sub-licensing Agreement between P and Q is renewable on an annual basis, effective as from March 2009.

P does not have a permanent establishment in Singapore and does not perform independent personal services from a fixed base in Singapore.

Under the sub-licensing agreements, the royalties income should be transferred to P's bank account. P fully controls the royalty income stream from Q and has full discretion on the usage of the funds of royalty income. The Licensing and the Sub-Licensing arrangements are not pure back-to-back and P is not a pass through of the royalty income. If P's contract with Q is terminated, the license agreements with the content providers still stay in place.

In case of bankruptcy of P or defaulting payments, the content providers will only be able to recover funds from P. The content providers cannot recover funds from Q directly even if the latter owes P. P has control over the Licensed Rights that the content providers have granted to it and P also bears any market risks, quality risks, foreign exchange risks and credit risks associated with the Licensed Rights. P is acting in its own capacity when procuring License Rights from content providers and sub-licensing the Licensed Rights to Q and is not acting in the capacity of an agent, a nominee or as a conduit company.

POINTS AT ISSUE

1. Whether P is tax resident in Mauritius for the purposes of Article 4 of the Double Taxation Agreement between Mauritius and Singapore; and
2. Whether P is the beneficial owner of royalties received from Q for the purposes of Article 12 of the Double Taxation Agreement between Mauritius and Singapore?

RULING

On the basis of the FACTS provided, it is ruled that -

1. P is resident in Mauritius by virtue of the provisions of section 73 of the Income Tax Act , therefore,and, , therefore,, P is also tax resident in Mauritius for the purposes of Article 4 of the Double Taxation Agreement between Mauritius and Singapore and hence, P is liable to tax in Mauritius.
2. P's right to use and enjoy the royalties income is not constrained by any contractual or legal obligation to pass on the payment received to another person. Furthermore, P assumes the risks and control of the royalties received from Q. Hence, P is the beneficial owner of royalties received from Q for the purposes of Article 12 of the Double Taxation Agreement between Mauritius and Singapore.

TR 231

FACTS

G is a private school in Mauritius which was founded and managed by H since September 2014 as the sole trader. H is a tax resident of Mauritius.

J is a company incorporated under the laws of Mauritius as a private company limited by shares and is engaged in providing pre-school and primary educational services.

On 16 July 2018, the owners of J approached H and sold 100% of the ordinary shares of J to H.

On 1 January 2019, J acquired G from H on a going concern basis for a consideration of MUR 244 million based on the terms and conditions of a Purchase Agreement. The consideration for the acquisition included all the assets of G based on the value of the business as at 1 January 2019, net of any cash of the business.

K, an Investment Adviser was appointed by J to perform a valuation of the business of G as at 1 January 2019 and as per the valuation report dated 25 March 2021, the components of value have been ascertained as follows:

Asset	MUR (million)
Student List (Customer List)	197
Others	128
Total	**325**

The other assets of MUR 128 million include intangible assets such as the school curriculum and goodwill.

The financial statements of J for the year ended 31 December 2019 will be reinstated to reflect the value of MUR 325 million for the acquisition of G's business as per IAS 8.

Payment for the acquisition of G which amounted to MUR 244 million is still due and has been accounted as a loan payable to H in the books of J.

As per the Purchase Agreement, the loan from H to J bears interest at the annual rate of 5% as from 1 January 2021 payable semi-annually. The loan can be repaid at the Seller's or Buyer's call, in part or in full, prior to 1 January 2035.

The transitional period of 2 years from 1 January 2019 to 31 December 2020 is as per Clause

6.2 of the Purchase Agreement and represents a moratorium to allow time for J to absorb the business of G and secure a means to refinance the loan from H (the Seller), following which interest starts accruing.

POINTS AT ISSUE

1. Whether the repayment of the capital element of the loan payable to H is of capital nature and is , therefore, not taxable in the hands of H?
2. Whether J is eligible to claim annual allowance on the Student List at the rate of 5% on cost?
3. Whether J is eligible to be approved as a charitable institution as per the definition under section 2 of the Income Tax Act?

RULING

On the basis of the FACTS provided, with regard to questions 1 & 2, it is ruled that the proposed transactions are designed solely to confer a tax benefit on both H and J. The transactions relating to the transfer of the business to J would , therefore, be caught under the anti-avoidance provisions of section 90 of the Income Tax Act and the tax liability of H and J shall be assessable as if the transaction or any part thereof had not been entered into or carried out.

With regard to question 3, it is noted that J is a company limited by shares and it is providing educational services to a selective section of the population against payment of school fees. As such the object of the company is not of a “public character”, , therefore,and, , therefore,, J will not qualify to be approved as a charitable institution for the purpose of section 2 of the Income Tax Act.

TR 232

FACTS

X is a domestic company incorporated and domiciled in Mauritius. It is engaged in water engineering consulting services and project management including works supervision and technical assistance. X is a wholly owned subsidiary of Y, a company incorporated and domiciled in France. Both the holding and subsidiary company are in the same line of business.

X has been awarded a contract as the sub-consultant from Z, a domestic company with regard to the M project in providing consulting engineering services. Besides, its own local employees on its payroll X does, for the purpose of executing the contract, hire the local services of consultants (mainly engineers) who are resident in Mauritius and also the services of its foreign holding company, Y.

The scope of the work does entail both the physical presence of the employees of Y in Mauritius for the proper execution of the work and also off-site work, that is work handled in the Office in France. The employees will be present in Mauritius for over 183 days.

Accordingly, Y does send its own engineers and technicians to Mauritius for the relevant tasks involved. These employees are remunerated in France by Y. There is no formal arrangement or contract between X and Y; the latter owns 100% shares of the former. X has been set up mainly to tap the local market and that of the Indian Ocean region.

Y is to charge a fee for services rendered to X. The former is to also charge a management fee to the latter. Being the holding company, Y is to provide financial assistance to X as and when required by way of inter-company loan with a reasonable rate of interest.

POINTS AT ISSUE

1. Whether X is to withhold TDS from the payments to Y in connection with:-

   (i) services as invoiced to X;

   (ii) loan interest payable on loan from Y and ;

   (iii) management fees ?

2. Are the employees of Y liable to income tax (i.e. PAYE) in Mauritius given that they will be here for over 183 days?

RULING

On the basis of information provided, it is ruled that –

1. As the employees of Y will be present in Mauritius for more than 183 days to carry out construction works supervision in Mauritius, Y shall be deemed to have a permanent establishment in Mauritius in accordance with Article 5 (4) of the Avoidance of Double Taxation Agreement between Mauritius and the Republic of France. The profits of Y attributable to its permanent establishment in Mauritius will, in accordance with Article 7 (1) of the Avoidance of Double Taxation Agreement between Mauritius and the Republic of France be subject to income tax in Mauritius.

   X is to withhold TDS from any payment of interest and services to Y at the rate 15% and 10% pursuant to section 111B(a)(i) and section 111B(h) respectively of the Income Tax Act.

   No TDS is to be withheld on management fees by virtue of section 111B(i) of the Income Tax Act.

2. As the employees of Y will be present in Mauritius for more than 183 days, they will be resident in Mauritius for tax purposes. Those employees would be liable to tax on their emoluments even though paid in France. Y will have to register as an employer and deduct tax under the PAYE system.

TR 233

FACTS

J is a domestic company incorporated in Mauritius. It was mainly engaged in the production of salt until it ceased production in the year 2015. J holds a BRN which provides for the activities of manufacturing of salt and general retailer of foodstuff and non-foodstuff.

For the purpose of carrying out its activities, J acquired substantial portions of freehold lands from K in Tamarin where it carried out its salt production operations. J sold a portion of land by way of a morcellement in 2008.

Since J ceased salt production activities, it did not make any development on the portion of land it held in Tamarin. It is now considering to sell the bare land in one bulk plot of 54 arpents without any further development.

POINT AT ISSUE

Whether J would be subject to income tax on the gain derived from the sale of its land at Tamarin?

RULING

Based on the FACTS provided, the gain arising to J on the disposal of the bare land situated at Tamarin in one plot of 54 arpents will be considered to be capital gain , therefore,and, , therefore,, not subject to income tax.

TR 234

FACTS

P is a domestic company incorporated in Mauritius. It runs a medical college under the name of Q. P offers the MBBS programme (Bachelor of Medicine, Bachelor of Surgery) which spans over five academic years. P is affiliated with a university in Mauritius. There are currently 388 students who are studying for the MBBS course. Most of the students enrolled for the MBBS course are from foreign countries, mainly from India.

P employs both local and expatriate staffs. Since November 2019, for the purpose of marketing, P has employed Indian representatives in offices in various cities of India, namely Chennai, Bangalore, Hyderabad and New Delhi. P neither owns an office in India nor pays any rent from Mauritius.

All the employees who are working in India are tax resident of India and offer their services to P from India. At no point in time, these employees come to Mauritius for the performance of their duties. P has not made any formal employment contract with the employees but amounts paid to them from Mauritius are directly remitted to them in India each month.

POINTS AT ISSUE

1. Whether the salaries paid to the Indian employees performing works in India for P will be subject to income tax and PAYE in Mauritius?
2. Whether the salaries paid to the Indian employees performing works in India for P will be subject to TDS in Mauritius?
3. Whether P has to declare information and particulars of the Indian employees performing work in India for P for the purpose of the Return of Employees (ROE)?
4. Whether the Indian employees of P working from India will have to file an income tax return in Mauritius?
5. Whether the Indian employees referred to herein-above will be eligible to take credit of any income tax paid in Mauritius while filing their income tax returns in India?

RULING

On the basis of the FACTS provided and, on the understanding, that the Indian representatives are not related to P,

1. The Indian representatives working for the college would not be liable to PAYE in Mauritius.
2. Payments made to the Indian representatives performing marketing services for P in various cities in India will not be subject to TDS in Mauritius. However, such payments will only be allowed as a deduction to P provided they represent reasonable expenses which satisfy fully the conditions laid down in section 18 of the Income Tax Act.
3. P has no obligation to declare information and particulars of the Indian representatives in the Return of Employees (ROE).
4. The Indian representatives of P working from India will not be required to file an income tax return in Mauritius.
5. In view of the above, the issue of taking credit in India in respect of Mauritius tax does not arise.

TR 235

FACTS

L holds a Global Business licence and Collective Investment Scheme licence with the Financial Services Commission. L pools funds from various investors across the globe (excluding Indian residents) and invests in India through Alternative Investment Funds (hereinafter referred to as "AIF") Category II and Category III. The Investment Manager of L is N which is a company incorporated under the Companies Act (Cap 50) in Singapore and regulated by the Monetary Authority of Singapore.

AIFs are funds incorporated in India for the purpose of pooling capital from Indian and foreign investors, which in turn, invest as per the pre-determined strategy. They are similar to Mutual Funds. AIFs are registered in the form of trusts under the Indian Trusts Act, where the investments of AIFs are held by Trustees for the benefit of its investors (residents and non- residents). They are regulated by the Securities and Exchange Board of India. Investors hold units in AIFs and are beneficiaries in AIFs.

The AIFs trusts are already set up in India and they pool fund from several investors and will invest in different product depending on its strategy. The AIFs trusts will accrue different types of income from its investment mainly dividend, interest and capital gains from disposal of its investment and same will be distributed to the unit holders depending on their percentage holding. The AIFs trusts will then pass those income to the unit holders, i.e. dividend income will flow to L in the form of dividend, interest income will flow to L in the form of interest and capital gains realised by the AIF trust will flow to L in the form of capital gains.

POINT AT ISSUE

Whether income earned by L through the AIF Category II and III will retain their characteristics, that is:

(a) whether dividend income accrued by the AIF Trust and distributed to L will be considered as dividend income for income tax purposes;

(b) whether interest income accrued by the AIF Trust and distributed to L will be considered as interest income for income tax purposes; and

(c) whether capital gains accrued by the AIF Trust and distributed to L will be considered as capital gains for income tax purposes ?

RULING

On the basis of the FACTS mentioned above, as a unit holder in the AIF, L will receive dividend income and capital gains from the subsequent disposal of these units. It is ruled that all income distribution made by the AIF Category II and III to L will be treated as dividend income , therefore,and, , therefore,, not retain their initial characteristics.

TR 236

FACTS

X is a company incorporated in Mauritius as a Category 1 Global Business Licence company. The main purpose of X is to act as an intermediary holding and financing company for its subsidiaries and joint ventures in Africa.

X holds 90% in a Senegalese company, Y, and the remaining 10% is held by the Government of Senegal. Y's main activity is to carry out mining operations in Senegal.

In view of promoting the mining industry in Senegal, the Government of Senegal has granted several tax concessions through a mining agreement to companies operating in the Senegalese mining industry including exemption from corporate tax. These concessions were introduced in law by the Mining Code.

The Government of Senegal entered into a Mining Agreement with Z, a company based in Senegal to carry out surveys and research for the exploration of gold and related ores. Under Article 28 of the Mining Agreement, Z is exempt from corporation tax for a period of 7 years from the date a mining concession is signed. Subsequently, an amendment was made to the Mining Agreement through L'Avenant No 1 whereby the exemption from corporation tax was reduced to 5 years and under Article 10 of the Mining Agreement, the exemption of 5 years may be restored to the full 7 years in the event that the mining life can be extended by an additional year.

The survey and exploration rights were then transferred from Z to K in 2011 and on 14 July 2016, K was also granted a mining concession. The mining concession was later transferred from K to Y in 2017 which now operates the Mako mine.

Y has approved a dividend distribution on 7 December 2020 and X has accrued that dividend in its accounts for the year ended 31 December 2020. Hence, X will be subject to tax in Mauritius on the dividends when filing its return for the Year of Assessment (YOA) 2020/2021.

POINTS AT ISSUE

(1) Whether X will be eligible to claim tax sparing credit under Regulation 9 of the Income Tax (Foreign Tax Credit) Regulations 1996 on any dividend income derived from its investment in Y for:

(i) the YOA 2020/2021; and

(ii) any subsequent years during which Y would be exempted from corporate tax in Senegal?

(2) Whether X would be eligible to claim any underlying tax credit instead of the tax sparing credit on the dividend receivable from Y, its subsidiary in Senegal after the proposed exemption period lapses?

RULING

On the basis of FACTS provided, it is ruled that -

(1) X is entitled to claim tax sparing credit in respect of dividend receivable from Y in accordance with the provisions of Regulation 9 of the Income Tax (Foreign Tax Credit) Regulations 1996 for the YOA 2020/2021.

(2) In the event Y no longer benefits from the corporate tax exemption, X would be entitled to claim underlying tax credit on dividends received from Y. However, no foreign tax credit shall be allowed where X has claimed a partial exemption in respect of that income under Part II of the Second Schedule to the Income Tax Act.

TR 237

FACTS

M is a domestic company engaged in international trading which involves buying and selling of goods overseas without the goods coming into Mauritius or passing through Customs control in Mauritius.

N is another domestic company in Mauritius. It holds a scrap metal exporter licence obtained from the Ministry of Commerce and Industry. As a holder of this special licence, N is authorised to export scrap metal from Mauritius.

M is not holder of a scrap metal licence.

M and N are related companies as some shareholders are common. Both companies are registered for VAT.

M has received an order from a client in India for the supply of scrap metal. M will buy these scrap metal from N to be export to its client in India.

As M is not authorised to export scrap metal, N will export the scrap metal on behalf of M to M's

client in India. For the purpose of the export and Customs declaration, N will be the exporter.

N will invoice M for the goods once the Customs export declaration procedures have been completed.

In its books, M will account as purchases the goods purchased locally from N, and the goods sold overseas in India as export sales.

POINT AT ISSUE

(1) Whether M will be subject to income tax at the rate of 3% on the profit realised on the specific sales /purchase transaction?

RULING

On the basis of the FACTS mentioned above and provided that M is duly authorised to deal in scrap metal, it is ruled that -

As N will be the exporter of the scrap metals, M will not be entitled to pay tax at the reduced rate of 3% as provided in section 44B of the Income Tax Act. It will , therefore, be liable to pay income tax at the normal rate of 15%.

TR 238

FACTS

X is a company registered in Canada and is engaged in gold and base metals mining. X has operations in Canada, United States of America, Australia, several countries in Latin America and Africa.

X incorporated a Mauritius holding company, namely Y to hold certain of its Africa based interests and to remunerate some of its senior executive on a month to month basis. X is considering the contract of employment of Dr Z, its Chief Operating Officer ("**COO**") to be under Y which will pay his salary into his offshore account, currently in Jersey. Costs incurred by Y to accommodate for Dr Z's salary costs will be recharged to X.

Dr Z, who is a South African citizen, currently owns a villa in Mauritius under the Integrated

Resort Scheme ("**IRS**"). As a holder of an IRS villa, Dr Z was issued a residence permit.

Given the extensive responsibilities Dr Z has across Africa and the Middle East and his extensive travel to fulfil his duties, Dr Z is not tax resident in South Africa but his family has been residing in South Africa for the past 38 years.

As COO, Dr Z has ultimate responsibility for the group's operations in the aforementioned region and for interfacing with major investors in the key investor markets of Canada, United States and Europe. Consequently, his duties will often be carried out via electronic media across international borders and airports depending on his schedule and travel requirements or whilst visiting Mauritius.

Due to the international nature of his employment, Dr Z travels extensively and he is expected to spend approximately 8 to 10 weeks in Mauritius over the course of any tax year. Some of his time will be on annual leave whilst other time will be spent working on various aspects of X's operations.

POINTS AT ISSUE

1. Whether only the portion of Dr Z's emoluments from Mauritius-based performance will be taxed in Mauritius?

2. Whether emoluments derived by Dr Z (and paid in his Jersey account) from performance of employment duties abroad will be taxable in Mauritius only on remittance ?

RULING

On the basis of FACTS provided**,** it is ruled that: **-**

1. in accordance with sections 73 and 74 of the Income Tax Act, Dr Z will be subject to tax on emoluments derived from performance of duties whilst physically present in Mauritius. For that purpose, the length of stay includes the date of arrival, date of departure, non-business days and annual leave spent in Mauritius.

2. in accordance with section 5 of the Income Tax Act, emoluments derived by Dr Z in respect of duties performed abroad will not be taxable in Mauritius.

TR 239

FACTS

B, a company incorporated in Mauritius, started to carry out business with three shareholders who are also full-time employees as executive directors of B. The shareholders each hold 100 ordinary shares in B.

Prior to admitting new shareholders to B, B proposes to improve its financial ratios through a share buy-back. The price to be paid for the shares of B by the new shareholders will reflect the goodwill of B and will be determined by a professional valuer. B is already in preliminary talks with two potential new shareholders. B proposes to buy back 60 shares.

POINT AT ISSUE

Whether the proceeds from the buy-back of the ordinary shares in the hands of the shareholders will be subject to tax in the event B proceeds with the buy-back of the 60 ordinary shares from the shareholders at the prevailing market value?

RULING

On the basis of the FACTS provided, it is ruled that the proceeds received by the existing shareholders from the buy-back of the ordinary shares is considered to be a benefit to shareholders in accordance with section 86A of the Income Tax Act and will , therefore, be subject to income tax.

TR 240

FACTS

B is part of a Group of companies in Mauritius and its principal activity is to act as a trading company for the sale of internet capacity across the African region.

Prior to November 2020, the sale of internet capacity was carried out by D, a sister company of B based in Madagascar. D was the owner of 2 submarine cables which use optical fibre technology to carry out internet capacity across different countries. D can also buy internet capacity from external suppliers to improve its network redundancy and quality of services for its end customers.

Post November 2020, the Group decided to expand its Telecom cluster in Mauritius and transferred all the rights and obligations of the cables from D to B. All contracts between B and external suppliers have also been novated such that B is now the entity buying capacity for resale from the said external suppliers.

On the basis that it is buying and selling/reselling bandwidth capacity to foreign clients, B is involved in the provision of international fibre capacity. The essential activities necessary to generate income from the sale of international fibre capacity are carried out in Mauritius by 14 full-time employees based in Mauritius. They provide shared services (such as legal, finance, treasury, etc.) to the Group, including to B and are employed by two entities within the Group, namely E and F. In return for the shared services provided, B incurs management and administrative services, payable to E. B also has a technical expert dedicated to the company who is the main point of contact for the negotiation and contractualisation with customer operators and international suppliers.

POINT AT ISSUE

Whether by virtue of item 47(a) of the Second Schedule to the Income Tax Act, B is eligible to claim the 80% exemption available to a company deriving income from the leasing and provision of international fibre capacity, subject to meeting the prescribed conditions relating to the substance of its activities?

RULING

On the basis of the FACTS provided, it is noted that B satisfies the conditions for eligibility to partial exemption as provided in section 23D of the Income Tax Regulations 1996. It is , therefore, ruled that the B is entitled to claim partial exemption on its income derived from the leasing and provision of international fibre capacity, by virtue of item 47(a) of Sub-Part C of Part II of the Second Schedule to the Income Tax Act.

TR 241

FACTS

B intends, as a way to bolster its capital, to implement a scrip dividend scheme (the "Scheme"). Under the Scheme, the ordinary shareholders of B will have the option of receiving their future dividends, or part thereof, by way of ordinary shares in B (the "Scrip Shares"). The Shareholders will have new shares issued in lieu of dividends as contemplated under section 64 of the Companies Act 2001.

The details of the proposed Scheme are as follows:

(i) The issuance of Scrip Shares will be in conformity with section 64 (Shares in lieu of Dividends) of the Companies Act 2001; and

(ii) The shareholders will elect between availing of dividends in cash and/ or the issuance of Scrip Shares in proportion to be set out in the rules of the Scheme (the "Scrip Shareholders").

POINT AT ISSUE

Whether Scrip Shares should be excluded from the determination of "leviable income" under Part III Sub-Part AB of the Income Tax Act 1995?

RULING

On the basis of FACTS provided, it is ruled that the total value of the Scrip Shares, that is, shares in lieu of dividends should be included in leviable income for the purpose of calculating solidarity levy in accordance with the provisions in sections 2, 16B and 16C of the Income Tax Act.

TR242

FACTS

X is incorporated in Mauritius as a private company limited by shares and holds a Global Business License.

X entered into an agreement with Y and Z, incorporated in Botswana for the sale of its investment in B, a South African Company **(the "Deal"**) for approximately USD 270M.

Y is a Botswana Government owned company and is unrelated to X.

After having fulfilled or waived all conditions precedent for the **the "Deal"** on 06 September 2016, C gave notice on the same day to the Z Respondents that all of the conditions of the **the "Deal"** had been satisfied and completion of the transaction was due to take place within five business days. Despite various attempts from C to reach an amicable solution within the framework of the agreement with the Z Respondents, the Botswana government made an abrupt decision to close the Z Group, by application for provisional liquidation which was granted by order of the High Court of Botswana on 9 October 2016.

Y failed to complete **the "Deal"** and as a result a dispute arose between X & Y.

The dispute was then referred to the London Court of International Arbitration ('**LCIA**') where the LCIA determined on the 29th of July 2020 that the **the "Deal"** became unconditional on the 6th of September 2016 and that Y and Z were liable to pay a compensation to X, which were to be determined during phase 2 of the hearings.

During phase 2 of the LCIA hearings the parties reached the settlement. The agreed settlement compensation was less than X's initial estimate of damages (which was around USD190-200M), but such compensation appears to be a positive result given that the prospects of recovering damages from Botswana were very remote, especially since Y was under liquidation.

The settlement was mutually agreed by all parties involved.

POINT AT ISSUE

Whether the compensation income received by X is of capital nature and will be treated as a non-taxable item

RULING

On the basis of the FACTS provided above, it is ruled that the compensation receivable by X as damages for breach of contract by B for purchase of shares is not taxable. However, any expense incurred by X in relation to the compensation received will not be an allowable deduction under section 18 of the Income Tax Act.

TR243

FACTS

C was set up in Mauritius in July 2021 to operate as a biomedical research company, in collaboration with B, a biomedical research company based in India.

Activities of B

B is a Contract Research Organisation (**"CRO"**) which provides services to the global pharmaceutical industry including GLP toxicology/safety assessments, exploratory, analytical chemistry and basic research studies. B plays a key role in the development pipeline of its pharmaceutical clients by helping verify the optimal dosing strategies for new treatments and making sure these treatments are safe enough to enter and then progress through the various stages of human clinical trials. This field of research is known as pre-clinical research. A large proportion of current research on treatments conducted by B required that the final stage of safety and efficacy studies be undertaken using monkeys as part of the drug development and regulatory approvals process.

Activities of C

C was set-up to facilitate supply of monkeys as models for conducting pre-clinical research as well as conduct pre-clinical studies and investigations involved in the development and testing of pharmaceutical products and therapies.

There are different types of studies which shall be conducted wherein C shall be responsible to conduct Pharmacokinetic studies (**"PK"**) in Mauritius through the use of monkeys. Further to conducting the PK studies, a selection of the eligible monkeys shall be made and the selected monkey shall be sent for advanced testing which will be outsourced to B.

Expenditure incurred by C on medical research and development

The expenses in relation to the studies carried out in Mauritius include inter-alia:

- Rearing of primates and carrying out tests on the primates to assess their eligibility for advanced testing;
- Salaries for trained monkey handlers;

- Salaries of experts for the carrying out of the studies; Animal food purchases;
- Monkey medical costs; Viral testing;
- Pathology tests; Veterinary consumables; Staff amenities; and
- Marketing expenses for the medical studies and client relations with the end-pharmaceutical customers.

Experts would be relocated to Mauritius to bring their knowledge and expertise to carry out the relevant studies and their salaries would be borne by C.

The end-product of the research and development activities undertaken by C will either be:

(i) results of the bio-analysis of blood samples taken during the study period; or

(ii) drawing blood samples after the dosage study is completed and sending these samples directly to the client's laboratory.

POINT AT ISSUE

Whether C would be eligible to claim double deduction on all expenditure incurred for the purpose of medical research and development carried out in Mauritius?

RULING

On the basis of the FACTS provided above, it is ruled that C is not entitled to the double deduction under section 57 of the Income Tax Act as its activities do not consist of any original or planned investigation that has been undertaken with a view to gain new scientific or technical knowledge. Moreover, C has not applied any research findings or other knowledge to plan or design new or substantially improved materials, devices, products, processes, systems or services.

TR244

FACTS

G is a public company limited by shares incorporated in Mauritius in December 2011.

G's main activity is to provide hotel management and hotel operation services.

As part of a restructuring exercise, G intends to transfer its corporate domicile to Guernsey. Further to the migration, G will keep its operating model in Mauritius and continue to:

(i) take its key strategic and commercial decisions from Mauritius;

(ii) chair its Board meetings from Mauritius;

(iii) have a majority of directors who are tax resident in Mauritius;

(iv) carry out its core business activity, that is the provision of hotel management services from Mauritius;

(v) use its physical office in Mauritius as its registered premises, which will be used to carry out its business activities; and

(vi) employ its current local workforce, which currently stands at 125 individuals, who will perform their duties pertaining to the core business activity from Mauritius.

POINTS AT ISSUE

Whether upon migration,

(i) G will be tax resident in Mauritius?

(ii) dividend paid by G will be exempt from income tax?

(iii) G will be required to comply with applicable tax laws in Mauritius? and

(iv) G will be able to carry forward its accumulated tax losses?

RULING

On the basis of the FACTS provided above, it is ruled that:

(i) G will continue to have its central management and control in Mauritius and will , therefore, qualify as a company resident in Mauritius in accordance with section 73

(1) (b) of the Income Tax Act. It will also be resident in Guernsey by reason of its incorporation. As a dual resident, its residence status for the purposes of the Mauritius-Guernsey tax treaty will be determined in accordance with the tie- breaker clause of Article 4(3) of the treaty between Mauritius and Guernsey. Since

G's place of effective management will remain in Mauritius, G will be deemed to be tax resident in Mauritius.

(ii) Dividends paid by G will be exempt pursuant to item 1 (a) of Sub-Part B of Part II of the Second Schedule to the Income Tax Act.

(iii) G will be required to comply with the provisions of the Income Tax Act, including the filing of annual returns under section 116 of the Income Tax Act.

(iv) G will be able to carry forward its accumulated losses provided that the conditions stipulated in section 59 of the Income Tax Act and in Regulation 19 of the Income Tax Regulations 1996 are satisfied.

TR245

FACTS

Q is a private company with liability limited by shares registered in Mauritius in October 2021. It holds a Global Business Licence and a Family Office (Single) License (**"SFO"**) issued by the Financial Services Commission in November 2021.

Q is wholly owned by R and Q has 100% shareholding in each of the following companies:

1) V - a company based in Belize and which acts as an investment holding. V holds 100% shareholding in Y - a company based in Cyprus and which holds immovable property solely for family use;
2) X - a company based in Cyprus and which holds title for cars which are solely for family use;
3) Z - a company based in Cyprus and which acts as a Special Purpose Vehicle;
4) T - a company based in Cyprus and which owns a yacht and other personal water crafts solely for family use; and
5) Investment in a portfolio of securities, namely equities, bonds, commodities, alternative investments, private equity and structured products.

In addition to the above, Q currently has:

(i) Motor vehicle under its direct name for the sole use of R and is not meant for any business; and

(ii) Interest free loans, as well as interest bearing loans, granted to R and third parties. Q is expected to earn income mainly from dividends, interests and profits/gains from disposal of securities. It may subsequently earn rental/lease/capital income on properties owned that could be rented or sold.

POINT AT ISSUE

Whether Q will be eligible for the 10-year tax holiday in respect of its expected income streams namely dividend, interest, rental/leasing income and profits/gains from disposal of securities and other property?

RULING

On the basis of the FACTS provided above, it is ruled that pursuant to item 30A of Sub-Part C of Part II of the Second Schedule to the Income Tax Act, Q being holder of a Family Office (Single) Licence issued after 1 September 2016 will be entitled to a 10-year tax holiday provided that -

(i) the income is derived from the activities covered under the SFO licence; and

(ii) the corporation satisfies the conditions-

   (a) of minimum employment; and

   (b) relating to the substance of its activities,

as specified by the Financial Services Commission under the Financial Services Act.

TR246

FACTS

F is a private limited company incorporated in February 2016 and domiciled in the Republic of Mauritius. F holds a Category 1 Global Business Licence under the Financial Services Act 2007 and is regulated by the Financial Services Commission in the Republic of Mauritius.

F is a protected cell company with three cells namely Cell A, Cell B and Cell C. The principal activities of F are asset holding and debt financing. F has entered into an agreement with M for an uncommitted revolving structured trade and commodity finance facility for an aggregate amount equal to USD25m. M has agreed to pay the following fees for the loan: -

(i) An arrangement fee of 2% of the total commitment of USD25m. Effective from 1 January 2021 and pursuant to the second addendum dated 1 January 2021, the arrangement fee was changed to 3.5% ;

(ii) Interest income at the rate of 5% per annum ;

(iii) A commitment fee of 0.5% per annum on the available commitment amount for the availability period ;

(iv) Effective from 1 January 2021, a prepayment fee of 3.5% attributable to all or any part of the loan paid on a day other than on its original repayment date, pursuant to the second addendum agreement dated 1 January 2021. Following the second agreement dated 4 January 2020, a prepayment fee of 1.5% was charged for the year ended 31 December 2021 ; and

(v) A management fee of 1.5% of the total commitment of USD25m.

In addition, F has also entered into a second agreement with another company namely X for an aggregate amount of USD 9m. The latter has agreed to pay the following fees for the loan:

(i) An arrangement and management fee of 3.5% of the total commitment of USD 9m;

(ii) Interest income at the rate of 5% ;

(iii) A commitment fee of 0.5% per annum on the available commitment amount for the availability period. Effective 1 January 2021 and pursuant to the second addendum dated 1 January 2021, the commitment fee was changed to 2% ; and

(iv) A prepayment fee of 1% attributable to all or any part of the loan paid on a day other than on its original repayment date. Pursuant to the first addendum agreement dated 4 January 2020, a prepayment fee of 3.7% is being charged for the year ended 31 December 2021.

As a result of debt financing agreement in place, F derives finance income such as arrangement fee, commitment fee, prepayment fee, gain on exchange and interest income.

POINT AT ISSUE

Whether all the finance income which includes arrangement fee, commitment fee, prepayment fee, gain on exchange and interest income will benefit from the 80% exemption?

RULING

On the basis of the FACTS mentioned above, it is ruled that since the arrangement fee, commitment fee, prepayment fee and gain on exchange are not included in Sub-Part B and Sub-Part C of the Second Schedule of the Income Tax Act, these incomes are not subject to 80% partial exemption.

As regards interest income, F will be allowed to claim 80% partial exemption by virtue of item 7 of Sub-Part B of the Second Schedule of the Income Tax Act provided that F satisfies the conditions prescribed in Regulation 23D of the Income Tax Regulations 1996.

TR 247

FACTS

X was incorporated in Mauritius as a domestic company with its central management and control in Mauritius. X is a wholly owned subsidiary of Y, a bank founded and based in Bermuda with listing on the Bermuda Stock Exchange and New York Stock Exchange. Y offers a range of community banking and bespoke financial services from 8 leading international financial centres, supported by centralized service centres in Canada and Mauritius.

X acts as a support service centre which provides non-client facing and back-office services for entities of Y Group located in foreign jurisdictions, which include Bermuda, Guernsey, Jersey, Switzerland, Cayman Islands, United Kingdom and Singapore. The back-office and administrative support provided by X to its affiliated entities include inter alia accounting services, anti-money laundering compliance and various similar back-office support assistance. X provides support services to the Y Group. Such services are not provided to other third parties. Given that X does not contract with third party customers, it does not face significant market risk relating to the services.

In view of the supportive nature of the intra-group services being provided, X is remunerated based on a cost-plus model where all costs incurred by X are recharged with a margin of 7.5% to the serviced entities, except for certain accounting adjustments (e.g. foreign exchange differences and provisions) made in the financial statements for financial reporting purposes.

X owns routine tangible assets such as office space, furniture and equipment required in the conduct of its business. The services are conducted by employees of X, who are based in Mauritius. X does not use any intangibles assets in its day to day operations.

X is subject to tax in Mauritius at the rate of 15%.

POINT AT ISSUE

Whether the chargeable income of X may be ascertained using its accounting profit before tax after applying the predetermined cost-plus percentage of 7.5% to the costs incurred at the level of X?

RULING

On the basis of the FACTS provided, it is ruled that the cost-plus method can be used to determine the chargeable income of X.

The proposal to apply a cost-plus percentage of 7.5% is acceptable taking into account that the services being provided to X are of supportive in nature and low-value intra-group services.

TR 248

FACTS

C was incorporated in Mauritius as a private company and it holds a Global Business Licence issued by the Financial Services Commission. The principal activity of C is that of investment holding.

In 2010, C acquired 100% of the shares of J, a company incorporated in Singapore. In 2010, C entered into a loan agreement with J for a loan facility of up to SGD 78m. The loan advanced to J bear interest equal to the Singapore Dollar Swap Offer Rate plus a margin of 5% per quarter.

The income streams of C consist of dividend and interest income from J. The interest income is derived solely from the aforesaid loan facility provided to J during the years 2010 to 2013. C does not have any staff with the exception of its two Mauritian resident directors who are responsible for the monitoring of the aforesaid loan. The administrative activities are carried out by its management company and the total expenditure incurred by C for the two years ended 30 June 2021 are minimal.

POINT AT ISSUE

Whether C is entitled to claim the interest exemption by virtue of item 7(b) of Sub-part B of Part II of the Second Schedule to the Income Tax Act?

RULING

On the basis of the FACTS provided, it is ruled that C does not satisfy the conditions for eligibility to partial exemption as laid out in section 23D of the Income Tax Regulations 1996. Thus, C is not entitled to claim partial exemption on interest income by virtue of item 7(b) of Sub-part B of Part II of the Second Schedule to the Income Tax Act.

TR 249

FACTS

M was incorporated in Mauritius as a private company and it holds a Global Business Licence issued by the Financial Services Commission. The principal activity of M is that of investment holding.

M owns 100% of the shares of N, a Singapore incorporated company. In 2011, M entered into a loan agreement with N for a loan facility of up to SGD 442m. The loan advanced to N bear interest equal to the Singapore Dollar Swap Offer Rate plus a margin of 5% per quarter.

The income streams of M consist of dividend and interest income from N. The interest income is derived solely from the aforesaid loan facility provided to N during the years 2011 to 2014. M does not have any staff with the exception of its two Mauritian resident directors who are responsible for the monitoring of the aforesaid loan. The administrative activities are carried out by its management company and the total expenditure incurred by M for the two years ended 30 June 2021 are minimal.

POINT AT ISSUE

Whether M is entitled to claim the interest exemption by virtue of item 7(b) of Sub-part B of Part II of the Second Schedule to the Income Tax Act?

RULING

On the basis of the FACTS provided, it is ruled that M does not satisfy the conditions for eligibility to partial exemption as laid out in section 23D of the Income Tax Regulations 1996. Thus, M is not entitled to claim partial exemption on interest income by virtue of item 7(b) of Sub-part B of Part II of the Second Schedule to the Income Tax Act.

TR 250

FACTS

K has set up an appropriate committee responsible to determine the appropriate course of action when a debt is considered to be doubtful or is non-performing. The committee decides on the appropriate course of actions considering a number of factors including the debt recovery costs, size of debt amounts, the recovery timeframes and any other debt restructuring alternatives.

When the committee determines that a loan is doubtful, it would evaluate the various options and it may conclude that the sale of a debt is in the best interest of the bank. The bank may approach specialized agencies and any other third parties for the sale of such debt including foreign parties in so far as debts granted to non-residents are concerned. Upon completion of the bidding processes, the bank executes an agreement of the transaction.

For financial reporting purposes, the excess of the carrying value of the debt and the amounts recovered from the sale is recognized as a sell down expense.

POINT AT ISSUE

Whether the sell down expense on the sale of a debt to independent third parties who may not be debt recovery agencies qualifies for a deduction under section 57 of the Income Tax Act?

RULING

On the basis of the FACTS mentioned above, it is ruled that the sell down expense on the sale of debt to independent third parties who may not be debt recovery agencies does not qualify as a deduction under section 57 of the Income Tax Act as the debt constitutes an asset of the bank. Moreover, the debt cannot be treated as a bad debt as it does not satisfy the conditions as set out in section 60(1) (a) of the Income Tax Act.

TR 251

FACTS

M was incorporated in Mauritius on 18 December 2001. M was set up as an Investment Fund with a Category 1 Global Business License, and consequently has been authorized to operate as a Closed-End Fund, categorized as Professional Collective Investment Scheme as per the FSC letter dated 6 January 2011.

M has appointed N to act as Fund Manager. An agreement to this effect was signed on 30 April 2002 (the **"Initial Agreement"**). N was incorporated in Mauritius and was a subsidiary of bank P. N was contracted to provide fund management services to M. These fund management services were provided by a division of P known as the Q who are designated advisers to N.

During the year 2013, N was acquired by a South African subsidiary of R and the Q division was taken on by R. The Initial Agreement was subsequently amended and replaced by an agreement dated 8 November 2013 made between M, Q and R (**"FMA"**).

After a tender process, the FMA was subsequently terminated on 8 May 2016. The terms of the termination were contained in a Termination Agreement (**"TA"**) dated 9 May 2016. Under the FMA, Q's fees consisted of a fixed fee and a performance fee (25% of the profit or loss before any taxes and performance fee).

The TA provided that for the final accounting period (I January to 8 May 2016) outstanding fees would be calculated on the basis of management accounts for M prepared by Q in accordance with International Financial Reporting Standards **("IFRS").**

Q prepared draft accounts which were sent to M on 5 August 2016 and proposed the following:

- The reversal, in whole or in part, of impairment losses on loans to two projects, against which provisions had been made in earlier periods. These amounted to USD 46,868,000 and USD 23, 134,348 respectively; and
- The recognition of the value of share warrants amounting to USD 2,206,596 which had not appeared in earlier accounts at all.

M rejected those proposals and prepared accounts which maintained the provisions and recorded the value of the warrants as zero. These accounts were approved by the board of directors and were certified by its auditors on 13 October 2016. The effect of the changes made in the M accounts was to reduce the performance fee.

Q and R both disputed the amount of the performance fee and filed for arbitration, as per the terms of the FMA. The main issue of the dispute was whether the M accounts were, as the TA required, in accordance with IFRS and whether the appropriate accounts for determining the performance fee were those prepared by Q in August or those issued by M in October.

On 10 June 2021, the arbitrator concluded that the accounts prepared by M did not comply with IFRS and that M was in breach of the contract. Q was thus entitled to the performance fee it would have received if M had complied with the contract. As a result, the performance fee amounted to USD 18,052,236.10.

Subsequently, M was ordered to pay Q the sum of $18,052,236 together with interest at the rate of 2% above the monthly London Inter-Bank Offered Rate for US Dollar, compounded annually, from 27 October 2016 to the date of final payment. M was also instructed to pay the legal fees incurred by the claimants, namely N and R.

POINTS AT ISSUE

Whether the below payments made by M could be treated as tax deductible for income tax purposes –

- The performance fee of $18,052,236;
- The interest on the performance fee due;
- Legal fees payable to N and R; and
- Legal fees incurred by M?

RULING

On the basis of the FACTS provided, it is ruled that:

(i) The performance fees of $18,052,236 to the extent it has been incurred to produce a taxable income would be treated as an allowable expense for income tax purposes.

(ii) The interest on the performance fee would not be an allowable deduction in accordance with section 19(1) of the Income Tax Act.

(iii) The legal fees payable to N and R and legal fees incurred by M would not be an allowable deduction as they were not been incurred exclusively in the production of gross income by virtue of section 18(1) of the Act.

TR 252

FACTS

F, G and H are pure equity investment holding entities incorporated as Global Business companies in Mauritius.

F has 100% holdings each in G and H.

G holds I, incorporated in Kenya and engaged in poultry farming.

H holds J, incorporated in Kenya and engaged in meat processing.

The shareholdings of G in I and H in J are 100% respectively. The same individuals sit on Companies F, G and H.

Mr. A is an executive director of Companies F, G and H and the CEO of Companies I and J. He is a key man to the operations of the Group.

F wishes to subscribe for key man insurance for Mr. A with a Life Assurance Company of Canada. F will pay monthly premium to the insurance company for an annual subscription and will consider renewal of the insurance at the end of the one-year period. The insured will be Mr. A, whilst the beneficiary will be F.

POINTS AT ISSUE

(i) Whether the insurance premiums paid to the insurance company are allowable for tax purposes in the accounts of F?

(ii) Whether there is any tax implication on the lump sum that may be paid by the insurance company under the terms of the key man insurance cover?

RULING

On the basis of the FACTS provided, it is ruled that:

(i) The insurance premiums being not exclusively incurred in the production of gross income by virtue of section 18(1) of the Income Tax Act would not be an allowable expense for F.

(ii) The lump sum payable by the insurance company under the terms of the key insurance cover in excess of premiums paid would be a taxable income for F in accordance with section 10(1)(g) of the Income Tax Act.

TR 253

FACTS

M is a privately-owned company which operates as a clinic providing medical facilities.

M intends to issue redeemable preference shares, at a price of MUR 100,000 per share for a maximum amount of MUR 50 million under a private placement to

- "Eligible Practicing Doctors": these would be Visiting Doctors and Employed Doctors. Visiting Doctors are independent practitioners whereas Employed Doctors are full-time employees of M.
- "Eligible Senior Management": these would be members of the executive team or Heads of departments.

The purpose of this issue of redeemable preference shares is to align and increase the Eligible Practicing Doctors' and Senior Management's commitment to M and to finance expansion initiatives in. M. The return on the preference shares would vary between 3% to 10%. For the doctors, the return will depend on M's performance and the annual doctor fees generated through M. As for the Senior Management, their return will depend on M's performance and their years in service.

From an accounting perspective, the redeemable preference shares will be classified as a financial liability. The debt will be measured at amortized cost and interest will accrue every year at a specified interest rate.

POINTS AT ISSUE

1. Whether from the perspective of M,

    (i) The interest payments made to Visiting and Employed Doctors would be tax deductible?

    (ii) TDS would be applicable on interest paid to visiting doctors?

    (iii) The return of the redeemable preference shares paid to Senior Management will be treated as interest or emoluments?

    (iv) TDS or PAYE would be applicable, based on the reply to question (iii)(above)?

    (v) The interest or emoluments paid to Senior Management would be tax deductible based on the reply to question (iii) above?

2. (i) Whether the Visiting and Employed Doctors will be subject to tax on the interest and whether they can deduct TDS suffered?

    (ii) Whether the Senior Management would be subject to tax on the interest and whether they can deduct any TDS or PAYE suffered?

RULING

On the basis of the FACTS provided above, it is ruled that -

(i) Interest payments made to Visiting and Employed Doctors would be tax deductible.

(ii) TDS at the rate of 15% would be applicable on interest paid to Visiting Doctors in accordance with section 111B (a) of the Income Tax Act.

(iii) The return on the redeemable preference shares paid to Senior Management will be treated as interest

(iv) TDS would be applicable on interest paid to Senior Management.

(v) The interest payments made to Senior Management would be tax deductible.

2. (i) The Visiting and Employed Doctors will be subject to tax on the interest and they can deduct any TDS suffered.

(ii) Senior Management would be subject to tax on the interest and they can deduct any TDS suffered.

TR 254

FACTS

A has been incorporated in Mauritius since 9 November 2017 and it holds a Global Business License issued by the Financial Services Commission.

The principal activity of A is that of investment holding and it currently holds 10.77% shareholding in B (formerly C), an automobile project company situated in Pakistan.

B qualifies for a tax exemption in Pakistan under Clause 126E of Part I of the Second Schedule of the Income Tax Ordinance 2001, which states as follows:

"Income derived by a zone enterprise as defined in the Special Economic Zones Act, 2012 (XX of 2012) for a period of ten years starting from the date the developer certifies that the zone enterprise has commenced commercial operation and for a period of ten years to a developer of zone starting from the date of signing of the development agreement in the special economic zone as announced by the Federal Government.

Provided that this clause shall also apply to a co-developer as defined in Special Economic Zone Rules, 2013 subject to the condition that a certificate has been furnished:

(a) by the developer that he has not claimed exemption under this clause and has relinquished his claim in favor of the co-developer and

(b) By the Special Economic Zone Authority validating that the developer has not claimed exemption under this clause and has relinquished claim in favor of the co-developer".

A receives dividend income from B.

POINT AT ISSUE

Whether A is eligible to claim tax sparing, along with the withholding tax and underlying tax suffered on the foreign dividend received from B?

RULING

On the basis of the FACTS provided, it is ruled that A is entitled to claim credit for tax sparing in respect of dividend receivable from B in accordance with the provisions of regulation 9 of the Income Tax (Foreign Tax Credit) Regulations 1996 and Article 23(4) of the Double Taxation Avoidance Agreement between Pakistan and Mauritius. A will also be entitled to claim foreign tax credit in respect of withholding tax and underlying tax suffered on the foreign source dividend receivable from B for set-off against its Mauritian tax payable.

TR 255

FACTS

F is a private limited company incorporated on 11 February 2016 and domiciled in the Republic of Mauritius. F holds a Category 1 Global Business Licence under the Financial Services Act 2007 and is regulated by the Financial Services Commission in the Republic of Mauritius.

F is a protected cell company with three cells namely Cell A, Cell B and Cell C. The principal activities of F are asset holding and debt financing to cross-border entities. F has entered into an agreement with J for an uncommitted revolving structured trade and commodity finance facility for an aggregate amount equal to USD25m. J has agreed to pay the following fees for the loan: -

(i) An arrangement fee of 2% of the total commitment of USD25m. Effective from 1 January 2021 and pursuant to the second addendum dated 1 January 2021, the arrangement fee was changed to 3.5%.
(ii) Interest income at the rate of 5% per annum,
(iii) A commitment fee of 0.5% per annum on the available commitment amount for the availability period.
(iv) Effective from 1 January 2021, a prepayment fee of 3.5% attributable to all or any part of the loan paid on a day other than on its original repayment date, pursuant to the second addendum agreement dated 1 January 2021. Following the second agreement dated 4 January 2020, a prepayment fee of 1.5% was charged for the year ended 31 December 2021.
(v) A management fee of 1.5% of the total commitment of USD 25m.

In addition, F has also entered into a second agreement with another company namely K, which is also domiciled in Zimbabwe for an aggregate amount of USD 9m. The latter has agreed to pay the following fees for the loan:

(i) An arrangement and management fee of 3.5% of the total commitment of USD 9m.
(ii) Interest income at the rate of 5%.
(iii) A commitment fee of 0.5% per annum on the available commitment amount for the availability period. Effective from 1 January 2021 and pursuant to the second addendum dated 1 January 2021, the commitment fee was changed to 2%.
(iv) A prepayment fee of 1% attributable to all or any part of the loan paid on a day other than on its original repayment date. Pursuant to the first addendum agreement dated 4 January 2020, a prepayment fee of 3.7% is being charged for the year ended 31 December 2021.

As a result of debt financing agreement in place, F derives finance income such as arrangement fee, commitment fee, prepayment fee, gain on exchange and interest income.

POINT AT ISSUE

Whether arrangement fee and commitment fee, which are an integral part of the interest income under the Effective Interest Rate Method, will benefit from the 80% exemption?

RULING

On the basis of the FACTS mentioned above, it is ruled that, since the arrangement fee and the commitment fee are not included in Sub- Part B and Sub-Part C of the Second Schedule to the Income Tax Act, this income is not subject to 80% artial exemption.

TR 256

FACTS

A is a charity incorporated in Canada. A has entered into a funding agreement with B, an international non-governmental organization and charity, incorporated in Canada, pursuant to which it will receive certain funds to be used for charitable purposes (the "Charitable Funds"). A will enter into a further funding agreement with its wholly owned subsidiary, C, also incorporated in Canada, which will receive the Charitable Funds to be used for the establishment and operation of a charitable investment fund. C is registered as a charity in Canada since November 2022.

C is the founder of D, a charitable foundation in Mauritius. D was incorporated as a charitable foundation on 19 May 2022. C or A will endow the Charitable Funds to D to run a program to provide accessible funding and loans to Small and Medium Enterprises in sub-Saharan Africa. D will do so by transferring the Charitable Funds to Investment Vehicles (the "IVs"), either incorporated locally or in Africa, which shall in turn provide funds to SMEs Investors (the "Portfolio Companies") in Africa. The IVs and the Portfolio Companies will be vetted, and due diligence shall be conducted by G, an independent advisor prior to disbursement of funds. The Portfolio Companies will be required to identify and invest in SMEs in need of loans and investment to grow the SMEs business so that the latter may provide employment opportunities to the most vulnerable, i.e. women and youth, in sub-Saharan Africa, in a view to pursuing D's object of poverty alleviation through employment creation for the vulnerable.

D shall enter into agreements with E. These agreements will detail the charitable fund program requirements which will comply with the charitable objects of D and the TVs shall enter into agreements with the Portfolio Companies, on similar terms to the agreement between D and the IVs.

D's charitable objects are for relief of poverty, advancement of education and any other purpose beneficial to the public in general. D's charitable objects shall be pursued outside of Mauritius. D shall absorb any loss made by the SMEs and any positive returns shall be used by D to finance additional rounds of investments into IVs (the "Reinvestment")

D is considering applying for a GBL Licence.

POINTS AT ISSUE

(1) Whether D shall be considered as tax resident given that specific rules regarding CMC apply to companies holding a GBL Licence? In the affirmative, would D benefit from Double Taxation Treaties, of which Mauritius is a party?

(2) Since D is a non-tax resident, would its status as a charitable foundation prevail and as such be an exempted body even if it derives Mauritian source income?

RULING

On the basis of the FACTS mentioned above, it is ruled that: -

(1) D is not a tax resident in Mauritius as it does not meet the conditions for having its central management and control in Mauritius, even if the foundation is the holder of a GBL licence issued by the Financial Services Commission;

(2) Since D is not a tax resident in Mauritius, it will be subject to income tax only on its chargeable income attributable to its Mauritian source income. However, in accordance with section 7(1) and item 1 of Part I of the Second Schedule to the Income Tax Act, D, being registered in Mauritius as a charitable foundation, will be exempted from income tax.

TR 257

FACTS

A was incorporated as a domestic company in Mauritius on 16 August 2022 as part of a reorganisation of companies with common shareholders. Its principal activities are investment holding as well as providing debt finance to related parties.

A will hold investment in Mauritius domestic companies that are specialised in the operating of super/hypermarkets and wholesale trade. Existing inter-company debts among these companies together with the relevant interest entitlement will be assigned to A in order to achieve synergy at finance and reporting levels.

The core activity of A will be to finance the short-term and long-term capital requirements of its related parties by way of commercial loans granted on an arm's length basis. A plan to do so for the future and existing loan agreements as follows:

I*. Future Loan Agreements*

Given that A holds companies involved in trading activities, it will finance the capital requirements or projects of these companies in the form of intragroup loans.

2. *Existing Loan Agreements*

Group companies will transfer all the existing intragroup loans to A through a novation agreement with relevant parties. In doing so, the existing lender's rights and obligations would be transferred to the new lender, A.

A's shareholders and directors are Mauritian residents. Its business premises and operations are in Mauritius. Decision making, whether at directors' level or at operational level (with respect to day-to-day operations), performance of duties with respect to the business activities are all in Mauritius.

POINT AT ISSUE

Whether on the basis of its business activities, A would be eligible to claim the 80% partial exemption on the interest income derived on both new and existing reassigned/novated loans irrespective of the derivation of exempt dividend income?

RULING

On the basis of the FACTS mentioned above, it is ruled that A will not be eligible to claim partial exemption on the interest income as it does not satisfy the conditions relating to the substance of its activities as laid down in regulation 23D of the Income Tax Regulations 1996.

TR 258

FACTS

A is incorporated in Mauritius as a private domestic company since 10 May 2022. It forms part of B Group which was founded in 2007 in France. B Group is engaged in the building, promotion, sale and operation of real estate projects in France, Mauritius and other countries around the world. A's principal activity is property management.

B Group's most recent real estate development project in Mauritius is the Phase 2 of C project (the "Project"), which is being carried out in Tamarin, Riviere Noire under the Property Development Scheme ("PDS").

The Project comprises the development of 52 residential properties (i.e. private villas, apartments and penthouses) on the slopes of mountain D, as well as a restaurant G, restaurant H, club house, kid's corner, spa, fitness centre and concierge.

Post the completion of the Project, the residential properties will be sold to clients. Since the Project is being carried out under the PDS Scheme, both Mauritian citizens and non-citizen buyers will have the possibility to become owners of such residential property. The owners, will have the option to put their respective residential properties under the management of 'A. The latter will offer accommodation packages including hotel-related services (such as board and lodging) to clients who book such residential properties. The income derived by A from such accommodation packages will be the main source of revenue.

As regards, restaurant G, restaurant H, club house, kid's corner, spa, fitness centre and concierge, they will be housed in a commercial building which will be owned by a specific buyer ("Owner") but managed by A. As part of such management functions, A will operate the said businesses, earn business income therefrom and also be responsible for the maintenance, marketing and other related aspects pertaining to the businesses.

The Owner is a private domestic company incorporated in Mauritius since 8 June 2022 and its principal activity is property/ investment holding.

A will enter into a commercial lease agreement with the Owner for the purposes of renting the commercial building and will be required to pay rental income to the Owner as per the following structure:

(a) A fixed annual rental amount of Euro 345,000 payable in twelve monthly instalments of Euro 28,750 each (***"Fixed Rent"),*** which remains payable irrespective of the level of profitability from the business operation; and

(b) A variable rental amount *("**Variable Rent**")* payable annually and calculated as a percentage of the profitability of the commercial operation. For the calculation of the Variable Rent, the percentage will vary in accordance with A's Earnings Before Interest, Taxes, Depreciation and Amortization (*"**EBITDA**").*

A and the Owner are owned by different distinct shareholders , therefore,and, , therefore,,, they do not constitute related parties.

In addition, A may, subsequently, incorporate a new wholly-owned subsidiary in Mauritius to take-over the management functions of the commercial building and such substitution will be provided

for in the commercial lease agreement. Nevertheless, this substitution will not alter the modus operandi of the contemplated transaction nor the rental structure elaborated above.

POINTS AT ISSUE

Whether the Fixed Rent and the Variable Rent under the commercial lease for the purpose of the restaurant G, restaurant H, club house, kid's corner, spa, fitness centre and concierge will both constitute tax deductible expenses for the Company under section 57 of the Income Tax Act?

RULING

On the basis of the FACTS provided, it is ruled that the Fixed Rent and the Variable Rent under the commercial lease for the purpose of restaurant G, restaurant H, club house, kid's corner, spa, fitness centre and concierge will both constitute tax- deductible expenses for A under section 57 of the Income Tax Act.

TR259

FACTS

V was incorporated in Mauritius on 29 June 1998 as a private company with liability limited by shares and holding a Global Business Licence ("**GBL**") issued by the Financial Services Commission ("**FSC**") in Mauritius. It forms part of W group of companies (the "Group"). V is the ultimate holding company of the Group and is listed on the Johannesburg Stock Exchange ("**JSE**").

The business activities of V comprise the following:

(i) Provision of trade financing services to related entities in the Group as well as to third parties;
(ii) Procurement of goods, essentially for third party clients;
(iii) Freight and administrative services relating to trade financing, to both Group entities and third parties;
(iv) Arrangement for financing for related parties as well as third parties; and
(v) Administrative services to Group entities based in Mauritius.

h.

V currently employs 11 full-time employees based in its physical office in Port Louis, which it shares with other Group entities in Mauritius.

i.

Following the amendments brought to the Workers' Rights Act 2019 ("**WRA**") and the introduction of the Workers' Rights (Portable Retirement Gratuity Fund) Regulations 2020 ("**WRA Regulations**"), V is required to make contributions to the Portable Retirement Gratuity Fund ("**PRGF**") in respect of its employees, on a monthly basis, effective January 2022.

V is also required to pay the PRGF contribution in relation to 'past services' in respect of an employee for the period starting as from 1 January 2020 (or such subsequent date prior to 1 January 2022 on which the employee took employment with V) where the employee's employment is terminated, or the employee resigns, retires or passes away, not later than one month after the date the event occurs.

In addition, where one of the V's employees ceases to be in its employment e.g., the employee resigns, retires or dies, or alternatively the employee's employment with V is terminated, V is legally required to contribute to the PRGF Fund any shortfall in contribution depending on the value of accumulated contributions made by V as of such date and a lump sum amount calculated on the basis of the employee's length of employment with V, effective from the date PRGF became effective, i.e., 1 January 2020 .

Where the contributions are not yet paid, given the legal provisions under the WRA and WRA Regulations, V is required to account for the amounts, in every relevant income year in its financial statements prepared under International Financial Reporting Standards ("**IFRS**").

POINT AT ISSUE

Whether the following contributions, either actually paid or required to be booked in its financial statements in any particular income year on the basis of the relevant provisions of the WRA and the WRA Regulations as well as the requirements of IFRS, constitute tax deductible expenses for V in that income year under the Income Tax Act –

(i) Monthly contribution paid, as from January 2022, in respect of employees on its payroll in the relevant month;
(ii) Contribution for 'past services' for the period starting 1 January 2020 in respect of employees who were in employment as of such date or any subsequent date prior to 1 January 2022; and
(iii) Contribution in respect of payments required to be made upon an employee ceasing to be in

the employment of V, whether due to termination of employment, resignation, retirement or death?

RULING

On the basis of the FACTS provided, it is ruled that:

(i) Monthly contribution paid as from January 2022 in respect of employees on its payroll is tax deductible expense for V in the income year it is paid

(ii) Contribution for 'past services' for the period starting 1 January 2020 in respect of employees who were in employment as of such date or any subsequent date prior to 1 January 2022 required to be booked in its financial statements in any particular income year will not be tax deductible. However, where payment of contribution for 'past services' is made an income year, such contribution may be deducted by V in that income year.

(iii) Contribution in respect of payments required to be made upon an employee ceasing to be in the employment of V, whether due to termination of employment, resignation, retirement or death, to be booked in its financial statements in any particular income year will not be tax deductible. However, on payment of the shortfall in an income year, same may be deducted by V in that income year.

TR 260

FACTS

M was incorporated in Mauritius on 30 April 2008 as a private company with liability limited by shares. It holds a Global. Business 'Licence from the Financial Services Commission.

The business activity of M is investment holding. It currently holds 50% shareholding in a holding company situated in Singapore, namely N, which itself, amongst others, holds 67.13% shareholding in another holding company in Indonesia, namely 0, which itself, amongst others, holds 100% in each of five operating companies, still in Indonesia, namely P, Q, R, S and T, anyone of which, for simplicity, hereinafter referred to as U.

In the light of its business activities, M derives dividend income which flows through the entire structure from U, i.e.

(i) U pays dividends out of its operating profits to O;
(ii) O pays dividends to N out of dividends received from. U; and
(iii) N pays dividends to M out of dividends received from 0, which itself originates from dividends received from U.

The corporate income taxes applicable in the relevant jurisdictions are as follows:

(a) U, based in Indonesia, is subject to a 22% corporate income tax rate in Indonesia;

(b) O, based in Indonesia, is exempt from corporate income tax on dividend earned in Indonesia from U; and

(c) N, based in Singapore, is exempt from corporate income tax in. Singapore on dividend earned from O by virtue of the fact that the underlying profits out of which dividend were paid have already met the 'subject to tax' condition through the 10% withholding tax deducted by O and the 'foreign headline tax rate of at least 15% condition in Indonesia.

With respect to withholding taxes ("WHT"):

(i) U is not required to withhold WHT on payment of dividend to 0;
(ii) O is required to withhold a 10% WHT on dividends paid to N under the Singapore-Indonesia DTA; and
(iii) N is not required to withhold WHT on dividends paid to the Company.

Based on the structure, M earns dividend from N in Singapore.

It should be noted that N may not always declare dividends to M in the same income year in which it receives corresponding dividend income from O. In these circumstances, dividends would be paid out of N retained earnings and not necessarily from its current year profits.

In addition, N is expected to declare both interim dividends as well as final dividends. Under the Singapore Companies Act, dividends should be declared out of profits. Accordingly, where the Board of N declares interim dividends (i.e., during the course of a financial year), it makes estimates and anticipates the profits to be disclosed in N forthcoming audited financial statements for that financial year for the purposes of making its decision.

However, N's profits as per its audited financial statements may be different from the Board's estimates due to factors beyond the control of the Board, e.g., due to the booking of an audit adjustment with respect to impairment loss on shares held by N in another investee company.

POINTS AT ISSUE

(i) Whether M is eligible to claim underlying tax credit ("UTC"), against its Mauritius tax liability arising on dividend from N, in respect of the corporate income tax paid by U in Indonesia on the latter's operating profits on receipt of dividends from N, which dividend originates ultimately from dividends paid by U to O?

(ii) Whether M is eligible to claim UTC on dividends from N in the event of timing differences between the declaration of dividend by U and earning of dividend by itself?

(iii) Whether M is eligible to claim UTC on interim dividends declared and paid by N based on estimates of its profits made by the Board of N in the event that any audit adjustment made in N audited financial statements subsequently at year end reduces the latter's profits below the amount of interim dividend declared?

RULING

On the basis of the FACTS mentioned above, it is ruled that-

(i) By virtue of section 77 of the income Tax Act and regulation 7 of the Foreign Tax Credit Regulations 1996, M is eligible to claim underlying tax credit, against its Mauritius tax liability arising on dividend from N, in respect of the corporate income tax paid by U in Indonesia on the latter's operating profits on receipt of dividends from N, which dividend originates ultimately from dividends paid by U to O.

(ii) M is eligible to claim underlying tax credit on dividends from N in the event of timing differences between the declaration of dividend by U and earning of dividend by itself, by virtue of section 77 of the Income Tax Act and regulation 7 of the Foreign Tax Credit Regulations 1996.

(iii) Since the interim dividend will be based on estimated retained earnings, it will not satisfy the definition of dividend as per section 2 of the Income Tax Act. As such, M is not eligible to claim underlying tax credit on interim dividends declared and paid by N based on estimates of its profits made by the Board of N.

TR 261

FACTS

A has been incorporated in Mauritius on 28 December 2018 and it holds a Global Business

Licence issued by the Financial Services Commission.

A had share application money of USD 3,880,000 in its audited financial statements for the Year ended 31st December 2021,

During the year 2022, there was a 100% change in shareholding and the share application monies is still in the statement of financial position as at date.

The board of directors of A would like to write off this share application monies and are considering writing off the share application monies as an income.

The share application monies were received in 2019 in 4 tranches and represent amounts invested by the previous shareholders but for which shares had not been issued yet by A. Before A could issue the shares for the share application monies, the shareholders disposed of their existing shares to new shareholders.

The shareholders of A have changed in 2022 and the share application monies were from the previous shareholders. The new shareholders intend to clean up their balance sheet and since this amount does not relate to them but relates to the previous shareholders, they have decided to write off the amount.

There is no resolution or agreement approving the share application monies.

The proposed accounting entries are as follows:

Dr Share application monies USD 3,880,000

Cr Other Income USD 3,880,000

POINT AT ISSUE

Whether the other Income amounting to USD 3,880,000 recognised in A's income statement from the writing off of the share application money will be subject to income tax in Mauritius?

RULING

On the basis of the FACTS mentioned above, it is ruled that the Other income amounting to USD 3,880,000 will be subject to income tax in Mauritius in accordance with section 10(g) of the Income Tax Act.

TR262

FACTS

X was incorporated in Mauritius on 14 September 2009 as a private company limited by shares. X holds a Global Business Licence.

At incorporation, the principal activity of X was that of an investment holding company focusing on investments in the logistics, rail, terminals and infrastructure space. Over the years X diversified its business as laid below.

Currently, X principally derives income from the following business activities:

- Equity investments holdings
- Ocean Freight Project - chartering in and out of vessels
- Syrah Project – logistic services
- Rail activity - leasing of locomotives/rolling stock
- Trading of commodities
- Debt investment »
- Chartering of vessels and Ocean Freight

POINT AT ISSUE

Whether the total chargeable income of X should be taken into consideration for the purpose of computing the chargeable income attributable to export?

RULING

On the basis of the FACTS mentioned above, it is ruled that for the purpose of computing the chargeable income attributable to export, the apportionment method should take into account the total chargeable income of X in accordance with section 44B(2) of the Income Tax Act.

TR 263

FACTS

A is a company incorporated and located in South Africa. It manufactures and sources:

(i) A branded optical lens wherein it owns the said trademark; and

(ii) other optical lenses brands including B brands, C brands and such other private label branded lenses with third parties' logo or trade mark (hereinafter the "Products")

D is a private company incorporated in Mauritius.

Upon signature of a Distribution Agreement and an In-Market Sales Commission Agreement, D will act as the exclusive distributor of A in the territory of Mauritius and will be responsible for the delivery of the Products to optometrists in Mauritius. As per their business model, D will act as the delivery agent of the Products to optometrists in Mauritius. D will act as the delivery agents of the Products to the customers of A in the Mauritian territory. D will not be raising any invoice to the customers of the Products nor will it be collecting any payments on behalf of A.

The customers of the Products will be any purchaser in the territory of Mauritius (hereinafter the **"Customers"**) and will include mainly optometrists who will be purchasing the lenses from A for their respective clients. The Customers will effect their payments for the purchase of the Products directly to A via an online platform and the latter will raise invoice to the Customers in its name.

A operates a business model as follows:

- The Customers order lenses from A via D;
- D holds stock of lens consignment in Mauritius which belongs to A;
- D polishes the ordered lens from inventory of the stock consignment prior to delivery to the Customers;
- D dispatches processed lenses to the Customers on behalf of A;
- A raises invoice to Customers for the order;
- The Customers effect their payments to A through digital wallet
- D will raise an invoice to A on a monthly basis for its services, in terms of its technical support and the distribution of the lenses to the Customers in Mauritius.

POINT AT ISSUE

1. Whether A can raise invoice to the Customers in Mauritius in its own name for the sale of the Products in respect of the above business model pertaining to sale of products emanating from stock consignment held in Mauritius?

RULING

On the basis of the FACTS mentioned above, it is ruled that A can raise invoice to the customers in its own name for the sale of the products out of the stock consignment held in Mauritius. However, as the products will be stored, processed and then delivered to customers in Mauritius, A will have a permanent establishment in Mauritius. It will, , therefore,, have to be registered in Mauritius for income tax purposes and it will be liable to tax on its income, sourced in Mauritius.

TR 264

FACTS

A was incorporated on 16 November 2020 as a private company limited by shares under the Companies Act 2001 of Mauritius and proposes to engage in the business of providing professional accounting services to domestic and international clients.

As executive director of A, Mr X, a Mauritian national and qualified accountant, will be working remotely in Singapore, , therefore,and, , therefore,, will be performing his duties with respect to his employment wholly in Singapore.

Mr X together with his family will move to Singapore where his spouse will take up employment and all his children will be attending full time schooling in Singapore. Mr X and his wife own a house in Mauritius which they intend to use whenever the family visits Mauritius during their holidays (usually not more than 3 weeks). Mr X will buy an apartment in Singapore, making Singapore his permanent place of abode. He does not intend to return to Mauritius and in the current income year, he has been present in Mauritius for less than 183 days. In the previous two income years and the current income year, he has been present in Mauritius for less than 270 days.

A will pay Mr X's emoluments into his bank account in Singapore, and he will not transfer his emoluments received in his bank account in Singapore to his Mauritian bank account. Occasionally, he may transfer his savings to Mauritius for investment purposes.

POINTS AT ISSUE

1. Whether A should withhold income tax (PAYE) and solidarity levy from the emoluments of Mr X who is performing his duties for the Company wholly outside of Mauritius?

2. Based on the background provided above, whether Mr X will be resident for tax purposes in Mauritius or not?

RULING

On the basis of the FACTS mentioned above, it is ruled that –

1. A shall withhold income tax (PAYE) and solidarity levy from any emolument paid to Mr X pursuant to section 93 of the Income Tax Act; and

2. Mr X will be resident in Mauritius for tax purposes as he has a permanent home available in Mauritius and the centre of his economic activity is in Mauritius.

TR 265

FACTS

A is a domestic company incorporated on 17 September 2021.

The activities of A consist of fishing in Mauritian waters. A does not own any fishing vessels and does not have any technical and human resources to carry out fishing activities. It has only administrative staff.

As A has no technical resources, it engages the services of B to supply all technical, fishing vessels and human resources. B is incorporated and based in Samoa (a Polynesian island).

The shareholder of B is Mr D, who owns 60% of A.

The quantity and type of fish caught are declared to the Ministry of Blue Economy, Marine Resources and Shipping Fisheries, which issues an Export Authorisation and a Landing Authorisation.

The catch belonging to A is sold to B. An invoice is issued by A to B for all sales. Likewise, a debit note is received from B which covers the cost of fishermen and other resources supplied to A.

Only an insignificant quantity of fish is sold locally.

When the catch is on-boarded, a bill of lading is issued by the shipping agent to evidence shipment.

POINTS AT ISSUE

1. Whether the sale of fish by A to B qualifies as an export of goods
j.
2. Whether A qualifies to pay income tax at 3%?
k.

RULING

l.
1. On the basis of the FACTS provided, it is ruled that: i. the sale of fish by A to B does not qualify as an export of goods; and
2. A is liable to pay income tax at the rate of 15%

TR 266

FACTS

A is a domestic company incorporated in Mauritius on 8 April 2013.

m.

Currently A holds contractual agreements with a number of foreign companies for the provision of marketing consultancy services. It is looking to transfer the current agreements to another agent in exchange for a consideration.

1. A provides marketing consultancy services on behalf of a number of foreign entities listed below:
   - B, a company incorporated and domiciled in France;
   - C, a company incorporated and domiciled in France;
   - D, a company incorporated and domiciled in Italy; and
   - E, a company incorporated and domiciled in Germany.

   Altogether the ("**Suppliers**"")

2. The activity of A is to market the products of the Suppliers in different geographical areas such as Guadeloupe, Guyana, Martinique, Reunion, Mayotte, New Caledonia, French Polynesia, Seychelles, Madagascar and Mauritius.

n.

3. A entered a written marketing consultancy agreement with the respective Suppliers (the "**Agreement**") whereby A acquired the right to provide the services listed below to targeted retailers ("**Retailers"):**

   o.

   - Contact prospective Retailers in the specified geographical areas;
   - Negotiate certain terms and conditions relating to the proposed sales of the products to the Retailers, based on the commercial guidelines and policies set by the Suppliers;
   - Assist in the organisation of the promotions of these products by the Retailers; and
   - Provide training to the Retailers on the products.
4. The products currently distributed by the Suppliers comprise barbeque equipment and accessories, garden tools and DIY tools. The target Retailers of A are DIY stores specialising in the sale of home, gardening and agricultural products. In Mauritius, A works primarily with DIY stores and gardening tools outlets.
5. A does not order, stock, distribute or supply the products. Orders for the products are placed directly by the Retailers from the Suppliers and all payments for the products are made between the Retailers and the Suppliers. The Suppliers are also responsible for the pricing of the products as well as dealing with any issues regarding the products. Moreover, A cannot conclude any agreement with the Retailers on behalf of the Suppliers and A does not have any whatsoever contractual obligations towards the Retailers.
6. A is remunerated by the Suppliers in the form of commissions which are based on the sales made by the Suppliers to the Retailers.
7. Considering that the respective Agreements give rights to future economic benefits, the Agreements are capitalised as intangible assets in the accounts of A.
8. A intends to transfer the Agreements with the Suppliers to another agent to continue with the same business activity being marketing consultancy services, in exchange for a consideration. The new agent is non-resident in Mauritius.

POINT AT ISSUE

Whether the proceeds to be received by A from the transfer of the Agreements are of capital nature and fall outside the scope of tax in Mauritius?

RULING

On the basis of the FACTS provided, it is ruled that the proceeds receivable by A from the transfer of the Agreements constitute compensation in respect of future income , therefore,and, , therefore,, would not be of capital nature.

TR 267

FACTS

1. A, a South African citizen, has been a tax resident in Mauritius as from the tax year 2021/2022.

2. A is a member and beneficiary of B, a multi-member pension and savings trust (subsequently referred to as the **"Trust**") based in Guernsey. Under the trust deed, members, who are also beneficiaries, make contributions to the Trust, which are maintained by trustees in sub-funds. In the Taxpayer's case, the contributions made consist of his past savings derived from South Africa.

p.

3. Those contributions are then invested by the trustee, namely B, on behalf of the members/beneficiaries to generate a capital return. For clarity's sake, the Trust is not a personal trust and the Trust is not a pension fund. Any member may hold a range of diverse investments in a sub-fund. , therefore,, a member's sub-fund is made up of their initial contributions and any capital gain return on those contributions.

q.

4. In the case of A, the trustee has invested in a contract granted by D (the "Contribution Contract").

r.

5. The value of the contract is based on certain underlying units (article 6.3.1 of the Contribution Contract). In essence, the value of the Contribution Contract fluctuates according to the notional value of a range of diverse investments including "unit trusts, deposits, equities, fixed interest securities and D's Unit Funds" (article 6.4.2 of the Contribution Contract. , therefore,, the Contribution Contract does not directly hold the underlying assets, but rather a contract whose value is linked to the performance of a basket of underlying securities

s.

6. The Contribution Contract has a maturity period of 99 years, whereby the value of the referenced units shall be estimated and paid to the Taxpayer on redemption of the Contribution Contract by the trustee of the Trust.

t.

7. However, prior to its maturity, the Contribution Contract can be surrendered partly or wholly, and the value of the underlying units shall be paid (article 21.5 of the Contribution Contract. , therefore,, any distribution made (i.e. surrender in part) to the Taxpayer reflects the increase (or decrease) in the Contribution Contract's value (article 21.6 of the Contribution Contract.

u.

8. The trustee is the one responsible for the choice, administration, distribution and surrender of the investment made through the Contribution Contract. The trustee may make ad hoc distributions to the Taxpayer, and as explained above, the distributions shall represent the increase (or decrease) in value of the original investment.

v.

9. The Agreement between D and the Contract Holder(s) further provides for, inter alia the following: -

w.

- In accordance with Clause 6.4.1 of the Contract Terms and Conditions, the Personal Fund will consist of monies and assets linked to the Personal Fund, together with the reinvested interest, dividends, capital, profits or other distribution (less any tax) relating to the existing assets linked to the Personal Fund.
- In accordance with Clause 6.4.2 of the Contract Terms and Conditions, subject to D's prevailing asset acceptability criteria, which is available on request, a

wide range of asset categories can be linked to this Contract, including unit trusts, deposits, equities, fixed interest securities and D's Unit Funds. Acceptable assets must be marketable and liquid.

POINT AT ISSUE

Whether the distribution to be received by A from the Trust and in particular to confirm that such distributions would be capital in nature , therefore,and, , therefore,, not subject to tax in Mauritius?

RULING

On the basis of the FACTS mentioned above, it is ruled that the distribution made by the Trust to A:

i) which forms part of the initial contribution in the Trust is of capital nature , therefore,and, , therefore,, not taxable in Mauritius;
ii) exceeding the initial contribution is of revenue nature , therefore,and, , therefore,, taxable in Mauritius.

TR 268

FACTS

V was incorporated in Mauritius on 2 April 2021 as a private company with liability limited by shares. It holds a Global Business Licence issued by the Financial Services Commission.

V forms part of W Group of companies (the "**Group**") which is engaged in the Oil and Gas industry, with production and exploration operations in 14 countries across the world, including five countries in Africa, namely Congo, Democratic Republic of Congo, Cameroon, Gabon and Chad. The Group operates through entities based principally in the local countries of operations for the exploration and the production segment and now Mauritius for its services segment.

The business activity of V is ships leasing.

As part of the implementation of the Group's activities within the Mauritius International Financial Centre, V acquired vessels from related parties for the purpose of carrying out the ship leasing activity. The acquisition of the vessels was funded principally by way of interest-bearing loans, at arm's length, taken from related entities based in Bermuda.

The vessels acquired are leased to operators in the Oil and Gas industry in Africa.

POINT AT ISSUE

Whether V is eligible to claim tax deductibility of its interest expenses incurred on the loans taken for the acquisition of the vessels in its tax returns submitted?

RULING

On the basis of the FACTS provided, it is ruled that V is eligible to claim tax deductibility of its interest expenses incurred on the loans taken for the acquisition of the vessels in its tax returns in accordance with section 19(1) of the Income Tax Act.

TR 269

FACTS

1. M is a company incorporated in Mauritius on 29 April 2022. Tt holds a Global Business Licence issued by the Financial Services Commission.

2. M is held at 100% by N, a company incorporated in Cayman Islands and holds 30.75% in O, a company incorporated in Kenya involved in the development of a smart city in Tatu, a special economic zone, and issued with a special economic zone ("**SEZ**") licence.

3. Under section 29(1) and section 35(1) of the Kenyan Special Economic Zones Act, all licenced economic zone enterprises, developers and operations shall be granted tax incentives as specified in the respective tax laws.

4. Section 29(1) of the Kenyan Special Economic Zones Act has been replicated below:

> *29. Special economic zone enterprises*
>
> *(1) The benefits prescribed in Part VI of this Act shall not accrue to any enterprise unless it holds a valid licence issued by the Authority.*

5.Section 35(1) of the Kenyan Special Economic Zones Act has been replicated below:

> *Benefits accruing to special economic zone enterprises, developers and operators*
>
> *(1) All licensed special economic zone enterprises, developers and operators shall be granted tax incentives as specified in the respective tax laws.*

6. O benefits from a specific incentive provided under the Kenyan legislation and the headline tax rate would be applicable if it did not benefit from the tax reduction under the SEZ incentives.

7. Based on the SEZ incentives, the corporation tax is 10% in the first 10 years and 15% in the next 10 years instead of the headline rate of 30%. There is also no withholding tax on dividends paid by O compared to the rate of 15% outside of the SEZ.

POINTS AT ISSUE

(1) Whether M can claim a tax sparing credit on dividends received from O in Mauritius for the 30% corporate tax that should have been levied in Kenya if the SEZ Act had not been enacted?

(2) In the event M cannot claim the tax sparing credit in Mauritius, whether the dividends received from O will benefit from the 80% partial exemption assuming that M meets its substance requirements for foreign dividends in Mauritius?

RULING

On the basis of the FACTS mentioned above, it is ruled that M is entitled to claim tax sparing credit in respect of dividend receivable from O in Mauritius in accordance with the provision: of regulation 9 of the Income Tax (Foreign Tax Credit) Regulations 1996.

TR 270

FACTS

A is a private company with liability limited by shares registered in Mauritius on 12 October 2021. It holds a Global Business Licence and a Family Office (Single) License ("**SFO. Licence**") issued by the Financial Services Commission on 11 November 2021

The Company is wholly owned by B — (the "**UBO**").

The Company's investment structure is currently as follows:

1. 100% shareholding in D, a company based in Belize. D acts as an investment holding company. Among other activities, D holds 100% shareholding in E, a Cyprus-based company, which holds immovable property. The immovable property is not meant for rental or real estate business and is solely for family use;
2. 100% shareholding in F, a company based in Cyprus. F holds title for cars, which are for family use only;
3. 100% shareholding in L; a company incorporated in Cyprus. L acts as a Special Purpose Vehicle;
4. 100% shareholding in H, a company based in Cyprus. H employs personnel working on the pleasure craft of the UBO
5. 100% shareholding in J, a company based in Malta. J owns a yacht and other personal water crafts. The aforementioned water crafts are all for family use and not for business; and
6. investment in a portfolio of securities, namely equities, bonds, commodities, alternative investments, private equity and structured products.

In addition to the above, A currently has:

(i) motor vehicle under its direct name. This vehicle is for the sole use of the UBO and is not meant for any business; and

(ii) interest free loans, as well as interest bearing loans, granted to the UBO and third parties.

The UBO now wishes to expand A's asset base by transferring certain intellectual property assets ("**IP assets**) into the name of A. As a background, the UBO, who is the promoter and majority owner of several financial services entities operating across the world ("**Operating Entities**"), mostly in the investment dealer space, has over time developed four trademarks, namely M, N, O and P which are respected trademarks in their business fields internationally. The IP assets are currently held by foreign entities owned by the UBO.

With Mauritius having formally joined the Madrid Protocol effective 6 May 2023, the UBO considers that consolidating the ownership of the IP assets within A will provide for better protection of the trademarks and also optimise operational efficiency for such trademarks. Based on the operation of the Madrid Protocol, if the trademarks are housed within A, the Madrid System will enable A to seek protection in respect of these trademarks in 130 countries through one single international registration

Once the transfer effected, it is expected that A will grant licences, under specific Trademark Licence Agreements, to the different Operating Entities to enable them to use the IP assets on a non-exclusive basis and subject to appropriate monitoring and control. In consideration for such licensing rights, A is expected to earn royalties from the Operating Entities.

POINT AT ISSUE

Whether the 10-year tax holiday to which A is entitled, covers royalty income to be earned by A, as the holder of an SFO Licence, from the IP assets?

RULING

On the basis of the FACTS mentioned above, it is ruled that 10-year tax holiday to which A is entitled as holder of an SFO Licence will not cover royalty income to be earned by A as it does not satisfy the conditions set out under item 30A of Sub-Part C of Part 1I of the Second Schedule to the Income Tax Act.

TR 271

FACTS

S is incorporated in Mauritius as a private company limited by shares and holds a Global Business Licence ("**GBL**"). The principal business activity of S is that of an investment holding.

T is a company incorporated in Mauritius and holds a GBL.

U is a company incorporated in Mauritius and holds a GBL.

S and T are not related.

S and T hold shares in U. S shareholding in U is as follows:

Class of shares	Percentage holding
Class A	22.75%
Class B	1.41%

On 13 September 2018, S entered into an agreement with T relating to future projects that might be undertaken by U where shareholder funding (in the form of loans to U or purchase of additional shares in U) would be required.

The agreement states that the first USD 2 million of S share of funding would be provided by T and the next USD 500K by S up to a cap of USD 2.5 million.

The reason behind the agreement for T to invest on behalf of S was that *"T wished to benefit from S continued involvement in future projects but S needed the outlay to be capped".*

T would benefit from S involvement as T *"see value in the founders of S remaining involved due 1o their connections in the sector, in banking & finance & for the S's brand name to be linked to the ongoing projects."*

During the year ended 31 December 2022, T paid U USD 427,728 to meet the funding requirement due under the agreement.

S has accounted for the amount invested by T in U as other income.

T has treated the expense as non-deductible for tax purposes.

POINT AT ISSUE

'Whether the amount invested by T in U on behalf of S shall be taxable or non-taxable in the hands of S?

RULING

On the basis of the FACTS provided, it is ruled that the amount paid by T on behalf of S and accounted as other income by S is taxable pursuant to section 10(1)(g) of the Income Tax Act, in the hands of S.

TR 272

FACTS

A is 58 years old and is a United States of America citizen.

As per USA law, A retains USA tax residency indefinitely, pays USA income tax and files USA tax returns.

A is a long-time resident of Saudi Arabia for most of the past 29 years and is a long-time employee of a Saudi Arabian company, for the past 18 years.

A will be retiring from his work in Saudi Arabia and will be relocating to Mauritius on a retirement permit in July 2024.

Upon retirement, A will receive a lump-sum pension in August 2024, derived from working for the Saudi Arabian company, and the value is anticipated to be in excess of USD million (approx. MUR 45 million).

The lump-sum pension funds are held in a plan sponsored by a USA-based subsidiary of the Saudi Arabian company and the pension account of A is managed by a USA-based pension company.

The pension plan is a qualified plan under section 401(a) of the US Internal Revenue Code of 1986, as amended.

The pension plan funds are USA tax-protected , therefore,and, , therefore,, A is neither taxed on the funds while he is still working nor taxed on the funds if he "rolls" them over to another qualified plan upon retirement.

Upon retirement, A will elect a USA-based pension company, to do a lump-sum "roll-over" transfer of the funds from his pension account into another qualified USA tax-protected retirement account based in the USA.

A anticipates being physically present in Mauritius when this transaction will take place in August 2024 as well as being physically present for the entirety of the Mauritius income tax year 2024-2025.

Upon retirement, A will also receive distribution withdrawals from his USA tax-protected individual retirement account into his bank account in Mauritius from which he would draw funds to cover his living expenses in Mauritius.

As per USA law, distribution withdrawals from the individual retirement account are reportable income on A USA tax returns

POINTS AT ISSUE

(1) Whether A, being a resident in Mauritius, will be liable to tax in Mauritius when transferring the lump-sum pension from the pension account into another qualified USA tax-protected retirement account?

(2) Whether the lump-sum pension transfer will benefit from any tax relief in Mauritius in case of tax liability in Mauritius?

(3) Whether the retirement funds transferred into his bank account in Mauritius for living purposes will be subject to tax in Mauritius?

(4) Whether A will benefit from any tax relief if the retirement funds transferred to the Mauritius bank account are taxable in Mauritius?

RULING

On the basis of the FACTS mentioned above, it is ruled that —

(l) Pursuant to section (5) of the Income Tax Act, A will not be liable to tax in Mauritius when transferring the lump-sum pension from the current pension account into another USA tax-protected qualified retirement plan.

(2) As the lump-sum is not taxable in. Mauritius, the question of exemption on the first MUR 2.5 million of the lump-sum does not arise.

(3) According to section 10 of the Income Tax Act, the distribution withdrawals transferred into A's Mauritian bank account for covering living expenses in Mauritius will be subject to tax in Mauritius.

(4) A will be allowed to take as credit against income tax payable in Mauritius the amount of foreign tax paid in respect of the distribution withdrawals transferred to Mauritius provided that the credit for actual tax suffered does not exceed the amount of Mauritian income tax payable on all the foreign source of income in accordance with section 77 of the Income Tax Act and as laid down by regulation 6(1) of the Income Tax (Foreign Tax Credit) Regulations 1996.

TR 273

FACTS

M is incorporated in Mauritius and holds a Global Business Licence. M holds 50 ordinary shares in N, a company incorporated in South Africa, representing 50% of the capital of N and 50% of voting rights. Two unrelated entities hold collectively the remaining 50 Ordinary A shares in N.

O, a company based in Geneva, has previously lent and advanced a sum of Rand 920,727,090.40 (nine hundred and twenty million, seven hundred and twenty-seven thousand and ninety Rand and forty cents) (the "**Capital Sum**") to N ("**the Borrower**"). The amount was advanced pursuant to a commercial arrangement between both parties, whereby N was to develop coal assets using working capital provided by O. In return, O would become the ultimate buyer of coal meeting export grade qualities, produced by these assets.

N has been in financial difficulty for several years and was unable to meet its commitments under the arrangement as well as being unable to repay the funds to O. The main business issues for N were that it did not have sufficient capability to mine enough coal to cover the agreements. Because of the amount owed to O, N was technically insolvent, and this significantly hampered its ability to do business successfully.

During 2021 and 2022, N changed the nature of its business and undertook to become a contract mining services provider as opposed to a company which mined coal for its own account. N obtained 2 material tenders to mine coal for P, a large coal mining company in South Africa. However, these contracts required O to agree to subordinate the amount owed to it below the amount payable to P, which materially decreased the chance of repayment to O.

During 2022, N began to make small payments against the amount owed to O. However, two material risks also became clear. Firstly, that in order to execute the mining contracts, N would have to procure vast amounts of finance for equipment. This would be difficult and would require further subordination of the amount owed to O. Secondly, N came under investigation by the South African tax authorities in relation to various tax issues. Given these additional risks and because M did not want to further subordinate its debt, O indicated its interest to disengage with N on the arrangement.

Being the parent company of N and for the purpose of enabling N to continue with its operations/deliver on its contracts, M acquired the Capital Sum, together with any interest accruing thereon (collectively referred to as "**the Loan**) from O for an amount of USD 5.9 million. The amount due by N to O was , therefore, novated to M with effect from 17 January 2023. The relevant authorisation from the South African Bank Q was also received to allow for the novation of the Loan from O to M.

Further to the acquisition of the Loan by M, the new parties to the Loan are now M ("**Lender**") and N ("**Borrower**"). The Loan will bear interest at the prime rate charged by the South African Bank R plus 1.5%. Interest shall accrue monthly in arrears and shall be calculated on the basis of nominal, annual, compounded monthly based on a 365-day year.

M and O are not related parties. At the time of acquisition of the Loan, it was assessed that N would struggle to ever fully repay the outstanding amount. Accordingly, the Capital Sum was acquired by M from O at a nominal value {USD 5.9 million). O's willingness to sell at this price demonstrated their assessment of the risks involved with the Loan. M's purchase of the Loan and willingness to subordinate it completely in relation to not only P's interests but also in relation to any further financing achieved in relation to purchase of necessary capital mining equipment has allowed N to achieve financing for new equipment which has in turn allowed N to win additional contracts for contract mining services. Consequently, as from April 2023, N finds itself in an improved financial position which may allow it 1o begin to repay the Capital Sum, plus the interest payable on the Loan, there is still no assurance that N will ever be able to repay the entire amount or even a majority of it.

M , therefore, acquired the Loan principal at a smaller amount (USD 5.9 million) in relation to the total debt outstanding (Rand 920,727,090.40) and it may recover a higher loan principal amount from N over the amount paid to acquire the Loan principal. M may , therefore, recognise a gain on the difference between the Loan principal acquisition price and the amount it will recover on the Loan principal from N.

POINTS AT ISSUE

(i) Whether the gain arising for M between the acquisition price of the Loan principal (USD 5.9 million) and the amount of Loan principal that it may recover aver the acquisition price is capital in nature , therefore,and, , therefore,, will not be subject to income tax in Mauritius?
x.

(ii) Whether the interest charged on the Loan at South African Prime rate + 1.5% will be considered as an arm's length rate in accordance with section 75 of the income Tax Act?

RULING

On the basis of the FACTS mentioned above, it is ruled that —

(i) Any gain that may arise for M between the acquisition price of the Loan principal and the amount that it may recover will be considered as capital in nature , therefore,and, , therefore,, will not be subject to income tax in Mauritius,

(ii) Interest charged by South African Bank R which is not related to M on the loan of Rand 920,727,090.40 (nine hundred and twenty million, seven hundred and twenty-seven thousand and ninety Rand and forty cents) at South African Prime rate + 1.5% will be considered as an arm’s length rate in accordance with section 75 of the Income Tax Act.

TR 274

FACTS

X is a bachelor with no children. He lives and has settled in Mauritius indefinitely. His permanent address is in Mauritius.

X was granted a residence permit under the Integrated Resort Scheme in the year 2017. On a professional side, he is a director of Y, a company resident in Mauritius for which he obtained an occupation permit. He also acts as consultant for Y since the year 2021.

X resigned from his posts as executive from 3 French Companies before coming to Mauritius. Except in Mauritius, he does not hold any executive post anywhere in the world.

X is entitled to dividends from his investments in France and Switzerland. Due to his professional responsibilities, he usually travels a lot around the world.

Apart from Mauritius, X does not own any property in France or elsewhere and he does not have any intention to buy property outside of Mauritius.

Given that X has left France indefinitely, he has been issued with an Exit Tax document by the French Tax Authorities -"Direction Générale des Finance Publiques".

POINTS AT ISSUE

(1) Whether X is domiciled in Mauritius and whether he should be granted a Tax Residence Certificate?

(2) Which income will be subject to tax in Mauritius?

RULING

On the basis of the FACTS mentioned above, it is ruled that —

1. Although X owns a residential property in Mauritius, he does not live permanently in Mauritius and is , therefore, not domiciled in Mauritius. Moreover, X has –

(i) neither been present in Mauritius for an aggregate period of 183 days or more in any income year;

(ii) nor has he been present in Mauritius for an aggregate period of 270 days or more in any income year and the 2 preceding income years.

, therefore,, by virtue of section 73(1) of the Income Tax Act, X is not resident in Mauritius and would not be granted a Tax Residence Certificate.

(2) Emoluments and any other Mauritian sourced income derived by X will be subject to income tax in Mauritius.

TR 275

FACTS

X was incorporated in Mauritius on 24 March 2015 as a private company with liability limited by shares. It holds a Global Business Licence.

The business activity of X is to acquire "turbine engine aircrafts and lease them out to appropriate operators”. X has not changed its business activities over the years.

As part of its normal business activities, X acquired two aircrafts along with their spare parts in the income years 2015 and 2019 respectively. The total investments in the aforementioned aircrafts amounted to USD 2,005,902 and the aircrafts have been leased out by X such that the latter derives lease income. In its income tax returns, X has claimed 100% annual allowances on the aforementioned aircrafts (inclusive of their spare parts) in their respective years of acquisition, for a total of USD 2,005,902.

During the period from 01 July 2021 to 31 December 2021, X has claimed the 80% partial exemption on the lease income generated from the leasing of aircrafts in accordance with item 42 (a) (ii) of Sub Part C of Part II of the Second Schedule of the Income Tax Act.

During the income year 2022, X has transferred ownership of the aircrafts, to each of the lessees, for a consideration of USD 601,395 and USD 1,310,578 respectively. X also derived a net gain on disposal from aircrafts amounting to USD 1,911,973, In line with the provisions of section 24(5)(a) of the Income Tax Act, X had a net balancing charge of USD 1,537,297 (restricted to the annual allowance claimed for each asset) during the income year ended 31 December 2022

POINT AT ISSUE

Whether X is entitled to claim an 80% partial exemption under the Second Schedule of the Income Tax Act on the balancing charge of USD 1,537,297 arising from the disposal of aircrafts?

RULING

On the basis of the FACTS mentioned above, it is ruled that X is entitled to claim partial exemption under item 48 (a) of Sub-Part C of Part II of the Second Schedule of the Income Tax Act on the balancing charge of USD 1,537,297 arising from the disposal of aircrafts.

TR 276

FACTS

A has been incorporated as a private company limited by shares in Mauritius on the 17" of January 2023. A holds a Global Business Licence and is authorised to operate as an investment dealer by the Financial Services Commission.

A:

- shall act as intermediary in the execution of securities transactions on behalf of other persons;
- does not trade in securities on its own account;
- shall also have an office and an employee in Mauritius;
- shall not be licensed to carry underwritings;
- and shall use MetaTrader 5 as its trading platform;

Business activities and operations

y.

z. A acts as an intermediary in the execution of securities transactions whereby its main source of income represents a mark-up on the spreads when the transaction is effected. The prices provided to clients will include A's mark-up. A applies mark-ups on spread, commissions and swaps based on the quotes received from the liquidity providers with which it cooperates with. The mark up is calculated by the investment dealers in Turkey and recommended to the Board of Directors of A to approve.

aa.

A's operations are as follows:

- receive orders from potential clients;
- create and send those new orders for Execution to its Liquidity Providers {'LPs') and/or exchanges (Bourse);
- and « once confirmation is obtained from the LP and/or Exchange about the execution of the order, it sends a confirmation to the client for the order received.

bb.

A will have access to a range of liquidity providers and depending on the trade direction, size, and market condition it will direct trades accordingly in order to offer the best possible execution of order based on likelihood, price, cost, speed and other related factors.

cc.

Functions of the employee

A will have a full-time employee based in Mauritius who will carry out the functions of on boarding, trading, business development and daily operation. The employee shall:

- conduct a compliance review,
- pre-screening for completeness of application;
- world check screening to check the clients' background;
- review the clients' orders for compliance with the law;
- exchange trading rules;
- and other cognate duties.

A shall incur the minimum expenditure proportionate to its level of activities

POINT AT ISSUE

Whether A satisfies the conditions of regulation 23D of the income Tax Regulations 1996 and is eligible for 80% partial exemption on its income derived under its investment dealer license?

RULING

On the basis of the FACTS mentioned above, it is ruled that in accordance with item 41 of Part 11 of Sub-Part C to the Second Schedule of the Income Tax Act, A will be entitled to 80% partial exemption on income derived by it as an investment dealer provided that it:

(i) carries out its core income generating activities in Mauritius as specified in the application;
dd. shall also have an office in Mauritius;
(ii) shall have an adequate number of suitably qualified persons in Mauritius {direct employment) to conduct its core income generating activities and who will carry out the duties as enumerated in the application; and
(iii) incurs a minimum expenditure proportionate to its level of activities.

ee. <u>TR 277</u>

ff. <u>FACTS</u>

gg. A has been incorporated as a private company limited by shares in Mauritius on the 14" of March 2023. A holds a Global Business Licence and has been authorised to operate as an investment dealer by the Financial Services Commission- (“**FSC**”).

hh.

ii. A shall:

- act as either a counterparty or a broker in the securities transactions;
- not trade in securities on its own account;
- not be licensed to carry underwritings;
- also have an office and employees in Mauritius;
- and connect buyers and sellers, facilitating seamless transactions and contributing to market efficiency

jj.

kk. <u>Business activities and operations</u>

ll.

mm. A will act as either a counterparty or a broker in the securities transactions. In fact, A will be a financial services firm that provides securities trading services for clients. While being the counterparty, A will execute trades as principal to the client. As brokers, A will connect buyers and sellers, facilitating seamless transactions and contributing to market efficiency.

nn.

oo. A is engaged in two business models.

pp.

qq. In the first business model, A offers its clients a range of different products at competitive prices and deliver high levels of service through its trading platform. A provides straight through processing services by facilitating the instant execution of clients’ trades by external counterparties. Under this model, A’s revenue streams are spread derived from the client’s trading transactions, commission and additional pips automatically determined by algorithms on client financing.

rr.

ss. In the second model, A acts as a principal counterparty for its clients' trades. A, as a market maker, assumes the role of both the buyer and seller for its clients. Revenue is primarily generated through the spread, which represents the difference between bid and ask prices of financial products offered.

tt.

uu. Unlike the first model, where trades are executed with external counterparties, A as a market maker, internalizes a significant portion of client trades. This allows A to derive revenue not only from the spread but also from the market impact of client trades.

vv.

ww. The trading platform will be hosted by the Datacentre in New York.

xx.

yy. A does not trade in securities for its own account.

zz.

aaa. A’s investment dealer license excludes underwriting

bbb.

ccc.

ddd.

eee.

<u>Functions of the employees</u>

fff.

A shall have two local directors which will take major decisions of the Company through board meetings

A will also have the following full-time employees in Mauritius.

ggg.

hhh. Responsibility/ position	Number of employees
k.ML Manager	lll. 1
mm. Dealing & Liquidity Management	nnn. 1-2
o. T Staff	ppp. 1-2
q. Back office (onboarding)	rrr. 3-4

sss.

The full-time employees based in Mauritius will carry out the functions of on boarding, trading, business development and daily operation.

Incur a minimum expenditure proportionate to its level of activities

A shall incur the minimum expenditure proportionate to its level of activities.

POINT AT ISSUE

Whether A satisfies the conditions of regulation 23D of the Income Tax Regulations 1996 and whether A is eligible for 80% partial exemption on its income derived under its investment dealer license?

RULING

On the basis of the FACTS mentioned above, it is ruled that in accordance with item 41 of Part II of Sub-Part C to the Second Schedule of the Income Tax Act, A will be entitled to 80% partial exemption on income derived by it as an investment dealer provided that it

(a) carries out its core income generating activities in Mauritius as specified in the application;
(b) shall have an office in Mauritius;
(c) shall have an adequate number of suitably qualified persons in Mauritius (direct employment) to conduct its core income generating activities and who will carry out the duties as enumerated in the application; and
(d) incurs a minimum expenditure proportionate to its level of activities

TR 278

FACTS

A is a South African citizen who holds a South African passport. He is a leading entrepreneur and investor on the African continent. He is the founder of the X Group.

A moved to Mauritius in January 2023 together with his wife B and his three minor children, with the intention of taking up residence in Mauritius. As part of his migration, he established his business activities in Mauritius.

A is a registered taxpayer in Mauritius and he is the holder of an Occupation Permit as Investor in Mauritius issued by the Economic Development Board in February 2023. He also qualifies for a right of residence, since he has purchased a property in Mauritius.

A is married to B, a South African citizen holding a South African passport. B is employed by a Mauritian company as a professional and she holds an Occupation Permit as Professional issued by the Economic Development Board in April 2024, she is also registered as a taxpayer in Mauritius.

A has entered into an Employment Agreement with X Group Limited in Mauritius and earns a salary of US $8 000 per month.

A's three minor children have, since their arrival in Mauritius in January 2023, been enrolled at a private school in Mauritius.

A has purchased a property in Mauritius, and he is also renting a 6-bedroom home on a long-term lease with an option to buy in from DC Golf Estate, situated in Mauritius. A has no immovable property registered under his personal name in South Africa. Both A and B have close friends in Mauritius and are members of the DC Golf Club and local gymnasiums.

A has notified the South African authorities of his relocation and has requested to be treated as a non-resident South African taxpayer. Both A and B have taken the necessary steps to ensure that they are no longer ordinarily resident in South Africa and regard themselves as non-resident taxpayers of South Africa in respect of the 2023/2024 tax year.

Several companies of A have been registered in Mauritius which have entered significant contracts in the Democratic Republic of the Congo, Liberia, Indonesia, Ghana, Kenya and Italy.

POINT AT ISSUE

'Whether A's a tax resident of Mauritius and is eligible for a Tax Residence Certificate?

RULING

On the basis of the FACTS mentioned above, it is ruled that by virtue of section 73(1)(a)(i) of the Income Tax Act, A will be considered as a tax resident in Mauritius for the fiscal year commencing 1 July 2023 and he will be eligible for a Tax Resident Certificate.

TR 279

FACTS

On 3rd May 2017, X Ltd purchased 2 plots of land from Mr Y for Rs 55,000,000.

On 21st March 2024, the Government of the Republic of Mauritius acquired the land for an amount of Rs 111,100,000 for the implementation of parking and other infrastructural facilities.

Given that this was a transaction with the Government of the Republic of Mauritius, the said deed was exempted from the land transfer tax.

POINT AT ISSUE

Whether X Ltd is subject to income tax on the sale of the properties made to the Government of the Republic of Mauritius?

RULING

On the basis of the FACTS mentioned above, it is ruled that the X Ltd is subject to income tax on the gain arising from the sale of the properties made to the Government of the Republic of Mauritius in accordance with section 10 of the Income Tax Act.

VAT RULINGs 16 to VAT RULINGs 118

VATR 16

FACTS

A Limited, a property developer intends to construct villas for sale to foreigners who will then entrust the villas to a well-known hotel operator for commercial letting to holiday-makers for periods not exceeding 90 days. Each foreign owner would be entitled to use the villa for personal purposes for not more than 6 weeks each year. The hotel operator will pay to each foreign owner a rental fee based on his share of pooled income from the letting of the villas.

A Limited, as well as each foreign owner, intends to apply for VAT registration given that:

a) A Limited will be making taxable supplies as provided under item 48(b) of the First Schedule to the VAT Act;
b) each foreign owner will be making taxable supplies in excess of the annual registration threshold of Rs2 Million and will , therefore, need to be compulsorily registered for VAT.

Points in issue

Whether it can be confirmed that

a) the property developer can be VAT registered as it would be making taxable supplies under item 48(b) of the First Schedule to the VAT Act, given that the villas sold will not be for residential purposes;
b) each foreign owner will need to be compulsorily registered for VAT, given that each of them would be making taxable supplies from commercial letting above the registration threshold.

RULING

On the basis of FACTS provided, it is confirmed that

a) A Ltd, the property developer, is required to be VAT registered in accordance with section 15(1) of the VAT Act 1998 as it will be making taxable supplies in respect of sale of villas not for residential purposes, as provided under item 48(b) of the First Schedule to the VAT Act.
b) each foreign owner is required to be compulsorily registered for VAT in accordance with section 15(1) of the VAT Act 1998 as it will be making taxable supplies from commercial letting.

ttt. **VATR 17**

FACTS

An airline company does not presently claim any input VAT on its crew accommodation invoices when these are charged by hotels, nor on passenger accommodation whenever there are flight delays. Providing crew accommodation is, however, part of the normal operating activity of the company as is also that of providing accommodation to its passengers in the event of delays due to technical or other problems. 15% VAT on hotel invoices thus represent a major cost to the company which thus inflates local costs.

Point in issue

Whether 15% VAT on accommodation invoices charged by hotels in respect of crew accommodation and accommodation for passengers during delayed flights can be claimed as input tax by the company.

RULING

Section 21(2)(c) of the VAT Act states in clear terms that no input tax is allowable as a credit against output tax in respect of "accommodation or lodging". As the law stands, VAT charged on accommodation invoices cannot , therefore, be claimed as input tax.

VATR 18

FACTS

E Ltd provides outbound roaming facilities to its subscribers. Whenever a subscriber wants to avail himself of the roaming facilities he applies for such a service against a deposit fee. This enables the subscriber to use the mobile network of E Ltd's foreign roaming partners (i.e. foreign service providers-FSPs) in the foreign country. On a daily basis, E Ltd receives details of the usage of the subscriber and the corresponding amount charged by the FSP (inclusive of the foreign country's VAT, if applicable). E Ltd raises an invoice on the subscriber to claim the amount charged by the FSP. In addition E Ltd charges, the subscriber a roaming charge, representing 15% of the amount charged by the FSP, for services provided to the latter in Mauritius. Depending on the settling arrangements that exist between E Ltd and the FSP the amount collected from the subscriber, excluding the roaming charges of 15 %, is paid to the FSP.

Point in issue

Whether E Ltd should charge the subscriber VAT-

a) on the total amount invoiced to the subscriber, including the amount charged by the FSP; or

b) only on the roaming charges charged by E Ltd.

RULING

a) The outbound roaming services fall outside the scope of VAT since these are provided outside Mauritius and by the FSP.

b) The roaming charges of 15% of the amount invoiced by the FSP are for services provided in Mauritius by E Ltd and are , therefore, subject to VAT.

VATR 19

FACTS

T Ltd, headquartered in India, provides consulting and IT services to clients globally as partners to conceptualize and realize technology driven business transformation initiatives. It has a branch, registered in Mauritius since December 2002, and also registered for VAT purposes. T Ltd operations in Mauritius comprise of both IT services and Finacle® implementation.

T Ltd owns an IPR (Intellectual Property Right) of a banking software product Finacle®, which caters for the needs of the global banking industry. As with software products continuous research and development effort is required for updating/enhancing the product to increase its utility for customers, a typical Finacle® customer will have the following agreements entered into with T Ltd:

1. **Licence Agreement**

   Under this agreement the customer is granted the rights to use the software for his internal use. The customer pays a one-time licence fee to T Ltd for the procurement of such rights.

2. **Annual Technical Support (ATS) Agreement**

   Under this agreement T Ltd provides technical support on Finacle® to the customer, a significant portion of which is provided by common support staff operating from T Ltd offices in Bangalore, India, and also at the customer location in Mauritius. The customer pays an annual 'ATS fee' to T Ltd.

3. **Customisation and Installation Agreement**

   Under this agreement T Ltd provides professional services for customizing the Finacle® product to the customer's needs and implementing it in the operating environment of the customer. The latter pays a one-time 'customization and installation fees' to T Ltd.

4. **Training Agreement**

   Under this agreement T Ltd provides training to the end users of the customer in Finacle®, mainly at the customer location in Mauritius. The customer pays a one-time 'training fee' to T Ltd. The branch is not a separate legal entity. All the contracts with the customers are signed by T Ltd and work authorizations for T Ltd personnel to work in Mauritius are sponsored by the end customers. The branch will be providing the necessary logistical support to these personnel while in Mauritius only.

Points in issue

a. Confirmation as to whether the services described in each of the 4 agreements should be subject to VAT.
b. Whether VAT applies in each of the following cases:
   i. services provided by T Ltd to Mauritian customers;
   ii. services provided by T Ltd to Mauritian customers where these services are performed from outside Mauritius;
   iii. services provided by T Ltd to Mauritian customers where the services are provided partly from outside Mauritius and partly from Mauritius;
   iv. services provided by T Ltd to overseas based customers while these services are performed in Mauritius.

RULINGs

a. It is confirmed that the services described in each of the 4 agreements concluded by T Ltd with the customers for the use of the banking software product Finacle® are subject to Value Added Tax pursuant to the provisions of sections 4(1) and 9 1) of the VAT Act 1998, as they constitute a taxable supply of services made in Mauritius by the branch which is a taxable person registered for VAT in the course or furtherance of its business.

b. As T Ltd is providing services in Mauritius through the branch, a permanent establishment located in Mauritius, the services provided to Mauritian customers in each of the scenarios referred to at 2(a) to 2(c) above are subject to VAT as these are taxable supplies of services.

c. The services provided from Mauritius by T Ltd through its permanent establishment in Mauritius to overseas based customers are supplies which are zero-rated in accordance with item 6 (a) of the Fifth Schedule to the Act, "being supply of services made to a person who belongs to a country other than Mauritius and who is outside Mauritius at the time the services are performed in Mauritius."

VATR 20

FACTS

M Ltd is a private company incorporated in Mauritius and engaged in the marketing of petroleum goods (i.e. Mogas, Gas oil, fuel oil, Jet A1 & lubricants)in the country. The company has 13 retail outlets which are basically run on two models:

a. Dealers-operated retail outlets, where land is owned by the dealer.
b. Company owned Company operated (COCO) retail outlets, where a contractor is appointed by the company to manage the station.

In the first model, the retail margins on Mogas and Gas oil are fully enjoyed by the dealers as the land on which retail outlet has been developed is contributed by him. In the second model (COCO), the retail margins on Mogas and Gas oil are shared between M Ltd and the contractor on an agreed formula, in accordance with the terms of the contract.

Points in issue

Whether it can be confirmed that

a. No Vat charge should apply on 'retail margin sharing' as the retail margin has already suffered VAT;
b. M Ltd is correct in charging VAT on 'equipment fee' and that the depiction thereof on the invoice is correct;
c. Arithmetical calculations of both VAT elements (in specimen invoices) as shown in Annexure E are correct.

RULINGs

a. It is confirmed that since the retail margin has already suffered VAT no charge to VAT should apply on the 'retail margin sharing' as sharing of retail margin between the lessor and the lessee does not amount to a supply of services.
b. It is confirmed that M Ltd is correct in charging VAT on 'equipment fee.' However, the VAT element on the invoice should be shown in such a way that it clearly indicates that it is in respect of both oil and equipment fee.
c. As the VAT is chargeable on the value including the retail margin of liquefied petroleum gas we suggest that the invoice be amended to show : -

    - The value inclusive of the retail margin but exclusive of VAT;
    - The amount of VAT charged and the rate applied.

VATR 21

FACTS

P Ltd was issued with a letter of intent for an IRS project on 16 June 2006, that is prior to 1 October 2006. The IRS project will include the construction of 20 Standard 4-bedroom villas and amenities. A detailed list of the building works and services which are part of the IRS project was submitted in annexes to the application.

Point in issue

Whether the exemption under item 65 of the First schedule to the VAT Act is applicable to all costs associated with each of the building works and services listed in annexes to the application.

RULING

Item 65 of the First Schedule to the Act provides for the exemption of the "construction of a building or part of a building, flat or tenement (excluding repairs and renovations) to be used for residential purposes .....Construction works on the 20 Standard 4 bedroom villas and works and services directly connected to the construction of those villas supplied to P Ltd by the main contractor and subcontractors nominated by the main contractor in advance and the services supplied by architects, engineers and quantity surveyors for the design and management of the works directly connected with the construction of the villas are exempted from VAT.

However, works and services related to the provision of amenities forming part of the IRS project such as landscaping, golf amenities, beach restaurant, boat house and swimming pool, the furnishing of the buildings and the marketing and financial management of the project would not fall under Item 65 of the First Schedule to the Act.

VATR 22

FACTS

Société C is a 'Société Civile d'Attribution' registered in Mauritius with a share capital of Rs

4,000,000 owned in equal proportion by two associates, viz A and B.

The Société is the owner of three contiguous plots of land of a total acreage of 321.5 toises situated at St Jean Road Quatre Bornes which it has resolved to develop by the construction of a 9-storey building comprising parking lots, office and commercial spaces as well as residential accommodation.

Under the project, it is proposed to increase the share capital (parts sociales) of the Société into 106 'Group de Parts Sociales' with a corresponding attribution of 106 lots. The shares will initially be issued to the two co-owners. Potential buyers will be required to subscribe to the share capital of the Société and the value attributable to the respective shares will depend upon

a) the date on which the shares are transferred; and
b) the value of the construction work in progress as certified by the Quantity Surveyor.

Subsequently, the buyer will contribute towards the construction works through a Current Account with the Société until the construction is completed. At the completion of the project, the Société will be dissolved and the various lots attributed by a 'partage' to each owner.

Point in Issue

a) Whether Société C is a property developer under item 48 of the First Schedule to the Act?
b) In case the Société is considered a property developer under item 48 of the First Schedule, whether the transfer of right to the property through the transfer of shares will be a taxable supply?
c) In case the Société is considered a property developer under item 48 of the First Schedule is the time of supply determined to take place
   - at the time when the shares are transferred? or
   - at the time when the Société is dissolved and the different lots effectively attributed

RULING

Société C is a property developer under Item 48 of the First Schedule as it is the initiator of the property development project and directly involved in the carrying out of the project, whereas the other investors or potential buyers will be only joining in at different stages to become owners of their proportionate lots.

On the basis of the above RULING, in accordance with Item 48(a) of the First Schedule of the Act, the transfer of right to the property to be used for residential purposes or parking lots to be used by eventual owners of the residential property will be an exempt supply.

As Société C is a property developer and should be registered for VAT, the time of supply, in accordance with section 5 of the Act, is the time a VAT invoice is issued or the time payment for the property is made either through purchase of shares or contribution towards the Current Account, whichever is the earlier.

VAT R23

FACTS

E Ltd is a company registered for VAT and is engaged in the preservation of the environment. It provides services such as the collection of used oil, sludge and hydrocarbon waste from such waste-producers throughout the island as well as from ships berthed in Port Louis, owned by non-resident companies and not registered in Mauritius.

E Ltd invoices the non-resident companies operating the foreign vessels in respect of the charges for the collection of the used oil and wastes from their vessels.

Point in issue

Whether it can be confirmed that the supply of services to the non-resident companies operating the foreign vessels is a zero-rated supply.

RULING

It is confirmed that the supply of services made to the non-resident companies operating the foreign vessels is a zero-rated supply pursuant to section 11 of the VAT Act 1998 and in accordance with item 6(a) of the Fifth Schedule to the Act.

VATR 24

FACTS

A Developer intends to carry out a development project under the IRS scheme which will comprise of a number of luxury apartments and villas together with conference, commercial and wellness centres etc, annexed thereto.

The properties to be sold fall in three major categories:

a. apartments and villas forming part of a rental pool which shall be managed by a hotel operator, herein referred to as " Hotel Residences;
b. villas which shall be managed by a rental management operator, herein referred to as "Non-Hotel Residences;
c. conference, commercial and wellness centres which shall be managed by specialist operators.

The properties will be marketed to both foreigners and Mauritians. The main purpose of the acquisition of these properties by the investors is to earn a yield on the investment, either by generating an income stream through commercial letting or through an appreciation in value.

The owners of the "Hotel Residences will be obliged to participate in a rental pool programme operated by a hotel operator for the purpose of conducting a hotel business, in accordance with the terms of the rental pool agreement which will be signed at the conclusion of the sale with each owner of a Hotel Residence. The rental agreement provides for the deduction of all operating expenses, control and management expenses, as well as the payment of all taxes.

The owners of residences not forming part of the rental pool programme will be entitled, on a voluntary basis, to rent their properties, i.e. "Non-Hotel Residences through a separate rental programme which will be managed by a rental management operator. In accordance with this agreement, the latter will be remunerated with a monthly management fee representing a percentage of the gross rental income.

The owners of both the Hotel Residences and the Non-Hotel Residences intend to let their properties for a period not exceeding 90 days, but on a renewal basis. These owners also intend to apply for VAT registration as they expect to make an annual turnover of taxable supplies of more than Rs 2 Million. The Developer as well intends to apply for VAT registration as he expects to make an annual turnover of taxable supplies of more than Rs 2 million.

Points in issue

a. whether the owners of Hotel Residences and Non-Hotel Residences will be making taxable supplies;
b. whether the owners referred to in (i) above who anticipate to have an annual turnover exceeding Rs 2 million will need to be compulsorily registered for VAT;
c. whether as a result of (i) and (ii), the Developer needs to be compulsorily registered for VAT, given that he will be making taxable supplies of more than Rs 2 million.

RULING

On the basis of the FACTS given, it is confirmed that :

a. the owners of Hotel Residences and Non-Hotel Residences will be making taxable supplies;
b. the owners referred to in (i) who anticipate to have an annual turnover exceeding Rs 2 million will be required to be compulsorily registered for VAT in accordance with section 15(1) of the VAT Act 1998 as they will be making taxable supplies from commercial letting;

c. the Developer will be required to be compulsorily registered for VAT under section 15(1) of the VAT Act, given that he will be making taxable supplies of more than Rs 2 million in respect of the sale of villas not falling within the First Schedule.

Please note that being given the owners of Non-Hotel Residences will be entitled to "rent their properties on a voluntary basis, no claim for repayment of tax will be entertained under section 24 of the Act in their respect unless and until satisfactory evidence is provided that they have actually started letting their property.

VATR 25

FACTS

S (Mauritius) Ltd carries on the activity of refuse disposal in Mauritius. As a pioneer of the cleaning industry, it has been constantly renovating its plant and machinery and kept pace with the changes in technology. It operates four stations around the island where all garbage and waste are disposed. The present trend is to collect garbage and waste around the island in compactors and trailer compactors and send these to the station units for final disposal.

The compactors and trailer compactors are machinery mounted on trucks or lorries, and even if these trucks are not moving, the compactors keep compacting the waste. The compactor engine can only run if the engine of the truck is continuously running, thus consuming fuel. The trailer compactors also keep compacting all the way to the stations. The concept in this project is to avoid trucks and lorries taking several trips to the disposal units, thus also avoiding polluting the island and traffic congestion. At the stations there are machineries consuming diesel which are fixed and remain on site.

Points in issue

Whether the Company can be allowed to claim a credit of 50% of the input tax paid on diesel against output tax in respect of the compactors and trailer compactors mounted on trucks and lorries?

RULING

Section 21(2) (e) states as follows:

"No input tax shall be allowed as a credit under this section in respect of -

petroleum oils and other oils or preparations of heading No 27.10 of Part I of the First Schedule to the Customs Tariff Act, except-

a. fuel oils;

b. oils or preparation used for resale; and

c. gas oils for use in stationary engines, boilers and burners"

In view of the above provisions, no input tax can be allowed for diesel used in respect of compactors and trailer compactors which are machinery consuming diesel mounted on trucks and lorries, being given that these are not 'stationary engines'.

However, diesel used on machinery which are fixed and remain on site can be claimed by the Company as credit for input tax against output tax.

VATR 26

FACTS

P Ltd is a company which acts as a reservation platform between customers and taxi operators/contract bus operators for the provision of taxi services in the island. Bookings for the service can be done online, using the Company's website, or via its hotline after office hours. Upon a booking, a taxi is sought to meet the expectations of the client. Clients are invoiced by the Company and the proceeds are treated as sales. The taxi operators are subsequently paid by the Company and the transaction is treated as cost of sales.

The Company provides taxi services both to companies and individuals, including VIP services, transport of employees and for general use. It does not itself hold any taxi permit but sub-contracts with individuals holding proper taxi permits. The business relations between the Company and taxi operators are backed by service agreements which include tariffs, and also provide for full responsibility to be taken by the taxi operators/contract bus operators for any loss or damage occasioned to any person in case of an accident.

Points in issue

a. Whether the income derived by P Ltd is subject to VAT?
b. In the event the answer to 1 above is in the affirmative, whether the clients of the Company can claim the relevant input VAT as a deduction?

RULING

a. P Ltd does not hold licences for transport of passengers by public service vehicles. It outsources the transportation service to contractors who hold appropriate public service vehicle licences, viz. taxi operators and contract bus operators. In essence, the Company derives its income for acting as a reservation platform between customers and contractors. Such service provided by the Company is a taxable supply , therefore,and, , therefore,, subject to VAT in accordance with the provisions of section 9(1) of the VAT Act.
b. The provisions of item 27 of the First Schedule to the VAT Act are as follows*: "The transport of passengers by public service vehicles excluding contract buses for the transport of tourists and contract cars."*

Since public service vehicles include taxis, no VAT will be charged by taxi operators as the supply is an exempt supply. The Company will , therefore, charge VAT only on the fee receivable for acting as a reservation platform. On the other hand, operators of contract buses for the transport of tourists and operators of contract cars will charge VAT on their supplies to the Company. For administrative convenience , therefore,, P Ltd may charge VAT on the full amount of such supply, which will also allow the VAT registered operators to claim input VAT as a deduction in respect of their taxable supplies to the Company, in accordance with section 21 (1) of the Act.

VATR 27

FACTS

A Ltd voluntarily applied for and was registered for VAT. It holds a management licence and its main activity is to set up trusts and act as trustees for these trusts. Most of these trusts have the following characteristics:

a) both the settlor and beneficiaries are non-residents;
b) they are discretionary trusts;
c) they have elected to be non-resident for tax purposes.

Services are also provided to trusts that elect to be resident in Mauritius.

Points in issue

Confirmation that a supply of services made to a non-resident trust is not subject to VAT at the rate of 15%.

RULING

On the FACTS provided, A Ltd makes a supply of services both to resident trusts and non-resident trusts. While the supply of services to resident trusts is subject to tax at 15%, it is confirmed that the supply of services made to non-resident trusts is treated to fall under item 6 (a) of the Fifth Schedule to the VAT Act and is, , therefore,, zero-rated.

VATR 28

FACTS

A Limited is incorporated in Mauritius as a domestic company and has its registered office in Port Louis. Its sole shareholder and director is a UK national resident in Mauritius. The company will be engaged in arranging for the purchase of commodities from suppliers worldwide and its resale to clients overseas. For that purpose, under an agreement, A will act as an agent for a UK company (the Principal) by offering procurement services from Mauritius. The agreement will not constitute any association, partnership, joint venture or other relationship.

For the purpose of this operation, 'procurement services' has been defined in the Memorandum of Agreement entered into between the UK company and A Limited to mean as acting for the Principal, opening and operating a bank account, co-ordinating the purchase and shipment of commodities, clearance of commodities from Customs & Excise in the respective countries of the suppliers and customers, arranging for payments to suppliers and receiving payments from customers, placing orders, entering into correspondences, invoicing and the preparation of all documentation relative to conducting the supply of commodities.

A Limited has made arrangements with a local clearing and forwarding agent to oversee trans-shipment of goods both by air or sea routes from suppliers to clients. All transactions and settlements on supplies and sales will be undertaken on the Agent's name (A Limited). The latter will manage funds on behalf of the Principal and maintain accounting records in Mauritius to disclose all such transactions in its books. Billing to customers will be initiated from here. Also, Board meetings will be conducted in Mauritius.

As consideration for acting as Agent on behalf of the Principal, A Limited will receive an amount equal to 8% of the gross profit on the transactions, and this will be used as the tax base to calculate its tax liability, if any. Any profit remaining shall belong to the Principal and will be repatriated to the United Kingdom where it will be subject to UK tax laws. The income of 8% pertaining to A Limited will be calculated at the end of the financial year and will be based on the accounting profit made out of the above transactions. The accounting profit will be determined by using the generally acceptable accounting principles and standards.

Points in issue

Whether: A Limited needs to register for VAT

RULING

Section 15 (1) of the VAT Act 1998 states as follows:

“.....every person-

a. who, in the course or furtherance of his business, makes taxable supplies; and
b. whose turnover of taxable supplies exceeds or is likely to exceed the amount, specified in the Sixth Schedule (i.e. Rs 2 million per annum)

shall apply to the Director General ...... for compulsory registration as a registered person under the Act.

On the other hand section 15 (3) provides that "where the turnover of a person is made up exclusively of-

a. zero-rated supplies; or
b. zero-rated supplies and exempt supplies,

that person shall not be bound to apply for registration under this section.

On the basis of information submitted, it appears that A Limited will be providing services exclusively to the UK Company, and as such services will constitute zero-rated supplies, A Limited will have no obligation to register itself for VAT purposes.

However, A Limited may opt for VAT registration in order to be able to claim repayment of input tax

suffered, if any.

VATR 29

FACTS

X is a private limited company incorporated and domiciled in Mauritius, and is engaged in property development for the benefit of companies within a Group. It holds an appropriate licence as land promoter and property developer from the relevant authority. Y is another private limited company incorporated and domiciled in Mauritius and operates a chain of supermarkets throughout the island. X and Y are wholly owned subsidiaries of Z and are both VAT registered.

All land and buildings belonging to X are presently rented to Y under an operating lease. The Management of X is considering the sale of all X's properties to Y. The capital expenditure incurred by Y will be exclusively incurred in the production of gross income.

Points in issue

1. Whether, under the VAT Act 1998, the disposal of the land and buildings by X should be treated in accordance with :
    (i) Section 21(7)(a) of the Act; or
    (ii) item 48(b) of the First Schedule to the Act ?
2. In case the issue at 1 above is treated in accordance with item 48(b) of the First Schedule to the Act, whether-
    a. VAT will be charged on the portion of the property related to land?
    b. Y will be allowed to deduct from its output tax the input tax charged on the invoice to be issued by X?
    c. input tax suffered by X and Y in respect of such expenses as notary, property valuer and other professional fees directly related to this transaction will be deductible against their output tax ?

RULING

a. It is confirmed that the sale of land and buildings is subject to VAT in view of item 48(b) of the First Schedule to the VAT Act which reads as follows: "for any other purposes except land with any building, building or part of a building, apartment, flat or tenement together with any interest in or right over land, sold or transferred by a VAT registered property developer to a VAT registered person.

b.

- It is confirmed that VAT will be charged on the portion of the property related to land, since the exemption provided under item 47 of the First Schedule, i.e. " the grant, assignment or surrender of any interest in or right over land does not apply in this case as land with any building sold or transferred by a VAT registered property developer to a VAT registered person falls under the 'exception' provision under item 48 (b) of the above Schedule.
- It is confirmed that since Y makes both taxable supplies and exempt supplies, it will be allowed to deduct from its output tax the input tax charged on the invoice that will be issued by X, on the purchase of immovable properties which will form part of its fixed assets, in accordance with the provisions of section 21 (3) (b) of the Act, i.e. in the proportion of the value of taxable supplies to total turnover.

uuu.

- It is confirmed that both X and Y will be allowed to claim the input tax suffered in respect of expenses such as notary, property valuer and other professional fees directly related to this transaction in accordance with the provisions of section 21 of the Act; and, where applicable, the credit for input tax will be restricted as provided in section 21(3)(b) of the Act.

VATR 30

- Replaced by VAT RULING 63

VATR 31

FACTS

P Ltd is a VAT registered company. It proposes to offer online booking services, i.e. in respect of hotel rooms and villas to foreigners, against a service fee. For the service rendered, the related fee is charged and is settled before the time the foreigner actually comes to Mauritius for his stay. The service fee is distinct from the actual rental charged to the client for the accommodation and is used in part to settle costs of foreign business partners.

Points in issue

Confirmation that the service fee meets the definition of zero-rated supply in terms of section 11 and item 6(a) of the Fifth Schedule to the VAT Act.

RULING

The supply of services referred to at Item 6(a) of the Fifth Schedule to the VAT Act means a supply of services which is not utilised in Mauritius. In the present case it cannot be said that the online booking services in respect of hotels and villas in Mauritius are services not utilised in Mauritius. The above services , therefore, do not qualify as zero-rated supply in terms of section 11 and item 6 (a) of the Fifth Schedule to the VAT Act.

VATR 32

FACTS

A Ltd is engaged in the provision of management services, including financial and human resource services to related companies. B Ltd which operates a Hotel is a related company in which A Ltd holds shares, representing 23% of the total shares. A Ltd derives management fee from B Ltd as a consideration for the service it provides to this company under a management agreement. There is, however, no formal written management agreement between the two companies.

Pursuant to a restructuring exercise, the management agreement between the two companies has terminated and consequently B Ltd has to compensate A Ltd. The compensation has been computed at some Rs 203 million and is based on an independent valuation. The consideration for the compensation will be by way of shares, so that B Ltd will issue new shares to A Ltd.

Points in issue

Confirmation that-

a) the compensation receivable by A Ltd is outside the scope of the VAT Act, as it is not a consideration for a supply of services but instead a receipt of capital nature, being compensation for the loss it will suffer subsequent to the termination of the management contract.
b) A Ltd would not be required to disclose the transaction in its VAT return as it is not a supply and is neither a zero-rated supply nor an exempt supply.
c) Since A Ltd would not charge VAT on the compensation payment, the question of input tax does not arise.

RULING

On the basis of the fact that the compensation is not provided in any written contract between A Ltd and B Ltd, the amount receivable by A Ltd is a consideration for the surrender of a right , therefore,and, , therefore,, constitutes a supply in accordance with the provisions of section 4(2)(b) of the VAT Act.

The issues raised in the circumstance do not arise and A Ltd will , therefore, be required to disclose the transaction in its VAT return and also charge VAT at the appropriate rate in that respect.

VATR 33

FACTS

A is a non-resident French company. It has obtained a contract to provide services to B Ltd, a company incorporated in Mauritius and which is VAT registered. A proposes to sub-contract part of the services to C Ltd, which is incorporated in Mauritius and registered for VAT. C Ltd is a wholly-owned subsidiary of A.

There is no contractual relationship between B Ltd and C Ltd. The subsidiary only acts as a sub-contractor of A for part of the services the latter provides to B Ltd. There will not be any direct invoicing between B Ltd and C Ltd. A has no permanent establishment in Mauritius. C Ltd is legally and commercially independent of A. It also acts in the ordinary course of business and is at arm's length in its business dealings with A.

Points in issue

Whether, with regard to the contractual arrangements, it can be confirmed that the supplies by C Ltd to A are taxable supplies; and, if in the affirmative, whether they are zero-rated supplies in accordance with section 11(2) and item 6(a) of the Fifth Schedule to the VAT Act?

RULING

On the basis of FACTS provided, it is confirmed that with regard to the contractual arrangements between C Ltd and A, the supply of services performed by C Ltd is a taxable supply. However, examination of the contract between A and B Ltd shows that the services provided by A to B Ltd are supplied in Mauritius. A is , therefore, liable to be registered for VAT in Mauritius. In the circumstances the services provided under the sub-contract by C Ltd to A do not fall under item 6(a) of the Fifth Schedule to the Act and are , therefore, not zero-rated.

VATR 34

FACTS

A Ltd is a company involved in the development of commercial outlets for sale. It is VAT registered as it will be making taxable supplies. It will sell commercial outlets both to persons who are VAT registered and to persons not registered for VAT.

While A Ltd will charge VAT on all sales made to VAT registered persons, input VAT on such sales will be claimed against the output VAT, subject to section 21 of the Act. However, sales of commercial outlets to persons who are not registered for VAT will not be subject to VAT as the supply is an exempt supply under item 48 of the First Schedule to the Act. Input VAT on such supply will , therefore, be borne by A Ltd.

Points in issue

Whether it can be confirmed that the above understanding of item 48 of the First Schedule is correct.

RULING

On the basis of FACTS stated, it is confirmed that the sale of commercial outlets made by A Ltd to persons who are not registered for VAT is not subject to VAT, as it is an exempt supply as provided by item 48(b) of the First Schedule to the VAT Act. Any input VAT on such supplies will , therefore, have to be borne by A Ltd.

VATR 35

FACTS

A Limited (the Company) is a domestic company which is considering to enter into a sixty-year commercial lease agreement for a number of apartments with B Limited, another company incorporated in Mauritius, for approximately USD 4m plus VAT, payable upfront. A Limited will thereafter be engaged in subleasing business. Both companies will be registered for VAT. As of date, however, there is no transaction yet between the two companies.

Points in issue

Whether it can be confirmed that -

a. the Company will be entitled to claim a refund of the VAT payable on the USD 4m in respect of the commercial lease ;
b. once the Company registers for VAT, then VAT is chargeable on all subleases, irrespective of whether these subleases are short-term or long-term(exceeding 90 days).

RULING

a) Section 24 (1) of the VAT Act reads as follows: *"Where a registered person submits a return under section 22 and the excess amount includes input tax amounting to more than 100,000 rupees or such other amount as may be prescribed, on capital goods being building or structure (including extension and renovation), plant machinery or equipment, of a capital nature, the registered person may, in that return make a claim to the Director-General for a repayment of the amount of input tax allowable in respect of those capital goods.*

*vvv.*Also, item 11 of the Third Schedule to the Act states that *the "leasing of, or other grant of the right to use, goods is a supply of services.*

www. It is clear that the "supply that would be made by the Company would in fact be a supply of services and not a supply of "capital goods. It cannot , therefore, be confirmed in the circumstance that the Company would be entitled to claim "*repayment of the input tax payable on the lease.*

b) Being given that A Ltd cannot use the building predominately as a place of residence, the subleases will constitute taxable supplies irrespective of their duration.

VATR 36

FACTS

B Ltd (the Company), proposes to be engaged in the rental of short-term immovable properties in Mauritius. It will contract with bungalow and small villa owners for the rental of their bungalows/villas, mainly to international clients. The contract will be on a request basis only, i.e. it will not have any exclusivity to the properties, and the owners will also be free to contract with other operators or clients.

Upon requests from clients, the Company will look for bungalows and villas available for accommodation from a predetermined list of owners, who may or may not be VAT registered. The Company will charge the client an amount which will comprise the cost of accommodation and a service fee. Under the payment conditions, 10 percent of the amount charged will have to be paid by the client as deposit upon booking confirmation, and the balance within 30 days prior to arrival. The amount payable to the bungalow owners will be paid by the Company after settlement by the client of the total amount charged.

Currently the Company is not VAT registered, but as it expects its turnover to exceed Rs 2 million in the foreseeable future it may have to register for VAT.

Point in issue

Whether it can be confirmed that once the Company is registered for VAT, it should charge VAT on its service fee only and not on the cost of accommodation?

RULING

On the basis of FACTS given, the Company will be making a taxable supply of the rental of villas/bungalows for short term periods (not exceeding 90 days). The Company will, , therefore,, be required to charge VAT on the total amount charged to clients which will include the cost of accommodation and the service fee.

Please note that, should the Company have to pay VAT to a VAT registered owner of the bungalows/villas, it will be entitled to claim as input tax the VAT payable to the owner.

VATR 37

FACTS

P Ltd is licensed under the Financial Services Act to carry out the distribution of financial products, viz. the shares of F Ltd, which is an authorized mutual fund, listed (but not traded) on the Stock Exchange of Mauritius. P Ltd is the exclusive distributor of F Ltd.

In accordance with the terms and conditions of the distribution agreement with F Ltd, P Ltd markets, offers and sells shares to existing and new clients. It may also subcontract with intermediaries acting as introducers of clients to P Ltd. For its services, P Ltd charges F Ltd a commission in the form of a distribution fee (also referred to as an upfront fee or entry fee) amounting to 2% (net of VAT) on clients' gross subscription monies, i.e. gross amount to be invested. The commission is incorporated in the offer price at the time of purchase of the shares, in much the same way as an investor would pay a brokerage fee to an investment dealer. Out of the distribution fee, P Ltd may in turn pay commissions to intermediaries in accordance with the terms of their respective agreements.

P Ltd is also licensed under the Securities Act 2005 to act as investment adviser (unrestricted category). In accordance with the discretionary investment management mandate, the company manages investment portfolios of securities for its clients. For its services, P Ltd charges an entry fee of up to 3% on the total value of the portfolio, placed under its management, and a monthly management fee of the market value of the portfolio at the end of each month.

Currently, VAT is being levied by P Ltd on the distribution fee, the entry fee and the management fee.

Points in issue

Whether VAT must be levied by

a) a licensed distributor of financial products on commission earned from the distribution of shares of an authorized mutual fund?
b) a licensed investment adviser on entry fees and management fees charged to clients for the provision of discretionary investment management services of investment portfolio?

RULINGs

a) The distribution of shares of an authorized mutual fund by a licensed distributor of financial products falls within the purview of item 50(c) of the First Schedule to the VAT Act 1998 which provides for "the issue, transfer or receipt of, or dealing with any stocks, bonds, shares, debentures and other securities, including the underwriting and the settlement and clearing of such securities. It is, , therefore,, an exempt supply;
b) The entry fees and management fees earned by a licensed investment adviser falls within the purview of item 50 (e) of the above Schedule and is, , therefore,, also an exempt supply.

VATR 38

FACTS

T Limited is a company engaged in construction works. It entered into a contract with a contracting authority which provided that, if the contractor suffers delays, and or incurs costs from failure to be in possession of the site, the amount of such costs shall be added to the contract price.

Pursuant to arbitration relating to a dispute in respect of costs incurred due to delays and extension to the time of completion of the contract, an award was made for the payment by the contracting authority of an amount of Rs 31,000,000 which includes interest to the tune of Rs 6,000,000. In addition, the contracting authority was ordered to pay the costs of arbitration amounting to Rs 9,516,843.20, out of which Rs 8,091,843.20 were inclusive of VAT.

Point in issue

Whether VAT is chargeable on the amount of the award?

RULING

Part of the award (Rs 25,000,000) is in relation to the additional costs incurred by the contractor. By virtue of the conditions of the contract, it is part of the contract price , therefore,and, , therefore,, subject to VAT.

As regards the items of arbitration costs which are inclusive of VAT, being given that the contractor has already taken credit for input tax in respect thereof, it has to make an adjustment for the VAT element in its VAT return for the period in which payment is received.

VATR 39

FACTS

Company A (the Company) has as its principal activity the supply, installation, repair and maintenance of electronic equipment on board ships under a freeport licence. The Company also holds the following licences:

1. Port licence issued by the Mauritius Ports Authority;
2. Dealer's licence - E licence issued by ICTA.

The Company wishes to extend its activities on the local market, and will, thus, have three types of income:

1. income derived exclusively on the Freeport zone (goods and services);
2. income derived on the local market through Customs control (goods only);
3. income derived on the local market without Customs control (services only).

POINT AT ISSUE

1. Whether the Company should register for VAT, and whether the threshold under the Sixth Schedule applies to the Company?
2. In the event the answer to 1 above is yes, how should output tax be treated and declared on VAT return?

RULING

1. For the purpose of registration, the company has to consider its value of taxable supplies, including the zero-rated taxable supplies made by virtue of its freeport activities. Where the annual turnover of total taxable supplies exceeds the registration threshold as per the Sixth Schedule to the VAT Act, the company is liable to register for VAT.
2. Once registered, the company will have to account on its VAT return the supplies other than those dealt with in accordance with section 50 of the VAT Act.

VATR 40

FACTS

C Ltd is licensed to carry banking business in Mauritius which includes both Segment A and Segment B business, pursuant to the Banking Act. C Ltd is intending to sell the whole of its sub-custody business on a going concern basis to another bank, viz. S ("the purchaser bank) which is also registered for VAT. Most of the sub-custodian business of C Ltd forms part of Segment B banking business. The proposed transaction would involve the transfer of the following to the purchaser bank:

1. Client custody contracts;
2. Assets under custody held on behalf of clients;
3. Permanent and recurrent records of the business;
4. Current and non-current assets of the business;
5. Third party contracts;
6. Contract of employment for the relevant employees; and
7. Sub-custody relationships

POINT AT ISSUE

Whether it can be confirmed that the proposed transaction is within the ambit of section 63(3) of the VAT Act.

RULING

On the FACTS provided, C Ltd is proposing to sell only part of its business, i.e. its sub-custodian business mostly constituting of its Segment B business to another bank, and will not, as such, cease to carry on business. It cannot, , therefore,, be confirmed that the proposed sale of the sub-custodian business falls within the ambit of section 63(3) of the VAT Act.

VATR 41

FACTS

X intends to acquire commercial and/or office buildings on a going concern basis and wishes to have clarifications on the VAT treatment of electricity in the real estate sector.

Electricity is, normally, supplied by the Central Electricity Board (CEB) to existing commercial and office buildings with one single owner, or syndicate of owners and billed according to readings from a central meter. Tenants of the commercial or building complex are, thereafter, separately invoiced every month in respect of their electricity consumption, by the owner or syndicate of owners, in either of the following ways:

Option 1: tenants are billed on a pro-rata basis according to their monthly electricity consumption, obtained from readings of their respective secondary meters.

Option 2: tenants are billed according to their monthly electricity consumption, obtained from readings of their respective secondary meters, but at the commercial rate applicable, i.e. a mark-up is added on the bulk rate borne by the owner or syndicate of owners. (The bulk rate is a preferential rate which is below the commercial rate charged by the CEB).

Option 3: electricity is supplied by the CEB through a central meter but processed through a transformer and routed to the personal secondary meters of each tenant with re-invoicing made at a mark-up by the owner or syndicate of owners.

POINT AT ISSUE

Whether invoices for electricity by owners or syndicate of owners to tenants under each of the above options should be charged at zero-rated amounts, or whether 15% VAT should be charged on such amounts of electricity consumption?

RULING

Item 7(a) of the Fifth schedule to the VAT Act provides that electricity "supplied by the Central Electricity Board and the renting out of a meter, the reconnecting of electricity supply and the carrying out of infrastructure works, by the Board is a zero-rated supply in accordance with section 11 of the Act.

In cases where CEB supplies electricity to the landlord who subsequently routes same through his own meters to his tenants, VAT should be charged on the total amount invoiced to the tenant.

Where the tenants' meters are placed by CEB and the CEB bills are in the names of tenants but the payment is done by the landlord and claimed back from the tenants with a mark-up, the landlord is authorized to charge VAT only on the mark up provided the service charge and the disbursement are clearly mentioned on the VAT invoice.

VATR 42

FACTS

T Ltd (the Company) is a property developer and registered for VAT since 31 October 2008. Its principal activity is to develop a 3-storey office building of saleable retail and commercial space, comprising 40 units. The project has been approved by the Board of Investment and construction has already started.

The Company will offer these units for sale both to Mauritian citizens and foreigners. It intends to sell 80% of the units, and retain the remaining 20% for its own use and for leasing to third parties.

POINT AT ISSUE

Confirmation that-

1. VAT will be levied to purchasers of units who are VAT registered, and no VAT will be levied to purchasers who are not VAT registered;
2. the Company can claim credit for input tax on all construction costs and other expenses in the proportion of its taxable supplies to its total supplies.

RULING

It is confirmed that -

1. Since the Company is a registered property developer, it will be required to charge VAT only to VAT registered purchasers of units. No VAT will have to be charged to purchasers (of units) who are not VAT registered, in accordance with the exemption provision of item 48(b) of the First Schedule to the VAT Act.
2. The Company will be entitled to claim credit for input tax on all construction costs and such other expenses incurred in the proportion of its taxable supplies to its total supplies in accordance with the provisions of section 21 (3) (b) of the Act.

Please note, however, that any claim for VAT repayment will be considered by this Office only when the Company will be in a position to provide MRA satisfactory evidence in respect of the proposed sale to VAT registered persons.

VATR 43

FACTS

P Limited (the Company) is a property developer, registered for VAT, and is the owner of land of some xx square metres intended for the development of *"Project A* which will comprise of the following:

1. an IRS project of some K units to be developed by the Company and implemented in two phases, a first phase of Y units and a second phase of Z units;
2. construction of a 100-room hotel together with some n "forced rental pool apartments under a RES scheme to be developed by G Limited;
3. a commercial centre to be built and operated by G Limited.

The breakdown of the surface area and percentage is as follows:

Surface Area

	(m2)	*Percentage (%)*
▪ Under a Real Estate Scheme (RES)	x	11
▪ For the operation of a Hotel	x	10
▪ Commercial Centre	x	9
▪ Under an Integrated Resort Scheme	x	70
Total	**xx**	**100**

The company will carry out all required infrastructural works on the land prior to its sale. The infrastructural works will include construction of roads, bridges and canals as well as water, electricity and sewer services in respect of the project.

Out of the Y units to be built and sold by the Company under the first phase of the IRS scheme, 13 units will be sold under a "*forced rental pool* agreement with G Limited. The buyers of these units will apply for VAT registration on the grounds that they will be making taxable supplies. Under the agreement, the owners of the units will be entitled to occupy the unit for their personal use and to revenue from the rental pool, in addition to having access to hotel facilities. The units will be maintained by a hotel operator during the owners' absence.

There exists a possibility that the second phase of the project would not materialize.

POINT AT ISSUE

1. Whether the Company can recover all VAT suffered on the building cost of the 13 units referred to above?
2. Whether VAT suffered on the infrastructure provided by the Company for its own benefit and that

of G Limited can be recovered, bearing in mind that both the Company and G Limited will have taxable supplies as follows:
   a. the Company, in respect of the construction and sale of the 13 units;
   b. G Limited, in respect of hotel operation and the commercial centre.
3. If the answer to 2 above is in the affirmative, the formula that will be used to calculate the VAT that can be recovered.
4. In the event phase 2 of the project does not materialize, how will it impact upon the formula referred to above?

RULING

On the basis of the FACTS given, it is noted that the company will be making the following supplies:

1. Supply of 13 IRS villas to potential VAT registered persons.
2. Supply of a number of IRS villas, not yet quantified, to other persons.
3. Supply of developed land to G Ltd for the construction of a hotel and apartments, and a commercial centre.

Our RULINGs in respect of the issues raised are as follows: -

1. The construction and sale of an immovable property by a VAT registered property developer to a VAT registered person constitutes a taxable supply in accordance with the exception provision of item 48(b) of the First Schedule to the VAT Act. On the basis of FACTS provided, it is, , therefore,, confirmed that the Company can recover the input VAT suffered on the building cost of the 13 units it intends to construct and sell to potential buyers who will be registered for VAT, subject to the limitations of section 21(2).
2. VAT on the infrastructure relating to the 13 units as per supply (1) above will be allowed as input tax credit. On the other hand, since the sale of the IRS villas as per supply (2) above and the sale of land to G Ltd as per supply (3) above are exempt supplies by virtue of item 48(b) and item 47 respectively, VAT suffered on the infrastructure in relation thereto will not be allowed as input tax credit.
3. Since the Company will make both taxable supplies and exempt supplies, it will be allowed to take credit for input tax in respect of the VAT suffered on infrastructure costs in the proportion of the value of the taxable supplies to the total turnover, in accordance with the provisions of section 21(b) of the Act.

xxx. However, section 21(3)(d) of the Act also allows a registered person to make an application to the Director-General for consideration of an alternative basis of apportionment of input tax, in case the apportionment under section 21 (3) (b) is not fair and reasonable.

4. Being given that the turnover of the exempt supplies will be known only at a later stage, the input tax credit that will be initially calculated will have to be reviewed when the project becomes certain in case the turnover basis is used.

Similarly, an application for an alternative basis will have to cater for review of the figures when the supplies become known.

Please note that claims for repayment will be entertained only when the supplies can be reasonably ascertained.

VATR 44

FACTS

A Ltd is a private limited company, incorporated and domiciled in Mauritius. It is engaged in the processing of by-products from fishing and canning industries for the production of animal feed. B Ltd, another private limited company, incorporated and domiciled in Mauritius, is engaged in the processing of tuna loins and its by-products. B Ltd is the principal supplier of raw materials to A Ltd. Both A Ltd and B Ltd are wholly owned by C Ltd.

Management is considering the transfer on a going concern basis of all activities actually carried out by A Ltd to B Ltd, the objective being to benefit from synergies which will:

- enhance production efficiency and effectiveness;
- mitigate production, administrative and financial costs; and
- improve the use of financial resources amongst others.

The above scheme will not give rise to loss of employment but will rather facilitate the mobility of human resources within the operations. Following the transfer, A will cease all its activities and will eventually be wound up.

POINT AT ISSUE

Whether the transfer on a going concern basis of the land and building from A Ltd to B Ltd shall be treated under section 21(7)(a) or section 63(3) of the VAT Act?

RULING

On the basis of FACTS provided, since the transfer of all the activities of A Ltd to B Ltd will be made on a going concern basis, it is confirmed that the said transfer should be treated under section 63(3) of the VAT Act.

VATR 45

FACTS

A is a company holding a Category 1 Global Business Licence ('GBC 1') and is tax resident in Mauritius. Its main activity is investment holding. Its main objective is to hold investment for long-term appreciation which is eventually sold at a gain. The sale of the investment will be made to non-residents who do not have a permanent establishment in Mauritius. It may happen that A receives dividend income on its investment. Such income would only be incidental to the main activity of A. A is presently not registered for VAT and any VAT suffered by the company on expenses is not recoverable. The company is considering the possibility of registering for VAT and claiming repayment of the VAT it pays on its expenses. Examples of such expenses would be audit fees and other sundry expenses.

POINT AT ISSUE

Whether A as a GBC 1 company can register for VAT and claim repayment of input VAT suffered on the expenses?

RULING

Section 9 of the VAT Act states that VAT shall be charged on any supply of goods or services made in Mauritius where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by him.

The company is not involved in the business of purchase and sale of shares. Rather, it is an investment holding company.

In the circumstances, the question of the company making zero-rated supplies does not arise, and the company is not liable to register for VAT.

VATR 46

FACTS

B Ltd is licensed and regulated by the Financial Services Commission (FSC), and holds an *"investment adviser (unrestricted)* licence under the Securities Act 2005, under which, it is authorised to provide the following services:

- Investment advisory; and
- Portfolio management, whether on a discretionary or non-discretionary basis.

As such, B Ltd manages investment portfolios of securities for pension funds, corporate and institutional clients, including Collective Investment Schemes (CIS), in accordance with investment management mandates.

A CIS Manager has outsourced its investment management function and appointed B Ltd as an Investment Adviser under a non-discretionary investment management mandate, i.e. the investment portfolio of the CIS is managed by B Ltd but the CIS Manager is always informed and consulted on all investment decisions.

B Ltd is remunerated on the basis of a percentage of the net asset value of the investment portfolio of the CIS at the end of each month.

POINT AT ISSUE

Whether the remuneration that B Ltd receives from the non-discretionary management of the CIS investment portfolio is to be treated as a taxable supply or an exempt supply for VAT purposes?

RULING

Under the provisions of item 50(e) of the First Schedule to the VAT Act, only *"the management of investment funds and pension funds* is an exempt supply, irrespective of whether the supply is made under a discretionary or a non-discretionary investment management mandate. Investment advisory services are, however, subject to VAT.

VATR 47

FACTS

C Ltd currently undertakes a number of activities and owns a significant land bank. The activities of the Company include agriculture, rental of buildings and investment holding, so that, its principal recurrent income streams consist of sugar, molasses, agricultural and diversification revenue, rental income, interest and dividend.

The Company wishes to restructure its activities through the establishment of one or more wholly-owned subsidiaries as follows:

- the Company will retain ownership of the land asset as well as the investments;
- all agricultural and ancillary activities will be transferred to a wholly-owned subsidiary (WOS);
- the WOS will rent the land it needs for the conduct of its agricultural activities.

To implement the proposed restructuring exercise, the following scenarios are currently considered:

- ***Scenario 1***

  Transfer of the agriculture and ancillary activities, including all the employees, to the WOS on a going concern basis.

  Under this scenario the income of the Company will consist of dividend and rental income from land used by WOS.

- ***Scenario 2***

  Transfer of the agriculture and ancillary activities to the WOS on a going concern basis. The legal employer of the employees will still be the Company, subsequent to the transfer. Under this scenario all the inventories of the Company will be transferred to the WOS.

- ***Scenario 3***

  Transfer of the agriculture and ancillary activities to the WOS on a going concern basis. Subsequent to the transfer some of the employees will be employed by the WOS, whereas, in respect of the other employees who will still be employed by the Company, a relevant corresponding charge will be made to the WOS.

- ***Scenario 4***

Transfer of the agriculture activities in one WOS and transfer of the agricultural and ancillary activities to another wholly-owned subsidiary (WOS 2). The employees will be transferred to WOS and WOS 2 at the same time.

Based on its audited accounts as at 30 June 2010, the assets of the Company, amongst other assets, comprise of:

- ***property, plant and equipment*** *which* include land, buildings and motor vehicles
- ***consumable biological assets*** which include fertilisers and consumables.

POINT AT ISSUE

1. Whether it can be confirmed that each of the scenarios 1 to 4 above would qualify as a transfer as a going concern in accordance with section 63(3) of the VAT Act?
2. In the event any of the above scenarios would not qualify as a transfer as a going concern, whether the VAT treatment of the assets transferred would be as follows:
    a. the value of the land would be exempt from VAT.

b. the value of the building would be exempt from VAT, with the understanding that any input tax claimed should be clawed back in accordance with section 21(7) of the Act.
c. the value attributable to fertilisers would be zero-rated.
d. no output tax should be accounted on motor vehicles in respect of which credit for input tax was not allowed at the time of acquisition.

RULING

1. On the basis of information provided in the appendix to your RULING application, none of the scenarios provided would qualify as a transfer as a going concern in accordance with section 63(3) of the VAT Act.
2. The VAT treatment of the assets mentioned in your application is as follows:
   (i) The transfer of the land would be exempt from VAT in accordance with the provisions of item 47 of the First Schedule to the VAT Act.
   (ii) The transfer of the building would be exempt from VAT in accordance with the provisions of item 48 of the First Schedule to the VAT Act. However, any input tax allowed on the building would be clawed back under the provisions of section 21 (7) of the Act.
   (iii) The value attributable to fertilizers to be transferred would be zero-rated as provided under item 2(g) of the Fifth Schedule to the Act.
   (iv) Output tax should be accounted on the transfer of all motor vehicles, irrespective of whether input tax was disallowed at the time of acquisition, as section 63(2) would not apply in the case of a restructure of business.

3. Furthermore, all other taxable assets to be transferred, as a result of the restructure, would be subject to VAT at their corresponding rates.

VATR 48

FACTS

An auditing firm, duly licensed to provide auditing services in Mauritius, has among its clients' portfolio companies, incorporated outside Mauritius which are represented by offshore management companies in an "agent" capacity. The foreign companies do not have a place of management or an office in Mauritius. The management companies are only contact points and do not have power of any action including investment decisions, nor do they have any authority to conclude contracts in the name of the foreign companies.

The auditing firm has been commissioned to provide auditing services to these foreign incorporated companies and to report on the financial statements to the shareholders in accordance with International Financial Reporting Standards. In line with international auditing practice, the auditing firm agrees on the terms of the audit assignments in *'letters of engagement*' addressed to the directors of the foreign companies through the offshore management companies at their local registered address.

The auditing firm engages its local staff and carries out the audit work in Mauritius. It charges professional fees for the auditing services to the foreign companies through the offshore management companies which collect the fees from the foreign companies to pay them over to the auditing firm.

The auditing firm is duly registered for VAT in accordance with section 15(2) of the Value Added Tax Act.

POINT AT ISSUE

Whether in respect of the auditing services it performs for the foreign companies, the auditing firm can issue its invoices zero-rated to the care of the offshore management companies which act as contact points for the foreign incorporated companies?

RULING

On the basis of FACTS submitted, the offshore management companies are only contact points for the foreign incorporated companies which do not have a permanent establishment in Mauritius. The audit services provided to the foreign incorporated companies is, , therefore,, a zero-rated supply in accordance with the provisions of item 6(a) of the Fifth Schedule to the VAT Act.

The auditing firm can , therefore, issue its invoices, zero-rated.

VATR 49

FACTS

S is a corporation organized under the laws of country A and is a global leader in the design and supply of passport personalisation systems (the System) in country A and worldwide. The System constitutes the equipment and the software.

Background FACTS

1. In 2004, S and the Government of Mauritius, duly represented by the Commissioner of Police (CP), entered into a contract (the 2004 Contract) for the supply of passport booklets and the design and supply of a new passport System for the Government of Mauritius. The 2004 Contract included the supply of passport printing equipment, readers, customized holographic film and ink ribbon, training of Passport & Immigration Office (PIO) personnel in the operation of the System, and maintenance services.
2. Under the 2004 Contract, S was responsible for importing the System and the different components as the Government of Mauritius did not wish to be involved in the importation and clearance of these items. Under the Contract, S was also authorised to subcontract or delegate

the supply of services and tangible components to third parties, with the prior approval of the CP. In accordance with the terms of the Contract, , therefore,, S hired the services of R Ltd, a Mauritius-based independent agent, to provide customs clearance services for the goods on consignment *in favour of* S and to deliver such goods to the CP as well as providing maintenance services (the Subcontract).

3. Both the 2004 Contract and the Subcontract expired on 29 June 2009, but have been extended by the parties, as they negotiated follow-on contracts at the CP's request.
4. S had not submitted any income tax and VAT returns to MRA on the grounds that it had not carried out any business in Mauritius, and has not made any taxable supplies in Mauritius. The MRA, however, reached the conclusion that income accruing to S from the whole 2004 Contract was subject to income tax and the supplies were taxable supplies. Subsequently, the income tax and VAT assessments made on S were settled by the Government of Mauritius by virtue of a clause to that effect in the Contract.
5. Prior to the 2004 Contract expiring, the CP expressed the wish for its renewal in order to obtain the necessary support for the issue of passports and the operation of the System by the PIO. The 2004 Contract is proposed to be renewed by the parties with terms and conditions substantially different from the original Contract, as stated in the proposed new contracts.
6. Under the proposed new contract between S and the CP (the 2011 Contract):
   - the CP will be the importer of the passport booklets, passport printing equipment, readers, customized holographic film and ink ribbon. S will have no responsibility whatsoever to deliver any of the components to the CP in Mauritius. In other words, the CP will be responsible for clearing all the items from Customs and pay all taxes and duties on importation;
   - the System implemented under the 2004 Contract will continue to be run in Mauritius by the CP/ PIO, and not by S;
   - S will have no office or staff in Mauritius to perform any part of the 2011 Contract;
   - a three-way Contract (the 2011 Maintenance Contract) is proposed to be signed between S, R Ltd and the CP for the provision of certain spare parts and maintenance and technical support directly to the CP.
7. Under the proposed 2011 Maintenance Contract between G, R Ltd and the CP:
   - R Ltd will be the first-tier supplier of technical support and spares, and S will be the second-tier service provider. Any secondary support by S will be provided online through phone, fax, teleconference and emails;
   - if it should be determined by all three parties that a visit by S to R Ltd or CP's principal operating site is necessary, S will agree to make such visit, provided that S will not make more than two short trips per calendar year to Mauritius. Since the secondary support will be provided online, the visit of S's staff to Mauritius and the activities, if any, undertaken by them in Mauritius will be merely auxiliary in nature.
   - S will invoice R Ltd directly for any spare parts, online secondary support and for any on-site trips exceeding two.
   - R Ltd will be responsible to pay any duties and taxes on any import of spare parts;
   - R Ltd will be responsible to account for VAT on any supplies made and pay any taxes on income arising under the (*Maintenance*) Contract.

POINT AT ISSUE

Whether S will have to register and account for VAT in Mauritius?

RULING

In the event S would perform maintenance services on-site in Mauritius, it will be liable to tax on the amount of income attributable for the performance of those services, which is understood to be included in the contract price. S will also have to register and account for VAT if the annual turnover of its supply of services in Mauritius exceeds or is likely to exceed 2 million rupees, in accordance with the provisions of section 15 of the VAT Act.

VATR 50

FACTS

A business entails the purchase of fabrics in roll from which are then cut and stitched according to the requirements of the clients and installed at their place, viz. Hotels. In short, roll fabrics are the main raw materials which are converted into finished products in terms of curtains and other similar types. This process involves mainly human labour.

POINT AT ISSUE

1. As most of the clients' order involves the whole components i.e., fabrics and their making up, fixing and installation, should VAT to be charged be limited to the labour / installation services only as fabrics constitute exempt supplies?
2. Should the VAT invoice consist of both exempt supplies (fabrics) and taxable supplies (fixing and installation)?

RULING

The whole process constitutes a single vatable supply and cannot be split into fabrics and labour / installation costs and VAT should be charged on the total invoice price.

VATR 51

FACTS

A Ltd, hereinafter referred to as 'the entity', is incorporated in Mauritius and its main activities are to offer online booking for hotel/guesthouse accommodation and ancillary products such as transfers and excursions as well as drinks or gift packages. Bookings and payments are made by customers online on the entity's website and the amount net of its commissions is subsequently remitted to the hotel/guesthouse.

POINT AT ISSUE

a) Whether the above supplies are vatable and at what rate;

b) Should VAT be applied on the net amount or on the gross amount receivable by the entity; and

c) The VAT treatment to be applied to:

i. hotels/guesthouses in Mauritius and those outside Mauritius; and
ii. Mauritian and overseas customers.

RULING

On the basis of FACTS given, the VAT treatment to be given to the supplies made by the entity is as follows:

1. Where the hotel/guesthouse accommodation is in Mauritius, the whole package constitutes taxable supplies in Mauritius, and is chargeable at the rate of 15% irrespective of where the client is located.
2. Where the client is located in Mauritius and the accommodation is outside Mauritius, the service fee, being the difference between the amount charged by the entity and the amount invoiced to the entity for the accommodation and related services, is subject to VAT at 15 %.
3. Where the client is outside Mauritius and the accommodation is outside Mauritius, the service fee mentioned at (2) is zero-rated by virtue of Item 6(a) of the Fifth Schedule to the Value Added Tax Act.

VATR 52

FACTS

XYZ Ltd is a trading company making sales either on cash basis or hire purchase terms. Its assets include hire purchase debts (HP debts).

XYZ Ltd proposes to dispose of its total HP debts to a bank (proposed transaction). Subsequent to the proposed transaction, the HP debtors will settle their dues to the bank. In return for the assignment of the debt to the Bank, XYZ Ltd will receive cash in two instalments, the last instalment to be settled on the satisfactory performance of the HP debt portfolio based on a set of predetermined criteria.

POINT AT ISSUE

Whether the assignment of the HP debts by XYZ Ltd to the bank falls within the ambit of ‘factoring’, which is an exempt supply under the VAT Act?

RULING

It is confirmed that the assignment of HP debts to the bank fall within the ambit of ‘factoring’ and the consideration for the exempt supply by the bank would be the difference between the total debts assigned and the payment made by the bank to XYZ Ltd.

VATR 53

FACTS

A company which is not yet incorporated in Mauritius proposes to construct, install and operate a Solar Photovoltaic farm and supply electricity produced by it directly to the Central Electricity Board (CEB). The company's annual turnover of taxable supplies will be approximately Rs 30m. The entity will start operation two years after the tender has been allocated by the CEB.

POINT AT ISSUE

Whether the company will be:

a) eligible to apply for registration?

b) required to charge VAT on its supplies to the CEB?

c) eligible to make a claim for VAT repayment in respect of capital goods acquired for the construction of the Solar Photovoltaic farm?

RULING

On the basis of FACTS given, it is confirmed that the company will:

a) have to apply for compulsory registration under section 15 of the VAT Act;

b) have to charge VAT at 15% on the total value of its supplies to the CEB; and

c) be eligible to make a claim for VAT repayment in accordance with section 24 of the VAT Act.

VATR 54

FACTS

R Ltd, referred to as the company, operates a hypermarket and sells consumables which it purchases both locally and from foreign suppliers. All the trading agreements with the vendors/suppliers are embodied in a contract with the company; and as part of this agreement, the company negotiates certain terms of trade which is of an agreed percentage of the total supplies' value excluding VAT. The terms are as follows:

Incentive Discount

This discount is pre-agreed with the suppliers and is available on certain goods purchased and is based on the volume of goods purchased. It is commonly referred to as an incentive given to a purchaser to buy more. The suppliers do not show it on their invoice, but instead the company sends an invoice to claim the discount. It is a fixed percentage on total purchases exclusive of VAT for a particular period.

Settlement Discount

This is a cash discount on settlement of amounts due and is a term of payment.

Advertising

Some vendors' products are published in the company's brochures and as part of this arrangement, vendors have to pay for this service.

Category Management

Some vendors are allowed to occupy certain particular shelf space in the shop and they pay a fee for this.

Swell Allowance

This is a compensation that the company receives for lost sales due to expiry of goods or damaged products.

POINTS AT ISSUE

1. Whether Incentive Discount is subject to VAT, if any, under section 9(1) of the VAT Act depending on whether the product carries VAT at 15%, 0% or if it is exempt? If there is no VAT implication, should the invoice for the Incentive Discount be reported on the VAT return and how?
2. Whether Settlement Discount is vatable?
3. Whether Advertising is vatable?
4. Whether Category Management Fee is vatable?
5. Whether Swell Allowance is vatable?

RULINGs

On the basis of the information provided, the VAT treatment for the items mentioned in the application is as follows:

1. Incentive Discount

yyy. The Incentive Discount does not constitute a supply in accordance with section 4 of the VAT Act and is, , therefore,, not subject to VAT. Hence, the company is not required to report the incentive discount invoiced in its VAT returns.

2. Settlement Discount

zzz. Cash Discount received for early settlement of amounts due is not a consideration in return for a supply and is , therefore, not subject to VAT.

3. **Advertising**

aaaa. The publishing of suppliers' products in the company's brochures constitute a supply of service in accordance with section 4(2) of the VAT Act and the payments received are , therefore, subject to VAT at the standard rate of 15%.

4. **Category Management Fee**

bbbb. The occupation of shelf space by suppliers for their products in shops is a taxable supply of services by owners of shops in accordance with section 4(2) of the VAT Act. The supply is subject to VAT at the standard rate of 15% irrespective of whether the product is taxable or exempt.

5. **Swell Allowance**

cccc. Swell allowance, which is an allowance received for lost sales due to expired or damaged goods, is a compensation rather than a supply of goods and is outside the scope of VAT. VAT is , therefore, not chargeable on swell allowance received in respect of taxable goods which are expired or damaged.

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VATR 55

FACTS

S Ltd, a company engaged in construction and engineering works, is in receipt of retention monies. Retention relates to the amount of progress billing that is not paid until the satisfaction of conditions specified in the contract for payment of such amounts or until defects have been rectified and it is after the defect period is completed that an invoice will be issued for the settlement of the retention money.

POINTS AT ISSUE

Whether VAT on retention money receivable is payable after the defect liability period is completed being given that neither invoice is issued nor money is received prior to that period?

RULINGs

On the basis of FACTS provided, it is confirmed that VAT on retention is invoiceable upon submission of a certificate by the Quantity Surveyor, which will enable the contractor to issue a VAT invoice.

VATR 56

FACTS

A Ltd acts as General Sales Agent (GSA) for airlines operating from/to Mauritius (Online airlines) and for airlines which do not operate from/to Mauritius (Offline airlines). In its capacity as GSA, A Ltd acts as agent for these airlines, sells tickets on their behalf and remits all revenue from ticket sales to the airlines. Once the passenger uses the ticket, A Ltd perceives commission from both Online and Offline airlines.

POINTS AT ISSUE

Whether the commission receivable from Offline airlines is zero-rated and fall within the purview of Item 6(a) of the Fifth Schedule to the Value Added Tax Act?

RULINGs

It is confirmed that commission receivable from Offline airlines are zero-rated and fall within Item 6(a) of the Fifth Schedule to the Value Added Tax Act, being given that the Offline airlines to whom services are being supplied by A Ltd belong in a country other than Mauritius and are outside Mauritius at the time the services are performed.

VATR 57

FACTS

A Ltd is a company incorporated in the British Virgin Islands and is not resident in Mauritius. It aims to provide internet related services in Mauritius and overseas. Its first project is a real estate portal which will offer services to real estate agencies and companies both local and overseas. Users will be able to post their advertisements on the web site. The server hosting the web site is located in the United States. There is no contract between the company and the server operator and fees to the latter are paid yearly through bank transfer.

The revenue of the company will be from advertising fees paid by the real estate agencies and companies, both local and overseas, which advertise on the web site. The company does not charge any commission on business transactions concluded via the web site. The site only provides information with regard to properties available for rent and sale. Users cannot place any orders or transact through the web site.

Marketing of the web site will be done both online and offline. Online marketing will be done mainly through e-mails and offline marketing made in local newspapers which will be VAT registered persons. The company will have no physical presence in Mauritius with respect to the operation of the business.

POINTS AT ISSUE

a) Whether the company should be registered for VAT purposes; and
b) Whether the VAT registered persons in Mauritius should charge VAT in respect of services provided to the company.

RULINGs

a) The supply of services provided through the website to persons in Mauritius will fall within the meaning of a taxable supply as defined in section 2 of the VAT Act. Consequently, if the annual turnover of taxable supplies of the company exceeds the threshold imposed by the Sixth Schedule to the VAT Act, the company should apply for compulsory registration as a registered person in accordance with the provisions of section 15 of the VAT Act. The supply of the internet related services to overseas clients of the company is outside the scope of VAT; and

hhhh.

b) The services provided by the local VAT registered persons are utilised by the company for marketing the web site in Mauritius. The end-users of the services offered by the web site being in Mauritius; , therefore,, the services of the local VAT registered persons would not qualify as zero-rated supply under the provisions of section 11 and item 6(a) of the Fifth Schedule to the VAT Act. Hence, the local VAT registered persons should charge VAT at the rate of 15% in respect of the supply of services to the company.

VATR 58

FACTS

X Ltd is a VAT registered company engaged in advertising, branding and communications and its range of activities includes events management.

A few of the main expenses incurred for events management are catering services, food and drinks and occasionally, hotel accommodation for foreign artists/performers.

POINTS AT ISSUE

Whether the company is allowed credit for input tax on catering services, food and drinks and hotel accommodation for foreign artists/performers.

RULINGs

It is confirmed that by virtue of section 21 of the VAT Act, no input tax can be allowed as a credit in respect of catering services, food and drinks or hotel accommodation for foreign artists/performers.

VATR 59

FACTS

ABC is a company incorporated in UK and it carries out banking business through a branch in Mauritius, hereinafter referred to as Company Z. The branch is duly registered in Mauritius as a foreign company and holds a banking licence under the Banking Act. D Ltd is a Mauritian incorporated company and is wholly owned by ABC.

Company Z and D Ltd have approved a scheme under which D Ltd would undertake the banking business currently being operated by Company Z from both a commercial and legal standpoint. The scheme has been presented to the Bankruptcy Division of the Supreme Court in the form of a petition in accordance with sections 261 to 264 of The Companies Act. The implementation of the scheme would involve the transfer of the whole of the current business of Company Z to D Ltd and the latter shall issue shares to ABC in consideration for the transfer of the business.

POINTS AT ISSUE

Whether the implementation of the scheme will imply the payment of any output tax by Company Z under the VAT Act.

RULINGs

Company Z does not have to charge output tax as the business of banking has been transferred as a going concern and will continue to operate in the foreseeable future; and the provisions of section 63 of the VAT act will apply.

VATR 60

FACTS

C is a non-profit making organisation which provides recreational, sports, and catering facilities to its members and visitors. Upon admission, the member pays a one-off entrance fee and a monthly subscription fee.

POINTS AT ISSUE

a. Whether the facilities enjoyed by members constitute taxable supplies by the club in the course or furtherance of its business pursuant to the VAT Act and, therefore, subject to VAT;
b. On the assumption that the club's activities fall within the definition of "business" in the VAT Act, whether entrance and subscription fees constitute consideration for taxable supplies made by the club.

RULINGs

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

a. the activities carried on by the club fall within the definition of "business" as provided under section 3 of the Value Added Tax Act which -

iiii. "Include any activity carried on by a person, whether or not for gains or profit, and which involves in part or in whole the supply of goods or services to other persons for a consideration."

jjjj. Furthermore, the word "person" is defined as including "club or association"

kkkk. The activities carried on by the club constitute taxable supplies within the meaning in section 2 of the Value Added Tax Act and are , therefore, subject to VAT.

b. the payment for entrance and subscription fees constitute consideration for taxable supplies made by the club, in that the club grants members the right to have access to the club premises and to its facilities.

VATR 61

FACTS

A Ltd is a property developer registered for VAT. Its principal activity will be to construct a business hub of three floors. The ground floor will be partly rented and partly used by the company for its operations. Floors 1 and 2 will be sold for office and commercial purposes.

POINTS AT ISSUE

a. Will the company be entitled to claim the input tax on capital goods in full?

b. When will the company be able to make a claim for VAT repayment from the MRA?

RULINGs:

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

a. in accordance with Item 48(b) of the First Schedule to the VAT Act, the sale or transfer of any building or part of a building, flat or tenement together with any interest in or right over land, made by a VAT registered property developer is subject to VAT when made to a VAT registered person and exempt from VAT when made to a person who is not VAT registered.

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mmmm. The company will , therefore, be entitled to claim credit for input tax on capital goods in the proportion of its taxable supplies to its total supplies in accordance with the provisions of section 21(3) (b) of the VAT Act.

nnnn.

b. in view of the above, the company may claim VAT repayment only when it will be in a position to provide MRA with satisfactory evidence in respect of the proposed sale to VAT registered persons.

VATR 62

FACTS

XYZ Ltd is a company holding a GBL 1 licence and is engaged in the provision of wholesale international broadband capacity. XYZ Ltd intends to enter into a reciprocal deal with ABC Ltd which will involve the swap of an "indefeasible right of use" of services between ABC Ltd and XYZ Ltd.

In that respect, ABC Ltd will sell capacity on its cable from "Mauritius to Mombasa" to XYZ Ltd and XYZ Ltd will sell capacity on its cable from "Mombasa to Marseille" to ABC Ltd . These capacity services will be utilised within their own networks and are not for end-user business.

POINTS AT ISSUE

a. Confirmation that the sale of capacity from "Mauritius to Mombasa" by ABC Ltd to XYZ Ltd will be subject to VAT at 15%;
b. Confirmation that the sale of capacity from "Mombasa to Marseille" by XYZ Ltd to ABC Ltd will be outside the scope of the Mauritius VAT.

RULINGs

On the basis of FACTS provided, the transactions between XYZ Ltd and ABC Ltd will involve the sale of reciprocal capacity on their respective networks between two companies operating in Mauritius, in the course or furtherance of their business.

Both supplies are , therefore, subject to VAT at 15%.

VATR 63

Notice is hereby given that VAT RULING **VATR 30** issued by the MRA and published in the Government Gazette No. 99 of 7 November 2009 is hereby revoked as from this date and replaced by a new RULING VATR 63 as shown hereunder:

FACTS

The *"Syndicats de Co-propriétaires"* are associations of co-owners, governed by article 664 (and subsequent articles) of the *"code civil mauricien"* (the Mauritian Civil Code) which regulates the obligations of the co-owners in respect of the common areas and amenities in a building complex. The Syndicat de Co-propriétaires contributes to a Fund out of which expenses for the maintenance of common parts of the building are approved by an Annual General Meeting of the Syndicat de Co-propriétaires.

The Syndicats de Co-propriétaires is distinct from the Syndic which is a legal entity to which a Syndicat de Co-propriétaires may entrust the management and maintenance of the building in return for a fee.

All the expenses incurred by the Syndicats de Co-propriétaires are allocated to the different co-owners in the proportion of their thousandth or n-th share in the *"co-propriété"(*co-ownership) as may be defined in the rules of the *"co-propriété".* The allocation of expenses may be made either by special provision at the commencement of each quarter or by *"debours des frais",* i.e. disbursement of actual expenses at the end of each quarter. The allocation of expenses is carried out by means of *an "appel à contribution" or "appel de fonds",* i.e. by raising the required funds, and not by means of the issue of invoices. Additionally, in accordance with the provisions of article 664-59 of the Mauritian Civil Code, the syndicat de co-propriétaires can make claim for payment in respect of these *"appel à contribution" or "appel de fonds"* as follows:

a. by advance payment from the available cash funds, as provided in the rules of the *"co-propriété";*
b. at the commencement of each accounting period, by provision made thereafter, without prejudice to the conditions in the rules of the *"co-propriété";* or, alternatively by decision of the general assembly;
c. during the course of the accounting period; or
d. by special provision made to implement the decisions of the general assembly.

No mention is made , therefore, of any margin or consideration whatsoever, in respect of expenses incurred or to be incurred, but only of the allocation of expenses or a provision for expenses, being given that a Syndicats de Co-propriétaires does not have to its credit any accumulated profit.

POINTS AT ISSUE

Whether or not a *"Syndicat de Co-propriétaires"* has the obligation to apply for compulsory registration as a registered person under the VAT Act.

RULINGs

Section 15 of the VAT Act provides as follows:

"(1) Subject to the other provisions of this section, every person -

a. who, in the course or furtherance of his business, makes taxable supplies; and
b. whose turnover of taxable supplies exceeds or is likely to exceed the amount, specified in the Sixth Schedule

shall apply to the Director-General, in such form and in such manner as may be approved by him, for compulsory registration as a registered person under the Act."

Section 3(1)(b) of the Act defines ***"business"*** as to include *"any activity carried on by a person,* *whether or not for gains or profit, and which involves in part or in whole the supply of goods or services to other persons for a consideration".*

On the basis of FACTS provided, the receipt of fund by the Syndicat de Co-propriétaires does not constitute receipt in respect of a supply.

On the other hand, the services provided by the Syndic constitute a taxable supply and the Syndic , therefore, has the obligation to apply for compulsory registration as a registered person under the VAT Act, pursuant to section 15 of the Act.

VATR 64

FACTS

The company sells processed fresh vegetables like lettuce, carrots, onions and tomatoes. The production processes of the various products are as follows:

a. the vegetables are bought and stored in a chilled room overnight prior to production;
b. in the case of lettuce, the base and withered leaves are removed. For carrots and onions, the tips are cut before being peeled;
c. the vegetables are pre-rinsed with tap water;
d. the vegetables are washed in chlorinated water for 1 to 3 minutes;
e. the vegetables are then drained;
f. in the case of lettuce whole leaves are selected or the lettuce is shredded. Tomatoes are sliced or diced. Onions are cut or sliced and carrots are cut in “julienne”; and
g. each product is packed in containers of 0.250 kg /0.5 kg/1 kg for sale.

POINTS AT ISSUE

Whether the sale of the processed vegetables should be exempt from VAT by virtue of Item 7(c) of the First Schedule to the VAT Act or subject to VAT at the rate of 15% in accordance with section 9(3) of the VAT Act.

RULINGs

By virtue of Item 7(c) of the First Schedule to the VAT Act:

"primary agricultural and horticultural produce (including tomatoes, potatoes, onions and other vegetables, fruits, tea, coffee, cocoa beans and nuts) which have not been processed except for reaping, threshing, husking, crushing, winnowing, trimming, drying and packaging to put them into marketable condition", are exempt from VAT.

On the basis of information provided, the processed vegetables would fall within the ambit of Item 7(c) of the First Schedule to the Value Added Tax Act and the supply thereof would be exempt from VAT.

VAT 65

Notice is hereby given that VAT RULING VATR 65 issued by the MRA and published in the Government Gazette No. 64 of 20 July 2013 is hereby revoked as from this date and replaced by a new RULING VATR 65 as shown hereunder:

FACTS

B is a company incorporated in Mauritius and holding a Category 1 Global Business Licence. Its primary business activity is to sell premium fish products on the international market.

For the purpose of its activities in Mauritius, fish will be bought from C, a company incorporated in Reunion Island and D, a company incorporated in Mauritius and holding a Category 1 Global Business Licence.

The fish bought from C will be caught on the high seas by fishing vessels which bear French flags.

The fish bought from D will also be caught on the high seas. D will lease fishing vessels bearing Mauritian flags from Mauritian companies for its fishing activities. Fish supplied by D would be the produce of Mauritius.

The raw fish bought by B will be processed by freeport operators in the freeport zone. The freeport operators will charge B a fee for the processing services provided. B does not hold a freeport licence.

Fish processed into 'premium fish products' are meant for exports. However, a small proportion may be sold on the local market.

Raw fish not meeting the technical specifications for processing into 'premium fish products', representing about 20% to 40% of the total raw fish purchased, will be re-exported or sold to the local canning companies.

Fish wastes (heads, tails and other wastes), the fish by-products, unfit for human consumption, generated from the processing activities of the freeport operators, will be sold on the local market to companies producing fish meal and fish oil.

Prior to the coming into operation of the above activities, B will, for a temporary period, provide logistical and procedural assistance in Mauritius to C. The services provided will include offloading from fishing vessels, Customs and port formalities, transfer to freeport operators for processing and export of the 'premium fish products', on behalf of C. B will receive a commission for the services so provided. C will remain the owner of the fish.

Point of Issue

To confirm whether:

1. the raw fish to be bought by B from D will be a zero- rated supply by D.
2. the raw fish to be bought by B from C will be exempt from VAT.
3. the sale of raw fish by B to Mauritian canning companies will be a zero- rated supply.
4. the services provided by freeport operators to B will be zero- rated supplies.
5. the sale of the fish by-products by B to Mauritian companies will be zero-rated supply.
6. the sale of 'premium fish products' by B in Mauritius will be a zero- rated supply.
7. the raw fish sold to foreign companies and processed fish sold to international clients will be zero-rated supplies.
8. the supply of services during the transitional period by B to C will be zero-rated supplies.

RULINGs

On the basis of information provided, we confirm the following:

1. the sale of raw fish by D will be a zero-rated supply.
2. the raw fish to be bought from C will be exempt from VAT.
3. the sale of raw fish, the produce of Mauritius, will be a zero-rated supply. Otherwise the sale of the raw fish will be an exempt supply.
4. the supply of services provided by freeport operators to the company will be subject to VAT at the rate of 15% in view of the provisions of section 50 (1) (b) of the VAT Act.
5. the sale on the local market of fish by-products, unfit for human consumption, will be subject to VAT at 15%.
6. the sale on the local market of 'premium fish products', the produce of Mauritius, will be a zero-rated supply. Otherwise the sale of the 'premium fish products' will be an exempt supply.
7. the export of raw fish and processed fish products will be zero-rated by virtue of Item 1 of the Fifth Schedule to the VAT Act.
8. the services to be supplied by B to C, during the transition period, will be zero-rated by virtue of Item 6(a) of the Fifth Schedule to the VAT Act.

VATR 66

FACTS

S Ltd will be, upon the grant of a leasing licence by the Financial Services Commission, engaged in the provision of finance leasing services for the purchase of solar power/electric systems for use by the lessee (client) to generate electricity for its own consumption.

The client will contract with M Ltd for the installation, maintenance and operation of the solar asset. At the time of the agreement with M Ltd, the client will make an initial payment directly to M Ltd. M Ltd will, thereafter, transfer the right to receive monthly payments and ownership of the solar asset to S Ltd.

The client will be invoiced monthly by S Ltd for the payments for a period of 10 years and at the end of that period, ownership will be transferred to the client.

All transactions between the parties will be done on an arm's length basis and on purely commercial terms.

POINTS AT ISSUE

1. What are the VAT implications on signature of the agreement?
2. What are the VAT implications for S Ltd and M Ltd when M Ltd transfers the right to the monthly payments and solar system to S Ltd as security?
3. What are the VAT implications on the monthly payments made by the client?
4. Is S Ltd required to register for VAT, given it makes no taxable supplies?

RULING

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

1. At the time the client makes the agreement and effects the down-payment, M Ltd will have to issue a VAT invoice for the full purchase price and charge VAT thereon. The VAT invoice will have to be drawn in the name of the lessor, indicating that the purchase is on behalf of the lessee and the VAT is claimable by the latter. The client will be entitled to take credit for the input tax suffered subject to the limitations of section 21 of the VAT Act;
2. There will be no VAT implications on the transfer of the right to the monthly payments from M Ltd to S Ltd;
3. In accordance with Item 30 of the First Schedule to the VAT Act, the charges paid by the client under a finance lease agreement is exempt from VAT;
4. S Ltd will not have to register for VAT as it will be making only exempt supplies and no other supply.

   However, if the agreement is terminated before the 10-year period and the asset is sold to a third party, S Ltd will have to consider its liability for VAT registration.

(Rec. No. 2115365)

VATR 67

FACTS

B is engaged in the unloading, bagging and distribution of cement. For the purposes of the cement unloading operation, it uses a cement unloading structure called the ‘Kovako’. The ‘Kovako’ is equipped with 4 engines. Two of the engines are used to run the compressors, the third is used to run a rotary lobe vacuum blower and the fourth is used for the hydraulic movement of the vacuum arm and the vacuum nozzle. These engines are not used to propel the ‘Kovako’. The ‘Kovako’ is stationary when it is in operation.

The ‘Kovako’ has to be positioned on the quay for the cement unloading process and after completion of the operation, it is removed from the quay. To enable the ‘Kovako’ to be moved from/to the quay, it is fitted with wheels. However, it does not have its own means of propulsion and hence, requires the assistance of two machines, the ‘Chargeuse’ and the ‘Manitou’, for its movement from/to the quay. Also, the ‘Kovako’ has to be repositioned along the quay, with the assistance of the two machines, to have access to the various holds of the ship.

POINT AT ISSUE:

Whether the company can be allowed to claim credit for input tax suffered in respect of gas oils used by the engines fitted on the ‘Kovako’.

RULING:

On the basis of FACTS submitted, the engines of the ‘Kovako’ are not stationary engines. Hence, no input tax can be allowed for gas oils used in respect of the engines by virtue of the provisions of section 21(2)(e)(iii) of the VAT Act.

VATR 68

FACTS

B has been awarded a contract by C for the supply of duty free and VAT-free goods on board of C planes. B does not have any licence authorising the company to:

a) import and supply goods on board of airlines;
b) operate a Customs Approved Store Room (CAS) for the supply of goods on board of airlines.

Goods imported by B are stored in the CAS of D and the export bills are drawn in the name of D.

POINT AT ISSUE

Whether sales of duty-free products on board of aircrafts are considered as zero-rated supplies.

RULING

Pursuant to Item 1 of the Fifth Schedule to the VAT Act, goods exported under Customs control are zero rated.

However, on the basis of the FACTS mentioned above, the supplies of those goods on board of airlines are considered to be made by the CAS owner, namely D and not B.

It , therefore, follows that goods supplied on board of airlines by D are zero rated whereas the supplies made by B are considered to be outside the scope of VAT.

VATR 69

FACTS

F Ltd (the ''Company'') is a private limited company incorporated on 11 August 2014 and registered for VAT with effect from 01 October 2014. Its objective is to organise and promote a professional local football league at the elite level in Mauritius. In so doing, it will significantly improve quality of local football, organise professional league matches having full-time paid players committed and dedicated to football forming a professional league, attract talented young players who can aim for a career in professional football and produce a respected national team.

The Company's business plan provides for revenue generation from different sources including sponsors, advertising fees, and from the organisation of professional football leagues matches in Mauritius. The Company will then use these funds to provide financial resources to football clubs to meet the salaries of the full-time football players. In return, the clubs will perform a number of matches and football players will play as a full-time profession.

POINTS AT ISSUE

What will be the VAT treatment applicable in respect of each of the following items?

- (i) Sponsorship fees
- (ii) Advertising in stadium
- (iii) Sale of football match tickets
- (iv) Sale of specialised football magazine
- (v) Sale of rights of television broadcasting of football matches
- (vi) Receipts upon transfer of football players to a foreign football club
- (vii) Payments to football clubs to meet the players' salaries

RULING

(1) By virtue of section 4 of the Value Added Tax Act, the following items will be subject to VAT at the standard rate of 15% -

- oooo. - sponsorship fees;
- pppp. - advertising in stadium; and
- qqqq. - sale of rights of television broadcasting of football matches.

(2) The sale of specialised football magazine and football match tickets will be exempt supplies in accordance with item 17 and 45 of the First Schedule to the VAT Act.

(3) Any receipt upon the transfer of football players to a foreign football club will be a zero-rated supply pursuant to item 6(a) of the Fifth Schedule to the VAT Act.

(4) The payment made by the Company to football clubs would constitute consideration for taxable supply of services by the clubs to the Company. Should the clubs' turnover of taxable supplies exceed the registration threshold, they will have to register for VAT. In such a case, the company would be entitled to input VAT on a proportionate basis in respect of VAT invoiced by the club to the Company.

VATR 70

FACTS

X is a company which provides telecommunication services to its subscribers and to the subscribers of its foreign roaming partners when they are availing themselves of the services in Mauritius. In April 2000, X entered into a contract with a foreign roaming partner, Y whereby each party will provide roaming services to the other party's subscribers.

Following a drastic reduction in the number of Y subscribers roaming on X's network in November and December 2008, X entered into an Inter Operator Tariff Discount agreement (IOT Discount) with Y in January 2009 in order to continue benefitting from the traffic generated by Y customers. Through this discount agreement, each party agreed to provide each other with some discount (inclusive of all taxes) on the prevailing rates. The main elements of the agreement were as follows:

- Y will commit to send a minimum of Voice Traffic towards X network and X will provide a discount on the prevailing rates. Where Y is unable to meet the traffic commitment, Y shall pay to X the amount of charges which is based on the traffic commitment at the discounted rate.
- There was no traffic commitment imposed on X for its subscribers roaming in Y's network.
- The IOT discount agreement was for an initial period of 2 years (2009 and 2010) and was renewed for a further period of 2 years (2011 and 2012).

X issued VAT invoices to Y for the roaming services provided to Y subscribers while in Mauritius. The VAT amounts on the invoices have been remitted to MRA.

To enforce the discount agreement stipulated in the IOT agreement, the discount is afterwards calculated on the revenues invoiced under the agreement entered into between X and Y during the discount period and a credit note on the invoices issued to Y.

POINT AT ISSUE

With respect to section 21(4) of the VAT Act, whether X can adjust the output tax to take into account the VAT on the credit note.

RULING

On the basis of the FACTS of the case, it is noted that the discount is computed with reference to the volume of traffic on the network between the parties over a specific period as ascertained after the invoicing of the supply to roaming customers has taken place. The discount is , therefore, more in the nature of an incentive discount to Y and does not affect the taxable value of roaming services. In the circumstances, X cannot adjust the output tax to take into account the VAT on the credit note.

VATR 71

FACTS

Mr X is the sole shareholder in the under-mentioned companies:

(i) Y Ltd (the “Company”);

(ii) Z Park Ltd; and

(iii) C Project Management Ltd.

Y Ltd (the “Company”) is a private company limited by shares and was incorporated on 15 May 2015. Z Park Ltd is a private company limited by shares incorporated in 2010. It has a lease agreement with Business Parks of Mauritius Ltd for a plot of land of 3 acres for a fixed initial duration of 30 years with option for 2 additional periods of 30 years.

C Project Management Ltd was incorporated in 2011.

Y Ltd and Mr X propose to set up a Société Civile Immobilière d’Attribution called the Société for the development of a multi-storey building comprising of commercial spaces.

In the absence of the deed of the Société, the names of the initial associates of the Société shall be as many members (nominated partnership) as number of lots. The members of the nominated partnerships will be Y Ltd and Mr X, pending the subscription of potential buyers.

The initial share capital of the proposed Société will be approximately Rs 400 million. The proposed share capital of each of the initial associates will vary according to the number of groups of *“parts sociales”* they wish to acquire. For instance, if the building is divided into 10 groups of “parts sociales”, the buyer will pay Rs 40 million for one group of *“parts sociales”.*

The Société will sub-lease a third of the land from Z Park Ltd for its project.

The Société will appoint C Project Management Ltd for the management of its project and a management fee will be paid for these services.

The subscription amounts received by the Société from the buyers will contribute towards payment for invoices received from C Project Management Ltd.

Upon completion of the building, the Société will be dissolved.

POINTS AT ISSUE

1) Whether input tax suffered by the Société will be available as a credit against output tax in the course or furtherance of its business?

2) Whether any excess input tax attributable to the contract with contractors will be available for refund under section 24 of the Act?

3) Whether a VAT registered person who buys part of the building will be able to claim input tax?

RULING

1) Whether the Société is entitled to register for VAT and claim credit for input tax can only be ascertained after the VAT registration liability of the eventual buyers are established. If the Société is liable to register and does register for VAT, it will be entitled to claim credit for input tax on all construction costs and such other expenses, incurred in the proportion of its taxable supplies to its total supplies in accordance with the provisions of section 21 (3) (b) of the VAT Act.

Pursuant to section 2 and item 48 of the First Schedule to the VAT Act, the sale or transfer of an immoveable property, a building or part of a building, apartment, flat or tenement for purposes other than residential purposes, by a VAT registered property developer to a VAT registered person is a taxable supply. On the other hand, if the supply is made to a non-VAT registered person, the supply is an exempt supply.

In accordance with section 15 of the VAT Act, a person is liable to register for VAT if in the course or furtherance of his business, he makes taxable supplies and his turnover of taxable supplies is likely to exceed the VAT registration threshold.

In the light of the above provisions, the Société will be considered to be making taxable supplies to the eventual buyers who are VAT registered and the value of the taxable supplies will be the amount that the eventual VAT registered buyers will pay for part of the building they will be entitled to.

2) Any excess input tax attributable to the contract with contractors will not be available for refund under section 24 of the Act for the following reasons:-

(i) the Société is not making exclusively zero-rated supplies; and

(ii) the excess input VAT is not in relation to capital goods.

However, credit for allowable input tax will be available for future set off against subsequent output tax.

3) If the sale is made to a VAT registered person, that person will be able to claim credit for input tax to the extent that he uses it to make taxable supplies in accordance with section 21(3) of the VAT Act.

Please note that for income tax purposes, Mr X will be liable to tax on the project in accordance with section 10(3) (a) of the Income Tax Act.

VATR 72

FACTS

Mr. X is a VAT registered person and he makes both standard-rated and zero-rated supplies.

He is civilly married to Mrs. Y (the "spouse") since 7 October 1962 under the "régime légal de communauté". The latter does not derive any income except interest on her savings account. During the course of their marriage, on 26 May 1977, Mrs. Y acquired an immovable property consisting of an old wooden structure.

Since some months, Mr. X has started the construction of a commercial building on the land acquired by his spouse. He intends to use the building partly for his own business and partly for rental of office space. Mr. X is financing the construction of the building out of his personal savings.

Mr. X has hired the services of a VAT registered building contractor who has issued VAT invoices in his name for that purpose. Mr. X has not taken any credit for input tax in his VAT returns in respect of the construction of the building.

Mr. X intends to declare all income received from the rental of office spaces in his VAT returns.

POINT AT ISSUE

(1) Whether Mr. X will be entitled to make a claim for repayment of the VAT charged by the building contractor?

RULING

(1) On the basis of the FACTS provided, it is confirmed that Mr. X may take credit for input tax and make a claim for a repayment in respect of the construction of the immovable property at the time he satisfies the Director-General that the building is used by him to make taxable supplies.

(2) In case Mr. X takes credit for input tax and he subsequently transfers his business or ceases to carry on business, or the building or part of the building is sold or transferred, the clawback provisions in section 21(7) of the VAT Act will apply.

VATR 73

FACTS

A private limited company – (Z Ltd) which is in the process of being incorporated in Mauritius proposes to operate a property project comprising of commercial and residential premises, within the framework of the Real Estate Scheme (RES) under the Investment Promotion Act.

The RES project would be developed by a property developer (Y Ltd), and the residential units would be sold by that developer to buyers – mostly non-citizens, who may be either individuals or institutional investors. The owners of the RES units not wishing to personally reside in their property would then each rent their unit to Z Ltd under long-term letting (11 years) contracts. Z Ltd would thereafter rent the units to various clients, whether foreign-resident or Mauritian, under short-term letting contracts.

It is not expected that the owners of the RES units nor the foreign or Mauritian clients would be VAT registered. However, Z Ltd would be VAT registered.

POINT AT ISSUE

1. Whether the rent from abroad charged by Z Ltd to each foreign client would be liable to VAT at zero rate?
2. Whether the rent from Mauritius charged by Z Ltd to each client (Mauritian or foreign) for residential letting would be liable to VAT at the standard rate?
3. Whether the rent charged by Z Ltd for commercial letting of commercial premises would be liable to VAT at the ordinary rate?
4. Whether the rent charged by the owner of the RES unit (as lessor) to Z Ltd (the lessee) would be liable to VAT, assuming that the said owner would derive annual turnover below the registration threshold in respect of this activity?
5. In the event that the Z Ltd's activities are subject to distinct VAT regimes (zero-rated, exempt, ordinary rate), can those various activities all be operated within a single company in a fiscally neutral manner? Whether those activities are operated within a single Operator company or within two separate Operator companies (for instance, one company focussing in the zero-rated activity, and the other on the activity liable to VAT at the ordinary rate), the VAT treatment of the relevant activities will not differ.

RULING

On the basis of FACTS given above, it is confirmed that:

1. the rent charged by Z Ltd to each foreign client will be for services which are utilised in Mauritius and the foreign client will be in Mauritius at the time the services are performed. The rent will , therefore, not qualify as zero-rated supply under section 11 of the VAT Act.
2. as the building will not be used predominantly as a place of residence, the rent charged by Z Ltd to each client whether Mauritian or foreign, will be subject to VAT at standard rate irrespective of the period of stay.
3. the rent charged for commercial letting of the commercial premises is a taxable supply and will , therefore, be subject to VAT at the standard rate.
4. where the rental charged by the owner of the RES unit (as lessor) exceeds the threshold

for VAT registration, that is Rs 6 million per annum, he will be liable to compulsorily register for VAT.

5. for VAT purposes, registration of Z Ltd covers all its activities. The supplies would be accounted for in accordance with the provisions of the VAT Act with respect to the different supplies made (standard-rated, zero-rated and exempt).

VATR 74

FACTS

J Ltd is a VAT registered person. It acquired buildings between the years 2002 and 2013 and it took credit for input tax suffered on the acquisitions. In July 2016, that is before the end of the nineteenth year following the years in which the buildings were acquired, J Ltd amalgamated with and into K Ltd and all assets and liabilities of J Ltd were transferred to K Ltd. K Ltd is also a VAT registered person.

POINT AT ISSUE

Whether sections 63(3) and 21(7A) of the VAT Act apply on the transfer of buildings following the amalgamation of J Ltd with and into K Ltd?

RULING

Based on the aforesaid FACTS, it is confirmed that sections 63(3) and 21(7A) of the VAT Act apply on the transfer of the buildings following the amalgamation of J Ltd with and into K Ltd.

VATR 75

FACTS

T Ltd is a company incorporated in Mauritius. It has an agreement to provide marketing services to C Ltd, a company incorporated and domiciled in Switzerland and engaged in the pharmaceutical business.

The marketing activities to be performed by T Ltd comprise of the following -

(i) promoting the public awareness to diseases treated by the products;

(ii) promoting the awareness for the C Ltd products among members of the T Ltd medical community;

(iii) performing medical conferences and public relations activities for C Ltd and its products; and

(iv) replying to all medical and scientific queries relating to the products of C Ltd.

T Ltd does not order, stock, distribute or supply such products and does not take any orders for the products. Such products are imported directly by certain third-party distributors. The distributors enter into separate distribution agreements with C Ltd and remain responsible for the pricing and the safety of the products as well as dealing with the issues regarding the products.

T Ltd receives from C Ltd payment for all expenses incurred together with an agreed mark-up.

POINT AT ISSUE

Whether the supply made by T Ltd is subject to VAT at 15 % or should it be treated as zero rated.

RULING

T Ltd is supplying marketing services to C Ltd, a company which belongs in a country other than Mauritius and which is outside Mauritius at the time the service are performed. The supply is considered as zero-rated in accordance with item 6(a) of the Fifth Schedule to the Value Added Tax Act.

VATR 76

FACTS

XYZ is a private limited company whose business is to produce and organise events and Cultural Strategy, including cultural festivals in Mauritius.

XYZ Ltd is also the producer and organiser of an annual festival. This non-for-profit festival promotes culture and the *patrimoine.*

There is no monetary benefit towards the creation of the event, as this annual festival is sponsored by the private sector and the public sector. It is expected that some more individuals will contribute to the holding of the other editions.

The festival will be sponsored by –

(i) donations from private firms and companies whose logos are displayed by XYZ Ltd on leaflets, flyers and bill-boards. VAT is being charged to the private sponsors;

(ii) donations (hereinafter referred to as “gifts”) from individuals and companies whose logos are not displayed;

(iii) crowdfunding.

The gifts to XYZ Ltd will be spent towards the expenses of the festival or other festivals. The gifts are given for free and no consideration or services will be provided in return by XYZ Ltd to the donors, save for the obligation imposed on XYZ Ltd to use the monies towards the expenses of the event which promotes culture. The monies given to XYZ Ltd will become part of XYZ’s Ltd revenue on the festival and will be mixed with the remaining revenues received from sponsors.

Crowdfunding is the process by which the public is called upon by an entity or individual to give money to that entity or individual for a special purpose. The monies are not investment; they are given as gift but for a specific purpose and the entity is obliged to use the monies for this purpose. The scenario is , therefore, similar to the scenario described in respect of gifts, but the process is slightly different in that there is an appeal to the public and a specific process to follow.

Thus, the financial activity is reported and disclosed under the name XYZ Ltd. However, the audit of the festival is done separately and the financial figures are recorded and reported separately.

POINTS AT ISSUE

Value Added Tax

Whether the gifts received by XYZ Ltd from individuals and companies, and the monies received through crowdfunding for the sponsoring of the festival will be subject to VAT?

Income tax

1. Whether the gifts received by XYZ Ltd from individuals and companies, and the monies received through crowdfunding for the sponsoring of the festival will be subject to income tax?
2. Whether the companies and individuals contributing as gifts will be allowed to deduct the amount donated against their gross income?

RULING

On the basis of the above-mentioned FACTS, it is confirmed that:

Value Added Tax

1. The gifts received by XYZ Ltd from companies and individuals, and the monies received through crowdfunding for the sponsoring of the festival do not constitute supply for consideration by virtue of section 4 of the VAT Act. They will , therefore, not be subject to VAT.

Income Tax

1. The gifts received by XYZ Ltd from companies and individuals, and the monies received through crowdfunding for the sponsoring of the festival should be accounted as gross income and, therefore, will be subject to income tax.
2. The contribution of companies and individuals by way of gifts for the sponsoring of the festival are not expenses exclusively incurred in the production of gross income, and therefore,, will not be deductible under section 18(1) of the Income Tax Act.

VATR 77

FACTS

J Ltd is a limited liability company domiciled in France. It has been awarded three contracts in Mauritius as follows:

(1) Contract with K Ltd- RDP Project.

J Ltd (as a subcontractor) was awarded a contract in association with L Ltd- the main contractor) for the provision of consultancy services to K Ltd for the feasibility study, design and preparation of bid document for the upgrading of the Intake structure and review of treatment process at the plant.

A sub-consultancy agreement was made between L and J Ltd to provide part of the services relating to the main contract.

J Ltd will also enter into contracts with other local sub-contractors in connection with the above project.

The duration of the main contract is estimated to be between 9 to 12 months.

J Ltd's personnel will effect on-site visit in Mauritius to meet J Ltd's clients and collect information at the plant for the provision of services in France.

J Ltd estimates the number of days to be spent by its personnel in Mauritius as follows:

The project manager 28 days

Engineer No 1: 28 days

Engineer No 2: 5 days

(2) Contract with M Ltd- SC Project

J Ltd was awarded a contract for the provision of technical assistance services to M Ltd in connection with a Smart City project at Cap Tamarin.

J Ltd will also enter into contracts with other local sub-contractors including L in connection with the above project.

The duration of the contract is estimated to be between 9 and 10 months.

J Ltd estimates the number of days to be spent by its personnel in Mauritius as follows:

The project manager 28 days

Engineer No 1: 28 days

Engineer No 2: 15 days

Engineer No 3: 15 days

Engineer No 4: 15 days

(3) Contract with K Ltd - La Nicolière Project.

J Ltd (as a main contractor) was awarded a contract in association with L (the subcontractor) for the provision of consultancy services to K Ltd for the feasibility study on the rehabilitation and extension of La Nicolière treatment plant and associated works inclusive of the concept design for rehabilitation works.

J Ltd will also enter into contracts with other local sub-contractors in connection with the above project.

The duration of the contract is estimated to be between 9 to 12 months.

J Ltd estimates the number of days to be spent by its personnel in Mauritius as follows:

he project manager 28 days

Engineer No 1: 28 days

Engineer No 2: 5 days

Engineer No 3: 5 days

POINTS AT ISSUE

(i) Whether J Ltd ought to charge VAT to :

a) L in connection with RDP Project;

b) M Ltd in connection with the SC Project; and

c) K in connection with La Nicolière Project?

(ii) Whether TDS ought to be withheld by:

a) L from payments made to J Ltd in connection with RDP Project;

b) M Ltd from payments made to J Ltd; and

c) K from payments made to J Ltd in connection with La Nicolière Project?

(iii) Whether the local sub-contractors should charge VAT to J Ltd?

(iv) Whether TDS ought to be withheld by J Ltd from payments made to local subcontractors?

RULING

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

(i) J Ltd needs not charge VAT to its clients namely L, M Ltd and K Ltd which are all VAT registered. On the other hand, in accordance with section 14 of the VAT Act, the latter ought to apply reverse charge on the supply of services received from J Ltd abroad.

(ii) No TDS ought to be withheld by L, M Ltd and K Ltd as J Ltd does not have a permanent establishment in Mauritius.

(iii) By virtue of item 6(a) of the Fifth Schedule to the VAT Act, the supply of services by the local sub-contractors to J Ltd are zero-rated supplies.

(iv) Since J Ltd is a foreign company which does not have a permanent establishment in Mauritius, it needs not withhold TDS from payments made to local sub-contractors.

VATR 78

FACTS

A is a company engaged in the business of hotels operation. It presently operates 8 hotels.

Three of the hotel buildings are owned by B, a subsidiary of A, incorporated in April 2016. B is VAT registered with effect from December 2016.

A has entered into contracts for the renovation of 3 hotels owned by B. A restructuring exercise has been undertaken whereby the cost of the structural part of the renovation to the immovable property will be borne by B and any capital expenditure on movable property will be borne by A.

The contractors and service providers will continue to invoice A and A will withhold TDS at the appropriate tax rates on payments to the contractors and service providers. A quantity surveyor will determine the structural and non-structural aspects of the expenditure, so that, A will invoice B for the structural aspect in accordance with the report of the quantity surveyor.

An Agreement would be executed between the parties, so that, all the terms and conditions between A and the relevant suppliers equally apply to B and A.

POINTS AT ISSUE

(1) Whether B should apply TDS on payments made to A?

(2) Whether A will be able to claim credit for input tax on VAT charged by the contractors and service providers on the structural aspect of the capital expenditure and whether the corresponding amount charged to B by A will be subject to VAT at the standard rate?

RULING

On the basis of the FACTS mentioned above, it is confirmed that -

(1) A not being a contractor or a provider of services as specified in the Fifth Schedule to the Income Tax Act, B is not required to apply TDS on the payment made to A.

(2) A will be entitled to claim credit for input tax on VAT charged by the contractors and service providers on the structural aspect of the capital expenditure and the corresponding amount A will charge to B will be subject to VAT at the standard rate of 15%.

VATR 79

FACTS

G is a domestic company engaged in providing marketing consultancy services for a number of suppliers incorporated and domiciled in France, Italy and Germany. The activities are carried out in regions such as Guadeloupe, Guyana, Martinique, Reunion, Mayotte, New Caledonia, French Polynesia, Seychelles, Madagascar and Mauritius.

The services provided by G consist of the following:

i. contact prospective clients in the regions mentioned above;

ii. negotiate certain terms and conditions relating to proposed sales of products to the clients based on commercial guidelines and policies set by the suppliers;

iii. assist in the organisation of the promotion of these products by clients; and

iv. provide training to the clients on the products.

G has only 1 employee who also acts as representative of the brands in all the different countries.

The suppliers provide samples of their products to G to assist the latter in marketing these products. The suppliers remain the owner of their sample products at all times.

G does not order, stock, distribute or supply any products. Orders are made directly by the clients from the suppliers and all payments for any products are made directly between the clients and the suppliers. The suppliers are responsible for the pricing of the products as well as dealing with any issues regarding the products.

Where the prospective clients of the suppliers are in countries other than Mauritius, the representative of G travels to those countries and performs the marketing activities (e.g. contacting prospective clients, negotiating terms and conditions, training, etc.) while he is there.

G cannot conclude any agreement with the clients on behalf of the suppliers and does not have any contractual obligations whatsoever with the clients. G is remunerated in the form of a commission which is based on the sales made by the suppliers to the clients contacted by G.

POINT AT ISSUE

Whether the marketing consultancy services provided by G should be treated as zero-rated supplies?

RULING

On the basis of the aforesaid FACTS, it is confirmed that:

The marketing consultancy services by G performed outside Mauritius and supplied to a person who belongs in a country other than Mauritius and who is outside Mauritius at the time the services are performed are outside the scope of VAT.

The marketing services by G performed in Mauritius and supplied to a person who belongs in a country other than Mauritius and who is outside Mauritius at the time the services are performed are considered as zero-rated supplies in accordance with item 6(a) of the Fifth Schedule to the Value Added Tax Act.

VATR 80

FACTS

P was incorporated in September 2017 and its sole shareholder is Mr Q.

The company contemplates to acquire a vessel that will be used to:

(a) transport commodities such as raw sugar for refining or coal from foreign countries

to Mauritius (“activity A”);

(b) transport commodities such as refined sugar from Mauritius to foreign countries

(“activity B”); and/or

(c) transport certain commodities between foreign countries only (“activity C”).

The vessel will be registered in Mauritius and the company will not be engaged in any fishing activities.

Whilst its core business activities will initially be the transport of coal and related products for sugar milling companies in the Indian Ocean region, it will ensure that it is able to adapt itself, so that, it can transport any other commodity. This may require modification to the vessel and the company may have to incur capital expenditure at a later date.

The company may also have to undergo repairs outside Mauritius, whilst it would prefer to have such repairs being done in Mauritius.

POINTS AT ISSUE

Whether reverse charge will apply to -

(i) any repairs done in Mauritius by a foreigner without a permanent establishment (“PE”) in Mauritius?

(ii) any repairs done in Mauritius by a foreigner with a PE in Mauritius?

(iii) any repairs done outside Mauritius?

RULING

On the basis of FACTS provided, the company is entitled to be registered for VAT as it will be making zero-rated supplies in accordance with item 3 of the Fifth Schedule to the VAT Act.

In the circumstances, it is confirmed that:

(i) where repairs are done in Mauritius by a foreigner without a PE in Mauritius, the reverse charge will apply and to the extent that the supplies relate to shipping activities, it would be revenue neutral.

(ii) where repairs are done in Mauritius by a foreigner with a PE in Mauritius, the reverse charge will not apply; the company will be entitled to claim credit for input tax on any VAT charged by the supplier of services and may make a claim for repayment thereof in accordance with section 24 of the Value Added Tax Act.

(iii) where the repairs are done outside Mauritius and to the extent that they are not utilised in Mauritius, the repairs will be outside the scope of VAT.

VATR 81

FACTS

B – (“the Company”) is a private company incorporated in Mauritius and is involved in the construction industry, hiring of plant and machinery and civil engineering projects. The Company holds a Grade A Category of construction license, issued by the Construction Industry Development Board.

The Company has entered into a contract with C for the construction of an office for a final agreed amount of Rs 257M. However, in the execution of the project, the Company has not been able to meet the deadline set for its completion. Accordingly, in line with the clause set out in the conditions of contract, damages termed as “Liquidated and Ascertained Damages” - (LAD) is applicable. The Company was , therefore, liable to pay Rs 10M as LAD.

POINT AT ISSUE

Whether, in case the final agreed amount of the contract duly certified by the Project Consultants amounts to Rs 257M, VAT should be applied on the amount of Rs 257M or on the amount of the contract after deducting the LAD of Rs 10M, i.e. Rs 247M?

RULING

The value of the taxable supply of the Company in respect of the above contract is, in accordance with section 12 of the Value Added Tax Act, the agreed contract value of Rs 257M. VAT should , therefore, be charged on the amount of Rs 257M, before deduction of the LAD.

VATR 82

FACTS

S is incorporated in Mauritius as a domestic company. It will import goods from a supplier in Brazil and will consign these goods directly to its client in China without going through the circuit of the Mauritian Customs control.

S will pay its supplier in Brazil by bank transfer from its Mauritian bank account and in turn, it will issue invoices to the client in China. The latter will pay S by bank transfer into its Mauritian bank account.

POINTS AT ISSUE

1. Whether the supply of goods by S to its client in China will be a zero-rated supply or outside the scope of VAT?
2. In case the supply of the goods will be zero-rated, whether the S will be entitled to take credit for any amount of VAT suffered and claim repayment thereof?

RULING

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

1. as the goods will be exported directly from Brazil to the client in China, the supply will be outside the scope of VAT in Mauritius; and
2. S will , therefore, not be entitled to any credit for input tax attributable to the above supply.

VATR 83

FACTS

R holds a Category1 Global Business Licence and it conducts re-insurance business by virtue of the Professional Reinsurer Licence, granted by the Financial Services Commission pursuant to section 11 of the Insurance Act 2005. R provides re-insurance services exclusively to companies outside Mauritius in accordance with the conditions of its Global Business Licence.

POINT AT ISSUE

Whether the supply of the re-insurance services made by R is a zero-rated supply, falling under item 6(a) of the Fifth Schedule to the VAT Act?

RULING

On the basis of information provided and, on the understanding, that the services are being provided from Mauritius, it is confirmed that the supply of the re-insurance services is zero-rated in accordance with the provisions in item 6(a) of the Fifth Schedule to the VAT Act as it is being made by R to persons who belong in a country other than Mauritius and who are outside Mauritius at the time the services are performed.

VATR 84

FACTS

N will be the promoter of an external pension scheme (“EPS”) under the Private Pension Schemes Act 2012 (“PSSA 2012”). In that respect, an EPS application shall be made in accordance with section 12 of the PPSA 2012. Pursuant to section 9 of the aforesaid Act, the EPS shall hold a Category 1 Global Business Licence (“GBL”) under the Financial Services Act 2007 (“FSA 2007”)

The EPS will be established as a trust under the Trusts Act 2001 (“TA 2001”) with Mauritian trustees. A Pension Scheme Administrator licensed by the FSC under Part IV of the FSA 2007 will be established in Mauritius, employing Mauritian based individuals, and the membership of the EPS will be confined to non-residents whose economic activities are wholly outside Mauritius. Individuals who would advance funds to the EPS will be individuals who will not be tax resident in Mauritius. The EPS will also provide pension benefits (comprising pensions/annuities/lump sum benefits) to non-residents and/or their beneficiaries on retirement, disability or death, as the case may be.

The EPS will be a defined contribution scheme within the provisions of the PPSA 2012 offering membership to non-resident members who may be either employed or self-employed, and whose membership will not be sponsored by their employers. The EPS will not be comparable to a conventional occupational pension scheme. It will also not be a superannuation fund set up for the benefits of employees of a Mauritian employer.

The EPS will accept contributions from non-resident members and pay pension benefits to non-resident members and/or their beneficiaries on retirement, disability or death, as the case may be. To this extent, the EPS will accept capital contributions from non-resident employees and contributions for the benefit of non-resident members from their employers and the latter may or may not be resident in Mauritius. It will also accept transfers from existing non-resident pension plans for the benefit of its non-resident members.

The EPS will invest member’s contribution in global investments comprising deposits, shares, bonds, debentures, collective investment schemes and similar global securities. The investments will accordingly be invested internationally.

The effective place of management of the EPS and the Mauritian pension administrator will be in Mauritius.

POINT AT ISSUE

Whether the EPS will be liable to register and account for Value Added Tax under the Value Added Tax Act 1998?

RULING

On the basis of the FACTS mentioned above, it is confirmed that as the management of investment funds and of pension funds is an exempt supply by virtue of item 50(e) of First Schedule to the Value Added Tax, the EPS will not be liable to apply for VAT registration.

VATR 85

FACTS

H holds a Global Business Licence and a Global Treasury Activities Licence, issued by the Financial Services Commission of Mauritius.

H forms part of the P group of companies which is an integrated financial services group, providing a comprehensive range of products and services to the South African market and niche products in certain international markets.

H is a platform for holding hard currency loans to sub-Saharan Africa clients, sourced by the P Group entities, as well as selling down portions of these loans into secondary market as and when required. ft also undertakes global treasury activities.

H has sufficient resources in Mauritius to enable it to provide services to entities outside Mauritius since its executive management team is supported by 3 full-time employees.

POINTS AT ISSUE

1. Whether income of H for the services rendered to entities outside of Mauritius will be zero-rated in terms of section 11 and item 6 of the Fifth Schedule of the VAT Act?
2. Whether H may register for VAT in terms of section 15 of the VAT Act?
3. Whether upon VAT registration, H may make a claim of repayment for allowable input tax in terms of section 24 of the VAT Act?

RULING

On the basis of information provided, it is confirmed that-

1. The supplies made by H to entities outside of Mauritius are zero-rated by virtue of section 11 and item 6(a) of the Fifth Schedule to the VAT Act.
2. Since the turnover is made up exclusively of zero-rated supplies, H may opt to apply for registration under section 15 of the VAT Act.
3. Upon registration, H may make a claim for repayment for allowable input tax under section 24 (2) of the VAT Act.

VATR 86

FACTS

B, a company incorporated in Mauritius has received an order from D, a company based in Zimbabwe. Owing to foreign exchange controls in Zimbabwe, D has suggested that the order be channelled through M.

M currently holds a Category 1 Global Business Licence under the Financial Services Act and forms part of the same group of companies as D. M will report each transaction as a purchase of goods from B and a corresponding sale to D but the goods will not be subject to any process by M.

For purposes of the Bill of Lading, the shipper and the consignee will be B and D respectively. The terms of the shipment will be Free on Board. The goods will leave the warehouse of B and will be loaded directly to a ship, such that, M will not take any physical possession of the goods. However, on the Customs declaration, M will appear as the exporter and D will be the importer.

B will receive cash from M and the trade debt of M will be settled by its holding company. D and M have certain financial arrangements whereby the trade debt of D from M will be settled over a period of time.

POINT AT ISSUE

Whether the sales made by the company to M will be subject to VAT at zero-rate?

RULING

Based on the above FACTS, B will be selling goods to M, a company incorporated in Mauritius. The supply of goods by B to M will not fall within the ambit of Item 1 of the Fifth Schedule to the VAT Act as the supply will not constitute goods exported from Mauritius under Customs control. Therefore, the supply will be subject to VAT at standard rate.

VATR 87

FACTS

C, a private domestic company is a subsidiary of B, a French entity.

The current business activity of C is the provision of IT support services, administrative support and project management services to related entities within D only, including Mauritian related entities of C. No service is rendered to any unrelated parties. The IT support service is provided by C to D on behalf of B. C invoices B directly for the IT services rendered to the entities in D and B reallocates the fees to the entities as appropriate. However, the invoices for the other services are issued directly by C to the related entities. Service fees charged to the related entities are determined at cost plus 5% mark up on operational cost. Services rendered to Mauritian entities represent less than 5% of the total services rendered to the D and can be tracked from available records/software used. The annual turnover of taxable supplies is likely to exceed rupees 6 million

C carries out its activities from Mauritius and it locally employs the appropriate personnel with the relevant qualifications and experience to be able to provide such services.

It also rents an office, incurs operating expenses such as audit fees, accounting and tax fees, parking fees, etc. on which VAT is charged by VAT registered service providers.

POINTS AT ISSUE

1. Whether the supply of services by C to the foreign entities is a zero-rated supply?
2. Whether the supply of services by C to Mauritian entities is a standard rated supply (i.e. liable to VAT at 15%)?
3. Whether C can register for VAT purposes and claim repayment for any input VAT incurred?
4. Whether VAT at the rate of 15% is applicable on 5% mark-up only or total fees charged to the local entities.

RULING

On the basis of FACTS mentioned above

1. The supply of services by C to the foreign entities is zero-rated by virtue of section 11 and Item 6(a) of the Fifth Schedule to the Value Added Tax Act.

2. The supply of services made by C to Mauritian entities including services rendered to Mauritian entities and invoiced directly to B, is a supply of services performed and utilised in Mauritius and is , therefore, subject to VAT at 15%.

3. Since the turnover of taxable supplies is likely to exceed rupees 6 million, C is required to register for VAT under section 15 of the VAT Act. As C is mainly engaged in zero-rated supplies, it may make a claim for repayment of any excess input tax in accordance with section 24(4) of the VAT Act.

4. VAT at the rate of 15% is applicable on the total fee charged in respect of the local entities.

VATR 88

FACTS

L was incorporated in Mauritius and it holds a Global Business Licence ("GBL"). L is wholly owned by G, a French entity.

The business activity of L is to provide payroll management services to the subsidiaries of H operating in Africa, including C, holder of a Global Business Licence. Services rendered to foreign entities represents around 90% of the business activity of L. L manages the payroll of the Group subsidiaries and recharges the salaries/social contributions paid on their behalf with a mark-up of 5% of its operational expenses to those companies. The main source of income of L is in the form of service fees received from the provision of payroll management services. The annual turnover is likely to exceed rupees 6 million.

L carries out its core income generating activities from Mauritius and it employs local staff to carry out these payroll management activities.

It also rents an office, incurs operating expenses such as audit fees, accounting and tax fees, parking fees, etc on which VAT is charged by VAT registered service providers

POINTS AT ISSUE

1. Whether the supply of services by L to the foreign entities in Africa is a zero-rated supply?

2. Whether the supply of services by L to C is also a zero-rated supply?

3. Whether L can register for VAT purposes?

4. Whether L can claim repayment for any input VAT incurred?

5. Whether VAT of 15% is applicable on the 5% mark-up only or total fees charged in respect of the local entities?

RULING

On the basis of FACTS mentioned above,

1. The supply of services by L to the foreign entities in Africa is zero-rated by virtue of section 11 and item 6(a) of the Fifth Schedule to the VAT Act.

2. The supply of services by L to C is zero-rated provided that the latter is engaged in providing services to foreign entities.

3. Since the turnover of taxable supplies is likely to exceed rupees 6 million, L is liable to register for VAT under section 15 of the VAT Act.

4. As L is mainly engaged in zero-rated supplies, it may make a claim for repayment of any excess input tax in accordance with section 24(4) of the VAT Act.

5. VAT at the rate of 15% is applicable on the total fee charged to the local entities.

VATR 89

FACTS

Z was incorporated in Mauritius under the Companies Act 2001 as a private company limited by shares and it holds a Category 1 Global Business Licence issued by the Financial Services Commission. The principal business activity of Z is investment holdings.

Z is currently contemplating an extension of its business activities to carry out trading in physical gold. The physical gold products can be in casted bar format, minted bar format or gold grains with a purity level of at least 99.5%.

Z will purchase the gold products from its related parties, T or N. The gold purchased will be sold, either in whole or in fractions, to third-party entities and/or financial services groups which have presence in several countries across the world, including Mauritius (collectively "**M Co**").

M Co will in turn, sell the gold products, either in whole or in fractions, to the end-clients who may be located anywhere in the world.

In general, there will not be any inventory maintained by Z, either in Mauritius or elsewhere, since every gold sale transaction will be hedged instantaneously (apart from certain instances where a small inventory is held until the hedge occurs).

The sales of the gold products (or any fraction thereof) will normally not entail any physical delivery and, in practice, the gold products will never leave T or N's custody in Switzerland. The end-clients are expected to hold their respective gold portfolios in electronic form, with T or N acting as the underlying custodians. In particular, the gold products will normally not be imported into or enter Mauritius at any point in time. However, in certain remote instances, at the specific client's request, such gold products may be required to be physically delivered to the client.

The current potential customer of Z is G and the name of the Mauritius entity within the G is H, incorporated in Mauritius.

POINTS AT ISSUE

(1) Whether the gold trading transactions between Z and M Co (be it M Co Mauritius company or foreign companies), to the extent that there is no physical delivery of gold into Mauritius or from Mauritius (i.e. the gold will not be transacted through Mauritius Customs) will be outside the scope of VAT in Mauritius?

(2) Whether the gold trading transactions between Z and M Co (in this case M Co Mauritius company) involving physical importation of gold into Mauritius by Z and sale within Mauritius will constitute exempt supplies?

(3) Whether Z will be required to register for VAT in Mauritius as a result of the contemplated gold trading transactions?

(4) Whether Z can voluntarily register for VAT in Mauritius as a result of its gold trading activities and be entitled to claim credit for input VAT suffered?

RULING

On the basis of the FACTS mentioned above, it is confirmed that —

(1) gold trading transactions, where there is no physical delivery of gold into Mauritius or from Mauritius, is outside the scope of VAT in Mauritius by virtue of section 9 of the VAT Act.

(2) gold trading transactions involving physical importation of gold into Mauritius will constitute exempt supply in accordance with item 52 of the First Schedule to the VAT Act.

(3) Z will not be liable to register for VAT as its supplies will either be exempt or outside the scope of VAT.

(4) Z will not be entitled to apply for voluntary registration and claim credit for input tax as its supplies will either be exempt or outside the scope of VAT.

VATR 90

FACTS

X provides discounts to its subscribers in order not to lose business opportunities. These discounts are given after taking into consideration the following:

- the loyalty of the subscribers and the total value of purchases;
- the contract period (higher discount for longer term contracts); and
- segment of the market.

Currently X is charging VAT on the gross amount of sales (amount before discount).

POINT AT ISSUE

Whether in accordance with section 12(2) of the Value Added Tax Act, X is allowed to charge VAT on the amount net of discount instead of the gross sales value?

RULING

On the basis of FACTS mentioned above, it is confirmed that VAT is chargeable on discounted price, provided that, such discount is granted to all subscribers meeting the criteria laid down for the said discount.

VATR 91

FACTS

C prepaid subscribers can recharge their account through Epin, C Scratch Cards, ATM Recharge, SMS Top-up and Online Recharge. Epin is an exclusive and paperless recharging facility for C prepaid subscribers. It allows instant recharge of prepaid accounts.

C has entered into a "Freelance Distribution Agreement" with freelancers for the sales/distribution of its products and services to its retailer network. The distribution of Epin is done through the freelancers.

Epin is sold in units of Rs 500 excluding VAT. VAT invoice is raised at the time of the sales to freelancers and the VAT amount is remitted to MRA. The sales value is treated as deferred revenue. The amount of Epin purchased is duly transferred in the freelancer's Epin wallet inclusive of VAT.

On sales of Epin to the retailer, the freelancer transfers the equivalent amount inclusive of VAT to the retailer's Epin wallet. The Epin is then sold to C's prepaid subscribers in different denominations. The amount sold is deducted from the retailer's wallet, the equivalent amount (exclusive of VAT) is credited in the prepaid subscriber's wallet and the deferred revenue recognised as revenue by C.

Currently, C post-paid subscribers can pay their post-paid bills at C's showrooms, through direct debit, internet and online payments and at post offices.

C's showrooms are located at 22 strategic points across Mauritius and Rodrigues. During month end period, post-paid subscribers have to queue up at showrooms to pay their bills which is very time-consuming and inconvenient for them.

C currently has more than 4,000 Epin selling outlets and they are within the proximity of the subscribers. In order to facilitate the payment of post-paid bills, C proposes to use its Epin retailer network to enable subscribers to pay their bills at their convenience without having to travel long distances.

For the purpose of paying the amount on his post-paid bill, the subscriber will give his mobile number and tender the amount payable to the retailer. The retailer will use the specific menu available on his Epin device to input the mobile number and the amount paid. He will then submit the transaction to C. Upon successful completion of the transaction, both the retailer and the subscriber will receive automatic SMS notifications from C's system. The subscriber will also receive instantaneously an e-receipt on his mobile via SMS once the payment is processed. Processing of the payment is done in real time. C's billing system will be updated automatically with the payment received from the subscriber and the balance of the retailer's wallet will be reduced by the corresponding amount of the payment.

POINT AT ISSUE

Whether C can adjust its taxable supplies and the corresponding VAT amount with respect to Epin being used for payment of bills?

RULING

On the basis of FACTS mentioned above, it is confirmed that C can adjust its taxable supplies and the corresponding VAT amount on settlement of the post-paid bill through Epin by the subscriber provided that appropriate records are kept in support of the transactions.

VATR 92

FACTS

S was incorporated on 22 February 2013 in Mauritius as a domestic company with its central management and control in Mauritius. S is tax resident and VAT-registered in Mauritius.

S is held by T, a company incorporated in the British Virgin Islands, and ultimately held by G, a company based in Jersey having tax residency in the UK. G is engaged in the provision of online payment solutions.

S is engaged in the information technology sector and mainly performs research and development ("**R&D**") activities related to online payment solutions for G. S currently has 83 employees who have been involved in the development of the Third-Party Processing ("**TPP**") software in the prior years and now assist with ongoing maintenance, updates and integrations in respect of the platform to be able to comply with regulations but also meet the demands of merchants.

In 2018, G implemented a group wide change to their accounting policies under the IFRS accounting standards. These accounting standards allow for the costs incurred to develop internal-use software to be capitalised to the extent the benefit will be delivered over a number of years. The software platform is the result of the joint R&D activities of S and R. Accordingly, the identified software platform development costs incurred in Mauritius have been capitalised in the books of S. S has claimed annual capital allowance on the capitalised intangible asset at the rate of 5% on cost.

The market value of the Mauritius IP is in the range of USD 35m – USD 50m, and the intangible assets will be transferred at book value.

S has not made any disposal of the Mauritius IP as of date

G is undertaking a restructuring project seeking to simplify its international IP strategy in order to own all IP in one territory and has , therefore, decided that it will transfer all IP that is currently owned outside the United Kingdom to the United Kingdom.

As part of the restructuring, a new entity of the Group, R will be set up in the UK and intends to acquire the business of S including a software platform ("Mauritius IP/intangible asset") partly developed in Mauritius.

The proposed transfer of the Mauritius IP is mainly driven by the fact that most of the technological development is now being led out of the UK from where the future ongoing development and exploitation of the IP will be led from. Also, the most senior resources of G are based in the UK and the workforce based in the UK is several times that of S. G has slowly built a strong presence in Europe during the past years and found that they have access to both a greater pool of potential customers and skilled workforce in Europe to further drive their growth as a technology company.

At the time of acquisition of the Mauritius IP from S, R will neither have a taxable presence nor a permanent establishment in Mauritius. The transfer of the IP will legally take place at net book value.

R will register a branch in Mauritius, in the future to further support its R&D activities after employees are transferred from S to R. In other words, the Mauritius Branch will act as an R&D centre and shall provide R&D service to its head office in the UK. Depending on future needs and success of Mauritian operation, the Mauritius Branch may also provide R&D services to other non-resident sister companies in the future.

The Mauritius Branch of the UK-headquartered entity will be remunerated at arm's length and its remuneration is likely to exceed MUR 6m annually.

POINTS AT ISSUE

1. Whether the transfer of the IP will be considered as a supply of services to its UK

headquarter in accordance with the Third Schedule of the VAT Act and a zero-rated supply in accordance with item 6(a) of the Fifth Schedule of the VAT Act?

2. Whether R&D services within the same legal entity from a branch to its head office (i.e. from the Mauritius Branch to R) is considered a taxable supply or should be considered as outside of scope of VAT Act?

3. Whether the Mauritius Branch will be bound to register for VAT at the time future R&D services will be provided to non-resident sister companies?

RULING

On the basis of the FACTS mentioned above –

1. The transfer of the IP is:
rrrr. a. a transfer of service in accordance with item 12 of the Third Schedule to the VAT Act; and
ssss. b. zero-rated in accordance with item 6(a) of the Fifth Schedule to the VAT Act.
2. Services from a branch to its head office is outside the scope of the VAT Act.
3. The supply of R&D services by U to its non-resident sister companies is a zero-rated supply and U shall not be bound to apply for registration by virtue of section 15(3) of the VAT Act.

tttt. **<u>VATR 93</u>**

uuuu. **<u>FACTS</u>**

vvvv. D operates as a hotel and it has been granted five contract car licences by the National Land Transport Authority on 20 March 2020 to operate five cars from Pereybère.

wwww.

xxxx. **<u>POINTS AT ISSUE</u>**

yyyy. Whether upon purchase of motor cars to be used for renting purposes, in line with the provisions in section 24 of the Value Added Tax Act, D can make a claim for repayment of the VAT charged to D by the car dealer?

zzzz.

aaaaa. **<u>RULING</u>**

bbbbb. On the basis of the FACTS mentioned above, it is noted that D will be also engaged in car rental business. As such, it will be entitled to take credit for input tax suffered on the purchase of the motor cars, used exclusively in the car rental business in accordance with sub-sections (1), (2) and (12) of section 21 of the Value Added Tax Act. It is confirmed that D may make a claim for repayment of the excess input tax by virtue of section 24(1) of the above Act. The claim will be processed in accordance with section 24(1A) of the said Act.

ccccc.

ddddd. VATR 94

eeeee.

fffff. FACTS

ggggg. G is a company resident in Singapore. It has entered into a contract with the owner of a ship for salvage following its grounding in the South East of Mauritius. The owner is a company resident in Japan. For the purpose of the salvage, G has entered into a verbal leasing agreement for the hire of manned helicopters from X in Mauritius. The helicopters are used for the transport of persons from the mainland to the place where the ship is grounded. The rental is based on the number of hours of flight and the maintenance cost of the helicopters.

hhhhh.

iiiii. POINTS AT ISSUE

jjjjj. 1. Whether the leasing of helicopters by X is an exempt supply as per item 38 of the First Schedule to the VAT Act?

kkkkk. 2. Whether the leasing of helicopters by X to G is a zero-rated supply?

lllll. 3. In the event the supply is both exempt and zero-rated, whether it can be confirmed that zero-rated supply takes precedence over exempt supply?

mmmmm.

nnnnn. RULING

ooooo. Based on the FACTS mentioned above:

(1) The supply of helicopter services by X to G does not fall within the ambit of item 38 of the First Schedule to the VAT Act and is , therefore, a taxable supply.

ppppp. (2) X is providing a service to G which in turn is providing a service in Mauritius to a company resident in Japan. G is , therefore, a taxable person in Mauritius and the supply made by X to G is taxable at standard rate.

qqqqq.

rrrrr. VATR 95

sssss.

ttttt. FACTS

uuuuu. P, a domestic company incorporated on 26 May 2016, is currently the sole shareholder of Q, holder of a GBL-CIS Manager licence. As the Financial Services Commission requires a company to have an unimpaired equity base, P could not apply for GBL licence due the significant losses it incurred from the years 2016 to 2018.

vvvvv.

wwwww. Q acts as the manager and offers investment management services to R which is a GBC1 closed-end fund, sub-categorised as a professional collective investment scheme. R is structured as a limited partnership and its general partner is Q. R will make growth equity and related investments in the industrial ecosystem across Africa.

xxxxx.

yyyyy. Prior to the incorporation of R in 2018, P incurred substantial expenses to the tune of USD 3.7M in the years 2016 and 2017 to promote R structure, secure foreign investors and find investment opportunities outside Mauritius. All expenses of P were made for the purpose of launching R and allow Q to secure a regular stream of revenue.

zzzzz.

aaaaaa. P is in the process of applying for a GBL licence and is contemplating to recharge part or all expenses incurred to set up R to Q.

bbbbbb.

cccccc. POINTS AT ISSUE

dddddd. 1) Whether the recharge of expenses incurred to set up R from P to Q upon being granted a GBL licence will be subject to VAT?

eeeeee. 2) In the event P does not apply for a GBL licence, whether the recharge to Q of the expenses incurred by P to set up R will be subject to VAT?

ffffff.

gggggg. RULING

hhhhhh. On the basis of the FACTS mentioned above, it is noted that P is not making any supply of services to Q. , Therefore,, the recharging to Q of expenses incurred by P is outside the scope of VAT.

iiiiii. **VATR 96**

jjjjjj.

kkkkkk. **FACTS**

llllll. M is a VAT-registered domestic company, incorporated and domiciled in Mauritius. It is engaged in water engineering consulting services and project management including works supervision and technical assistance. M is a wholly owned subsidiary of N, a company incorporated and domiciled in France. Both the holding and subsidiary company are in the same line of business.

mmmmmm.

nnnnnn. M has been awarded a contract as the sub-consultant from D, a domestic company with regard to the Cap Marina project in providing consulting engineering services. Besides, its own local employees on its payroll does, for the purpose of executing the contract, hire the local services of consultants (mainly engineers) who are resident in Mauritius and also the services of its foreign holding company, N.

oooooo.

pppppp. The scope of the work does entail both the physical presence of the employees of N in Mauritius for the proper execution of the work and also off-site work, that is work handled in the Office in France. The employees will be present in Mauritius for over 183 days.

qqqqqq.

rrrrrr. Accordingly, N does send its own engineers and technicians to Mauritius for the relevant tasks involved. These employees are remunerated in France by N. There is no formal arrangement or contract between M and N; the latter owns 100% shares of the former. M has been set up mainly to tap the local market and that of the Indian ocean region.

ssssss.

tttttt. N is to charge a fee for services rendered to M. The former is to also charge a management fee to the latter. Being the holding company, N is to provide financial assistance to M as and when required by way of inter-company loan with a reasonable rate of interest.

uuuuuu.

vvvvvv. **POINTS AT ISSUE**

wwwwww.

1. Whether N is to charge VAT to M for services rendered?

2. Does the place where the services are provided to M have any relevance to the obligation to charge VAT, that is, services in the office in France (online services/design and the like) and physical presence in Mauritius (supervisory activities, for example) ?

RULING

On the basis of information provided, it is ruled that

1. As N sends its engineers and technicians to provide services to M, N is a taxable person making taxable supply in Mauritius in the course or furtherance of its business. It will have to apply for VAT registration and upon its registration, it will have to charge VAT on the services rendered to M.

2. To the extent, the services rendered by N to M are from outside Mauritius, that is, its office in France, the reverse charge mechanism shall be applied by M pursuant to section 14 of the VAT Act. Under this provision, it will be deemed as if M had itself supplied the services in Mauritius and that supply were a taxable supply. Consequently, M may claim the VAT on the supply of the services as input tax in accordance with section 21 of the VAT Act.

As regard the services that will be provided by the engineers and technicians of N who will be physically present in Mauritius, N will have to register as a VAT registered person in Mauritius by virtue of section 15(2)(i) of the VAT Act and charge VAT on those services rendered to M.

VATR 97

FACTS

R is a company incorporated in Mauritius. It was initially engaged in the construction and sale of villas for residential purposes in the Integrated Resort Scheme ("IRS") project. On the basis of a letter of intent obtained by R from the Board of Investment and other explanations provided, on 8 March 2007 the Mauritius Revenue Authority informed R that R was deemed to have obtained the letter of intent prior to 1 October 2006 and, therefore, the construction of the villas would qualify for the exemption provided under item 65 of the First Schedule to the VAT Act.

Currently R is not registered for VAT.

As some plots under the IRS project are yet to be sold, R will continue with its initial business activity, that is, the sale of the available plots under the IRS project.

R is now also considering to extend its business activities as property agent. As an agent, R will deal –

(a) directly with local clients (individuals) for the sale of villas owned by the clients;

(b) with foreign agents who will refer foreign clients (individuals) to R for the sale of their villas; and

(c) with local agents who will refer local or foreign clients to R for the sale of their villas.

POINTS AT ISSUE

(1) Whether the letter of intent will still stand despite R is extending its business activity?

(2) Whether the supply of sales agency service by R to the foreign agents is a zero-rated supply?

(3) Whether the supply of sales service by R to the local clients or to local agents is a standard-rated supply, and whether where, it exceeds or is likely to exceed Rs 6m, R will have to apply for VAT registration ?

(4) Whether upon VAT registration, R will have to apply reverse charge mechanism on invoices received from foreign agents for clients' referral?

(5) Whether R can apply for an alternative basis of apportionment of input VAT given the current basis leads to unfair input VAT credit entitlement?

RULING

On the basis of the FACTS provided, it is ruled that –

(1) As R is deemed to have received a letter of intent prior to 1st October 2006, it is exempted from payment of VAT on the construction of IRS villas under item 65 of the First Schedule to the VAT Act. Moreover, the sale of plots under the said scheme will be an exempt supply under item 48 of the First Schedule to the VAT Act.

(2) The supply of sales agency service by R to foreign agents is zero- rated supply by virtue of item 6(a) of the Fifth Schedule to the VAT Act.

(3) The supply of sales service by R to local clients or to local agents is a standard-rated supply and R has to apply for compulsory registration by virtue of section 15 (2)(i) and item 12 of the Part I of the Tenth Schedule to the VAT Act.

(4) The reverse charge mechanism shall be applied on services received from foreign agents by R upon its registration as a VAT registered person.

(5) For the purposes of section 21(3)(d) of the VAT Act, R can apply for an alternative basis of apportionment of input tax under regulation 8A of the VAT Regulations 1998, where having regard to the nature of business, the apportionment of input tax in accordance with section 21(3(b) is not fair and reasonable.

VATR 98

FACTS

D is a domestic company engaged in international trading which involves buying and selling of goods overseas without the goods coming into Mauritius or passing through Customs control in Mauritius.

F is another domestic company in Mauritius. It holds a scrap metal exporter licence obtained from the Ministry of Commerce and Industry. As a holder of this special licence, F is authorised to export scrap metal from Mauritius.

D is not holder of a scrap metal licence.

D and F are related companies as some shareholders are common. Both companies are registered for VAT.

D has received an order from a client in India for the supply of scrap metal. D will buy these scrap metal from F to be export to its client in India

As D is not authorised to export scrap metal, F will export the scrap metal on behalf of D to D's client in India. For the purpose of the export and Customs declaration, F will be the exporter.

F will invoice D for the goods once the Customs export declaration procedures have been completed.

In its books, D will account as purchases the goods purchased locally from F, and the goods sold overseas in India as export sales.

POINT AT ISSUE

(1) Whether F should charge VAT to D on the goods exported to India on behalf of D? In the affirmative, whether D may make a claim for repayment of the input VAT on ground that the goods are exports by D?

RULING

On the basis of the FACTS mentioned above and provided that D is duly authorised to deal in scrap metal, it is ruled that -

As F and D are VAT registered persons, F must charge VAT at standard rate on the sales made to D. D will be entitled to take credit for input tax against output tax in respect of the VAT invoice raised by F. All goods exported from Mauritius under Customs control are zero-rated by virtue of item 1 of the Fifth Schedule to the VAT Act. However, as D will not be the exporter, it will not qualify to make a claim for repayment of the whole or part of any excess amount in accordance with section 24(4)(a) of the Value Added Tax Act.

VATR 99

FACTS

Q is engaged in the construction and operation of a world-class oceanarium.

xxxxxx. Q has been granted a Registration Certificate by the Board of Investment under the Investment Promotion Act for the purpose of carrying out and operating a world-class aquarium. The project value of the oceanarium exceeds Rs 400 million. Q is VAT registered.

yyyyyy.

zzzzzz. The mission of Q is, through continuous sharing of knowledge and stimulation of public awareness, to nurture a caring, loving and respectful culture towards the aquatic environment so as to develop in every citizen a natural inclination and readiness for safeguarding and protecting it from degradation. In other words, making people learn to better love and protect the aquatic environment.

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bbbbbbb. Once in operation, Q shall derive its revenue from the following specific streams:

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ddddddd. *Entrance fees*

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fffffff. Entrance fees shall be charged to the public at the ticketing counter of the oceanarium or online on Q's website. Each visitor shall be issued an entrance ticket against payment of an entrance fee.

ggggggg. The value of the entrance fee charged will depend on following factors:

hhhhhhh.

iiiiiii. Age group of visitors, e.g., kids, adults, senior citizens, etc;

jjjjjjj.

kkkkkkk. Special group visits, e.g., students, NGOs, senior citizens clubs, etc; and

lllllll.

mmmmmmm. Special discount on online purchases.

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ooooooo. The 8 different types of entrance fees which will be offered by Q are hereunder labelled as A to H:

ppppppp.

qqqqq. Entrance Fee Offer A	**rrrr. It is just the normal visit**
sssss. Entrance Fee Offer B	**ttt. It is the normal visit but with a free guide to accompany the visitor across the visit from start to finish. No additional charge during visit**

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vvvvvvv.

Entrance Fee offer C wwwwww.	**It is the normal visit during which the visitor will be accompanied through the "back of the house", e.g., machine room, etc, with a free guide for relevant explanations. No additional charge during visit.** xxxxx.

yyyyy. Entrance Fee offer D	**zzzzz. It is the normal visit during which the visitor will be allowed to step inside one of the outdoor pools in presence of a biologist for interactions with the sharks and explanations. No additional charge during visit**
aaaaaa. Entrance Fee offer E	**bbbbbb. It is a special evening visit following which a group of visitors are allowed to spend a night at the oceanarium under supervision. No additional charge during activity**
cccccc. Entrance Fee offer F	**dddddd. It is a normal visit during which the visitor will be accompanied through the back of the house and will also be allowed to step inside one of the outdoor pools in the presence of a biologist for interaction with sharks and explanations.** **eeeeee. No additional charge during activity.**

ffffffff.

gggggggg.

hhhhhh. Entrance Fee offer G	**iiiiiiii. It is a full package including a free guided tour, the back of the house visit and the encounter with the sharks. No additional charge during visit.** **jjj.**
kkkkkk. Entrance Offer H	**lll. It is a special offer which provides the visitor with an Annual Pass giving him/her the possibility of undertaking a "normal visit" to the aquarium as often as he/she wishes during a period of 12 months. No additional charge**

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oooooooo. <u>Food and Beverages service</u>

pppppppp. The oceanarium has a permanent outdoor food counter which will sell refreshments, food and beverages, to its visitors. Q has subcontracted this operation to an independent professional caterer. The latter shall pay to Q a monthly fee calculated on the basis of a fixed amount plus a percentage of food and beverages turnover.

qqqqqqqq.

rrrrrrrr. <u>Souvenir photos</u>

ssssssss. Q will operate a photo booth and will sell souvenir photos to the oceanarium's visitors at a determined price. The revenue derived by Q will be from the sale of photos.

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uuuuuuuu. *<u>Events on site</u>*

vvvvvvvv. Q will host different events at the oceanarium, including conferences, workshops, team building sessions, receptions and banquets. Q will derive revenue from such events through rental of the oceanarium's facilities and-/or a percentage of the food and beverages turnover of the food and beverages service provider whenever applicable.

wwwwwwww.

xxxxxxxx. *Membership programs*

yyyyyyyy. Q will offer to the public the possibility of subscribing to membership programs. Such membership programs shall consist of standing privileges including unlimited personal access to the oceanarium's facilities, participation to special events, discounts at the souvenir shop, etc. Q will derive its revenue from the sale of such membership programs.

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aaaaaaaaa. *Souvenir / Gift shop*

bbbbbbbbb. Q will operate a souvenir shop selling articles to visitors of the oceanarium and to the public at large on a retail basis. The articles will include mainly garments, plush toys, educational books, DVDs and other small articles like mugs, key holders and magnets to name but a few. Q will derive revenue from the sale of such articles.

ccccccccc.

ddddddddd. **POINTS AT ISSUE**

(1) Whether the entrance fees charged by Q to visitors will be a zero-rated supply?

(2) Whether the monthly fee calculated as a fixed amount plus a percentage of food and beverages turnover paid by the caterer to Q will be subject to VAT at standard rate?

eeeeeeeee. (3) Whether supplies made by Q in respect of the photo booth, events and subscriptions to membership programs will be subject to VAT at standard rate?

(4) Whether supplies made by Q in the souvenir and gift shop will be subject to VAT at standard rate?

fffffffff. **RULING**

ggggggggg. On the basis of FACTS mentioned above, it is ruled that:-

hhhhhhhhh.

iiiiiiiii. 1) The entrance fee charged by Q to visitors under offer A will be a zero-rated supply for a period of 8 years as from the start of operation of the oceanarium by virtue of item 30 of the Fifth Schedule to the Value Added Tax Act and regulations 18A of the Value Added Tax Regulations 1998. Any additional amount charged under offers B to H will be subject to VAT at standard rate.

jjjjjjjjj. 2) The monthly fee calculated as a fixed amount plus a percentage of food and beverages turnover paid by the caterer to Q will be subject to VAT at standard rate.

kkkkkkkkk.

3) The supplies made by Q in respect of the photo booth, events and subscription to membership programs will be subject to VAT at standard rate.

lllllllll.

mmmmmmmmm. 4) The supplies made by Q in the souvenir and gift shop will be subject to VAT at standard rate except for printed books and similar printed matter of heading No. 49.01 which are zero-rated in accordance with item 2(i) of the Fifth Schedule to the VAT Act.

nnnnnnnnn. **VATR 100**

ooooooooo.

ppppppppp. **FACTS**

qqqqqqqqq. C holds a Global Business Licence issued by the Financial Services Commission. C is registered for VAT. The business activities of C are those of purchase of audio-visual rights from producers/licence holders (“**Licensors**”) and the distribution of same to foreign buyers and also to D.

rrrrrrrrr.

sssssssss. In accordance with the Licence Agreement between C and the Licensors, C grants the rights to broadcast television programs in return of a licence fee.

ttttttttt.

uuuuuuuuu. In accordance with the Licence Agreement between C and the D, C grants the rights to broadcast programs to D upon payment of a licence fee and material fee. The material fee relates to external hard drive on which the films to be broadcasted are recorded, cost of recording and handed over to the broadcaster by the license holder/producer. It also includes the padded envelope and courier charges for dispatch.

vvvvvvvvv.

wwwwwwwww. The licence fee payable by C to the Licensors is a proportion of the licence fee received from D

xxxxxxxxx.

yyyyyyyyy. **POINT AT ISSUE**

zzzzzzzzz. Whether the supply made by C, namely sale of broadcasting rights to D is subject to VAT?

aaaaaaaaaa.

bbbbbbbbbb. **RULING**

cccccccccc. On the basis of the FACTS provided, it is ruled that the sale of broadcasting rights to D and the supply of the external hard drive on which the films to be broadcasted are recorded are exempt supply by virtue of item 73 of the First Schedule to the VAT Act.

VATR101

FACTS

J, is a pan-African energy group in the African energy sector. For the past 2 years, the group has been undergoing major changes involving-

(i) a simplification of its organisation and legal structure with merger towards its market;

(ii) a new brand identity; and

(iii) a new orientation of its business activities through a transformation of its value chain.

dddddddddd. K, is a company incorporated in Mauritius and it holds a Global Business Licence (GBL). It is J’s parent company and it is registered for VAT in Mauritius.

eeeeeeeeee.

ffffffffff. Previously, K operated only as a holding and financing company. As from 1 January 2021, K assumes, in addition to the existing holding and financing function, a headquarter function in Mauritius acting as “strategic control entity” or entrepreneur that contracts with the African Operational Subsidiaries Companies (the “OpCos”), which are the entities in charge of the responsibilities of daily execution, under a franchise agreement. K is , therefore, now the prime contractor to enter into contracts with the OPCos L for the right to use J's Group Intellectual Property for a franchise fee developed by K to enable the franchisees to develop their business. The IPR relates to the use of the brand it developed. K is the legal owner of the brand. The franchise fee is calculated as a percentage of the turnover of the franchisee(s).

gggggggggg.

hhhhhhhhhh. M, a company incorporated in the United Arab Emirates, provides key strategic guidance and initiatives relating to the IPR to the OPCos.

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jjjjjjjjj. To centralise the billing process, K charges the OPCos for the use of the brand and services provided by M to L and receives franchise income from the OPCos

kkkkkkkkkk.

lllllllll. M will subsequently issue an invoice to K to allocate part of the revenue for the services it provided to the OPCos.

K receives the following income in Mauritius: -

mmmmmmmmmm. - Franchise fee income under the franchise arrangement; and
nnnnnnnnnn. - Dividends and interest income.

As part of the restructuring exercise, K is considering the transfer of some of its IP to a company yet to be incorporated in Mauritius, Z which would hold a Global Business Licence and to a Foreign Company, Y. Both Z and Y will form part of J.

oooooooooo.

pppppppppp. <u>POINTS AT ISSUE</u>

(i) Whether the provision of the brand under the franchise agreement to the African OPCos will fall within the ambit of item 6(a) of the Fifth Schedule to the VAT Act?

(ii) Whether the provision of loans by K to foreign related entities within J will be considered as outside the scope of Mauritius VAT?

(iii) Whether K is entitled to claim a refund of its excess input tax?

(iv) What are the VAT implications on the transfer of IP from K to other group entities?

(v) What is the VAT implication for K on the franchise fee allocation paid to M (being a retrocession of some of the franchise fees received from operational companies for functions performed in Dubai)?

<u>RULING</u>

On the basis of FACTS provided, it is ruled that: -

(i) The contract of franchise between K and the OPCos for the right to use J's Intellectual Property for a franchise fee is a supply of service and zero-rated in accordance with section 11 and item 6(a) of the Fifth Schedule to the VAT Act.

(ii) The making of loans between entities within the same group is an exempt supply in accordance with item 50(fa) of the First Schedule to the VAT Act.

(iii) As K will be making both taxable and exempt supplies, credit for input tax shall be allowed in the proportion of taxable supplies to total turnover in accordance with section 21(3) (b) of the VAT Act. Any excess input tax which corresponds to the proportion of the value of zero-rated supplies to the total value of taxable supplies may be claimed as repayment under section 24(2) of the VAT Act.

qqqqqqqqqq.

(iv) (a) The transfer of IP from K to Y which is a foreign company within J is a zero-rated supply by virtue of item 6(a) of the Fifth Schedule to the VAT Act. (b) The transfer of IP from K to Z is a zero-rated supply provided that Z is mainly engaged in providing services to foreign entities.

rrrrrrrrrr.

(v) As M will be providing services to the OPCos and all these entities are outside Mauritius at the time the services are supplied, the transaction is outside the scope of VAT in Mauritius.

ssssssssss.

VATR 102

FACTS

The joint venture D is set up for photovoltaic projects contracted with the Central Electricity Board.

F is a private limited company, incorporated and domiciled in Mauritius. F is VAT registered. It is engaged in the engineering, procurement and construction of photovoltaic farms and energy efficiency projects in Mauritius.

F as the Engineering, Procurement and Construction ("EPC") of projects, has been appointed by D for the construction and installation of photovoltaic platforms. F is responsible for the procurements in relation to construction. F bears all the expenses for the procurement and then recharges same to D with a mark-up. At the level of F, a photovoltaic project would involve different elements namely:

a) importation of parts/ equipment for construction of the photovoltaic farms;

b) local purchases of photovoltaic-related supplies;

c) services provided by foreign suppliers and local suppliers such as commissioning services, storage fee at Customs, labour, transport, etc. in relation to the photovoltaic construction.

d) sale of the photovoltaic constructions to D with a mark-up being recharged on all expenses made including installation and commissioning.

The main components of the solar facilities project are as follows

(i) 65% are for PV modules;
tttttttttt. (ii) 15% for transmission equipment;
uuuuuuuuuu. (iii) 10% for logistics; and
vvvvvvvvvv. (iv) The remaining 10% are split between civil works, contingencies and soft costs.

POINTS AT ISSUE

I) Whether the supply of the photovoltaic system made by F, including installation and commissioning to D will be zero-rated?

2) Whether F can claim a repayment of input tax on the local purchase of parts/equipment and services obtained locally (e.g. transport/labour/warehousing, etc.) that are attributed to the construction of the photovoltaic plant?

RULING

On the basis of the FACTS provided above, it is ruled that-

1. The supply, installation, commissioning and supply of a photovoltaic system by F is a zero-rated supply in accordance with item 7 (aa) of the Fifth Schedule to the VAT Act.
2. Other supplies made, such as site preparation and civil works are subject to VAT at standard rate.
3. VAT incurred on parts/equipment bought locally and, on any services received locally (e.g. transport/ labour /warehousing, etc.) are allowed as input tax as provided for under section 21(3) of the VAT Act. The repayment of any excess VAT may be claimed in accordance with section 24(2) or section 24(4) (a) of the VAT Act as the case may be.
4. For any supply of services received from a supplier who does not belong in Mauritius and is not VAT registered, the provisions of section 14 of the VAT Act will apply. However, if the foreign supplier will be physically present in Mauritius to provide the service and the taxable value of the supply made in Mauritius exceeds the threshold as per the Sixth Schedule, then the foreign supplier has to apply for VAT registration under section 15 of the VAT Act and charge VAT to F.

VATR 103

FACTS

G is a company incorporated in Mauritius and is a VAT registered person.

It has been stated that G runs two tourist shops situated in Grand Baie and Moka under the trading name "G". The principal business activity of G is the sale of products held on consignment from local artisans and producers (collectively "**Partners**").

It has been further explained that as part of its modus operandi, G enters into a one-year contract ("**Agreement**") with each Partner to have their brands featured in the store. The key clauses within the Agreement are summarised as follows:

(i) Partners pay a monthly participation fee to G towards the running costs of the shops. The participation fees vary in accordance with the type of product showcased.

(ii) G works on consignment and the goods sold remain the exclusive property of the partners until sold. Prices are determined by the Partners themselves.

(iii) G provides to the Partners their summary report of sales made on their behalf every 6th of the previous period.

(iv) G collects 25% commission upfront on the sales made on behalf of the Partners and remits the balance to them.

The process for the sale of products on consignment is spelt out below:

(a) An invoice is raised in the name of G upon sale of the product;

(b) G collects the retail amount from customers;

(c) G subtracts 25% as commission; and

(d) The remaining amount is remitted to the Partners.

G recognises the commission received and participation fees as gross revenue for income tax purposes in line with IFRS 15.

POINT AT ISSUE

Whether G, acting as an agent for the Partners ought to charge VAT on the commission and participation fees received?

RULING

On the basis of the FACTS provided above, it is ruled that the goods on consignment from the Partners is a supply of goods by virtue of item 6(a) of the Third Schedule to the VAT Act. Therefore,, as a VAT registered person, G will have to charge VAT at the rate of 15% on the sale of goods made to final customers and subsequently issue VAT invoices in its name as provided in section 20 of the VAT Act. G will also have to charge VAT on the commission and participation fee received from its Partners.

VATR 104

FACTS

X is registered in Mauritius under the Foundations Act 2012 since 1 July 2020.

Y, a company incorporated in Mauritius is a council member of the Foundation.

X is the shareholder of the following:

- C, a domestic company;
- D, a company holder of a GBC licence; and
- E, a company holder of a GBC licence.

The beneficial owners of X are:

(a) Mr F, South Africa, (20%); and

(b) Mr G, South Africa, (80%)

X serves as an investment holding vehicle.

X has acquired 2 plots of land (Plot W' and Plot Z) in Y Golf Residences Ltd.

X is in the process of starting to design and build dwellings on the plots acquired for the construction of villas to be used for residential purposes.

X would like to be in a position where they can reclaim these costs by registering X for VAT.

During the construction process X will acquire the services of VAT registered suppliers, contractors and various service providers who will charge VAT to X.

POINT AT ISSUE

Whether X will be eligible to apply for VAT registration?

RULING

On the basis of the FACTS provided, it is ruled that X is not eligible for VAT registration as it is not making any taxable supplies.

VATR 105

FACTS

In 2005, M Group, an international fishing group, extended its activities to tropical tuna fishing and this was implemented in Mauritius with the construction of super freezer -40°C tuna purse seiners along with the construction of factories and office premises. The M Group's Mauritian tuna fleet consists of three super freezer purse seiners operating under the Mauritian flag in the Indian Ocean.

The M Group has set up the following —

- N, a public company limited by shares incorporated under the laws of Mauritius. N holds a 'global business licence' ("GBL") issued by the Financial Services Commission in Mauritius.
- O, a private company limited by shares incorporated under the laws of Mauritius and holding a GBL, is wholly owned by N. O holds a tuna purse seiner registered under the Mauritian flag.

wwwwwwwwwww. • P, a private company limited by shares incorporated under the laws of Mauritius and holding a GBL is also wholly owned by N. P holds a tuna purse seiner registered under the Mauritian flag.

The tuna purse seiners held by 0 and P are each referred to as a "**Vessel**" and together, as the "**Vessels**".

Each of O and P leases its respective Vessel to Q, a private company limited by shares incorporated under the laws of Mauritius which holds a GBL. Q is registered for VAT.

O has entered into a bareboat charter agreement with Q and derives rental income from the leasing of its Vessel.

P has also entered into a bareboat charter agreement with Q and derives rental income from the leasing of its Vessel.

Q uses the Vessels to carry out the tuna fishing activities in international waters. Thereafter, Q sells its catch to R, a private company incorporated under the laws of Mauritius which holds a GBL.

R processes and commercialises the fish on a worldwide basis and an insignificant portion is sold on the local market.

The processing is done via S, a domestic company holding a freeport license. S is held as a joint venture (50% M and 50% U).

POINTS AT ISSUE

1. Whether the leasing of the Vessels by O and P to Q falls under item 41 of the First Schedule to the VAT Act?

2. Whether O and P are required to be registered for VAT under section 15 of the VAT Act, given that the annual turnover of each entity exceeds Rs6 Million?

RULING

On the basis of the FACTS provided, it is ruled that:

1. The leasing of the Vessels by O and P to Q does not fall under item 41 of the First Schedule to the VAT Act.

2. The leasing of the Vessels operating under the Mauritian flag by O and P to Q constitutes a taxable supply made in Mauritius. As the annual turnover of taxable supplies of O and P would exceed Rs6 Million, both O and P will be required to register for VAT under section 15 of the VAT Act.

xxxxxxxxxx. **VATR 106**

yyyyyyyyyy. **FACTS**

zzzzzzzzzz. A was incorporated in Mauritius as a private company limited by shares on 14 May 2014 and holds a Category Global Business Licence ("**GBL**") issued by the Financial. Services Commission ("**FSC**").

aaaaaaaaaaa.

bbbbbbbbbbb. A is involved in the international trading of coal and other minerals. It acquires X mine from mining companies and other South African suppliers, including from the C mine in South Africa. X coal is processed through washing facilities and finished products are sold by A locally within South Africa, as well as internationally, but excluding Mauritius. In particular, in no circumstances, the coal sold by A is traded through Mauritius Customs

ccccccccccc.

ddddddddddd. A is registered for VAT purposes in South Africa for the purposes of its business activities.

eeeeeeeeeee. A had erroneously registered for VAT in Mauritius and had been filing monthly VAT returns. Nonetheless, based on the nature of its supplies, A has rectified the situation and now de-registered for VAT in Mauritius.

fffffffffff.

ggggggggggg. A has a sister entity, namely B, which is also incorporated in Mauritius and holds a GBL from the FSC.A is currently contemplating a business restructure which will involve the transfer of its business relating to the C mine, which includes the C off-take mining contract, receivables, payables and the stock of X coal, to B.

In this regard, it is highlighted that:

(i) the stock of X coal is currently held in South Africa and the transfer of such stock to B will not entail the stock being imported into Mauritius or crossing Mauritius Customs under any circumstance;

(ii) the C mine is situated in South. Africa and exploited under the mining contract within South Africa. The clients of A are also all non-residents of Mauritius. In no circumstances, the mining contract leads to supplies being made in Mauritius;

(iii) the receivables relate to funds due from customers following sale of coal under C Business. The coal so sold were neither imported in Mauritius nor exported from Mauritius through Mauritius Customs. In addition, the customers all are non-residents of Mauritius.

hhhhhhhhhhh. The consideration for the proposed transaction is likely to exceed MUR 6 million.

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jjjjjjjjjj. **POINTS AT ISSUE**

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llllllllll. (1) Whether the contemplated business re-structure, which will involve the transfer of the C Business to B, will not be subject to VAT in Mauritius?

mmmmmmmmmmm. (2) Whether A will not be required to re-register for VAT solely for the purposes of carrying out this transaction?

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ooooooooooo. **RULING**

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qqqqqqqqqqq. As all the underlying assets and liabilities of C to be transferred by A to B are outside Mauritius, the said transfer does not constitute a supply made in Mauritius. It is , therefore, confirmed that-

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1. The contemplated business re-structure which will involve the transfer of

the C Business to B, will not be subject to VAT in Mauritius.

2. A will not be required to re-register for VAT solely for the purposes of carrying out this transaction.

sssssssssss. VATR 107

ttttttttttt. FACTS

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vvvvvvvvvvv. As part of a business re-organisation, S intends to transfer its activities as a going concern to T.

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xxxxxxxxxxx. T is a newly incorporated company set up exclusively to take over the activities of S. T has not yet started its operations and it intends to do so with effect from 1st January 2023.

yyyyyyyyyyy.

zzzzzzzzzzz. Both entities' activities are the import and distribution of pharmaceutical products. Both entities are VAT registered persons. S makes both taxable and exempt supplies in the normal course and furtherance of its business.

aaaaaaaaaaaa.

bbbbbbbbbbbb. Following the re-organisation, the activities of T shall be exactly the same as S and its beneficial ownership shall also remain the same as S. S will no longer be operational and all the operations will be taken over by T.

cccccccccccc. As part of its re-organisation, T intends to acquire the tangible assets of S which shall comprise of:

dddddddddddd. Office equipment;

eeeeeeeeeeee. Computer equipment;

ffffffffffff. Motor vehicles;

gggggggggggg. Furniture and fittings; and

hhhhhhhhhhhh. Inventories.

iiiiiiiiiiii.

jjjjjjjjjjjj. The assets shall be acquired to make both taxable and exempt supplies in the normal course and furtherance of the business of T.

kkkkkkkkkkkk.

llllllllllll. S will receive consideration equivalent to the book values of the assets in the books of S since the purpose of the transfer is for a restructuring rather than for a profit motive.

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nnnnnnnnnnnn. There are no intangible assets on the books of S nor will the transaction give rise to any intangible assets.

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qqqqqqqqqqqq. POINT AT ISSUE

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ssssssssssss. Whether VAT will be chargeable on the transfer of assets from S to T?

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uuuuuuuuuuuu. RULING

vvvvvvvvvvvv.

wwwwwwwwwwww. On the basis of the FACTS provided, it is ruled that subject to section 21(7A), S shall not charge VAT on the transfer of its assets to T pursuant to section 63(3) of the VAT Act.

xxxxxxxxxxxx.

yyyyyyyyyyyy. With regard to its cessation of business, as a registered person, S will have to comply with the provisions in section 63(1) and (2) of the VAT Act.

zzzzzzzzzzzz. VATR 108

aaaaaaaaaaaaa. FACTS

bbbbbbbbbbbbb.

ccccccccccccc. A is a VAT registered private company operating in the retail and wholesale sector. A deals in goods and services in relation to home decoration, sanitary wares, tiles, paving and gardening.

ddddddddddddd. A deals in products which are both taxable and exempt from payment of VAT.

eeeeeeeeeeeee. A also accepts different modes of payment namely, cash, cheques, credit/debit cards, bank transfers, vouchers and deposits.

fffffffffffff. Some potential clients often make a down-payment/deposit with A for the following reasons –

ggggggggggggg. • They have the adequate means to pay but have not decided on which product to buy;

hhhhhhhhhhhhh. • The product which they intend to buy is temporarily out of stock.

iiiiiiiiiiiii. A accepts the down-payment/deposit.

jjjjjjjjjjjjj. A VAT invoice is being issued once the client finalises his choice of product and the quantity of the product to be purchased.

kkkkkkkkkkkkk.

lllllllllllll. POINT AT ISSUE

mmmmmmmmmmmmm. Whether A should raise a VAT invoice for the down-payment/deposit received from clients despite there has not been any exchange of goods and services?

nnnnnnnnnnnnn.

ooooooooooooo. RULING

ppppppppppppp. On the basis of the FACTS mentioned above, it is ruled that in accordance with section 5(1) of the VAT Act, VAT should be charged at the point the down-payment/deposit is made by the clients and a VAT invoice should be raised. The VAT so charged should be properly accounted for in the VAT return for the taxable period in which the down-payment/deposit is accepted.

qqqqqqqqqqqqq.

rrrrrrrrrrrrr. However, where the client finally decides to purchase a product which is exempted, an adjustment should be made by A in its VAT account and reported at line 13 of the VAT return for the taxable period in which the final sale is made.

sssssssssssss. VATR 109

ttttttttttttt. FACTS

uuuuuuuuuuuuu. X is a company incorporated on 06 September 2018. Its main activity is the charter of catamarans which comprise of-

(i) Live-aboard charters around Mauritius; and

(ii) expedition charter to St Brandon.

vvvvvvvvvvvvv. X holds a permit from the Ministry of Blue Economy, Marine Resources, Fisheries and Shipping.

wwwwwwwwwwwww. X is the owner of a catamaran which can accommodate a maximum of 8 passengers and 2 crews, sharing 4 double cabins and 2 crews.

xxxxxxxxxxxxx.

yyyyyyyyyyyyy. The expedition to St Brandon is a 10-night live-aboard expedition package on board the catamaran. St Brandon is located about 430 kilometres northeast of Mauritius. It is two full day and night (48 hours) sailing to reach the destination. This expedition is a sailing adventure with a week of fishing, kite-surfing, free diving, snorkelling and other similar recreational activities. Only 200 permits are delivered by the authorities for foreigners yearly. Permits from Outer Island Development Corporation and Prime Minister Office should be obtained for all foreigners prior to their voyage to St Brandon.

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aaaaaaaaaaaaaa. Passengers invoiced for the trip from Mauritius to St Brandon and back including activities described above.

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cccccccccccccc. POINT AT ISSUE

dddddddddddddd. Whether the transport cost included in the package falls under item 3 of the Fifth Schedule of the Value Added Tax Act and should be treated as a zero-rated supply?

eeeeeeeeeeeeee. RULING

ffffffffffffff. On the basis of the FACTS mentioned above, it is ruled that the supply made by X comprises of a sailing adventure with a week of fishing, kite surfing, free diving, snorkelling and other similar recreational activities. The said supply does not fall under the purview of item 3 of the Fifth Schedule to the VAT Act and, therefore, does not constitute a zero-rated supply.

gggggggggggggg. As a consequence, thereof, the transport cost included in the package for the expedition to St Brandon will be subject to VAT at the rate of 15%.

hhhhhhhhhhhhhh. <u>VATR 110</u>

iiiiiiiiiiiii. <u>FACTS</u>

jjjjjjjjjjjjj. A is engaged in the sale of chilled and frozen meat of poultry and is a VAT registered person.

kkkkkkkkkkkkkk.

lllllllllllll. A is diversifying its activities and is now producing and selling a type of product called "Oeufs Roti". In order to make this product, eggs are boiled and the shell is being removed. After this process, the eggs are boiled again in spices until they reach a dark brown colour and impart a spicy flavour. The finished products are then vacuum packed and sold as chilled packs of four or six eggs.

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nnnnnnnnnnnnnn. <u>POINT AT ISSUE</u>

oooooooooooooo. Whether the supply of "Oeufs Roti" produced by A is a zero-rated supply?

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qqqqqqqqqqqqqq. <u>RULING</u>

rrrrrrrrrrrrr. On the basis of the FACTS mentioned above, it is ruled that the sale of "Oeufs Roti" made by A constitutes a taxable supply as provided in section 9(3) of the Value Added Tax Act. However, since the supply does not fall within the purview of the Fifth Schedule to the Value Added Tax Act, it would attract VAT at 15%.

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VATR 111

FACTS

A is a domestic company incorporated in the Republic of Mauritius on 21 July 2021

A holds a yearly licence issued by the Mauritius Revenue Authority ("MRA") to trade in bunker fuel which was issued to it on 10th October 2022.

A is registered for VAT purposes since August 2021.

A conducts business in the import and sale of bunker fuel.

The Purchasing model

A purchases most of its fuel from B based in Dubai and a small percentage from C, based in Mauritius. No VAT is charged to A by C on fuel acquired locally as A does not sell its products on the local market.

The fuel is stored by A either on its own bunker barge called D or in a bonded tank which is leased from C. Both D and the bonded tank are under Customs control.

A is exempted from 'Custom Duty, Excise Duty and other taxes' under section 105(a) of the Customs Act on its purchases of fuel.

Fuel delivered by B to D is , therefore, free of Customs Duty, Excise Duty and all taxes on the basis of an application made to the Director General of the MRA prior to delivery to the Company.

The Sale Model

B has contracted A to supply fuel to its fleet of ships using A's bunkering facilities and logistics. In accordance with Section 94 of the Customs Act, the ships which enter the Mauritian waters for bunkering are exempted from the obligation to obtain a 'clearance certificate'.

They however need to obtain permission from the Mauritius Port Authority to enter the Port region.

A issues a Customs Bill upon delivery to the incoming ships. Once fuelling is done, the ships leave Mauritian waters.

A raises its invoices to B on a delivery-to-delivery basis for all fuelling done.

POINTS AT ISSUE

(1) Whether the sale of bunker fuel by A from its facilities and logistics to foreign vessels which enter the Port of Mauritius for the purpose of re-fuelling is a zero-rated supply within the meaning of section 11 and the Fifth Schedule to the VAT Act 1998?

(2) In case the supply referred to in Question 1 above qualifies as a zero-rated supply, what is the time period within which A can make a claim for repayment of the VAT input under section 24 of the VAT Act as incurred by it in the normal course of its business in respect of its running expenses which qualify as taxable supply?

RULING

On the basis of the FACTS mentioned above, it is ruled that —

(1) The sale of bunker fuel by A from its facilities and logistics to foreign vessels which enter the Port of Mauritius for the purpose of re-fuelling is deemed to be export under Customs control and therefore, is a zero-rated supply within the meaning of section 11 and the Fifth

Schedule to the VAT Act 1998.

(2) A may take credit for input tax of the VAT incurred on its running expenses by virtue of section 21 of the VAT Act and subsequently make a claim for repayment thereof in accordance with section 24 of the VAT Act as from the date of its VAT registration.

VATR 112

FACTS

M is a company incorporated and located in South Africa. It manufactures and sources:

(i) M branded optical lenses wherein it owns the said Trademark; and

(ii) other optical lenses brands including N brands, O brands and such other private label branded lenses with third parties' logo or Trade Mark (hereinafter the "**Products**")

P is a private company incorporated in Mauritius.

Upon signature of a Distribution Agreement and an In-Market Sales Commission Agreement, P will act as the exclusive distributor of M in the territory of Mauritius and will be responsible for the delivery of the Products to optometrists in Mauritius. As per their business model, P will act as the delivery agent of the Products to optometrists in Mauritius. P will act as the delivery agents of the Products to the customers of M in the Mauritian territory. P will not be raising any invoice to the customers of the Products nor will it be collecting any payments on behalf of M.

The customers of the Products will be any purchaser in the territory of Mauritius (here in after the "**Customers**") and will include mainly optometrists who will be purchasing the lenses from M for their respective clients. The Customers will effect their payments for the purchase of the Products directly to M via an online platform and the latter will raise invoice to the Customers in its name.

M operates a business model as follows:

- The Customers order lenses from M via P;
- P holds stock of lens consignment in Mauritius which belongs to M;
- P polishes the ordered lens from inventory of the stock consignment prior to delivery to the Customers;
- P dispatches processed lenses to the Customers on behalf of M;
- M raises invoice to Customers for the order;
- The Customers effect their payments to M through digital wallet;
- P will raise an invoice to M on a monthly basis for its services, in terms of its technical support and the distribution of the lenses to the Customers in Mauritius.

POINTS AT ISSUE

(1) Whether compulsory registration under section 15(2)(a) of the VAT Act would be a requirement for M in respect of the sales of the Products?

(2) Whether section 9(1) of the VAT Act in regard to VAT to be charged on any supply of goods made in Mauritius is applicable to M or P?

(3) Whether section 20(1) of the VAT Act is applicable to Pin respect of the issuing of a VAT invoice?

(4) Whether section 9(10) of the VAT Act is applicable to P?

(5) Whether section 9(11) of the VAT Act is applicable to B

RULING

On the basis of the FACTS mentioned above, it is ruled that –

(1) As M is not engaged in any business or profession specified in Part I of the Tenth Schedule to the VAT Act in Mauritius, it will not be required to compulsorily register under section 15(2)(a) of the VAT Act.

xxxxxxxxxxxxxx.

yyyyyyyyyyyyyy. However, M will have to compulsorily register for VAT in Mauritius under section 15(1) of the VAT Act if it is making taxable supplies in Mauritius and its turnover of taxable supplies exceeds or is likely to exceed the prescribed amount in the Sixth Schedule to the VAT Act.

zzzzzzzzzzzzzz.

(2) On being registered for VAT, M will have to charge VAT on the supply of any taxable goods or services made in Mauritius in accordance with section 9(1) of the VAT Act.

P, already being a VAT registered person will have to charge VAT to M for its services in terms of its technical support and the distribution of the lenses in Mauritius.

(3) Being a VAT registered person, P will have to issue a VAT invoice in respect of any taxable supply made to any person in Mauritius

(4) With reference to questions 4 and 5, sections 9(10) and 9(11) are not applicable to P as it will neither be effecting any sales in its own name nor will it effect the sales in the name of M.

aaaaaaaaaaaaaaa. VATR 113

bbbbbbbbbbbbbbb. FACTS

ccccccccccccccc. A is a domestic company entirely owned by Mr B who is a professional architect. A provides architectural services to the local market.

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eeeeeeeeeeeeeee. A is also related to C, a Global Business Company, 100 % owned by Mr B and which provides architectural services to the foreign market.

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ggggggggggggggg. Both companies share a pool of employees which consists of architects, draughtsman, designers and administrators who, for the sake of simplicity, are formally employed and paid by A.

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iiiiiiiiiiiiiii. Since these employees, though employed and paid by A, also spends time working on the projects of C, the latter shares the costs of these employees.

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kkkkkkkkkkkkkkk. Based on the numbers of hours the staff would work on the projects related to C, A would calculate the share of labour costs for C and send a claim to the latter for reimbursement. A shall not add any commissions or whatsoever to the claim.

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mmmmmmmmmmmmmmm. POINT AT ISSUE

nnnnnnnnnnnnnnn. Whether VAT will be applicable on the claim made by A to C for reimbursement of labour cost?

ooooooooooooooo. RULING

ppppppppppppppp. On the basis of the FACTS mentioned above, it is ruled that the supply of labour for consideration by A to C is subject to VAT at the standard rate of 15%.

qqqqqqqqqqqqqqq. VATR 114

rrrrrrrrrrrrrrr. FACTS

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ttttttttttttttt. A was incorporated in Mauritius on 10 August 2021 and it holds a Family Office (Multiple) Licence pursuant to section 16 of the Financial Services Act 2007.

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vvvvvvvvvvvvvvv. The Clients of A are High Net Worth Individuals ("**HNWIs**") and Ultra High Net Worth Individuals ("**UHNWIs**"), i.e., generally those affluent individuals and families whose net worth is at least USD 5 million in accordance with section 5(2) of the Financial Services (Family Office) Rules 2020 (the '**Rules**'). As of date, most of the Clients of A are non-Mauritian citizens and non-Mauritius residents.

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xxxxxxxxxxxxxxx. As per section 5(1) of the Rules, A provides certain categories of services to its Clients. Put simply, A looks after the financial and non-financial affairs of its Clients.

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zzzzzzzzzzzzzzz. The services provided by A include conciergerie services (the "**Services**") in accordance with section 5(1)(b) of the Rules.

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bbbbbbbbbbbbbbbb. A conciergerie service is, basically, the provision of personal assistance to **HNWIs** and **UHNVVIs** on all aspects from hotel bookings, transport arrangements, restaurant bookings, planning etc.

cccccccccccccccc. With regards to A, the Services include but are not limited to, arranging for ground transportation and hotel and restaurant bookings when the Clients of A visit Mauritius.

dddddddddddddddd. A charges VAT to its Clients when the Services procured are utilised, by the Clients, in Mauritius. The output tax is remitted to the Mauritius Revenue Authority.

eeeeeeeeeeeeeeee. Typically, A welcomes Clients in Mauritius. A arranges and pays for hotel booking, ground transportation and restaurant bookings (not limited to reservation but also including the food and drinks consumed) for the Clients. The Clients do not settle the service providers directly. A is billed for the end services by the service providers (e.g. hotels, restaurants including food and drinks consumed, ground transportation companies). VAT is charged on the amounts billed by the service providers. A settles the service providers directly.

ffffffffffffffff.

gggggggggggggggg. A then charges these costs to the Clients, along with a service fee for the conciergerie services, to which VAT is charged as output tax because the services and goods (food and drinks) consumed are utilised in Mauritius.

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iiiiiiiiiiiiiiii. POINT AT ISSUE

jjjjjjjjjjjjjjjj. Whether A is allowed to claim input tax suffered on the payments made to the ground transportation service providers, restaurants and similar other expenses (e.g., payments to tour operators) as part of the provision of the Services to its Clients, pursuant to section 21(2)(c) of the Value Added Tax Act?

kkkkkkkkkkkkkkkk. RULING

llllllllllllllll. On the basis of the FACTS mentioned above, it is ruled that, subject to section 21 of the VAT Act, input tax incurred by A on payments made for transportation, restaurant booking not limited to reservation but including the food and drinks consumed by the Clients and similar other expenses (e.g., payments to tour operators) is allowable as a credit for input tax for VAT purposes.

mmmmmmmmmmmmmmmmm. **VATR 115**

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oooooooooooooooo. **FACTS**

ppppppppppppppppp. X was incorporated under the laws of Mauritius on 22 February 2022 as a domestic company limited by shares and is VAT registered.

qqqqqqqqqqqqqqqq. The business activity of X is to buy, hold and administer a villa in Mauritius.

rrrrrrrrrrrrrrr. The villa will be put to business use, that is, renting to generate rental income.

ssssssssssssssss. As of date, the construction of the villa by X is still en-route and rental income is expected to be earned once construction is completed and rental made, which is not expected so soon.

ttttttttttttttt. The rental period will be for a period of less than 90 days.

uuuuuuuuuuuuuuu.

vvvvvvvvvvvvvvv. **POINTS AT ISSUE**

wwwwwwwwwwwwwwwww. (1) Considering X is VAT registered and the rental periods are designed to be less than 90 days, can X claim credit for input VAT before the actual commencement of its rental operations?

xxxxxxxxxxxxxxxx. (2) In case X can claim input VAT before the actual commencement of the rental operation, can X claim a refund for the excess input tax incurred during the construction phase, particularly on capital goods, despite the fact that X has not yet started to collect output VAT?

yyyyyyyyyyyyyyyy.

zzzzzzzzzzzzzzzz. **RULING**

aaaaaaaaaaaaaaaaa. On the basis of the FACTS mentioned above, it is ruled that:

bbbbbbbbbbbbbbbbb. (1) X may, by virtue of section 21(1) of the VAT Act, take credit for input tax incurred on the construction of the villa in Mauritius against output tax arising from the rental of the said villa for a continuous term not exceeding 90 days.

ccccccccccccccccc.

ddddddddddddddddd. (2) Subsequently, X may make a claim for repayment of the excess arising therefrom in accordance with section 24(1)(a) of the VAT Act. However, the Director-General may, in accordance with section 24(1A.)(b) of the Value Added Tax Act, retain the excess amount to be carried forward onto the return for the following taxable period.

eeeeeeeeeeeeeeeee.

fffffffffffffffff.

VATR 116

FACTS

X is a public limited company incorporated and domiciled in Mauritius. Its main business activity consists of the provision of hotel accommodation.

X claims refundable deposit from most of its clients. However, at the time a deposit is received, X does not have any contract with the client. The deposits are received from tour operators located outside Mauritius. The tour operators are not the final consumers and are not resident in Mauritius when a deposit is made.

POINT AT ISSUE

(1) Whether there is a supply of services under the VAT Act?

(2) In case the answer to the above question is yes, is the supply taxable at zero-rated or

standard rate?

RULING

On the basis of the FACTS mentioned above, it is ruled that —

(1) The provision of the hotel accommodation by X to the tour operators located outside Mauritius against the payment of a refundable deposit is a supply of service by virtue of section 4(2)(b) of the VAT Act. The refundable deposit received by X from the tour operators is part-payment of the full consideration for the supply of services made by X.

(2) The hotel accommodation will be provided and utilised in Mauritius by clients of the tour operators. , therefore,, the refundable deposit which is the part-payment of the full consideration receivable by X will be subject to VAT at the standard rate of 15%. For any cancellation of booking in respect of which a deposit received is refunded by X, X may make a VAT adjustment in the taxable period in which the refund is made in accordance with section 21(4) of the VAT Act.

VATR 117

FACTS

A is a public limited company incorporated and domiciled in Mauritius. Its main business activity consists of the provision of hotel accommodation to both local and foreign clients.

A has initiated a contribution program aimed at encouraging its hotel clients to participate in environmental conservation and sustainability projects. The contribution is entirely voluntary and are collected separately from the standard room charges. The funds thus collected are exclusively directed toward critical environmental initiatives, such as reforestation, wildlife preservation, and waste reduction, all of which are in harmony with A's commitment to responsible and sustainable tourism.

Being in the hotel industry, A is aware of the importance of maintaining a sustainable environment in Mauritius, that is, preserving an ecological balance of the natural environment and conserving the natural resources to support the wellbeing of both the hotel industry and the population of Mauritius as a whole.

The voluntary contribution from hotel clients amounts to MUR 100 per room night and the funds collected are allocated to the different environmental projects.

A does not provide any goods or services in exchange for the voluntary contribution made by these hotel clients.

A committee has been set up by A to decide on which sustainability projects the funds collected are to be utilized.

Currently, the committee has decided to invest in some sustainability project in various regions in Mauritius.

The committee intends to come up with other sustainability projects for investment in the near future.

POINT AT ISSUE

Whether the fund collected amounting to MUR 100 per room night from voluntary hotel clients is considered as vatable?

RULING

On the basis of the FACTS mentioned above, it is ruled that the voluntary contribution made by the hotel clients to A for environmental conservation is not consideration for any supply of goods or services made by A and therefore, is not subject to VAT in accordance with section 9(1) of the VAT Act provided that A –

(i) has obtained the necessary regulatory authorization for the collection of the voluntary contribution; and

(ii) keeps proper books and records to distinguish between the voluntary contribution received and consideration for supplies it makes.

VATR 118

FACTS

M is a private company limited by shares incorporated under the laws of Mauritius and holds a 'global business licence' issued by the Financial Services Commission of Mauritius — ("**FSC**").

M's sole shareholder is N, another private company limited by shares incorporated under the laws of Mauritius. N also holds a 'global business licence' issued by the FSC.

The sole shareholder of N is O, a company established in the United States of America.

M has been established to trade in carbon emission reduction credits ("**Carbon Credits**"). M invests in carbon programs to eventually hold the sole rights of these programs and on-sell such rights. Following its incorporation, M acquired the Carbon Credits and now sells these to several countries outside Mauritius. M conducts its business outside of Mauritius.

M is considering purchasing Carbon Credits from two trusts, namely P and Q (referred to as **the "Trusts"**), established under the laws of Mauritius. The sale of Carbon Credits to M by R shall be within Mauritius.

R are not managed and controlled from Mauritius and hence are not tax resident in Mauritius. R do not hold a 'global business licence'.

POINTS AT ISSUE

(1) Whether the sale of Carbon Credits in Mauritius falls outside the scope of the VAT legislation?

(2) Whether the Trusts are required to register for VAT in Mauritius if their respective annual turnovers relating to the sale of Carbon Credits in Mauritius exceed MUR 6 million?

RULING

On the basis of the FACTS mentioned above, it is ruled that -

(1) The sale of Carbon Credits in Mauritius is a supply of services by virtue of section 4(2)(b) of the VAT Act;

(2) As the sale of Carbon Credits is not an exempt supply according to the First Schedule to the VAT Act, the Trusts would be required to register for VAT in Mauritius if their respective annual turnovers relating to the sale of Carbon Credits in Mauritius exceed or is likely to exceed the amount specified in the Sixth Schedule to the VAT Act, in accordance with section 15(1) of the VAT Act.

Appendix A

Section 159 the Income Tax Act 1995

159. RULINGs

(1) Any person who derives or may derive any income may apply to the Director-General for a RULING as to the application of this Act to that income.

(2) An application under this section shall be in writing and shall -

(a) include full details of the transaction relating to the income together with all documents relevant to the transaction;

(b) specify precisely the question as to which the RULING is required;

(c) give a full statement setting out the opinion of that person as to the application of this Act to that income; and

(d) be accompanied by such fee as may be prescribed.

(3) `The Director-General shall, subject to subsection (3B), within 30 days of the receipt of an application under this section, give a RULING on the question to the applicant.850*

(3A) 851* Where an application is received under subsection (1), the Director-General may, within 30 days of the receipt of the application, request the applicant to furnish such additional documents and information as he may require for giving the RULING.

(3B)852 Where the Director-General requests an applicant to submit any document or information under subsection (3A), the time limit for the RULING referred to in subsection (3) shall run as from the date all documents and information have been submitted.

(3C) Where the application is in respect of an issue which is the subject of an objection, representations before the Assessment Review Committee or an appeal before the Supreme Court or Judicial Committee of the Privy Council the Director-General shall not give a RULING on that issue.853*

(4) Subject to subsection (5), a RULING under this section shall be binding upon the Director-General.

(5) Where there is any material difference between the FACTS relating to the transaction and the details contained in the application, the RULING shall not be binding upon the Director-General.

(6) A RULING under this section shall be published by the Director-General in such manner as he thinks fit except that the identity of the person to whom it relates shall not be indicated.

(7) Subject to subsection (8), any person may rely upon a RULING published under subsection (6) as a statement binding on the MRA THE INCOME TAX ACT 1995

* Please refer to endnotes at Appendix 1 Page 203 of 491

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Director-General as to the application of this Act to the FACTS set out in that RULING.

(8) The Director-General may, by publication in the Gazette, notify that a RULING which has been published shall cease to be binding with effect from a date which shall not be earlier than the date of the notice.

Appendix B

Section 69A of the VALUE ADDED TAX ACT 1998

(1) Any person, who in the course or furtherance of his business, makes taxable supplies, may apply to the Director-General for a RULING as to the application of this Act to any of the supplies made to him or made by him.

(2) An application under this section shall be in writing and shall –

(a) include full details of the transaction relating to the supply together with all documents relevant to the transaction;

(b) specify precisely the question as to which the RULING is required;

(c) give a full statement setting out the opinion of that person as to the application of this Act to that supply; and

(d) be accompanied by such fee as may be prescribed.

(3) The Director-General shall subject to subsections (3A) and (3B), within 30 days of the receipt of an application under this section, give a RULING on the question on the applicant.338*

(3A) Where the application is in respect of an issue which is the subject of an objection, representations before the Assessment Review Committee or an appeal before the Supreme Court or Judicial Committee of the Privy Council, the Director-General shall not give a RULING.339*

(3A) Where an application is received under subsection (1), the Director-General may, within 30 days of the receipt of the application, request the applicant to furnish such additional documents and information as he may require to give the RULING. 340*

* Please refer to endnotes at Appendix Page 72 of 194

(3B) Where the Director-General requests an applicant to submit any document or information in respect of an application under this section, the time limit for the RULING referred to in subsection (3) shall run from the date of the submission of all requested documents and information.341*

(4) Subject to subsection (5), a RULING under this section shall be binding upon the Director-General.

(5) Where there is any material difference between the actual FACTS relating to the transaction and the details contained in the application, the RULING shall not be binding upon the Director-General.

(6) A RULING under this section shall be published by the Director-General in such manner as he thinks fit except that the identity of the person to whom the RULING relates shall not be indicated in the publication.

(7) Subject to subsection (8), any person may rely upon a RULING published under subsection (6) as a statement binding on the Director-General with respect to the application of this Act to the FACTS set out in that RULING.

(8) The Director-General may publish a notice in the Gazette to the effect that a RULING which he has previously published shall cease to be binding with effect from a date which shall not be earlier than the date of the notice.

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Ehram Court, Cnr Mgr. Gonin & Sir Virgil Naz Streets, Port Louis, Mauritius
T: +230 207 6000 | E: headoffice@mra.mu | W: www.mra.mu