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."