

## **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.