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 thedisposal 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 sociétéfor 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 sociétéfor 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, and therefore no issue of transparency for tax purposes arises. B Ltd will be the beneficial owner of the US trust, 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, 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 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 and;
- 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 preferred 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;
- 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 it will become a fixed rate. 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.

Point of Issue

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.

Ruling

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 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, and therefore deductible for income tax purposes.
3)
4) It is confirmed that there will be no withholding tax implications in Mauritius on payment by G of dividends on the ordinary shares. 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 there from 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, 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 Actincludes 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 booked 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 booked 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. 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), 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, 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 authorized 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, 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), 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 sourced 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 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 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.

Point of Issue

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?

Ruling

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'* 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 (Govt. Gazette of 1st September 2012 No.87)

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 (Govt Gazette of 8 December 2012 No. 124)

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 dependant 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 characterised 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 (Govt Gazette of 12 January 2013 No. 4)

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 (Govt Gazette of 23 February 2013 No. 16)

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 (Govt Gazette of 16 March 2013 No 25)

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 (Govt Gazette No. 27 of 30 March 2013)

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 (Govt Gazette No. 27 of 30 March 2013)

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 (Govt Gazette No. 48 of 01 June 2013)

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 (Govt Gazette No. 78 of 07 September 2013)

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.

3. 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 a 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 realized 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 offloading of the catch, crew changes, re-fuelling, 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 societé ''*includes a societé 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 societé.
2. Since the MU Partnership would qualify as a resident societé, the Joint Venture would also be considered to be a resident societé 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 offloading 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 societés, 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 exempted company with limited liability. Its central management and control is 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.