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.