

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.