TR 1

Facts

A non-resident corporation has deposited substantial sums of money with the Bank of Mauritius in the form of deposits and bills.Theses balances yield substantial interest to the corporation.

Part III of the Second Schedule Item 3(c) provides that interest payable on a balance maintained by a non-resident at any bank in Mauritius is exempt from tax.

Point at issue

Whether the words "any bank in Mauritius" include the Bank of Mauritius.

Ruling

The Bank of Mauritius does not fall within the ambit of "any bank in Mauritius".

TR 2

Facts

A company proposed to launch a scheme to induce members of the staff to leave its employ before reaching the normal retiring age against payment of an allowance in view of redundancy. The scheme known as the "Early Leavers Scheme" covered all members of the pensionable staff with a minimum of 10 years continuous service. The allowance payable to the early leavers was computed on the basis of the number of completed years of service.

The members of the staff would also be entitled to their normal pension benefit available in accordance with the rules of their staff pension fund.

Point at issue

Whether the portion of the allowance not exceeding the specified sum is exempt from tax as provided in the second Schedule Part II Item 5 of the Income Tax Act 1995.

Ruling

The portion of retiring allowance not exceeding the specified sum is exempt from income tax.

TR 3

Facts

A foreign company has been operating a branch in Mauritius. A new company was incorporated in Mauritius to take over the activities of the branch. The branch had accumulated losses as at the date of its take over.

Point at issue

Whether the accumulated tax losses of the branch of the foreign company are transferable to the company incorporated in Mauritius to take over the activities carried on by the branch.

Ruling

Losses incurred by the branch of a foreign company cannot be transferred to a company incorporated in Mauritius as they constitute two distinct and separate entities.

TR 4

Facts

A resident company proposes to engage the services of a foreign company for general overseas information sourcing, inspection of goods before shipment, consultancy services etc. These services will be provided from outside Mauritius and the local company does not envisage that any representative of the service providers will be required to come to Mauritius in connection with these services.

Point at issue

a) Whether fees received by a non-resident will attract tax in Mauritius;
b) Whether expense so incurred by the local company is an allowable deduction.

Ruling

Fees received by a non-resident for services provided from outside Mauritius to a resident of Mauritius are not taxable in Mauritius. The fees, however, will qualify as allowable deduction for the resident provided that the expenses are exclusively incurred in the production of gross income, the transactions are done at arm's length and the parties are not related to each other in any way whatsoever.

TR 5

Facts

A resident company holding an Export Enterprise Certificate has accumulated losses up to the year of assessment 1996/97.

The Income Tax Act 1995 provides that:

a) a company holding an Export Enterprise Certificate is exempt from income tax as from the year of assessment 1997/98;
b) a company may carry forward its unrelieved loss to be set-off against its net income derived in the following income year and in the succeeding years.

Point at issue

Whether the accumulated losses of the company will be available for set-off against its future income should there be a change in legislation rendering a company holding an Export Enterprise Certificate taxable.

Ruling

As the law stands, accumulated losses up to the year of assessment 1996/97 of a company holding an Export Enterprise Certificate are available for set-off against future taxable income of the company.

TR 6

Facts

A resident company deals in shares which are quoted on the Mauritius Stock Exchange and Over the Counter Market. However, it holds shares in companies whose shares are not quoted. Such shares are held purely for capital growth and may be disposed of in the future.

Point at issue

Whether profits/losses arising from sale of shares which are not quoted on the Mauritius Stock Exchange or over the Counter Market would be taxable and deductible respectively.

Ruling

Sale of shares, whether quoted or not, constitutes a transaction effected in the ordinary course of the company's business and any profits or losses arising from the sale of unquoted shares are taxable and tax deductible respectively, as one of the main objectives of the company is to invest and deal in shares.

TR 7

Facts

An offshore company proposes to issue non-voting redeemable fixed rate preference shares to a group entity and intends to account for the transaction as a short term loan rather than equity and accordingly treat dividends payable as interest under the Financial Reporting Standard 5 (FRS 5).

Point at issue

Whether the tax treatment should follow the accounting treatment i.e a transaction should be based upon its economic substance where it differs from its legal form.

Ruling

The preference shares cannot be considered as a short term loan for tax purposes. The terms and conditions on which the preference shares will be issued may entitle them to be reclassified as a short term loan according to accounting standard. However, for tax purposes, any distribution will be treated as dividends and not as interest.

TR 8

Facts

An investment company listed on the official list of the Stock Exchange proposes to transfer the significant differential between the market price and the underlying net asset value (NAV) of the company's shares to a Unit Trust Scheme (authorised under Unit Trust Act 1989) which will be an open-ended Fund (having no predetermined limit) and will invest primarily in listed and unlisted securities, bonds and deposits. Subsequently, the company will distribute a dividend equivalent to the "differential" to its shareholders who will be required to re-invest in the Unit Trust Scheme.

Points at issue

a) Whether an existing shareholder of the company who will be allotted shares in the Unit Trust Scheme will be entitled to investment relief under Section 36 of the Income Tax Act 1995.

b) Whether a corporate shareholder of the company will be entitled to an investment tax credit under Section 69 of the Income Tax Act 1995 in respect of units allotted to it.

Ruling

a) An existing shareholder who will be allotted shares in the Unit Trust Scheme will be entitled to investment relief under Section 36 of the Income Tax Act 1995.

b) Likewise, an existing corporate shareholder of the company will be entitled to an investment tax credit under Section 69 of the Income Tax Act 1995 in respect of shares allotted to it.

TR 9

Facts

A company proposes to give to its employees shares in the company free or with an option to buy at a price less than their market value (Employees' share participation scheme). The option may or may not be exercised by the employee.

Point at issue

Whether a contractual agreement between a company and its employee giving the latter an option to subscribe to a number of shares at a price lower than their market value gives rise to a taxable benefit.

Ruling

The difference between the purchase consideration and the market value of the share is a benefit in kind accruing to the employee and is taxable under Section 10 (1) (a) (i) of the Income Tax Act 1995 (when the option to acquire the shares is exercised by the employee)

TR 10

Facts

The main activity of a company is airline catering. More than 90% of its gross income is derived from sale of food processed by it. In its day to day operations, it purchases locally raw materials which include semi-finished goods, chicken, fish, lamb, beef, bacon, fresh fruits and vegetables. These are subsequently sanitized, processed and stored at appropriate temperatures and are then cooked/steamed/grilled/fried or baked according to set menus. The prepared meals or salads are placed in appropriate containers which are arranged in trays and blast chilled, ready for either continental breakfast or dinner destined for passengers.

Point at issue

Whether the activities and transformation processes mean "manufacture" as defined in the Income Tax Act 1995 and accordingly the company should be treated as a tax incentive company.

Ruling

The processing activities of the company fall within the ambit of the word "manufacture" as defined in the Income Tax Act 1995. Hence, the company qualifies as a tax incentive company.

TR 11

Facts

A foreign group of companies is planning to restructure a number of subsidiaries worldwide under a Mauritian offshore holding company and wishes to ensure maximum foreign tax credit available against the Mauritian tax liability.

Point at issue

Whether the pooling of foreign tax credit available to a taxpayer under Regulation 6 (3) (a) of the Income Tax (Foreign Tax Credit) Regulations 1996 includes both actual tax paid and deemed tax under Regulation 9 and the aggregate amount will be available for offset against the Mauritian tax liability.

Ruling

The pooling of foreign tax credit available to a taxpayer under Regulation 6 (3)(a) of the Income Tax (Foreign Tax Credit) Regulations 1996 includes both actual tax paid and deemed tax under Regulation 9. The aggregate amount will therefore be available for offset against the Mauritian tax liability.

TR 12

Facts

An offshore company incorporated in Mauritius as an asset management company will give investment advice to a fund also incorporated in Mauritius as an offshore company. The fund derives income through its investment activities abroad.

Point at issue

Whether the management fee which the asset management company will receive from the fund will be deemed to be foreign source income and hence the company will be entitled to claim the deemed foreign tax credit in accordance with Regulation 8 (3) of the Income Tax (Foreign Tax Credit) Regulations 1996.

Ruling

Since the asset management company is resident in Mauritius and will give investment advice to another company resident in Mauritius, the investment advisory fees are income derived from Mauritius. Moreover, as credit for foreign tax is given only in respect of foreign source income, the deemed foreign tax credit will not be available with regard to the investment advisory fees.

TR 13

Facts

A resident company is licensed to operate in the Mauritius Freeport Zone. It imports dyestuffs and textile auxiliaries in bulk which it processes for re-export. It also sells part of its products to factories operating in the Export Processing Zone.

Point at issue

Whether income derived from the sale of its products to factories operating in the Export Processing Zone is exempt from tax.

Ruling

The sale to factories operating in the EPZ constitutes an activity carried on outside the Freeport Zone. Income derived from such activities is therefore subject to tax in accordance with Section 49(2) of the Income Tax Act 1995.

TR 14

Facts

A foreign company will operate a worldwide satellite-based digital telecommunications system that will deliver wireless telephone and other telecommunications services to users worldwide. It proposes to form a Mauritian offshore company which will provide access to the system to Service Providers in other countries pursuant to a contract. One such Service Provider will promote and provide access to the system to its customers (i.e the end users). Payment by that Service Provider to the Mauritian offshore company will be in the form of a monthly usage fee mainly based on the actual usage of the system by the Service Provider. To enable it to fulfill its contractual obligations towards the Service Provider, the Mauritian offshore company will contractually obtain access to the system from the foreign company in return for payment of fees.

Point at issue

a) Whether the payment by the Mauritian offshore company to the foreign company will be characterized as a "royalty" or a "service fee" and whether that payment will be subject to tax in Mauritius.
b) Whether the Mauritian offshore company will be subject to tax in Mauritius at 15% against which it may claim credit/90% deemed credit for foreign taxes suffered on its foreign source income.
c) Where the Mauritian offshore company receives foreign income from two different foreign sources, whether it may claim foreign tax credit on one source and the 90% deemed credit on the second source.
d) Having regard to the nature of the activities of the Mauritian offshore company and the circumstances of the case, if the spread, that is the net income after Service Provider Fees and administrative costs, is not less than one per cent (1%) of the net amounts received from the Service Providers and not more than five per cent (5%) of such amount, whether this will be regarded by the Tax Authorities as reasonable.

Ruling

a) The payment by the Mauritian offshore company to the foreign company will be considered as a service fee. Moreover, the foreign company will not be liable to tax in Mauritius on that service fee since it is a non-resident company and the services provided to the Mauritian offshore company are performed from overseas.

b) The Mauritian offshore company will be taxable at the rate of 15% and the Income Tax (Foreign Tax Credit) Regulations 1996 will apply in respect of its foreign source income. However, fees derived from services provided from Mauritius by the Mauritian offshore company to Service Providers will be treated as Mauritian source income.

c) Where the Mauritian offshore company receives foreign income from two different foreign sources, it may claim foreign tax credit on one source and the 90% deemed credit on the second source in accordance with Regulation 6(3) of the Income Tax (Foreign Tax Credit) Regulations 1996.

d) The income of the Mauritian offshore company for income tax purposes will have to be determined in accordance with the arm's length principles.

TR 15

Facts

A wholly owned subsidiary of a foreign company which is itself part of a multinational group engaged in importing and distributing clothing for men, women and children in another country is incorporated in Mauritius and holds a Freeport Licence.

The subsidiary company will assist the holding company in procuring the stocks of garments and its role will include obtaining prices, pre-production and production information from factories/suppliers, carrying out quality inspections and following up orders to ensure that goods are exported on time. The subsidiary company will have an office in Mauritius and will employ the necessary staff, including expatriates, to carry out its functions.

Point at issue

Whether payments by the holding company for running the subsidiary's office in Mauritius on a cost recovery basis is acceptable to the Income Tax Department.

Ruling

The net income of the subsidiary will be determined by the Income Tax Department in accordance with arm's length principles.

Further, the activities of the subsidiary are considered to be carried out outside the Freeport Zone and the income derived from such activities will be subject to tax in accordance with Section 49(2) of the Income Tax Act 1995.

The above ruling would not be different if the subsidiary were a Mauritian offshore company.

TR 16

Facts

The core activities of a company since its incorporation have been the provision of a wide range of contracting works to the sugar industry for the preparation, upkeep and enhancement of sugar cane fields. These activities have been extended to the mechanical loading and mechanical harvesting of sugar cane top.

Point at issue

Whether the company is a tax incentive company under item 22 of Part V of the First Schedule to the Income Tax Act 1995 which reads as follows: "a company deriving at least 75 per cent of its gross income from agriculture, fishery and livestock".

Ruling

The company is not engaged in agriculture but is providing services to the sugar industry for the preparation, upkeep and enhancement of sugar cane fields. The income derived by the company, although linked with agriculture, represents the return for the services provided to the sugar industry. Hence, the company does not qualify as a tax incentive company.

TR 17

Facts

A foreign bank is offering the opportunity to employees of its branch in Mauritius to subscribe to the share capital of the bank in view of the increase in its capital on the following conditions:-

For each share subscribed by the employee, the employer should subscribe to one free share in favour of the employee up to a maximum of 16 free shares per employee.

Shares subscribed by the employee and the employer cannot be released before five years.

Point at issue

Whether the employee is assessable to tax on the free shares? If in the affirmative

- when should the tax be paid?
- should the tax be paid under PAYE?

Ruling

The employee is assessable to income tax on the free shares as these are fringe benefits falling within the ambit of Section 10 (1)(a)(i) of the Income Tax Act 1995. The tax should be paid under the PAYE System at the time the employee receives the benefit in accordance with the provisions under Part VIII, Sub-Part A of the Income Tax Act 1995.

TR 18

Facts

A group of companies engaged in sugar cane plantation have made applications for land conversion under Section 5(7)(f) of the SIE Act 1988 (as amended).

The companies propose to subdivide and develop the lands into residential plots and sell same to the public. The lands have been owned by the company for sugar cane plantation for a considerable period of time. The companies have never in the past been engaged in property development. The sale of lands by the group of companies will be effected under the 1200 Arpents Land Conversion Scheme approved by the Government whereby 25% of land will be sold to the Government at nominal prices. The group has the obligation to plough back at least 60% of the proceeds and carry out the conversion within a specified period, failing which the authority for land conversion will be withdrawn.

Point at issue

Whether the proceeds from the sale of the lands would constitute a chargeable income for Income Tax purposes.

Ruling

The profits to be realized by the group of companies from the sale of the lands will be considered as capital profits and hence not chargeable to income tax.

TR 19

Facts

A consortium proposes to acquire shares held by a foreign company in a Mauritian company engaged in sugar cane plantation. Apart from 5 different companies holding each an equal percentage of share capital of the consortium, the Government will participate in the shareholding of the consortium. The proposed agreement between the Government and the consortium provides inter alia that the Mauritian company will sell to the Government some portions of land at a concessionary price; be allowed to:

a) parcel out some other portions of agricultural lands to small planters as agricultural morcellements and sell part thereof on a going concern basis to an entity to be designated by Government;
b) rezone and parcel out other portions of land to be sold to the public.

Point at issue

Whether any gains from the sale of the lands by the Mauritian company would be chargeable to income tax.

Ruling

Any gains from the sale of the lands by the Mauritian company will be considered as capital profits and will not therefore be chargeable to income tax since the lands have been owned by the Mauritian company for sugar cane plantation for a considerable period of time. Moreover, the Mauritian company has never been engaged in property development.

TR 20

Facts

A foreign company intends to register itself with the Registrar of Companies as a foreign company to operate in the offshore sector. The offshore company (the lessor) will contract a loan with an offshore bank for the purchase of a new brewery plant which is being constructed abroad with a view to hire it to a leasing partnership (the lessee) established abroad which will in turn make the new brewery plant available to another company under a financial lease agreement. The lessee will pay a rental to the lessor during the first five years.

Point at issue

a) Whether the offshore company is assessable to tax on the lease interest derived by it under the finance lease agreement entered into by it and the leasing partnership.

b) Whether the lease interest paid by the leasing partnership to the offshore company is income derived from outside Mauritius.

c) Whether the offshore company will, by virtue of Section 19 of the Income Tax Act 1995, be entitled to a deduction in respect of interest payable on loan taken from the non-resident bank for the acquisition of the brewery plant.

d) Whether the offshore company is entitled to a deduction in respect of its administrative and other expenses which satisfy the requirement of Section 18(1) of the Income Tax Act 1995.

e) Whether the interest paid by the offshore company to a non-resident bank is exempt from tax under item 5 of Part III of the Second Schedule to the Income Tax Act 1995.

Ruling

a) The offshore company, being a resident of Mauritius, is assessable to tax on the lease interest derived by it under the finance lease agreement entered into by it and the leasing partnership.

b) The lease interest paid by the leasing partnership to the offshore company is income derived from outside Mauritius.

c) The offshore company will, by virtue of Section 19 of the Income Tax Act 1995, be entitled to a deduction in respect of interest payable on loan taken from the non-resident bank for the acquisition of the brewery plant.

d) The offshore company is entitled to a deduction in respect of its administrative and other expenses which satisfy the requirements of Section 18(1) of the Income Tax Act 1995.

e) Interest paid by the offshore company to a non-resident bank is exempt from tax under item 5 of Part III of the Second Schedule to the Income Tax Act 1995.

TR 21

Facts

An offshore bank intends to facilitate the roll out of a capital guaranteed investment product on behalf of an international fund. The investment would be in three year Zero Coupon Bonds. The Zero Coupon Bonds do not pay interest during their term. However, the interest accrues annually and the value is paid at maturity.

Point at issue

a) Whether the offshore bank will, by virtue of Section 19 of the Income Tax Act 1995, be entitled to deduct the accrued interest on the Zero Coupon Bonds.
b) Whether the offshore bank will be required to withhold taxes on interest payments at maturity.
c) Whether interest paid to the fund is chargeable to tax.

Rulings

a) The offshore bank will, by virtue of Section 19 of the Income Tax Act 1995, be entitled to deduct the accrued interest on the Zero Coupon Bonds on an annual basis.
b) There are no withholding taxes on interest payments.
c) Interest paid to a non-resident by a corporation holding an Offshore Banking Licence issued under the Banking Act 1988 is exempt from income tax under item 5 of Part III of the Second Schedule to the Income Tax Act 1995.

TR 22

Facts

An offshore company resident in Mauritius derives dividends from a foreign company in which it holds 50% of the shares.

Point at issue

Whether credit for underlying tax on a yearly basis will be granted on the production of a certificate from the tax authority of the foreign country that the company is subject to tax on its profits at a certain rate.

Ruling

The offshore company will be entitled to a credit for underlying tax on production of documentary evidence showing, in respect of the year for which credit is claimed, the following particulars:-

a) the amount of corporate tax actually paid by the foreign company and
b) the total profits of the foreign company out of which the dividends were paid.

The offshore company will still be able to claim an underlying tax credit in respect of a year where no tax has been paid by the foreign company if the dividends can be shown to have been paid out of a previous year's profits which have already been charged to tax. In such a case, the rate used in that previous year will apply for the purpose of calculating the underlying tax credit.

TR 23

Facts

A new unit trust scheme will be constituted. It will be managed by a company which has the status of "Approved Investment Institution". The company will transfer part of its locally quoted investment portfolio and all its overseas investment portfolio to the unit trust in exchange for an equal number of units of that unit trust. These units will then be distributed by the company to its shareholders by way of dividends in species on a pro-rata basis. However, as the reserves of the company are not sufficient to enable a distribution of such an amount of dividends, it will proceed to a reduction of its capital.

Point at issue

i. Whether existing shareholders of the company who will be allotted units in the unit trust will be entitled to investment relief under Section 36 of the Income Tax Act 1995.
ii. Whether a corporate shareholder of the company will be entitled to investment tax credit under Section 69 of the Income Tax Act 1995.

Ruling

Since the gain on revaluation of investments to be transferred to the unit trust is not realized and the company does not have sufficient reserves to pay the required amount of dividends which its shareholders could have used to finance the acquisition of the units in the unit trust, the distribution by the company to its shareholders of the units to be acquired by the unit trust cannot be considered as new investments being made by the shareholders (individual or corporate) and they will not therefore be entitled to investment relief thereon under Section 36 of Section 69 of the Income Tax Act 1995, as the case may be.

TR 24

Facts

A company engaged in the manufacture of animal and poultry feeds proposed to issue new shares due to expansion of the business and other factors. The change in the ownership of shares of the company as at 30 September 1999 did not exceed 50% while at the end of the income year ended 30 September 2000, less than 50% in the nominal value of the allotted shares in the company were held by or on behalf of the same persons.

Point at issue

Whether the company is entitled to carry forward the unrelieved losses as at 30 September 1998 for set-off against its net income for the income year ended 30 September 1999 and in succeeding years.

Ruling

In accordance with Section 59 of the Income Tax Act 1995 and the conditions prescribed in Regulation 19 of the Income Tax Regulations 1996, losses incurred by a company in an income year may be carried forward and set-off against its net income of the following year and in the succeeding years, provided that at the end of each of those years, not less than 50% in the nominal value of the allotted shares in the company are held by or on behalf of the same persons.

The company is therefore entitled to carry forward the unrelieved losses as at 30 September 1998 for set off against its net income for the income year ended 30 September 1999 as the change in the ownership of shares as at that date did not exceed 50%.

At the end of the income year ended 30 September 2000, less than 50% in the nominal value of the allotted shares in the company were held by or on behalf of the same persons. Any unrelieved losses as at 30 September 1999 cannot therefore be carried forward for set off against the company's net income for the income year ended 30 September 2000 and succeeding years.

TR 25

Facts

On 21 July 1997, a company engaged in hotel industry applied for a Hotel Development Certificate. The Ministry of Tourism and Leisure subsequently issued a letter of intent dated 25 August 1998 informing the company that the Government has approved the grant of a Hotel Development Certificate, subject to certain conditions. The Hotel Development Certificate was duly issued on 8 December 2000.

Point at issue

Whether for the purposes of Section 36 of the Income Tax Act 1995, the company would be regarded as a tax incentive company as from the date the Ministry of Tourism and Leisure issued the letter of intent.

Ruling

The company became a tax incentive company as from 1 July 1999 under item 29 of Part IV of the First Schedule to the Income Tax Act 1995. Had it not been for that new provision enacted by the Finance Act 1999, the company would have qualified as a tax Incentive Company as from the date the Hotel Development Certificate was issued to it i.e. 8 December 2000.

The company cannot therefore be regarded as a tax incentive company for the purposes of Section 36 of the Income Tax Act 1995 as from the date the letter of intent was issued to it by the Ministry of Tourism and Leisure.

TR 26

Facts

A resident company incorporated in Mauritius on 19 June 1998 hold an offshore certificate issued on 25 June 1998. The company continues to be governed by the Income Tax Act 1974 as it has not opted to be taxed under the Income Tax Act 1995.

Point at issue

Whether a Mauritian resident subscribing to Participating Shares of that company will be entitled to Investment Relief thereon pursuant to Section 36 of the Income Tax Act 1995.

Ruling

The company is governed by the Income Tax Act 1974 and it does not qualify as a tax incentive company. A Mauritian resident subscribing to shares in that company will therefore not be entitled to Investment Relief under Section 36 of the Income Tax Act 1995.

TR 27

Facts

A Mauritian company is involved in the manufacture and sale of chemical products, water treatment equipment and spare parts for domestic and industrial use.

A foreign company has a royalty agreement with the Mauritian company to provide the latter with formulations for the production of water treatment chemicals.

A new company was incorporated to establish a joint venture between the Mauritian company and the foreign company.

A division of the Mauritian company was transferred to the newly incorporated company for a specific amount of money.

The transfer consisted of the existing staff of the division and the existing clients of the Mauritian company.

Point at issue

Whether the receipt by the Mauritian company constitutes a taxable income.

Ruling

The receipt by the Mauritian company representing consideration for the sale of "goodwill" is not chargeable to income tax.

TR 28

Facts

A company incorporated by continuation in Mauritius holds a Category 1 Global Business License since 1998.

The company is registered with the Companies Registry in a foreign country as an overseas company. The company has established a place of business in that country from where all the activities of the company are carried out.

The company maintains full time employees based in the foreign country to carry out its day to day business activities. The company has no employees outside the foreign country.

Under the tax law of the foreign country, income not sourced in that country is exempt from tax. However, where an overseas company carries on business in that country through a branch, it is required to declare all income (wherever sourced) attributable to the branch in that country even foreign source income is eventually exempt.

Point at issue

Whether the company is eligible to a tax sparing credit under Regulation 9(1) of the Income Tax (Foreign Tax Credit) Regulations 1996 in respect of profits tax which would otherwise have been payable but for the exemption effectively given as a result of the source basis of taxation in that country.

Ruling

The company is entitled to a tax sparing credit in respect of profits tax which would otherwise have been payable had foreign source profits not been exempt in that country.

TR 29

Facts

A resident company incorporated in Mauritius holds a Regional Headquarters Certificate. A foreign company and its wholly owned subsidiary hold, each of them, 50% of the shares of the resident company.

All strategic decisions relating to the business of the foreign company and its subsidiary will continue to be made by the respective Board of Directors outside Mauritius.

The resident company will be providing a range of services including management, marketing, financial, coordination and other services to the foreign company and its subsidiary. As part of the service agreement, the resident company may issue sales invoices in the name of the foreign company/its subsidiary. However, pricing and all other terms relating to a transaction are pre-agreed by the foreign company/its subsidiary and the purchaser in a distribution contract. All sales and payments in respect of invoices issued by the resident company are entered in the accounts of the foreign company/its subsidiary.

The resident company will receive an arm's length service fee from the foreign company and its subsidiary in respect of the provision of the above services.

Point at issue

Whether the foreign company/its subsidiary may be considered as having a branch or agency (or other form of permanent establishment) in Mauritius or a source of income taxable in Mauritius.

Ruling (issued in September 2002)

Provided the transactions between the resident company and the foreign company/its subsidiary are carried out at arm's length and the issuing of invoices by the resident company is a pure administrative act, the foreign company and its subsidiary will not be considered as having a permanent establishment in Mauritius or other source of income taxable in Mauritius.

TR 30

A Facts

A bank holding a Category 2 Banking Licence deals with companies holding Category 1 and 2 Global Business Licences, Freeport Companies and Trusts which carry out qualified global business. The bank provides services to clients from Mauritius in respect of activities carried out outside Mauritius.

Points at issue

a) Whether the income from transactions with the entities as described above will be classified as foreign source income.
b) Whether the 80% presumed foreign tax credit will be available.

Ruling (issued in September 2002)

Companies holding Category 1 and 2 Global Business Licences, Freeport Companies and Trusts carrying out qualified global business outside Mauritius are resident in Mauritius. Companies holding Category 2 Global Business Licence are resident in Mauritius by virtue of their being incorporated/registered here except that they are deemed not to be resident only for treaty purposes under Section 76 of the Income Tax Act.

Income derived by the bank from the loan/banking facilities and other services provided to the entities mentioned above are income derived from within Mauritius and not foreign source income. Accordingly, no presumed foreign tax credit will be available.

B Facts

A bank holds a Category 2 Banking Licence. As a result of certain international trading transactions regarding lendings and borrowings or buying and selling of foreign currencies, the bank made certain gains or losses, due to fluctuation in foreign currency rates.

Point at issue

Whether exchange gains or losses would be classified as capital gains/losses or income receipt/allowable expenses.

Ruling (issued in September 2002)

Exchange gains/losses arising on accounts that record a company's ordinary business transactions are taxable or deductible as the case may be. However exchange gains/losses in connection with transactions involving capital assets are not recognized for income tax purposes.

C Facts

A new tax regime applicable to Global Qualified Corporations has been introduced whereby all such entities would be taxable at the rate of 15% on their income as from the year of assessment starting 01 July 2003. The basis period for the assessment year 2003/2004 is normally 01 July 2002 to 30 June 2003. The financial year of a bank holding a Category 2 Banking Licence ends on 31 March. The financial statement for the year ended 31 March 2003, which forms the basis for the assessment year 2003/04 will therefore include foreign source income earned from 01 April 2002 to 30 June 2002.

Point at issue

Whether the bank would have to pay tax on income derived during the period prior to 01 July 2002 at the rate of 15%. Alternatively, whether the income for the financial year ended 31 March 2003 could be apportioned so that the rate of tax in force during the period before and after 01 July 2002 could be applied for calculation of the tax payable and the allowable presumed foreign tax credit.

Ruling (issued in September 2002)

Pursuant to Section 4 of the Income Tax Act 1995, the income assessable for the year of assessment 2003/04 is the income derived during the preceding year ended 30 June 2003. However, as the bank has an approved return date under Section 118 of the Income Tax Act, the income for the financial year ended during that preceding year will form the basis of assessment for the assessment year 2003/2004.

Income tax payable for the year of assessment 2003/2004 should be computed based on the tax rate applicable for that year of assessment, i.e. 15%. Apportionment of the income of a financial year for calculation of tax payable or presumed foreign tax credit is not applicable.

TR 31

Facts

A foreign company, registered in Mauritius and forming part of a Multinational Group present in many countries all over the world provides marketing, technical services (including installation and maintenance) and post-marketing assistance but is not allowed to accept and conclude any contract with any client nor is it involved in the provision of services to clients in Mauritius. The Multinational Group provides services on a global rather than territorial basis and revenue can be generated in one country but the related costs incurred elsewhere. The company applies a pre-determined cost plus percentages to various categories of costs, irrespective of the actual amount of revenue generated in a territory.

Point at issue

Whether the application of a cost plus basis method could be used for computing the company's chargeable income in Mauritius.

Ruling (issued in September 2003)

The computation of chargeable income varies from one country to another depending on the level of activities and financial risk undertaken by the entities concerned. Cost plus basis is an acceptable method to arrive at the chargeable income as the company is providing some limited services which support the group's core activity.

TR 32

Facts

A shareholder holding the majority of shares in a company engaged in building services contemplates to sell all his shares to another potential new shareholder at a substantial amount in excess of the nominal value thus realising a capital gain. The existing shareholder does not trade in shares and this transaction is a one-off event.

Point at issue

Whether the gains accruing from the sale of shares are taxable in the hands of the seller.

Ruling (issued in November 2003)

The gains derived from the sale of shares are not subject to income tax by virtue of the exemption provided under Item 1 of Part IV of the Second Schedule to the Income Tax Act.

TR 33

Point 1: Taxation of Exchange Differences

Facts

A company incorporated in Mauritius holds a Category 1 Global Business Licence (GBC 1) for the purpose of holding investments of a group overseas. It intends to invest primarily in securities in some countries denominated in a currency other than its reporting currency viz US Dollars (USD).

At year end, the company may have in its balance sheet amounts due to and from brokers in different countries. The company may also have surplus cash in the bank account in these countries in the relevant underlying currencies for a number of reasons.

The debtors, creditors and cash balances at year end denominated in a currency other than the reporting currency will need to be translated at year end rates in accordance with generally accepted accountancy principles. This would result in exchange differences which would be taken to the statement of operations as results for the year.

Point at issue

Whether the exchange differences resulting from the above would be considered as a deduction or income, as the case may be, in computing the company's chargeable income.

Ruling (issued in November 2003)

The calculation of profits for tax purposes should start with a consideration of the accounts drawn up in accordance with accepted principles of commercial accounting.

If the accounts of the GBC 1 company prepared in accordance with the Companies Act and generally accepted accountancy principles have to take account of translation profits and losses then these profits and losses should also be taken into account for tax purposes unless there are particular reasons relevant to the case in question, including whether they are in respect of capital items, for taking a different view.

In deciding what generally accepted accountancy principle is for this purpose, regard should be had in particular to IAS 21 – "The effects of changes in Foreign Exchange Rates" and to published accountancy practices.

Point 2: Availability of tax sparing credit

Facts

The GBC 1 company would invest in an overseas company (Co A) which is resident in a State with which Mauritius has a Double Taxation Agreement. Co A operates in the Free Trade Zone and would accordingly benefit from certain tax incentives. It would thus enjoy a tax holiday for the first 5 years of operations and would pay tax at a concessionary rate for the next five years.

In the initial years of profitability when the full tax exemption is available, Co A proposes to retain the bulk of distributable profits for future plans and operations and distribute to the GBC 1 company only a small proportion.

Depending on future performance and actual results on budget, Co A proposes to distribute all surpluses in later years out of retained earnings accumulated over the 5 initial years. At that time the tax rate in force would be the reduced or concessionary rate.

Point at issue

Whether tax sparing credit would be available in the later years in respect of dividends received from profits earned in earlier years, which would but for the tax incentives have been taxed at the normal rate.

Ruling (issued in November 2003)

In accordance with the Double Taxation Agreement in force between Mauritius and the State concerned and the current provisions of the Income Tax (Foreign Tax Credit) Regulations 1996, tax sparing credit would be available to the Mauritian company in respect of dividends received from an investee company in that other State paid out of that investee company's current and/or prior year profits.

TR 34

Facts

A Mauritian citizen who is a Chartered Accountant returned to Mauritius after having spent more than 10 years abroad. She joined a Chartered Accountancy firm and worked there for some 15 months and afterwards took up employment in a company holding a Management Licence issued under Section 24(2) of the Financial Services Development Act 2001.

Point at issue

Whether the Mauritian citizen can be considered as a specified Mauritian employee as defined at Item 14(b)(i) of Part II of the Second Schedule to the Income Tax Act for the 50% tax exemption on emoluments.

Ruling (issued in January 2004)

The company licensed as a Management Company is not authorised to conduct any of the business activities referred to in Item 25 of Part IV of the First Schedule to the Income Tax

Act. Hence, the Mauritian citizen cannot be considered as a specified Mauritian employee and is therefore not entitled to the 50% tax exemption on emoluments.

TR 35

Facts

A company is mainly engaged in the construction of golf courses of international standard. The construction of a golf course includes among other `works' the leveling of land, landscaping, the construction of drainage system, the preparation of soil, construction of the basement for the purpose of installation of irrigation equipment and concrete works.

Point at issue

Whether the company engaged in the construction of golf courses is liable to income tax at the rate of 15%.

Ruling (issued in April 2004)

The company cannot be considered as a manufacturing company as defined in Section 2 of the Income Tax Act 1995. As it does not qualify as a tax incentive company, it is liable to income tax at the normal rate of 25%.

TR 36

Facts

A company is engaged in the breeding and export of monkeys. It has for the accounting period ended 31 December 2003 prepared its Financial Statements in accordance with the Mauritius Companies Act 2001 and the International Accounting Standards ("IAS"). IAS 41 Agriculture has been adopted by the company and applied retrospectively. The primates held for sale designated as non-bearer biological assets are measured at fair value less estimated point of sale costs. The fair value of the primates held for sale is based on expected selling price and future direct costs to bring the primates to saleable condition, discounted at an appropriate discount rate to balance sheet date.

The company contends that should IAS 41 be applied for tax purposes this will discourage expansion of the business whereby any increase in stock level of non-bearer biological assets will lead to additional tax burden for the company on unrealised profits. To remedy this situation the company proposes to value stock under IAS 2 (lower of cost and net realisable value) for biological assets having a life cycle of more than 1 year.

Point at issue

Whether IAS 2 Inventories can be used to value the monkeys held for sale.

Ruling (issued in July 2004)

IAS 2 cannot be used to value the monkeys held for sale since producers’ inventories of livestock fall outside the scope of that IAS. However, for income tax purposes a standard value may be adopted in respect of the monkeys held for sale in accordance with Regulation 4 (3) of the Income Tax Regulations 1996.

In view of the high profit margin expected in that line of business, a standard value similar to that used in respect of cattle, i.e. the market value less 40 per cent thereof, may be adopted for the valuation of monkeys.

TR 37

Facts

A private limited company engaged in the cultivation of sugar since its incorporation will undertake a restructuring exercise whereby a newly formed company will acquire all the shares of the private limited company and this new company will be in turn owned by the existing shareholders of the private limited company.

The sugar growing activities of the private limited company will be taken over by another newly formed company, which will pay a rent computed at an arm's length basis, for the use of the fixed assets including land belonging to the private limited company. After the restructuring exercise, the private limited company may parcel some or all of its agricultural land.

Points at issue

i. **Tax losses**

   (a) Whether the unrelieved tax losses of the private limited company will be available for carry forward irrespective of the fact that such losses arose partly from sugar growing activities and were partly transferred to the company by a related sugar milling company.

   (b) Whether the change in the shareholding of the private limited company will impact on the availability of the unrelieved tax losses for carry forward.

ii. **Profit on Sale of Land**

   Whether the profit derived by the private limited company from parceling and sale of some or all of its agricultural land is taxable.

Ruling (issued in December 2004)

Tax losses

The unrelieved tax losses of the private limited company will be available for carry forward and set off against its future profits irrespective of the fact that there is a change in the nature of the trading activities of the private limited company.

On the understanding that as a result of the restructure, there will not be any change in the ultimate shareholding of the private limited company the unrelieved losses of the company will be available for carry forward.

Profit on Sale of Land

Land parceling is an undertaking or scheme entered into or devised for the purpose of making profits which, by virtue of the provisions of Section 10(2) (c) of the Income Tax Act 1995, form part of taxable business profits.

The cost of land to be taken into account for the computation of the taxable profit will be the market value of the land just before it is made available for the development project.

TR 38

Facts

A company incorporated in Mauritius and holding a Category 1 Global Business Licence (GBL 1), will acquire a limited partnership interest (Partnership A) in a jurisdiction where partnerships are fully transparent for tax purposes. This partnership will in turn acquire interest in another partnership (Partnership B) in the same jurisdiction. Partnership B will directly acquire and hold shares of a publicly listed company (PLC).

Points at issue

a) Whether gains realized on the disposal of the shares held in PLC by partnership B and allocated to GBL 1 company in Mauritius will be treated as capital gains realized by the GBL 1 company.
b) Whether the GBL 1 company will be subject to income tax in Mauritius on the gains.
c) Whether in respect of dividends paid by PLC and allocated to the GBL 1 company, the latter company will be entitled to underlying tax credit for the tax paid by PLC on its profits.

Ruling (issued in December 2004)

a) Share of profits, gains and losses allocated to the GBL 1 company by the partnerships A and B will retain their characteristics and each source of income will be taxed in Mauritius according to the taxation rules applicable to that source of income in Mauritius. Capital gains realized on the disposal of shares held by partnership B will therefore be treated as capital gains realized by the GBL 1 company.
b) Capital gains realized on the disposal of shares are not subject to income tax in Mauritius.
c) On the understanding that the GBL 1 company will indirectly own not less than 5% of the share capital of PLC, the GBL 1 company will be entitled to underlying tax credit in respect of the dividends paid by PLC and allocated to the GBL 1 company by partnerships A and B.

TR 39

Facts

A foreign airline company is to appoint an agent to sell holiday packages on its behalf in Mauritius. The packages will include the airfare, hotel accommodation costs and ground handling arrangements in the country of destination.

Point at issue

What would be the tax implications if:

a) the appointed agency will be remunerated with commission and all sales proceeds repatriated directly to the foreign airline company;
b) the local branch office of the foreign airline is appointed as the agent of the foreign airline company and in that capacity is responsible for co-ordinating all activities of the foreign airline company in Mauritius.

Ruling (issued in March 2005)

a) On the understanding that the agent in the first scenario is an independent agent (i.e. an agent not acting under instructions from the foreign airline company and not doing business solely for the foreign airline company) the foreign airline company would not have a permanent establishment in Mauritius and would therefore not be liable to tax in Mauritius. The agent would however be liable to tax in his own name on the commissions received.
b) In the second scenario, as the local branch office of the foreign airline would be responsible for coordinating the activities of the foreign airline company in Mauritius, the latter would have a permanent establishment in Mauritius and would be liable to tax in Mauritius on the profits attributable to that permanent establishment.

TR 40

Facts

A company is engaged in Segment B banking activities (previously Category 2 banking).It received its banking licence on 3 June 2002 and started its operation as from July 2002 .When calculating PAYE in respect of its expatriate employees, employed since the beginning, the company has been applying 50% exemption available under item 14 (a) (iv) of Part II of the Second Schedule.

Point at issue

Whether it can be confirmed that

a) there is no limit on the number of expatriate employees who are entitled to claim 50% exemption
b) each expatriate employee is entitled to the 50% exemption of income tax on his emoluments up to 30 June 2006.
c) that further to the introduction of the Banking Act 2004, the 50% exemption up to 30 June 2006 will apply only to existing expatriate employees already benefiting from this exemption , and not to newly employed expatriates.

Ruling (given in September 2005)

It is confirmed that

a) There is no limit on the number of expatriate employees who are entitled to the 50% exemption provided under Item 14(a)(iv), Part II of the Second Schedule to the Income Tax Act 1995.
b) Each expatriate employee is entitled to the 50% exemption of income tax on his emoluments up to 30 June 2006.
c) As the law presently stands, the 50% exemption will apply not only to expatriates employed prior to the coming into force of the Banking Act 2004 but also to newly employed expatriates up to 30 June 2006 on the condition that they satisfy the requirements (as amended) laid down in Item 14(a)(iv), Part II of the Second Schedule to the Income Tax Act.

TR 41

Facts

A company wishes to incorporate a Category 1 Global Business Company (GBC 1). The company will be an investment holding company. One of its main activities would be to purchase promissory notes or bills of exchange or other financial instruments issued by companies outside Mauritius through offshore sellers. To finance the purchase of the promissory notes, bills of exchange or other financial instruments, the GBC 1 may in turn issue its own promissory notes, bills of exchange or other financial instruments to the offshore sellers.

Points at issue

Whether it can be confirmed that

a) the payment made to offshore sellers by the GBC 1 company for the purchase of promissory notes, bills of exchange or other financial instruments will not be subject to any withholding income tax, stamp duties, value-added taxes and any other taxes or duties.
b) the gains arising to the GBC 1 from the purchase and sale of the above financial instruments will not be liable to tax whereas the coupon interest received under the purchased promissory notes, bills of exchange or other financial instruments will be subject to tax at the rate of 15%.
c) the gains arising to the GBC 1 if these financial instruments are sold before maturity will not be assessable as also stated in (2) above.
d) the GBC 1 can apply for a certificate of residency in Mauritius through the Financial Services Promotion Agency if it satisfies the set criteria in order to benefit from lower withholding tax under the relevant Double Taxation Agreement between Mauritius and the country where the issuer is relevant.
e) the GBC 1 will be entitled to claim as tax deduction the interest paid (at arm's length) for the purchase of the financial instruments
f) in cases where the financial instruments are issued by the GBC 1 at a discount, the difference between the issue price and the redemption price will not be allowed as a deduction for income tax purposes.
g) interest paid by the GBC 1 in paragraph 5 above will be allowed as deduction even if the recipient of the interest is resident in the British Virgin Islands.

Ruling (issued in November 2005)

a) The payment made to offshore sellers by the GBC 1 company for the purchase of promissory notes, bills of exchange or other financial instruments will not be subject to any withholding income tax. Regarding the exemption from payment of stamp duties, value-added taxes and any other taxes or duties, it is suggested that these issues be addressed to relevant authorities.

b) The gains arising to the GBC 1 from the purchase and sale of the above financial instruments will be liable to tax in the hands of the GBC 1 at the incentive rate of 15%.Moreover, the coupon interest received under the purchased promissory notes, bills of exchange and other financial instruments will be subject to tax at the rate of 15%. GBC1 may benefit from credits for taxes suffered at source where this can be evidenced. If taxes suffered at source cannot be evidenced, a unilateral tax relief of 80% of the Mauritius tax charge is available under the Income Tax (Foreign Tax Credit) Regulation 1996, thus resulting in an effective maximum tax rate of 3%.

c) The gains arising to the GBC 1 if these financial instruments are sold before maturity will be assessable to tax in the same way as per paragraph (2) above.

d) The GBC 1 may apply for a tax residence certificate to the Commissioner of Income Tax through the Financial Services Promotion Agency. The tax residence certificate will be delivered to the company on the strict condition that it can prove to the satisfaction of the Commissioner that it is either incorporated in Mauritius or has its central management and control in Mauritius.

e) The GBC 1 will be entitled to claim as tax deduction the interest paid for the purchase of the financial instruments provided that the interest paid is at arms' length. The recipient of the interest will in principle be taxable in Mauritius.

f) Where the financial instruments are issued by the GBC 1 at a discount, the difference between the issue price and the redemption price will be allowed as a deduction for income tax purposes.

g) Interest paid by the GBC 1 in paragraph 5 above will be allowed as deduction even if the recipient of the interest is resident abroad. The recipient will on the other hand be taxable on the interest in Mauritius.

TR 42

Facts

A bank is proposing to implement a Domestic Medium Term Bond Programme under which it will issue unsecured bonds in tranches by private placement over a period of time. The bonds will have a term of maturity of more than 3 but less than 15 years. Interests on the bonds will be payable at the rates and dates as determined under the programme.

Point at issue

Whether interest payable on unsecured bonds that the bank is proposing to issue will be exempt from income tax under item 3(d) of Part III of the Second Schedule of the Income Tax Act.

Ruling (given in December 2005)

Although from a purely banking law perspective, bonds are treated in the nature of a deposit in view of the adequacy ratio requirements and the equal ranking to a fixed deposit in the event of a distribution in a winding-up, for the purposes of income tax, interest payable on bonds are only exempt when such bonds are issued by the Bank of Mauritius as approved by the Minister of Finance and Economic Development as provided under item 3(e), Part III of the Second Schedule to the Income Tax Act.

The Income Tax Act makes separate provisions for the exemption of interest on deposits. The provisions under item 3(d), Part III of the Second Schedule to the Income Tax Act are clear in that only deposits made and maintained for a continuous period of not less than 3 years by an individual in a bank bear tax-free interest. The exemption provided under this item in respect of interest payable on deposits cannot legally be extended to interest payable on bonds.

TR 43

Facts

A Societe will construct a number of villas. Some of the villas will be sold together with the freehold land on which they are built whereas others will be sold with only leasehold interest in the land on which they are built. The leasehold interest will be for eighty years and the buyer will make one lump sum payment in respect of the acquisition of the villa together with the leasehold interest in the immoveable property.

Point at issue

Whether the Societe is allowed to claim a deduction in respect of the costs of the land and construction of the villas against the lump sum payment received from the sale of the villas and the leasehold right.

Ruling (given in December 2005)

The costs incurred in the acquisition of the land and constructions of villas are allowable deductions against the gross income derived from the sale of freehold immoveable properties. As regards villas sold on leasehold interests for 80 years, the costs of land and construction of villas are not allowable.

TR 44

Facts

A company holding a Category 1 Global Business Licence will make a loan to a foreign company which will in turn invest the money in a real estate project in another foreign country. The implementation period of the project is estimated to be between 3 to 5 years. The loan agreement will provide that while interest will be accrued annually, payment will only be effected on a date after the implementation period.

Point at issue

Whether the interest income and expenses can be accounted for tax purposes on a cash basis.

Ruling (given in December 2005)

Section 5 of the Income Tax Act provides that income shall be deemed to be derived by a person when it has been earned or has accrued.

The GBL 1 company will therefore be taxable on accrued interest income and will also on the other hand be able to deduct accrued interest expenses.

TR 45

Facts

X Group is a UK quoted company and also a holding company of an international group. A large proportion of the group's activities are carried out in a country outside UK and the Group is planning to reorganize its operations in that country. The proposed structure will be such that there will be Mauritian Société holding a GBC 1 with two partners which will be companies holding GBC 1 also. One of these Mauritian Companies will advance interest-free loans to the holding Company incorporated in the country referred to above.

Point of Issue

Whether it can be confirmed that

a) the société's profits allocated to the partners will be taxed on the partners at an effective rate of 3 %.
b) only the partners of the Société will be subject to Mauritius taxation on their respective share of income from the Société and that the Société itself will not be subject to taxation as an entity.
c) the interest-free loans from the Mauritian Company to the South African Holding Company will be treated as equity and Mauritius will not seek to impute tax on the interest adjustments on the loans.
d) repayments of share capital, share premium and interest -free loans by the South African Holding Company will be treated as of a capital nature and not be reclassified as dividend income on applying anti-avoidance legislation.

Ruling

It is confirmed that

a) Every partner of a société holding a Category 1 Global Business Licence (GBL 1) under the Financial Services Development Act is liable to income tax in respect of his income in the société at the rate of 15%. However, where the partner is a corporation holding a Category 1 Global Business Licence, the company will be entitled to presumed tax credit in accordance with the provisions of regulation 8 of the Income Tax (Foreign Tax Credit) Regulations 1996.

b) A société is not liable to income tax except where a société holding a Category 1 Global Business Licence opts under Section 47(6) of the Income Tax Act to be liable to tax.

c) In the context of the reorganization of the Group's operations in South Africa so as to comply with the Black Economic Empowerment Legislation, the interest -free loans advanced by the Mauritian Company to the wholly owned South African Holding Company will be assimilated to equity capital. The Mauritian company will not be subject to tax on any deemed interest receivable on such loans.

d) Repayments of share capital, share premium and interest-free loans by the South African Holding Company to the Mauritian company will not be reclassified as income and will not be taxed by application of any anti-avoidance legislation.

TR 46

Facts

A foreign company intends to set up a Category 1 Global Business Licence Company (GBC l) for the purpose of providing management and consulting services to the mining industry worldwide. The proposed GBC1 will employ foreign employees. They will carry out work wholly outside Mauritius. The proposed GBC1 will also have consultancy agreement with overseas contractors who will provide management and consulting services on behalf of the proposed GBC1 and such services will be carried out wholly from abroad.

Points at issue

a) Whether the foreign employees the GBC1 will be employing to carry out work wholly outside Mauritius will be subject to PAYE.
b) Whether the overseas contractors will be subject to income tax in respect of fees they will receive from the GBC1for consultancy work to be carried out from abroad.

Ruling (given in January 2006)

a) The foreign employees the GBC1 will be employing to carry out work wholly outside Mauritius will not be subject to PAYE.
b) The overseas contractors too will not be subject to income tax in respect of the fees they will receive from the GBC1 for consultancy work to be carried out from abroad.

However, where the overseas contractor is related to the GBC1, the fees payable to the GBC1 would still not be taxable in the hands of the contractor but those fees would have to satisfy the arm's length principles for tax purposes in the accounts of the GBC1.

TR 47

Facts

A citizen of both Mauritius and the United Kingdom joined a company as marketing director on a contractual basis.

She was dismissed after 13 months of service on the ground that the company could not afford to continue to employ her at the rate agreed. By a statement of claim, she sued the company in tort for the injury she has suffered as a result of the company's wrongful acts and doing and "abus de droit" and claimed an amount of Rs17.8 m as damages.

The company contended that the parties who are linked by a contract can only ground any claim arising from the breach of the contract on the basis of contractual liability and not in tort.

An amount of Rs 5.6 m has been awarded to the plaintiff instead of Rs17.8 m claimed by her as damages.

According to the plaintiff the amount of Rs5.6m represents compensation for injury and not compensation for loss of office which is assessable by virtue of Section 10(1)(a)(ii) of the Income Tax Act.

Point at issue

Whether the amount of Rs5.6 m is emoluments under Section 98 of the Income Tax Act and therefore taxable, or whether it represents compensation payable for injury suffered by the plaintiff i.e damages for "abus de droit".

Ruling (issued in March 2006)

The amount of Rs 5.6 m and any other amount received by the plaintiff on her dismissal from her former employer in excess of severance allowance (to be computed at punitive rate in accordance with the Labour Act) constitute emoluments and therefore subject to PAYE.

TR 48

Facts

A company has set up a Retirement Fund having as objective the provision of retirement, withdrawal, death and disablement benefits for the beneficiaries. The Fund has been duly registered with the Registrar of Associations under the Employees Superannuation Fund Act.

Usually a superannuation fund has to be approved by this Office to benefit from certain provisions of the Income Tax Act viz:

a) Lump sum received by an employee as commutation of pension and paid from an approved superannuation fund is exempt from tax (Item 6 of Part II of the Second Schedule to the Income Tax Act).
b) The income of an approved superannuation fund is exempt from tax (Item 21 of Part I of the Second Schedule to the Income Tax Act).The Fund has not applied to this Office for approval since some specific features of the Fund do not meet the requirements of Regulation 5 of the Income Tax Act.

Points at issue

a) That the benefit payable from the Fund upon reaching the appropriate retiring age will qualify for the exemption under Item 5 of Part II of the Second Schedule to the Income Tax Act provided that all conditions therein described are satisfied.
b) That any income paid into the Fund will be, exempt from all taxes as provided for under Section 18(1) of the Employees Superannuation Fund Act.

Ruling (issued in March 2006)

a) The benefit payable from the Fund upon reaching the appropriate retiring age, as defined under Section 23 (3) of the Income Tax Act, will qualify for the exemption under Item 5 of Part II of the Second Schedule to the Income Tax Act, provided that all conditions specified in Item 5 mentioned above as well as under Regulation 3(1) of the Income Tax Regulations are satisfied.
b) Income paid into the Fund will be exempt from income tax as provided for under Section 18(1) of the Employees Superannuation Fund Act.

TR 49

Facts

Two companies form part of the same group.

Company A is a domestic company holding a Category 1(previously domestic, or Class A) banking licence and as such is taxable at the rate of 25 % on its taxable profits. The company has accumulated tax losses.

Company B is a domestic company holding a Category 1(previously offshore, or Class B) banking licence and is taxable at the rate of 15 % on its taxable profits. It is also entitled to a deemed tax credit of 80% on its foreign sourced income. It has no tax loss.

With the coming into force of the new Banking Act 2004, as there is no distinction between the two class of licences, since replaced by a unique banking licence, the immediate holding company has taken the decision to merge the two companies into a single company, whereby Company A is the surviving company which will operate under a single business licence and report segment A and segment B income.

The merger will not involve a change of more than 50% of shareholdings of Company A.

Point of Issue

Whether it can be confirmed that

a) the tax losses accumulated by Company A, the surviving company, can be carried forward against its future profits; and
b) the transfer or sale price of plant or machinery will be deemed to be equal to their base value at the date of sale or transfer.

Ruling

On the basis of facts provided it is confirmed that

a) the unrelieved tax losses of Company A will be available for carry forward against its future profits; and
b) the transfer or sale price of plant and machinery of company B to company A will be deemed to be equal to their base value at the date of sale or transfer.

TR 50

Facts

A Company holding a Category 1 Global Business Licence (GBLl) invests in securities or other vehicles abroad which provide for capital appreciation in the stock markets. There is an investment management agreement between the Company and the investment manager for the provision of investment management services in line with investment policies/restrictions approved by the board of the Company. The income of the Company consists of dividend income and gains on disposal of securities.

Point at issue

Whether the expenses incurred in the production of dividend income or gains on disposal of securities would not be disallowed.

Ruling (given in May 2006)

On the basis of facts provided

a) expenses incurred in the production of foreign dividend income are allowable for income tax purposes; and
b) expenses attributable directly to the sale of shares held as capital assets, being of a capital nature, are not allowable in accordance with Section 26(1)(a) of the Income Tax Act.