TR 151

Facts

B is a company registered in the United States. It provides an innovative new education-to-employment training model designed to provide companies in East Africa with the globally competitive staff they need to thrive. It holds the copyright (intellectual property rights-"IPR") to the education-to-employment training model.

B through its wholly owned subsidiary in Kenya called C, provides career-focused higher education and training.

B has previously partnered with D and has been commissioned to develop and implement a project to analyse and develop large scale employment bridge model in Kenya.

D is a foundation (stichting) incorporated under the laws of the Netherlands with its seat in Amsterdam, Netherland. It is a charitable foundation that oversees F's global philanthropy to improve the lives of children living in extreme poverty. F's profits provide D with financial resources to undertake and manage all global F's social and philanthropic efforts.

B would like to establish a Category 1 Global Business License company (GBC1) in Mauritius ("B Mauritius"). The ownership structure of B Mauritius will be held by four US nationals. The founders do not envision contributing in any significant capital themselves in B Mauritius before D's grant other than paying a nominal value for the shares of B Mauritius.

The D grant will be the source of significant initial capital for B Mauritius.

The funding received from D is planned to be disbursed as follows:

(a) to acquire between 10% to 90% in B Kenya from B United States. The remaining holdings will in all likelihood go to a local partner resident in Kenya; and

(b) the balance of the grant funds will be loaned by B Mauritius to B Kenya. The loan amount would be about $300K/quarter with an interest rate no greater than 3%.

The main purpose of B Mauritius will be:

(i) to act as a regional holding company for B Kenya and future subsidiaries in East Africa and will undertake similar initiatives;

(ii) to receive grant funding from D and disburse funds as per above.

(iii) to hold certain intellectual property rights (copyright) in the employment bridge model which it will license to B Kenya.

The proposed grant would be provided by D to B Mauritius in two instalments. B Kenya will use the grant funding to start up the new employment bridge model and related product offerings as well including undergraduate degree-bearing programs and corporate training.

Point at issue

Whether the grant funding received by B Mauritius from D will be treated as a capital receipt and hence not taxable in Mauritius?

Ruling

On the basis of the facts submitted, the grant funding received by B Mauritius from D would not be included in the gross income of the company by virtue of section 51 of the Income Tax Act.

However, it is to be noted that the company would be subject to income tax on dividend from foreign source, interest and royalty income.

TR 152

Facts

Company A (a company to be incorporated in Mauritius which will hold a Category 2 Global Business Licence) ("Co A") issues a convertible debenture ("CD") of ZAR 500 million to Company B (a company to be incorporated and to be listed in Mauritius on the SEM, and which will hold a Category 1 Global Business Licence) ("Co B").

The terms of the CD are as follows:

- Interest accrues at 8% per annum on the CD over a 5 year period but is only paid on redemption;
- Capital and accrued interest on the CD is paid at the option of Co A after 5 years either:
    - in cash; or
    - the issue of shares in Co A ("the Shares").

Co B will therefore realise its investment ("the Disposal") either through:

- redemption of the CD in cash by Co A; or
- sale of the CD or the shares by Co B.

The CD and the interest earned on the CD will be disregarded for accounting purposes and will be reflected as a share investment ("the Investment"). The carrying value of the investment will be either at:

- Fair value; or
- Amortised cost

with any changes in the value being reflected as a profit or loss in the income statement.

Points at issue

a) Whether the proceeds realised on the disposal of the CD or Shares will be treated as a capital gains realised by Co B?; or

b) Whether Co B will be subject to income tax in Mauritius on the proceeds realised on the disposal of the CD or Shares?

Ruling

a) Section 5(2) (a) of the Income Tax Act 1995 provides that *"income shall be deemed to be derived by a person when it has been earned or has accrued"*. In the light of the foregoing, though the interest is accrued and is only payable on redemption, Company B will be subject to income tax on the yearly interest accrued.

b) Company B being holder of a Category 1 Global Business Licence, the net gain on the disposal of the investment (excluding the accrued interest) will not be subject to tax in accordance with Items 7 and 8 of Sub-Part C of Part II of the Second Schedule to the Income Tax Act 1995.

Published on 18th April 2015, No. 37

TR 153

Facts

K is incorporated in Mauritius as a domestic company. It has entered into a loan facility agreement with L, a UK resident company with 100% indirect interest in K. As per the loan facility agreement, L agreed to make advances to K up to an overall maximum facility of MUR 10 billion bearing interest at 8%.

K's main activity is to hold investments in M and N (both Indian incorporated companies) and has used the facilities made available by L to finance the acquisition of these entities. During the past years K has been incurring tax losses and has not been able to repay the facilities and interest accrued as per the terms of the loan agreement.

K has been accruing interest expenses which have been treated as deductible in its annual tax returns as per the provisions of section 19 of the Income Tax Act.

As K has been making losses since its incorporation and is not in a position to settle the interest accrued and capital facilities advanced by L to date, it is now contemplating to waive some of the interest payable and convert the loan portion into equity.

Points at issue

1) Whether the waiving of interest claimed in the books of K will be subject to tax?
2) Whether unrelieved losses brought forward will be available for offset against future income including the income arising from reversal of accrued interest?
3) The tax implications if L releases K from its obligations of the loan capital facilities in consideration for an issuance of ordinary share capital in K.

Ruling

1) Since the accrued interest had been treated as deductible expenses for tax purposes in the company's returns for the previous years, the interest waived will be taxable upon reversal.
2) The losses carried forward will be available for set off against future income and the income arising from the waiving of interest subject to the limit of 5 succeeding years stipulated in Section 20(1) (b) of the Income Tax Act.
3) The conversion of the capital portion of the loan facilities into equity being a capital transaction will not be subject to tax under the Income Tax Act.

TR 154

Facts

V was registered in Mauritius as a Category 1 Global Business Licence ("GBC1") company on 12 January 2006 under the name of W with its registered address at Port Louis, Mauritius. V is a wholly owned subsidiary of the X group whose main activity is investment.

V currently has an effective shareholding of 37.06% in Y, a South African based company acquired in July 2011 at a cost of ZAR 4.1 bn.

V intends to dispose of all its investment in Y to Z, a publicly traded South African based company. The effective date of the disposal is expected around late March 2015/April 2015. The consideration for a minimum total amount of ZAR 26.4 bn for the disposal of Y will be settled as follows:

- Cash consideration of ZAR 15bn; and
- Shares in Z for a minimum value of ZAR 11.4 bn, that is 200m shares at a guaranteed price of ZAR 57 per share.

The Z shares which were acquired as part of the disposal proceeds from the sale of Y will be disposed of and the proceeds may be reinvested when better investment opportunities are identified.

Points at issue

1. Whether the gain on disposal of shares in Y is capital gain or exempt income?
2. Whether the gain on disposal of shares in Z, received as part of the sales consideration for Y, is capital gain or exempt income?
3. Whether the expenses directly or indirectly attributable to the gain on disposal of shares in Y and Z will be tax deductible or not?

Ruling

1. The gains derived from the disposal of the shares in Y will be treated as capital gain.
2. Where the shares in Z are held for a period of more than 6 months, the profit realised will be regarded as capital gain. Gains or profits derived from the sale of shares by a company holding a Category 1 Global Business Licence is an exempt income by virtue of item 7 of Sub-Part C of Part II of the Second Schedule to the Income Tax Act.
3. Expenses directly attributable to non-taxable income will not be allowable while expenses indirectly attributable to the gain on disposal will be disallowed on a proportionate basis.

TR 155

Facts

M is a private company incorporated in Mauritius on 31 December 2010. The Company is holder of a Category 1 Global Business License (GBC1) under the Financial Services Act 2007. The principal activity of M is that of an investment holding entity and it holds private equity investments in Bangladesh. M is a wholly owned subsidiary of N, a company based in the Cayman Islands.

M wishes to sell its Bangladesh investments and the funds received from the sale of the investments will be repatriated to its shareholders, N, by way of dividend distribution or repayment of loan.

Points at issue

1) Whether the profits on sale of the investments in Bangladesh will be subject to tax in Mauritius?

2) Whether the repatriation of funds by M to its shareholders in Cayman Islands by way of dividend distribution will be subject to tax in Mauritius?

3) Whether the repatriation of funds by M to its shareholders in Cayman Islands by way of loan repayment will be subject to tax in Mauritius?

Ruling

1) The profits on sale of the investments in Bangladesh will be exempt from income tax in Mauritius by virtue of item 7 of Sub-Part C of the Second Schedule to the Income Tax Act.
2) The repatriation of funds by M to its shareholders in Cayman Islands by way of dividend distribution will be exempt from income tax in Mauritius pursuant to the exemption provisions under item 1(a) of Sub-Part B of the Second Schedule to the Income Tax Act.
3) The repatriation of funds by M to its shareholders in Cayman Islands by way of loan repayment is of capital nature and will not be subject to income tax in Mauritius. It is understood that any interest payable with the loan repayment is also exempt from income tax under item 4 of Sub-Part B of Part II to the Second Schedule of the Income Tax Act.

TR 156

Facts

S a limited liability company incorporated in Mauritius in July 2005, acquired properties in September 2012 from an unrelated party. The properties were built prior to 1 July 2006. The consideration was based on a valuation report prepared by a professional valuer.

The property portfolio was, in the income year of acquisition, subsequently transferred to a wholly-owned subsidiary company, T (the company) which was incorporated in Mauritius under the Companies Act 2001 on 5 March 2012, as a private company limited by shares. The transfer was made at the same value as acquired by S. No annual allowance was claimed by S on the buildings transferred.

Points at issue

1. Whether the company can deduct annual allowance on the commercial premises which were built prior to 1 July 2006.
2. Whether annual allowance is available on the fair value of the commercial premises at date of acquisition.

Ruling

On the basis of the facts provided, it is confirmed that:-

1. The company is eligible to claim relief in respect of annual allowance on the commercial premises which were built prior to 1 July 2006 and transferred to the company in the income year ended 30 September 2013.
2. Annual allowance is available on the base value of the buildings in accordance with the provisions of section 24(6) of the Income Tax Act.

TR 157

Facts

K is a domestic trust created by a deed of settlement under the provisions of the Trusts Act 2001.The settlor of K is L, a private limited liability company incorporated under the laws of England and Wales. K is administered in Mauritius by M, a resident company.

The trustees of K are both resident and non-resident persons. The majority of the trustees are resident in Mauritius.

The members of K would be individuals resident of Mauritius, non-resident individuals and non-resident pension schemes which are funded by contributions from non-resident individuals.

K was granted a Private Pension Scheme Licence issued by the Financial Services Commission (FSC) pursuant to section 9 of the Private Pension Scheme Act 2012 (PPSA).

The pension scheme which K operates is not a superannuation fund as defined in the Income Tax Act nor an occupational pension scheme.

K is a defined contribution pension's scheme which would receive contribution from members and provide pension benefits (i.e pension, annuity and lump sum payments) to the beneficiaries of the Scheme.

The beneficiaries of K are the members of the Scheme and/or their dependents.

Points at issue

1. Confirmation that K is a domestic trust and is licensed by the Financial Services Commission to provide pension scheme benefits.
2. Whether the same or substantially the same tax relief available under the system of taxation of personal income in Mauritius is available to members of the Scheme irrespective of the residency of the members.
3. Whether K is established in Mauritius and the latter has a double taxation agreement with UK in force that contains provisions as to exchange of information and non-discrimination.
4. Whether a contribution or transfer to K made by an individual member is eligible for any tax relief or tax deductibility to the member, irrespective of the member's residency.
5. Whether for the purposes of determining the net income of the pension business:

   (i) the valuation of the liability of the pension scheme at the beginning of the income year and its liability at the end of the income year, as required under regulation 17(7) of the Income Tax Regulations 1996, can be assessed by the Board of Trustees rather than by an actuary; and

   (ii) that the liability at the end of the income year will be the addition of the contribution received during the income year with the liability at the beginning for the income year such that the overall effect is nil for the purposes of calculating the net income of the pension business under the provisions of regulation 17(7) of the Income Tax Regulations

1996 (i.e Liability at the beginning + Contribution received – Liability at the end of the income year = Nil).

6. Whether the pension benefits provided by K will be treated as pension, lump sums and annuities under the Mauritius income tax law.
7. Whether the pension benefits paid by K would attract tax at the applicable tax rate of 15% for both resident and non-resident members of the Scheme.
8. Whether there exists any tax relief for benefits paid to members who are non-resident in Mauritius, irrespective of when the members joined the Scheme or the period of time for which they were a member of the Scheme and whether the same condition holds for resident members.

Ruling

1. On the basis of facts given and the Pension Scheme Licence produced from the Financial Services Commission, it is confirmed that K, created by a deed of settlement on 25 August 2014, is a resident trust under section 73(d) of the Income Tax Act and is licensed by the Financial Services Commission to operate a pension scheme under the Private Pension Schemes Act 2012.
2. Under the system of taxation of personal income in Mauritius, tax reliefs are available to residents only.
3. The status of K in Mauritius is as mentioned in Ruling 1 above. It is also confirmed that Mauritius has in force a Double Taxation Agreement with UK and the treaty contains articles dealing with exchange of information and non-discrimination.
4. The Income Tax Act does not provide for the deductibility of contribution or transfer to K made by an individual member whether resident or not.
5. The net income of the pension scheme has to be ascertained in the same manner as any other pension business as provided under regulation 17(7) of the Income Tax Regulations 1996. The liability of the pension scheme at the beginning of the income year and at the end of the income year must be assessed in accordance with an actuarial valuation.
6. The pension benefits (pensions or lump sums or annuities) provided by K will constitute gross income in the hands of the beneficiaries under sections 10(1)(d) of the Income Tax Act.
7. Pension benefits paid by K to both resident and non-resident members would be subject to income tax at the rate of 15%. However, in the case of non-resident members, the provisions of the Pensions/ Pension and Annuities article of any applicable Mauritius DTA will apply.
8. As mentioned in Ruling 2 above, only resident members will be entitled to tax reliefs. These members will be entitled to reliefs in respect of income exemption threshold, interest relief and relief for Medical or Health Insurance Premium under sections 27, 27A and 27B of the Income Tax Act.

TR 158

Facts

H is raising fund to finance its operating and investment activities. Three types of instruments are to be issued for that purpose. They are as follows:

1) Convertible Bonds
2) Convertible Preference Shares A
3) Convertible Preference Shares B

The "Convertible Bonds" are secured floating rate notes with a tenor of 10 years; the return consists of yearly cumulative interest based on the aggregate of the repo rate and a margin. The bond will rank:

- junior, in all material respects, to the existing senior lenders and existing noteholders;
- pari passu without any preference among themselves; and
- senior to (i) any unsecured creditors of the Issuer and (ii) to holders of all classes of share capital of the Issuer.

The "Convertible Preference Shares A" are unsecured equity instrument with no liability on the issuer to repay capital. The dividend is based on the aggregate of the repo rate and a margin that depends on the level of retained earnings and will step up by 2% p.a. as from tenth anniversary of the issue date. The issuer may in its absolute discretion, as from the tenth anniversary of the issue date, redeem or buy back the preference shares. The redemption/buyback proceeds may, at the absolute discretion of the Issuer, take the form of either cash or ordinary shares of the issuer at the Discounted Value.

The "Convertible Preference Shares B" are also unsecured equity instrument but for a tenor of 10 years. The shareholder will receive cumulative preference dividend based on the repo rate and a margin that will depend on the level of the distributable profits of the issuer. The issuer may in its absolute discretion, as from the 5th anniversary of the issue date, redeem or buy back the preference shares. The redemption/buyback proceeds may, at the absolute discretion of the Issuer, take the form of either cash or ordinary shares of the issuer at the Discounted Value.

For the three types of instruments, the conversion is at the option of the shareholder and this can occur on the third, fifth and seventh anniversary of the issue at the Discounted Value. The three types of instruments are also to be listed within three months of the issue date.

Points at issue

i. Whether the interest payable on the Convertible Bonds will be an allowable expense for H?

ii. Whether in respect of both categories of Preference Shares, the dividend will be treated as an unauthorised deduction and exempt in the hands of the recipient?

Ruling

i. Being given that the proceeds of the Convertible Bonds will be used to fund the Operating and Investing activities of the company, the interest paid thereon qualifies as an allowable deduction under Section 19(1) of the Income Tax Act.

ii. As in the case of ordinary shareholders, dividend paid to preference shareholders is a distribution which depends on the availability of retained earnings. Unlike interest, dividend paid to preference shareholders in the present circumstances is not a cost incurred in the production of gross income. Hence it is an unauthorised deduction and is exempt in the hands of the recipient in accordance with Section 7 and item 1(a) of Sub-Part B of Part II of the Second Schedule to the Income Tax Act.

TR 159

Facts

Mr. X is a French national qualified as a Barrister-at-law in France. The latter proposes to establish a fixed place of business in Mauritius to conduct professional services of an independent character as a "professional introducer". For this purpose, Mr. X will apply for an occupational permit with the Board of Investment under the Scheme "Self-Employed" and shall have an office space in Mauritius from where he will conduct his professional activity. Mr. X will derive income from the conduct of his professional services from Mauritius only.

Points at issue

1) Whether the income generated from the professional services of an independent character will be taxed in Mauritius at the rate of 15% on the basis of section 5 (1)(a) of the Income Tax Act 1995.

2) Whether on the basis of Article 14 of the Double Taxation Avoidance Convention between the Republic of France and Mauritius, the income which is attributable to the fixed base from which the income shall be derived may be taxed in Mauritius despite the fact that Mr. X is a resident of France.

Ruling

In accordance with paragraph 1 of Article 14 of the Double Taxation Avoidance Convention between the Republic of France and Mauritius, the income which is attributable to the fixed base in Mauritius will be taxable in Mauritius at the rate of 15% on the basis of section 5(1)(a) of the Income Tax Act 1995 despite the fact that Mr. X is a resident of France.

TR 160

Facts

B Ltd (the "Company") is a private limited company incorporated on 11 August 2014 and registered for VAT with effect from 01 October 2014. Its objective is to organise and promote a professional local football league at the elite level in Mauritius. In so doing, it will significantly improve quality of local football, organise professional league matches having full-time paid players committed and dedicated to football forming a professional league, attract talented young players who can aim for a career in professional football and produce a respected national team.

The Company's business plan provides for revenue generation from different sources including sponsors, advertising fees, and from the organisation of professional football leagues matches in Mauritius. The Company will then use these funds to provide financial resources to football clubs to meet the salaries of the full-time football players. In return, the clubs will perform a number of matches and football players will play as a full-time profession.

Points at issue

What will be the income tax treatment in respect of each of the following items?

(i) Sponsorship fees

(ii) Advertising in stadium

(iii) Sale of football match tickets

(iv) Sale of specialised football magazine

(v) Sale of rights of television broadcasting of football matches

(vi) Receipts upon transfer of football players to a foreign football club

(vii) Payments to football clubs to meet the players' salaries.

Ruling

1. The items as per (i) – (vi) will be subject to income tax by virtue of section 51 of the Income Tax Act 1995.

2. Payments made by the Company to football clubs in order to meet players' salaries will be an allowable expense in accordance with the provisions of section 57 of the Income Tax Act 1995.

TR 161

Facts

X, [hereinafter referred as the “Company”] was incorporated in Mauritius as a private limited liability company and holds a Category 1 Global Business Licence issued by Financial Services Commission (“FSC”) to operate a Closed-End Fund. Its business activity is to make equity and equity-related investments in Africa. The shareholding of the company is broad-based, constituting primarily of institutional investors based outside Mauritius.

The Company has a significant interest in Y (thereafter referred as the “Underlying Partnership”), a limited partnership registered in Jersey, Channel Islands. The Underlying Partnership holds investment in several companies incorporated in Mauritius, each holding a Category 1 Global Business Licence issued by FSC (collectively as the “Mauritian SPVs”). The Mauritian SPVs, in turn, hold investments in African based countries, directly or indirectly.

The Underlying Partnership has a tax transparent status in Jersey. It is exempt from income tax under the domestic tax laws applicable in Jersey. However, its limited partners are subject to income tax on their respective share of profits, in their own country of residence.

The Mauritian SPVs being investment holding entities, are expected to derive the following two streams of inflows from their business activities:

(i) Foreign dividend income ; and/or

(ii) Capital gains on disposal of shares.

The Underlying Partnership, in turn, is expected to derive the following two streams of inflows from the Mauritian SPVs:

(i) Dividend income; and/or
(ii) Capital gains arising from the buy-back of shares held in Mauritian SPVs.

The Company is expected to be attributed a share of profits from the business activities of the Underlying Partnership, the taxability of which will be determined by the income tax legislation and framework prevailing in Mauritius.

Point at issue

What will be the income tax implications in Mauritius to the Company on its share of profits derived from the Underlying Partnership?

Ruling

The profits derived by the Company from the Limited Partnership will retain their characteristics. Hence, the Company's share of profit originating from dividend income earned by the Underlying Partnership from the Mauritian SPVs would be exempt income by virtue of items 1(a) and 2 of Sub-Part B of the Second Schedule to the Income Tax Act.

As regards the Company's share of profit originating from gains on disposal of shares earned by the Underlying Partnership from the Mauritian SPVs, they would be exempt from income tax by virtue of item 7 of Sub-Part C of the Second Schedule to the Income Tax Act.

TR 162

Facts

Z is a company incorporated in Germany. It has been awarded a contract by a Chinese contractor for the execution of sub-contractor works in Mauritius. In this connection, the German company has set up a branch as a foreign company in Mauritius for the execution of the construction works. The branch is provided support services from the head-quarter in Germany. The branch constitutes a permanent establishment (PE) under the Mauritius-Germany DTA.

Points at issue

In view of the new Authorised OECD Approach (AOA) on attribution of profits to permanent establishments (that is, the new Article 7 of the OECD Model Tax Convention on Income and on Capital as it reads on 22 July 2010), the questions are:

(a) Whether all income generated by the construction project is taxable fully in Mauritius according to the Double Taxation Agreement between Germany and Mauritius and the Mauritius Income Tax Act 1995.

(b) Whether it can be confirmed that the company which is a foreign company will be taxable on its profits in Mauritius and the OECD approach on attribution of profits to permanent establishments is ranked lower in order of precedence than the Mauritius Income Tax Act and is therefore not binding in this particular case.

Ruling

(a) The German company is taxable in Mauritius on all its income generated by the construction project in Mauritius in accordance with the Double Taxation Agreement between Mauritius and Germany.

(b) The German company will be taxable in Mauritius on the profits attributable to the branch and the relevant provisions of the treaty existing between Mauritius and Germany will apply for determining the profit attributable to the Mauritius branch.

TR 163

Facts

Two foreign promoters which are not Mauritian resident wish to set up a Closed End Fund (the « Fund ») licensed under the Securities Act 2005 as a limited partnership under the Limited Partnership Act 2011. The Fund shall be holder of a Category 1 Global Business Licence and shall have its seat in Mauritius. It will hold investments outside Mauritius and all of its income will be from foreign sources.

The General Partner (the "GP ") of the Fund will be a domestic company, incorporated in Mauritius as a private company limited by shares under the Companies Act 2001. The GP shall receive management fees from the Fund and shall not hold any interest in the Fund.

The Limited Partners (the "LPs") of the Fund will be foreign financial institutions or high net worth individuals who will not be resident in Mauritius.

The Fund will elect to have legal personality under Section 11 of the Limited Partnership Act 2011 and it will not opt to be subject to income tax at 15% under Section 47 (6) of the Income Tax Act 1995.

Points at issue

1. Whether the Fund will be considered as tax resident and whether it will be able to apply and be issued with a tax residence certificate under Section 73 of the Income Tax Act?
2. **In respect of the taxation of the Fund**
   a. Whether the Fund, as a resident Fund will be liable to income tax?
   b. Whether the Fund, as a resident Fund will benefit from application of the Double Taxation Agreements ("DTAs") entered into by Mauritius, even if it is not taxable in Mauritius as it will be "transparent" for tax purposes?
   c. If the answer to part (b) is yes, whether the revenues received by the Fund will be taxed in accordance with the provisions of the DTAs by any foreign jurisdiction which shall be a party to any DTA?
3. **In respect of the taxation of the LPs**
   a. Whether the LPs of the Fund which are not Mauritian resident shall be liable to tax in Mauritius on their share of income from the Fund?
   b. And if the LPs shall not be liable to tax, whether they need to register as taxpayers with the Mauritius Revenue Authority?
4. **In respect of the taxation of the GP**
   a. Whether the management fees to be received by the GP from the Fund will be taxed at a rate of 15%?

b. Whether any foreign tax may be deducted by reference to any tax withheld by the foreign jurisdictions in respect of the foreign source income of the Fund, out of which the management fees of the GP will be paid, as the Fund is transparent for tax purposes?
c. Whether, if the GP holds interest in the Fund in the same manner as a LP, the GP, as a resident company and resident LP would be entitled to claim credit for any foreign tax suffered in the foreign jurisdiction in respect of its share of foreign source income from the Fund?

Ruling

1. The Fund will be considered as a resident société for tax purposes in Mauritius, in accordance with Section 73 of the Income Tax Act. However, being given that the société will elect not to be taxed in Mauritius, the Fund will not be required to submit a return of income under Section 116 of the Income Tax Act. Pursuant to Section 73(3) of the Income Tax Act, no tax residence certificate will be issued to the Fund.

2. As the Fund will make an election under Section 47(6) of the Income Tax Act not to be taxed in Mauritius, the partners are the persons who will be liable to tax and will thus be the appropriate persons to claim the benefits of tax treaties.

3. The non-Mauritian resident LPs will be taxed on their share of income from the société. However, they would not be liable to income tax in Mauritius in respect of their share of income in the Fund being given that the latter will derive income from outside Mauritius. They will be required to register as taxpayers in the event they have taxable income in Mauritius.

4. The GP will be taxable on the management fees at the prevailing income tax rate. No foreign tax suffered by the Fund can be taken as a foreign tax credit against the management fee received by the GP.

   In the event the GP holds interest in the Fund, any foreign tax suffered by the Fund may be claimed as a foreign tax credit against income tax payable by the GP on its share of income from the Fund in accordance with the law and appropriate tax treaties in force.

TR 164

Facts

X is Zimbabwe's sole fixed telecommunication services provider that is 100% owned by the Government of Zimbabwe.

Following a court judgment, Y, a company incorporated in the Netherlands, became a judgment creditor of X for a sum of EUR 14,573,289.11 with interest as at 24 May 2014, due to a default of banking facilities contracted in or about 1997.

Since X was unable to meet its obligation vis-à-vis Y, the latter seized the shares of X held in Z (Mauritius) and was in the process of auctioning these shares in 2014 to recover its debt.

Prior to engaging in the sales of the shares, Y requested X for an immediate payment of EUR 3 million, in exchange for a full and final settlement, which X accepted in order to avoid foreclosure of its shares in Z (Mauritius). Both entities entered into a settlement agreement on 23 May 2014.

However, X was unable to raise the sum of EUR 3 million for payment to Y. AB, a company incorporated in Mauritius, offered to provide the EUR 3 million to X in exchange of a payment of USD 15,239,741 by the latter to BC. The amount of USD 15,239,741 was to be payable by X to AB in instalments over 5 years in accordance with a payment schedule as per the judgment dated 23 May 2014.

Point at issue

Whether the profit on debt settlement can be considered as capital gain by AB?

Ruling

The EUR 3 million is a loan/an advance made by AB to X to enable the latter to settle its debt with Y. The loan/advance of EUR 3 million is repayable over 5 years. The difference between EUR 3 million and USD 15,239,741, being the amount repayable over 5 years, represents interest falling under Section 10(1)(d) of the Income Tax Act, which is subject to income tax. It cannot therefore be considered as a capital gain.

Government Gazette of 09 April 2016

TR 165

Facts

A and B, hereinafter collectively referred as AB, currently have on secondment from C ("the Employer"), four (4) international assignees ("IA") who are foreign nationals.

The terms and conditions of employment of the IAs with the Employer remain unchanged while they are on secondment to the Mauritian entities

a) Relocation : Shipment of personal effects

As part of the IA benefits package, AB will cover the costs of the packing, shipping, associated temporary storage and in-transit insurance for moving the assignee's personal household effects from one country to another in connection with the assignment.

The costs relating to the shipment of personal effects and warehouse storage are either paid by AB or recharged to AB where the home country has incurred these costs.

b) Relocation : Flights to and from Assignment

AB meets the cost of one-way airfares and associated travel and hotel accommodation expenses for the IA and accompanying family members travelling to and from the host location at the commencement and completion of the assignment.

c) International Medical Benefits

ABC Group provides international medical insurance cover to all assignees, partners and dependent children. The above cover is provided under the ABC Group International Health Scheme. The Group International Health Scheme is underwritten by Z International and all premiums are paid by the ABC Group.

Currently, the premiums borne by the ABC Group are not recharged back to AB. Any refund for medical expenses to the IAs is handled directly by Z International and there is no involvement from AB.

IAs are entitled to benefits under the medical scheme irrespective of their performance in Mauritius, and the premiums paid are not claimed as a deduction by AB.

d) Deferred Shares Awards

ABC Group operates a Share Plan and a Cash Plan (collectively the "Plans") which are umbrella plans under which conditional awards (typically restricted share units, "RSUs") are granted to certain employees. Awards made under the Plans most commonly include deferred bonuses or other discretionary deferred share awards ("Deferred Awards").

Deferred Awards are typically structured as conditional awards of shares in ABC Holdings PLC, but may also be a deferred cash award or a cash-settled conditional share award. Whilst the Awards are granted on a particular date (for deferred bonuses the grant date will be shortly after the end of the relevant performance year), participants do not have any legal rights to the shares or to the cash payment until a later date when the Deferred Awards vest (the date when the participant is entitled to the shares or cash payment).

During the vesting period (i.e. between the time when the Awards are granted to the participants and when they vest) the participants do not have the right to vote, receive dividends or transfer the rights to the Awards. All Awards are subject to continued employment with ABC Group and can be subject to certain other performance conditions during the vesting period. The shares delivered following vesting may also be subject to a sale restriction for a period after the date the Awards vest, but they are generally no longer subject to any risk of forfeiture beyond the vest date. No amount of cash or shares are delivered to employees prior to the vest date.

Where employees move to or from Mauritius, AB will bear the costs of the awards on a pro-rata basis between grant and vest. If an employee leaves Mauritius prior to grant of a Deferred Award, AB will bear no costs in respect of that award.

Points at issue

Confirmation that -

1. payment of the costs of the packing, shipping, associated temporary storage and in-transit insurance for moving the assignee's personal household effects from one country to another in connection with the assignment is not a taxable benefit in the hands of the IAs, and is not subject to PAYE.
2. payment of airfares and associated travel and hotel accommodation expenses for IAs and their accompanying family members at commencement and completion of the assignment is not a taxable benefit in the hands of the IAs.
3. insurance premiums paid by the ABC Group on behalf of the IAs are not taxable in the hands of the IAs in Mauritius and refund of medical expenses to the IAs under the International Health Scheme operated by Z International will not be taxed in the hands of the IAs.

4. where the participants have worked outside Mauritius during the vesting period of awards, the basis for taxing restricted shares in Mauritius should be sourced by reference to services rendered in Mauritius during the vesting period.
5. the basis for computing the taxable amount in respect of shares vested to ABC Group employees will be the closing price of the shares on public stock exchange on the date of vesting or the amount of cash payment made available to the IAs in lieu of shares.

Ruling

On the basis of facts given above, it is confirmed that:

1) the relocation cost in connection with shipment of personal effects and flights to/ from Assignment is not considered as a taxable benefit in kind and therefore not subject to PAYE as it is not in return for services rendered in the course of the performance of the duties of the employment of the IAs in Mauritius.
2) the insurance premiums paid by the ABC Group on behalf of the IAs are taxable in the hands of the IAs in Mauritius whereas the refund of medical expenses to the IAs under the International Health Scheme operated by Z International will not be taxed in the hands of the IAs.
3) since the entitlement to the shares or the cash payment is conditional on continued employment with the ABC Group during the vesting period, and is based, at times, on performance criteria attained during the vesting period, the taxable amount in respect of the Awards will be pro-rated based on the period of employment in Mauritius.
4) the basis for computing the taxable amount in respect of shares vested to ABC Group employees will be either the closing price of the shares on public stock exchange on the date of vesting or the amount of cash payment made available to the IAs in lieu of shares.

Government Gazette of 09 April 2016

TR 166

Facts

Z was incorporated in the Republic of Mauritius on 16 August 1993 under the Companies Act 1984 as a private company with limited liability. The company holds a Freeport Licence from the Board of Investment (BOI) and is engaged in freeport activities. For the year ended 30 June 2015, 32% of the total revenue is derived from physical trading and the remaining 68% of revenue from paper trading.

Physical trade involves importing goods from countries like China, Indonesia, Malaysia to the Freeport Zone in Mauritius. These imported products pertain mainly to candles, seasoning condiments, stationary and cosmetic products and are stored in rented freeport space. These products are later exported to destinations like Madagascar and Comoro Island.

The company also deals in paper trading which relates to the importation of products such as wheat flour, tyres, stainless steel, kitchen items, fabrics, stationary and batteries from countries like India, China, Japan, Korea and Dubai. These goods are then exported to destinations like Madagascar, Tanzania, Johannesburg, Durban and Mombasa without being transited to Mauritius.

The company rents an office space at Rose-Hill where all administration work is carried out. There are 3 permanent employees. It does not possess any fixed assets and does not have any foreign offices. Foreign agents work for the company and receive commission in return.

Point at issue

Whether receipts from paper trading are taxable or not for the following periods:

- Period before 1 July 2003;
- Period starting 1 July 2003 and ending on 30 June 2011;
- Period after 30 June 2011.

Ruling

On the basis of facts given above, it is confirmed that:

(i) as the concept of « paper trading » did not exist prior to 1 July 2003, it was not considered to be a freeport activity under the Freeport Act 2001. Hence receipts from paper trading prior to 1 July 2003 was taxable.

(ii) based on Section 161A(13) of the Income Tax Act, receipts derived from paper trading between the period 1 July 2003 and 30 June 2011 is exempt from income tax.

(iii) in accordance with Section 49(1) of the Income Tax Act, income derived by a freeport operator after 30 June 2011 from the paper trading activities as described in the facts is exempt from income tax .

Government Gazette of 09 April 2016

TR 167

Facts

Mr M, a Swiss national intends to set up a Foundation under the Foundations Act 2012 for the benefit of a class of beneficiaries residing in France. The Foundation shall apply for a Category 1 Global Business Licence as well as for a Tax Residence Certificate under Section 73 of the Income Tax Act in respect of the Double Taxation Convention between Mauritius and France since distributions would be made to residents of France.
The Foundation shall also pursue charitable objects.

Points at issue

1. Whether the Foundation shall be treated as a company in accordance with Section 2 of the Income Tax Act for income tax purposes?
2. Whether the Foundation shall be entitled to access the Double Taxation Convention between Mauritius and France?

Ruling

1. In accordance with Section 2 of the Income Tax Act, a company includes a Foundation. The Foundation shall therefore be treated as a company for income tax purposes.
2. The Foundation shall also be entitled to treaty benefits from the Double Taxation Convention between Mauritius and France provided that it does not deposit a declaration of non-residence with the Director-General in respect of any income year as provided under Section 49A of the Income Tax Act.

TR 168

Facts

Mr D is a French national who is tax resident in Mauritius. He receives dividends of Euro 10 million from K, a company resident in Mauritius and holding a Category 1 Global Business Licence.

Points at issue

1. Whether K is required to pay corporation tax or any other tax on the dividends being distributed?
2. Whether Mr D is subject to income tax or any other tax on the dividends received from K?
3. The applicability of section 7(3) of the Income Tax Act and whether same can be applicable to Mr D.

Ruling

On the basis of facts given above, it is confirmed that :

1. the distribution of dividends by K to Mr D is exempt from income tax in accordance with item 1 of Sub-Part B of Part II of the Second Schedule to the Income Tax Act.

2. any dividend received by Mr D from a resident company is exempt from income tax in accordance with item 1 of Sub-Part B of Part II of the Second Schedule to the Income Tax Act.

3. Section 7(3) of the Income Tax Act is not applicable to Mr D since dividends are exempt by virtue of item 1 of Sub-Part B of Part II of the Second Schedule to the Income Tax Act.

   Under section 7(3) of the Income Tax Act, where emoluments, dividends and interest are paid by a body of persons or persons who are exempt from tax or out of income exempt from income tax, such income (emoluments, dividends and interest) is not exempt from tax by virtue of the provisions of this section. This means that such income will be exempt from income tax only if there are provisions elsewhere in the Income Tax Act to exempt such income.

TR 169

Facts

T Ltd is a company engaged in the development and distribution of software solutions. It has a significant number of employees based in Mauritius and all of its clients are currently located abroad. T Ltd forms part of a larger group of companies which are also involved in software development, maintenance and marketing (together the "Group"). In view of the expansion of the Group's activities (including the development of software by other Group companies which are not resident in Mauritius), T Ltd is looking to restructure the activities in Mauritius such that all the business conducted outside Mauritius are carried out through a company holder of a Category 1 Global Business Licence (hereinafter referred to as "T International").

With the restructuring, T Ltd will continue to carry out all activities conducted in Mauritius, namely development of software programmes, licensing of software to clients, ongoing (offsite) maintenance of the software and BPO activities.

T Ltd's revenues will consist of a monthly licence fee for the usage by the client of the software and a monthly maintenance fee for the ongoing servicing of the software in respect of non-BPO activities. As regards its BPO activities, it will receive a one-off implementation fee and a monthly operation fee.

On the other hand, T International will be marketing software abroad in return for an introducer's fee, payable by the client. Furthermore, T International will be conducting the implementation phase, which consists mainly of the on-site training of the software at the client's premises.

There will be a tripartite licensing, implementation and servicing agreement between the client, T Ltd and T International which will set out the different fees to be paid by the client to the two companies in respect of non-BPO activities.

All of T International's revenues will be derived from abroad since all of its clients are resident outside Mauritius.

Point at issue

Whether T International should be able to claim the deemed foreign tax credit on its foreign source income pursuant to regulation 8(3) of the Income Tax (Foreign Tax Credit) Regulations 1996?

Ruling

Given that T International will hold a Category 1 Global Business Licence, it is confirmed that it will be entitled to claim the presumed foreign tax credit under regulation 8(3) of the Income Tax (Foreign Tax Credit) Regulations 1996 on its foreign source income.

TR 170

Facts

B Ltd (the “Company”) is a company which was incorporated in Mauritius. The company’s objects as stated in its Business Registration Card are to carry out “real estate activities on a fee or contract”. The Company has been incorporated with the sole purpose of acquiring an immovable property in Mauritius under the Integrated Resort Scheme (“IRS”). The Company does not undertake any commercial activity in Mauritius and its main purpose is not the acquisition and sale of immovable properties.

The Company is wholly owned by Mr and Mrs XYZ who are French residents and who hold 50 % shareholding each. Neither of the shareholders are property dealers. The purchase of the IRS property was financed out of the personal savings of the shareholders and is in the form of a loan made by the shareholders to the company. The shareholders intended to settle in Mauritius at the time of acquiring the property and have travelled to Mauritius four times since the acquisition of the property, spending an average of 2-3 months during each visit.

The shareholders have decided to sell the Property for personal reasons and for this purpose they will sell all their shares in the Company holding the Property.

Point at issue

Whether the gains or profits derived by the shareholders from the sale of shares in the Company will fall within the ambit of paragraph 6(a) and paragraph 6 (b) of Article 1 of the Protocol dated 9 March 1990 to the Convention between France and Mauritius?

Ruling

On the basis of the above-mentioned facts, it is confirmed that the gains or profits derived by the shareholders from the sale of the shares in the Company fall within the ambit of paragraph 6(a) and paragraph 6 (b) of Article 1 of the Protocol dated 9 March 1990 to the Convention between France and Mauritius. As the gains or profits constitute capital gains, they will not be subject to income tax in Mauritius.

TR 171

Facts

U Limited is a company incorporated in Mauritius and is holder of a Category 1 Global Business Licence. It has started its operation in the business of acquiring and holding financial instruments in overseas jurisdictions and the net result at 31 March 2016 is a loss.

The company has royalty obligation payments to non-residents for the use or right to use Sigma Squawk facility, Stellar Software Licence, etc.

The company has incurred a gross loss in its first year of operation but will derive gross income in subsequent years from foreign sources. The company does not have any Mauritian source income.

Point at issue

Whether the royalty paid by the company qualifies for the exemption under item 5 of Sub-Part B of Part II of the Second Schedule to the Income Tax Act.

Ruling

Based on the above facts, it is confirmed that the royalty will qualify for the exemption as laid down under item 5 of Sub-Part B of Part II of the Second Schedule to the Income Tax Act.

TR 172

FACTS

M, ("the Foundation") was set up under the Foundations Act 2012. The business and affairs of the Foundation shall be managed by a board of councillors (the "Foundation Council") which consist of the following councillors:

1. Mr. N, a Swiss citizen (resident for tax purpose as per section 73(1) of the Income Tax Act);
2. Mr. B, a French citizen (resident for tax purpose as per section 73(1) of the Income Tax Act);
3. Mr. V, a Swiss citizen (not resident for tax purpose).

The Foundation intends to pay its councillors a gross annual remuneration of:

1. Mr. N - Euro 35,000
2. Mr. B - Euro 5,000
3. Mr. V - Euro 50,000

The councillors will perform duties similar to those of a director.

POINT AT ISSUE

Whether PAYE is applicable on the remuneration payable to the council members?

RULING

On the basis of facts mentioned above, it is confirmed that as the councillors will perform duties similar to those of a director, PAYE is applicable at 15% on the remuneration payable to the council members by virtue of section 96(3) of the Income Tax Act.

TR173

FACTS

Q Ltd was a public company incorporated in Mauritius. Its main shareholder was W Ltd which was holding 48.7% shares in Q Ltd. An amalgamation proposal was made and approved by the shareholders. Hence, Q Ltd ceased to exist and W Ltd became the amalgamated company as from 1 July 2016. Apart from W Ltd, the other shareholders of Q Ltd were:

	Shareholding
E Ltd	10.9%
R Ltd	13.8%
Members of the public	26.6%

According to the terms and conditions of the amalgamation process, E Ltd, R Ltd and members of the public were allotted 4.8277 shares for each share held in Q Ltd. Q Ltd had a number of wholly owned subsidiaries which had tax losses. Hence, after the amalgamation, since W Ltd was the surviving company, it became the holding company of the subsidiaries which have remained separate entities. All shareholders of Q Ltd were finally shareholders of W Ltd.

POINT AT ISSUE

Whether after the amalgamation of Q Ltd and W Ltd, the subsidiaries of Q Ltd can carry forward losses unrelieved at time of amalgamation or incurred for the year of assessment 2016/2017?

RULING

In accordance with Regulation 19(5) and (6) of the Income Tax Act, the criteria for the carried forward of losses is that the shareholding of a company at the end of the income year in which the loss is incurred must not have changed by more than 50% when compared to the shareholding at the end of the income year in which the loss is to be relieved.

Based on the above facts, Regulation 19(5) and (6) of the Income Tax Act are being complied with. Hence, after the amalgamation of Q Ltd with and into W Ltd, unrelieved tax losses of the subsidiaries or losses incurred by them for the year of assessment 2016/17 may be carried forward under section 59(b) of the Income Tax Act.

TR 174

FACTS

G Limited is a company incorporated in Mauritius and holds a Category 1 Global Business Licence. Its principal activities are the provision of trade financing services, procurement of goods, freight, group treasury management and administrative services.

G Ltd is a subsidiary of H Limited, a company incorporated in Mauritius. H Ltd holds a Category 2 Global Business Licence and is ultimately owned by I Ltd a company listed on the Johannesburg Stock Exchange.

The board of directors of H Ltd decided to acquire 75% of the share capital of a German company. G Ltd entered into a Foreign Exchange Contract ("FEC") to hedge the group's exposure in relation to the above acquisition. The hedge was entered into on behalf of H Ltd and I Ltd. There is no written contract between G Ltd and H Ltd for securing the FEC as G Ltd is the treasury of the group of which forms part H Ltd.

G Ltd surrendered the FEC to I Ltd so as to enable I Ltd to capitalize H Ltd by way of issuing additional share capital to I Ltd. The capitalisation proceeds were applied to the settlement of the acquisition consideration. The surrender of the FEC at market value gave rise to a gain.

POINT AT ISSUE

Whether the gain arising on the FEC entered by G Ltd should be treated as exempt as per the Second Schedule to the Income Tax Act?

RULING

On the basis of the facts mentioned above, the gain on the FEC has accrued to H Ltd and I Ltd which are not taxable in Mauritius. On the other hand, for arranging the FEC, G Ltd would be deemed to have received an arm's length fee which is taxable in Mauritius.

TR 175

FACTS

N is a fund established by the General Assembly as a Subsidiary Organ and integral part of an international organisation to provide for retirement, death, disability and related benefits for the staff of the organisation and the other organisations admitted to membership in the Fund. N is not an entity separate from the organisation; it does not have a legal personality separate from the organisation.

For more than a decade N has been investing in the equity markets in Mauritius. The investments were made through a discretionary Africa Emerging Market Equity external fund. As of March 31, 2016, N had an investment of USD xxx million invested in the discretionary Africa Emerging Market Equity Fund.

The Convention of the Privileges and Immunities of the organisation ("Convention") was adopted by a Resolution of the General Assembly. Mauritius acceded to the Convention on 18 July 1969. The Convention provides that the organisation, its assets, income and other property shall be exempt from all direct taxes".

N has no business presence in Mauritius and consequently no permanent establishment in Mauritius.

POINTS AT ISSUE

1. Whether N, as a Subsidiary Organ of the organisation, qualifies as an exempt body of person under item 20 of Part 1 of the Second Schedule to the Income Tax Act 1995?
2. Whether any income derived by N in Mauritius by way of dividend, interest, capital gains and other income that may arise as a result of its investment actions are exempt from taxes?

RULING

On the basis of the facts mentioned above, it is confirmed that -

1. N Fund, as a Subsidiary Organ of the UN, is an exempt body of person under item 20 of Part 1 of the Second Schedule to the Income Tax Act 1995; and

2. any income derived by N Fund in Mauritius by way of dividend, interest, capital gains and other income that may arise as a result of its investment actions will be exempt from income tax.

TR 176

Facts

R is tax resident in UK. It is a UK registered not-for-profit body corporate and is registered as a Scottish Charity. It offers degree programmes.

T Ltd is a company incorporated in Mauritius and is engaged in the provision of educational services. It is registered with the Tertiary Education Commission ("TEC") but not registered with the Mauritius Qualification Authority ("MQA") in Mauritius. R is not registered either with the TEC or the MQA.

R and T Ltd are not related entities. They have entered into an Agreement whereby they will collaborate to provide higher education to students in Mauritius and, in particular, to facilitate learning to enable students to attain degrees which are conferred by R as the sole awarding body. The services provided by R to T Ltd and the corresponding fees under the terms of the Agreement are as follows:

Services by R to T	**Corresponding fees**
Preparation of teaching material, meetings with associate lecturers from T Ltd, hosting events, visits to Mauritius, approval of events, meetings with regulatory bodies in Mauritius, 2 weekly strategic meetings over Skype and weekly operational meetings over Skype.	Academic start up support fees.
The supply of undergraduate degree course material and services.	A per student per annum charge which will cover services like access to R's student on-line systems, access to library systems, student registration and administration services, graduation and brand.
The provision of an online platform to students for e-learning (module delivery, library access,	A per student per annum charge which will cover services like access to R's student on-

online students registration, assessment monitoring).	line systems, access to library systems, student registration and administration services, graduation and brand.
The provision of fly-in-fly-out staff (both teaching and non-teaching staffs), for a period of less than six months, to Mauritius for Academic Delivery and Quality Assurance purposes. The Quality Assurance services will be provided as an integral part of the educational services provided by R to T Ltd.	Academic delivery and quality assurance fees which will be invoiced on a cost plus basis.
Non-teaching staffs will be mainly carrying Quality Assurance activities but there are also staffs involved in skills transference (technical staff for lab setups). There may also be visits relating to the management of the contract.	Academic delivery and quality assurance fees which will be invoiced on a cost plus basis
Online support, some teaching, assessment boards, Quality Assurance oversight and assessment marking will be provided from the UK by R.	Academic delivery and quality assurance fees which will be invoiced on a cost plus basis

R will not receive any allocation of the Mauritius student tuition fees, either directly from students themselves or collected by T Ltd on behalf of R and repatriated to R.

The degree programmes will be delivered by T Ltd with the collaboration of R. The first year of the degree programmes will be delivered solely by R and the second, third and fourth year degree programmes will be provided by both R and T Ltd. However, in the case where T Ltd cannot deliver the correct level and skills of staff during the first year of the degree programme, R will take delivery and charge T Ltd a higher rate for same.

An academic year consists of 3 trimesters. Each trimester lasts an average of 15 weeks. The company estimates that the fly-in-fly-out staff (teaching and non-teaching staff) provided by R will stay in Mauritius for durations not exceeding 2 weeks in each trimester during academic years 2016/2017 and 2017/2018. As regards year 2018/19, the duration will be 2 weeks for the first and third trimester, and 3 weeks for the second trimester. Overall the fly-in-fly-out staff will spend not more than 3 weeks in Mauritius in any trimester.

The degree programmes will be accredited by R. In case T Ltd wishes to collaborate with a Third Party to extend its portfolio of Programmes, it should discuss same and obtain the decision/ agreement of R within 30 days prior to engaging with the Third Party.

The delivery model of T Ltd will be a blended service with part of the degree being delivered online to students via e-learning and partly by face-to-face teaching. T Ltd will maintain at its own expenses appropriate offices, teaching facilities, equipment, administration facilities and systems as may be necessary for the effective performance of its duties under the Agreement. With regards to the use of brand, publicity and promotions, R will grant T Ltd the non-exclusive, revocable personal licence for the use of its trademarks. However, written consent should be obtained by T Ltd before using same.

T Ltd will allow R and its authorized representatives, at any reasonable time, to have access to the teaching premises for the purpose of ongoing assurance and confirmation of the academic environmental to support the delivery of the Programmes. Delivery of teaching service will be at the premises of T Ltd.

Points at issue

1. Whether R will be subject to income tax in Mauritius?
2. Whether R will be subject to Tax Deduction at Source ("TDS") in Mauritius?
3. Whether payments made to R with relation to the services like access to GCU's student on-line systems, access to library systems, student registration and administration services, graduation and brand will be considered as a royalty payment made by T?
4. Whether employees of R coming to Mauritius for periods not exceeding six months to deliver courses with regards to the degree programmes will be subject to PAYE in Mauritius?
5. Whether R should be VAT registered in Mauritius?

6. Whether reverse charge should be applicable on the services provided by R to T Ltd?

<u>Ruling</u>

On the basis of the facts provided, it is confirmed that:

1. Having regard to the time spent by the fly-in-fly-out staff of R in Mauritius and the absence of a fixed place of business in Mauritius, R will not have a permanent establishment in Mauritius and will not be subject to tax in Mauritius.
2. Since R will not have a permanent establishment in Mauritius, TDS will not be applicable on the payments made by T Ltd to R.
3. Payments made to R with relation to the services like access to R's student on-line systems, access to library systems, student registration and administration services, graduation and brand will not be considered as a royalty payment made by T but will be treated as business profits. Moreover, since R will not have a PE in Mauritius, the payments will not be subject to tax in Mauritius.
4. In the event that the fly-in-fly-out staffs from R are tax resident in UK, they will be exempt from tax in Mauritius in accordance with Article 15(2) of the Double Taxation Avoidance Agreement between UK and Mauritius and will not be subject to PAYE in Mauritius.
5. R will not have any obligation to apply for VAT registration in Mauritius since educational services provided in Mauritius is an exempt supply by virtue of item 16(a) of the First Schedule to the VAT Act.
6. Since educational services is an exempt supply in Mauritius, reverse charge will not apply.

TR 177

Facts

Mr N,an Irish national and Mr B, a British national, are both currently residing in Zimbabwe. They were the shareholders of various companies involved in financial services (money remittance services) and technology services/ licencing including a company called C Ltd, a private company incorporated in South Africa. N and B each held 25% of the ordinary shares in C Ltd.

During the year 2014, N and B were approached by a private equity group called P who was interested in acquiring a stake in the businesses owned by N and B.

It was agreed between the parties before the acquisition took place that a separate holding company, H Ltd is established in Mauritius to consolidate and own all the financial services and technology subsidiaries that are involved in money remittance services owned by N and B. The parties also reached a consensus that there will be no existing liabilities at the level of H Ltd once consolidation of the subsidiaries is completed.

H Ltd was incorporated in Mauritius by N and B. H Ltd holds a Category 1 Global Business Licence and the shareholders were R Ltd and T Ltd, two companies incorporated in Nevis, each with a 50% ownership in H Ltd.

The ultimate beneficial owners of R Ltd and T Ltd are N and B respectively.

On 22 December 2014, M Ltd, a company holding a Category 1 Global Business Licence and the holding vehicle for P acquired a stake of 35.2 % in H Ltd from R Ltd and T Ltd for a total consideration of USD 14 million.

On 3 February 2015, N and B entered into a sale of shares agreement in terms of which they both sold their 25 % shareholding respectively in C Ltd to H Ltd. Since no payment was effected, the transaction was reflected in the accounts of H Ltd as a loan of ZAR 12,210,000 due to N and B. However, this transaction which took place after 22 December 2014, the date of acquisition of shares in H Ltd by P, was contrary to the consensus reached by all parties that no liabilities should exist at the level of H Ltd.

N and B now wish to cancel the loan between themselves and H Ltd by waiving the outstanding loan to H Ltd.

Points at issue

Whether the waiver of the loan by N and B would constitute taxable income in the hands of H Ltd?

Ruling

On the basis of facts provided, it is confirmed that the waiver of the loan would not constitute taxable income since the loan was taken for acquiring a capital asset in the form of investment in C Ltd.

TR 178

Facts

Qualifying employees of X Limited, including non-Mauritian citizens who are relocated to Mauritius so that their legal and economic employer is X Ltd, are entitled to join a 'share scheme' operated by K Ltd, the holding company of X Ltd. The share scheme is typically administered outside Mauritius and provides the employees of X Ltd certain a right pertaining to the shares of K Ltd. K Ltd is resident in South Africa and is a public company whose shares are listed in South Africa.

K Ltd operates two schemes, namely the Equity Growth Scheme (“EGS”) and the Share Incentive Scheme (“SIS”).

The Equity Growth Scheme

Under the the Equity Growth Scheme (“EGS”), the employees receive Participation Rights (“PR”), subject to certain conditions being met. The conditions may include the number of years of employment with any company forming part of the SBGL group.

The PR is converted into shares at the time the employee exercises the rights. The number of shares that he would be entitled to is determined on the basis of a specified methodology/formula which takes into account the market price of the share at the time the PR is awarded and the market price of the share at the time he exercises his rights. At that time the employee may receive no shares at all should the market price at the date of exercise be lower than the market price of the share at the date of the award of the PR.

The employee is entitled to the shares, if any, free of any charge.
At the time the employee exercises his rights he does not receive the shares to which he is entitled but rather the shares are disposed of by the administrators of the Scheme at the market price prevailing at that date.

The employee receives the cash value/the proceeds of the sale of the shares less the brokerage fees he is required to pay under the Scheme.

The Share Incentive Scheme

Under the Share Incentive Scheme (“SIS”), a qualified employee receives an option to purchase shares of K Ltd at an agreed price. An employee is only able to participate in the SIS if he has been employed by X Ltd for at least 5 years. The SIS is made up of 2 alternatives:

a. *Purchase alternative*

Under the purchase alternative, the employee has the option to purchase a number of shares on a future date at a predetermined price and is under the obligation to acquire the shares at the agreed price on that date. At the exercise date, the employee is required to dispose of the shares.

b. Option alternative

Under the option alternative, a qualified employee has the option to purchase a number of shares on a future date at a predetermined price and can elect whether to acquire the shares on the exercise date. The employee can choose the date on which the shares should be disposed of.

Points at issue

Whether the gains realised on the disposal of the shares, under the Equity Growth Scheme, should be subject to income tax in the hands of the employee?

(1) Whether, under the Share Incentive Scheme, either under the Purchase alternative or the Option alternative, the acquisition of the shares at a price lower than their market value at the exercise date gives rise to a taxable benefit in the hands of the employee?

Ruling

On the basis of the aforesaid facts, it is confirmed that:

(1) A benefit arises at the time the employee exercises his rights under the Equity Growth Scheme. The value of the benefit is the proceeds from the sale of the shares less the brokerage fees. The employee is entitled to the ‘cash’ realised on the disposal of the shares, i.e the proceeds of the sale less brokerage fees, by virtue of his office or employment and hence, the amount received constitutes employment income. Therefore, the employee is liable to income tax thereon in view of the provisions of section 10(1)(a)(i) of the Income Tax Act.

(2) The excess of the market price of the share over the agreed price, at the time the employee acquires the share under the Share Incentive Scheme, is a benefit in kind to the employee and is taxable under section 10(1)(a)(i) of the Income Tax Act.

TR 179

Facts

R Ltd is holder of a Category 1 Global Business Licence. It entered into a loan agreement with Bank X (the "Lender") on 23 November 2015. The Lender is incorporated in China and is a government- owned entity. The Lender is also indirectly a 40% shareholder of R Ltd.

As per the terms of the Loan Agreement, the Lender shall charge R Ltd interest twice a year in accordance with the interest rate.

Point at issue

Whether interest arising in Mauritius and derived by the Lender will be exempt from withholding tax in Mauritius as the Lender is a governmental body.

Ruling

On the basis of facts provided, it is confirmed that interest paid by R Ltd to the Lender is exempt from income tax in Mauritius by virtue of item 4(a) of Sub-Part B of Part II of the Second Schedule to the Income Tax Act. Hence, R Ltd will not be subject to any withholding tax in Mauritius.

TR 180

Facts

A is a private company incorporated in Mauritius. A holds a Category 1 Global Business Licence ("GBC 1") and is tax resident in Mauritius. The principal activity of A is investment holding and it currently holds a 99.99% investment in B, a company incorporated and tax resident in Thailand, and 100% in C, a company incorporated in Singapore.

B was incorporated as a limited company in Thailand and is engaged in the business of providing information technology and e-commerce marketing services.

B was granted rights and privileges as a promoted industry under the Investment Promotion Act to support commerce and investment business and to be a regional headquarters ("ROH"). The ROH regime is a special scheme set up by the Board of Investment ("BOI") to attract foreign and local investment for the promotion of the economic and social development and security of Thailand. Under this regime, B enjoys a reduced rate of corporate tax. Further, a company under the ROH regime also benefits from exemption on withholding tax on dividend it distributes to its foreign shareholders, otherwise payable at 10%.

Point at issue

Whether A can claim underlying tax credit and withholding tax credit under the tax sparing credit?

Ruling

Based on the above facts, it is confirmed that A will be entitled to claim foreign tax credit for the amount of withholding tax and underlying tax spared in respect of dividend receivable from B for set-off against its Mauritian tax payable on its foreign source income.

TR181

Facts

A is a private company limited by shares and holder of a Category 1 Global Business Licence issued by the Financial Services Commission.

The shareholding structure of A is as follows:

- Shareholding of A
  - 15,333 shares held by H, a company registered under the laws of Bahamas and
  - 1 share held by C.
- Shareholding of H
  - 3,899,999 shares held by B, a company registered under the laws of Barbados; and
  - 1 share held by C.
- Shareholding of B
  - 11,694,702 shares held by E, a company registered under the laws of the Netherlands.
- Shareholding of E
  - 99% of the shares of E are held by F, a company registered under the laws of Jersey and
  - Remaining 1% of the shares of E is held by G, a company registered under the laws of Jersey
- Shareholding of F
  - 100% shares of F held by G

H intends to transfer all the shares it holds in A to E. Upon dissolution and/or striking off of H and/or B, all the surplus assets will be distributed E.

Points at issue

1. Whether A is entitled to carry forward unrelieved losses from the past five years upon the transfer of all H shares held in the Company to E?

2. Whether A can carry forward the losses unrelieved from the past five years upon the dissolution and /or striking off of H and/or B and the distribution of all the surplus assets to E?

Ruling

On the basis of the above facts, it is confirmed that pursuant to Section 59(b) of the Income Tax Act and in accordance with Regulation 19, A can carry forward the unrelieved tax losses from the past five years -

1. upon the transfer of all H shares held in A to E; and
2. upon the dissolution and /or striking off of H and/or B and the distribution of all the surplus assets to E.

TR 182

Facts

S (hereinafter referred to as "the Scheme") will be a defined contribution scheme within the provisions of the Private Pension Scheme Act 2012 (PPSA). It will be established by a non-resident settlor and set up as a purpose trust pursuant to Section 19 of the Trust Act 2001. The purpose for which the trustee will hold the trust fund will be to invest the trust fund outside of Mauritius, in order to generate funds that will provide for the payment of retirement benefits to its members. In that respect it will apply for a licence from the Financial Services Commission of Mauritius (FSC), as a private pension scheme under Section 9 of the PPSA.

The Scheme will be a private multi-member international pension scheme and membership will be open to Mauritius residents and non-residents alike. It will not be a scheme for which a deduction will be allowed under Section 22, 23 or 62 of the Income Tax Act (ITA).

It is anticipated that funds transferred from members' existing pension plans will include funds contributed from employment in the UK. Subsequent contributions will be accepted from or for the benefit of members. Therefore, whilst the Scheme will not be established as an occupational retirement scheme, it is possible that some employers may make contributions for the benefit of employees who are members of the Scheme.

Contribution from or on behalf of members will be segregated administratively into individual members' accounts and will for the most part be invested in bonds or investment products, often insurance-linked and custom designed for pension plans.

The Scheme will also apply to Her Majesty's Revenue and Customs (HMRC) in the UK to have it added to the list of Qualified Recognised Overseas Pension Scheme. This will enable the trustee to accept transfers of UK tax relieved funds into the Scheme. UK tax relieved funds will come from UK resident pension schemes by or for the benefit of former UK residents.

Points at issue

1. Whether the Scheme will be exempt from income tax, if it deposits a declaration of non-residence with the Director General?
2. Whether in order to ascertain its net income, the Scheme can apply Section 17 (7) of the Income Tax Regulations 1996?

3. Whether lump sum payments payable (in accordance with the provisions of the Scheme deed) to contributors/members and their beneficiaries, upon death or incapacity of the contributors/members will be subject to tax in Mauritius? Whether pension/annuities payable to the contributors/members and their beneficiaries will be liable to tax in Mauritius?
4. In the absence of any fiscal agency agreement, whether the pension scheme administrator of the Scheme will be held to be a fiscal agent of non-resident members/beneficiaries under Section 82 (1) (C) of the ITA and will have a duty to withhold and remit Mauritian taxes due before remitting funds to resident and non-resident contributors/members and their beneficiaries?
5. Whether Mauritius has taxing rights on payments made from the Scheme to contributors/members or beneficiaries residing in those two countries, Singapore and Malaysia, in the light of the DTA between Mauritius and these two countries?

Ruling

On the basis of the facts provided, it is confirmed that:

1. In accordance with Section 46 of the Income Tax Act , the following conditions must be satisfied for a trust to deposit a declaration of non-residence with the Director-General and be exempt from income tax in an income year :
   (a) the settlor of the trust must be a non-resident ; and
   (b) all the beneficiaries appointed under the terms of the trust, must throughout that income year be non-residents.

   Since the settlor of the Scheme will be a non-resident and membership of the Scheme will be open to Mauritian residents and non-residents alike, it is only in case the Scheme has no Mauritian residents as members in an income year that it will qualify to deposit a declaration of non-residence in that income year and be exempt from income tax.

2. Since the Scheme will be conducting pension business, it is allowed to compute its net income using the basis laid down in Section 17(7) of the Income Tax Regulations 1996.
3. Lump sum payments payable to contributors/members or their beneficiaries will be subject to tax in Mauritius. However, the first 2 million rupees of the lump sum payments may be exempt under item 6(a) of Sub-Part A of Part II of the Second

Schedule to the Income Tax Act, provided the Scheme qualifies as a "superannuation fund" under the definition given in Section 2 of the Income Tax Act.

Pension/annuities payable to the contributors/members or their beneficiaries will be liable to tax in Mauritius.

4. Even in the absence of a fiscal agency agreement, the MRA has the authority to deem the administrator to be an agent of the non-resident members/beneficiaries under Section 82(1)(c) of the Income Tax Act and direct him to withhold and remit tax to the MRA before remitting funds to the members/beneficiaries.

5. **(a) <u>payments made to contributors/members or beneficiaries residing in Singapore</u>**

With respect to payments made to members whose employers have been contributing to the scheme for the purpose of providing a pension plan for them, the provisions of Article 18 of the DTA with Singapore granting taxing rights to Singapore, will apply.

Regarding payments made to other contributors/members or beneficiaries, including those who have transferred funds from UK resident pension schemes, the provisions of Article 22 of the DTA with Singapore will apply. The taxing rights will be for Mauritius since the Scheme will have its permanent establishment in Mauritius.

(b) <u>payments made to contributors/members or beneficiaries residing in Malaysia</u>

With respect to payments made to contributors/members or beneficiaries residing in Malaysia, the provisions of Article 17 of the DTA with Malaysia granting taxing rights to Malaysia, will apply.

TR 183

Facts

X is an international energy company engaged in the exploration, production and marketing of natural gas. X was incorporated in Mauritius as a private company and it holds a Category 1 Global Business Licence. X has a wholly owned subsidiary in Jersey registered under the name of Y Limited. Y has a branch which derives income in Tanzania.

The gross income of Y for the years 2008 to 2016 amounting to USD 77.289 million represents the profits of the Tanzanian Branch, except for an amount of USD 128,357 which is interest income from Jersey for the year 2016. The profits from the Tanzanian Branch are not taxable in Jersey. However, the Branch is subject to tax at 30% in Tanzania and has paid tax amounting to USD 56.666 million on the income derived from Tanzania for the years 2008 to 2016.

Y wishes to pay a dividend of USD 77.289 million to X. The dividend receivable by X is taxable in Mauritius at the rate of 15% and the company is entitled to foreign tax credit.

Point at issue

Whether X is entitled to underlying foreign tax credit in respect of dividends received from Y by virtue of Regulation 7 of the Income Tax (Foreign Tax Credit) Regulations 1996?

Ruling

Based on the above facts and on the understanding that the provisions of Section 77 of the Income Tax Act are satisfied, it is confirmed that with regard to dividends receivable from Y on which X is taxable in Mauritius, X is entitled to foreign tax credit on account of tax paid in Tanzania on profits out of which such dividends are paid.

TR 184

Facts

M was incorporated on 20 September 2017 and its sole shareholder is Mr N.

The company contemplates to acquire a vessel that will be used to:

(a) transport commodities such as raw sugar for refining or coal, from foreign countries to Mauritius ("activity A");

(b) transport commodities such as refined sugar, from Mauritius to foreign countries ("activity B"); and/or

(c) transport certain commodities between foreign countries only ("activity C").

The vessel will be registered in Mauritius and the company will not be engaged in any fishing activities.

Its surplus cash may generate interest income. The company may also have foreign interest income.

Whilst its core business activities will initially be the transport of coal and related products for sugar milling companies in the Indian Ocean region, it will ensure that it is able to adapt itself so that it can transport any other commodity. This may require modification to the vessel and the company may have to incur capital expenditure at a later date.

The company will initially be funded by equity from Mauritian tax-resident shareholders, corporate and non-corporate. Given the magnitude of the proposed project and depending on its performance and expansion strategy, the company may also in the future have foreign shareholders with the long-term objective of becoming a Mauritian-based shipping company of international repute. However, the control of the company will remain with Mauritian tax-residents.

It is very likely that the company will fund part of the cost of acquisition of the vessel through a loan from a South African ("SA") commercial bank.

The company may also have to undergo repairs outside Mauritius, whilst it would prefer to have such repairs being done in Mauritius.

Points at issue

(i) Corporate tax treatment of the income from transport of goods

a. Whether income derived by the company from Activity A, B or C is exempt from tax?

b. Whether the income of the company will be exempt from Corporate Social Responsibility ("CSR")?

c. Whether upon the acquisition of a second vessel by the company, the tax treatment of the income from the second vessel will depend on the country in which the vessel is registered and the activities undertaken by the vessel in question?

(ii) Corporate tax treatment of interest income

a. Whether to the extent that the interest income is incidental to the core activities of the company, the interest income should-also be exempt from tax?

b. Whether in case the interest income is found to be taxable, any foreign tax suffered on the interest income will qualify for foreign tax credit ("FTC") and any unutilised FTC can be offset against CSR?

c. Whether any foreign exchange gain or loss on the interest income would be disregarded for tax purposes?

(iii) Tax treatment of interest to the bank

a. Whether interest incurred on loan taken from a South African bank to finance capital expenditure in connection with the vessel is a non-allowable expense for tax purposes?

b. Whether the rate applicable for TDS on interest paid to South Africa is 10 % in accordance with Article 11(2) of the tax treaty between Mauritius and South Africa?

c. Whether the effective rate for TDS should be computed at one-ninth of the interest payment where the company agrees that it should bear the TDS?

(iv) Foreign exchange difference on interest and capital repayment to the bank

a. Whether for purposes of the TDS mechanism, the foreign exchange rate prevailing on the date the interest is paid should be applied?

b. Whether foreign exchange gain or loss on the interest and capital repayment to the bank should be disregarded for tax purposes since it relates to the acquisition of the vessel?

(v) Impact of the OECD/G20 BEPS project

a. Whether, given that the core-income generating activities referred to in paragraph F of Part III of Chapter 4 of the BEPS Action 5 Report will be performed in Mauritius, the employees of the company will be taxed on their employment income in Mauritius?

b. Whether the corporate tax regime that currently applies to the company should not pose any international tax issue and whether the company should be considered as a 'qualified person' within the Multilateral Convention signed by Mauritius on 5 July 2017?

Ruling

On the basis of facts provided, it is confirmed that:

(i) Corporate tax treatment of the income from transport of goods

a. Income derived by the company from Activity A, B or C is exempt from tax by virtue of item 10 of Sub Part C of Part II of the Second Schedule to the Income Tax Act.

b. The company will be exempt from CSR to the extent that it derives exempt income.

c. Since the second vessel will not fall within the definition of a foreign vessel as laid down in section 2 of the Income Tax Act, the tax treatment of the income from the second vessel will depend on the activities undertaken by the vessel and whether it is a local vessel registered in Mauritius.

(ii) Corporate tax treatment of interest income

a. The interest income would be subject to tax.

b. Any foreign tax suffered on interest income can be offset against tax on foreign source income and any unutilized FTC can be set off against CSR pertaining to foreign source income.

c. any foreign exchange gain or loss on the interest income would be considered for tax purposes.

(iii) Tax treatment of interest to the bank

a. Interest incurred on loan taken from a South African bank to finance capital expenditure in connection with the vessel is not an allowable expense by virtue of section 26 (1) (a) of the Income Tax Act.

b. The rate applicable for TDS on interest paid to South Africa is 10 % in accordance with Article 11(2) of the tax treaty between Mauritius and South Africa.

c. Where the company agrees that it should bear the TDS, the effective rate for

TDS should be computed at one-ninth of the interest payment.

(iv) Foreign exchange difference on interest and capital repayment to the bank

a. For purposes of the TDS mechanism, the foreign exchange rate prevailing on the date the interest is paid should be applied.

b. The foreign exchange gain or loss on the capital repayment to the bank should be disregarded for tax purposes since it relates to the acquisition of the vessel.

(v) Impact of the OECD/G20 BEPS project

a. The employees of the company will be taxed on their employment income in Mauritius.

As regards confirmation of whether the corporate tax regime that currently applies to the company would not pose any international tax issue or whether the company would be considered as a ‘qualified person’ within the Multilateral Convention signed by Mauritius on 5 July 2017, these issues are beyond the scope of Section 159 of the Income Tax Act.

TR 185

Facts

H is a private company incorporated in Mauritius. It holds a Category 1 Global Business Licence and is tax resident in Mauritius. The principal activities of H are investment holding and it currently owns 64.89% in B, a company incorporated and tax resident in Uganda.

B is an electric energy generating company operating a power station in Uganda.

In accordance with the Uganda Income Tax Act, the income of B derived from the hydro power project is exempt from income tax from 01 July 2017 to 30 June 2022. This exemption was granted as part of the effort of the government to reduce the cost of electricity with a view to promote economic development in Uganda.

Point at issue

Whether H is entitled to claim tax sparing credit in respect of dividend receivable from B against the Mauritius tax imposed on such income?

Ruling

On the basis of the above, it is confirmed that H is entitled to claim tax sparing credit in respect of dividend receivable from B in accordance with the provisions of Regulation 9 of the Income Tax (Foreign Tax Credit) Regulations 1996 and Article 24(3) of the DTAA between Mauritius and Uganda.

TR 186

<u>Facts</u>

F is a private company incorporated in Mauritius with liability limited by shares and holds a management licence issued by the Financial Services Commission ("FSC").

F was acquired on 1 January 2017 by S. The acquisition of F was effected through a newly incorporated wholly owned subsidiary of S, M which is registered in Mauritius as a private company. The business activity of M is to act as the parent company of F and F Trustees, a related company.

The agreement for the sale and purchase of the entire issued share capital of F and its trustees makes mention of sale of shares only. However in accordance with IFRS 3, the consideration paid for the acquisition of F is broken down in the accounts of M into three components, namely -

(i) The Net Assets Value of F;

(ii) Contract and Customer Intangibles; and

(iii) Goodwill.

Hence each identifiable asset forming part of the purchase consideration has been recorded separately in the books of M. According to IAS 38, identifiable assets having a finite life are subject to amortisation. The "*contract and customer intangibles*" have been assessed with a finite life of 6 years.

It is proposed to merge F and M where F will be the surviving company for the following reasons -

(i) the "*contract and customer intangibles*" are recorded in the books of M and the income generated by that asset is recorded in F ;

(ii) because the asset is recorded in one company and the income in another company, the transaction has given rise to a commercial and accounting mismatch which is against the matching concept; and

(iii) following the merger, F will amortise the "*contract and customer intangibles"* over its useful life.

Point at issue

Whether F will be entitled to claim annual allowance at the rate of 5% on the cost of the "*contract and customer intangibles*" under Section 24 of the Income Tax Act and Income Tax Regulations 1996?

Ruling

MRA is of the view that there is no commercial and accounting mismatch of assets and income in view of the following:

M has purchased the shares of the shareholders of F. F has continued as a going concern without any change in its operations. Only the shareholders have changed. F is providing management services to its customers. In exchange for the management services, F is entitled to receive a fee which is accounted as revenue in its Income Statement. The contracts are between F and the customers. The change in shareholders has changed nothing in the business of F. The customers will continue to transact with F and they have no contractual relationship with M.

M is receiving dividends in return for the shares purchased in F. It is entitled to amortise the component of the purchase consideration for the shares which is represented by "*contract and customer intangibles*" under normal accounting principles. However, since dividend is an exempt income, it will not be entitled to annual allowance by virtue of Sections 24 and 26 of the Income Tax Act.

The merger is, in our view, being used as a medium to transfer the intangible asset from M to F, the origin of which is in F itself and same could not previously be recognised in the books of F in accordance with paragraph 63 of IAS 38 which prohibits the recognition of internally generated intangible assets.

In the circumstances, F will not be entitled to claim annual allowance on the "*contract and customer intangibles"* under Section 24 of the Income Tax Act and the Income Tax Regulations.

TR 187

Facts

C and D are two wholly owned subsidiaries of Z, a company incorporated in the British Virgin Islands. Both C and D are incorporated in Mauritius. D is registered as a joint venture law firm with the Attorney General's Office in Mauritius whereas C holds a management licence from the Financial Services Commission.

As at 31 March 2017, Z has advanced interest free loans to the tune of USD 1,904,462 and USD 702,132 to D and C respectively to support their operating expenses over the years. C has also advanced interest free loans amounting to USD 1,886,171 as at 31 March 2017 to D.

In their Income Tax returns for the year ended 31March 2017, D and C have declared tax losses and tax payable of Rs 66,392,624 and Rs 741,919 respectively.

The following transactions will take place to amend the existing group structure:

(i) D will deregister as a law firm and amend its business activity to that of secretarial services;

(ii) The current outstanding balance of loans due to Z by D (USD 1,904,462) and C (USD 702,132) will be converted into shares of D and C issued to Z;

(iii) C receivables of USD 1,886,791 in D will be converted into shares of D, issued to C; and

(iv) Z will transfer all its D shares to C at nominal value such that D becomes the wholly owned subsidiary of C;

Once the new structure is in place, Z will dispose of its stake in C to third parties.

Points at issue

Whether there are any income tax implications -

(i) on the proposed restructuring of the group: and

(ii) upon disposal of the shares of C after the restructuring?

Ruling

On the basis of facts provided, it is confirmed that:

(i) Regarding the income tax implications on the proposed restructuring of the group -

a. the MRA considers that the interest free loan advanced by C to D is not at arm's length by virtue of Section 75 of the Income Tax Act; and

b. D will not be allowed to carry forward any loss in accordance with Section 59 of the Income Tax Act.

(ii) The disposal of the shares in C will not be subject to tax since it is of a capital nature.

TR 188

Facts

S, a company incorporated under the laws of Mauritius and tax resident in Mauritius, will enter into an agreement with K, a company registered in United Arab Emirates ("UAE") as a Free Zone Limited Liability Company, to carry out the refurbishment, renovation and major repair works to the existing buildings owned by S.

S will also enter into a separate contract with the same K for the design and construction of residential villas in Mauritius.

In order to finance the development projects of refurbishments and construction of villas, S will contract loans from F. The latter company is tax resident in UAE and can avail from treaty benefits under the Double Taxation Agreement ("DTAA") between Mauritius and UAE.

The conditions of the loans, including the rate of interest to be charged will be at arm's length.

S, K and F are all related companies within the same Group the ultimate beneficiary of which is the Investment Corporation of Dubai, the principal investment arm of the Dubai Government.

Point at issue

Whether S can claim the interest payable to F as a tax deductible expense under Section 19 of the Income Tax Act?

Ruling

On the basis of the facts mentioned above, S will be entitled to claim the interest payable to F as a tax deductible expense by virtue of Section 19 of the Income Tax Act.

TR 189

Facts

F was incorporated on 28 December 2012 under the Foundations Act 2012. On 13 August 2013, F was granted a Pension Scheme Licence under the Mauritius Private Pension Schemes Act 2012.

F has been established in order to provide retirement benefits to its beneficiaries. The beneficiaries of F are the members of F and/or their dependants.

It is proposed to amend the Charter and Rules of F, so that it is open to membership for individual beneficiaries who are or were:

(a) personally resident in Mauritius ;
(b) not personally resident in Mauritius ; and
(c) employed.

The actual members of F are all non-resident individuals who were the retired employees of foreign big concerns. These persons have transferred their substantial retirement benefits from their former employers' Pension Scheme in UK to F in Mauritius. The only contributions made to F have been the transfer in values in respect of accrued pension benefits from members' employment. As of date, there is no Mauritian employer as member of F.

Points at issue

(1) Whether F will be a superannuation fund as defined in Section 2 of the Income Tax Act 1995 (as amended by Section 57(2) of the Private Pension Schemes Act 2012) ?

(2) Whether the contributions to F made by an employer for the benefit of its employees will be tax-deductible under Section 22 and 61 of the Income Tax Act 1995?

(3) Whether the income of F will be exempt from income tax under Item 8 of Part 1 of the Second Schedule to the Income Tax Act 1995?

(4) Whether the lump sum benefits from F exchanged for a pension payable by F will be restricted by Regulation 5(2)(e)(iv)(A) of the Private Pension Scheme (Licensing and Authorisation) Rules 2012 to 25% of the fund held for an individual beneficiary,

where the monthly pension otherwise receivable by that individual is more than Rupees 500 (£110.27 at September 2017) ?

(5) Whether the first Rupees 2,000,000 of any lump sum benefits within the limit referred to at (4) above will be exempt from income tax in accordance with Item 6(a)(ii) of Sub-Part A of Part II of the Second Schedule to the Income Tax Act, or taxable under Section 10(1)(a)(ii) of the Income Tax Act when received by an individual resident in Mauritius ?

(6) Whether any pension or annuity provided by F to members not resident in Mauritius will be taxable as income in Mauritius where it has a source in Mauritius and whether the Pensions and Annuities Article of Double Tax Agreements concluded by Mauritius may allocate taxing rights over pensions or annuities to the country of residence of the receiving member?

Ruling

On the basis of the facts mentioned above, it is confirmed that once the proposed amendments are brought to the Charter:

(1) F will be considered as a superannuation fund in accordance with Section 2 of the Income Tax Act (as amended by Section 57(2) of the Private Pension Schemes Act 2012).

(2) the contributions made to F will qualify for a deduction under Sections 22 and 61 of the Income Tax Act 1995.

(3) F will be exempt from income tax under Item 8 of Part 1 of the Second Schedule to the Income Tax Act 1995.

(4) the MRA is not the relevant Authority to give a ruling on a question relating to the Private Pension Scheme Act 2012. The Financial Services Commission is the appropriate regulatory body to reply to this question.

(5) the first Rupees 2,000,000 of any lump sum benefits will be exempt from income tax when received by an individual resident in Mauritius. However, any lump sum benefit in excess of Rupees 2,000,000 will be taxable under Section 10(1)(a)(ii) of the Income Tax Act.

(6) as a general rule, pension benefits and annuities payable to former employees who are residents as well as any 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 and Annuities Article of the DTAA in force between Mauritius and the relevant treaty partners will apply to pension benefits payable to non-residents.

TR 190

Facts

M will be the promoter of an external pension scheme (“EPS”) under the Private Pension Schemes Act 2012 (“PSSA 2012”). In that respect, an EPS application shall be made in accordance with Section 12 of the PPSA 2012. Pursuant to Section 9 of the aforesaid Act, the EPS shall hold a Category 1 Global Business Licence (“GBL”) under the Financial Services Act 2007 (“FSA 2007”).

The EPS will be established as a trust under the Trusts Act 2001 (“TA 2001”) with Mauritian trustees. A Pension Scheme Administrator licensed by the FSC under Part IV of the FSA 2007 will be established in Mauritius employing Mauritian based individuals, and the membership of the EPS will be confined to non-residents whose economic activities are wholly outside Mauritius. Individuals who would advance funds to the EPS will be individuals who will not be tax resident in Mauritius. The EPS will also provide pension benefits (comprising pensions/annuities/lump sum benefits) to non-residents and/or their beneficiaries on retirement, disability or death, as the case may be.

The EPS will be a defined contribution scheme within the provisions of the PPSA 2012 offering membership to non-resident members who may be either employed or self-employed, and whose membership will not be sponsored by their employers. The EPS will not be comparable to a conventional occupational pension scheme. It will also not be a superannuation fund set up for the benefits of employees of a Mauritian employer.

The EPS will accept contributions from non-resident members and pay pension benefits to non-resident members and /or their beneficiaries on retirement, disability or death, as the case may be. To this extent, the EPS will accept capital contributions from non-resident employees and contributions for the benefit of non-resident members from their employers and the latter may or may not be resident in Mauritius. It will also accept transfers from existing non-resident pension plans for the benefit of its non-resident members.

The EPS will invest members’ contribution in global investments comprising deposits, shares, bonds, debentures, collective investment schemes and similar global securities. The investments will accordingly be invested internationally.

The effective place of management of the EPS and the Mauritian pension administrator will be in Mauritius.

Points at issue

(1) Whether the EPS will be exempt from income tax in Mauritius?

(2) Whether pension benefits (comprising pensions/annuities/lump sum benefits) paid to the non-resident members and / or their beneficiaries on retirement, disability or death, as the case may be, will be considered to be Mauritian source income subject to income tax in Mauritius?

(3) Whether the EPS will be required to comply with the Mauritian income tax obligations to withhold income tax under the Pay As You Earn - ("PAYE") system?

(4) What will be the income tax treatment of any Mauritian sourced pension benefit paid to an individual who is resident in a treaty partner country?

Ruling

On the basis of the facts mentioned above, it is confirmed that:

(1) as the EPS will not be a superannuation fund set up for the benefits of the employees of an employer, its income will not be exempt from income tax under Item 8, Part 1 of the Second Schedule to the Income Tax Act. However, as the EPS will be a trust established under the Trusts Act 2001, holder of a Category 1 Global Business Licence and its beneficiaries will be non-resident individuals, its income will be exempt upon filing a declaration of non-residence for each income year under the provisions of Section 46(3) of the Income Tax Act.

(2) pension benefits (comprising pensions/annuities/lump sum benefits) paid to the non-resident members and / or their beneficiaries on retirement, disability or death, as the case may be, will be considered to be Mauritian source income subject to income tax in Mauritius in accordance with Section 10(1)(a)(ii), Section 10(1)(d) and Section 74(1)(b) of the Income Tax Act 1995. The pension benefits paid will also not fall within the ambit of the exemption provided in section 46(4) of the Income Tax Act, as Regulation 17, sub-section (7)(c) of Income Tax Regulations 1996 provides that payment of such benefits

will be considered as a recurrent expenditure and will be deductible in ascertaining the net income of a pension business.

(3) Subject to paragraph (4) below –

(a) the EPS will be required to comply with the Mauritian income tax obligations to withhold income tax under the PAYE system for pensions falling under Section 10(1)(a)(ii) of the Act.

(b) the recipients of pensions falling within Section 10(1)(d), may make a request to apply PAYE in accordance with Section 93(2)(b) of the Income Tax Act.

(4) The Pensions and Annuities Article of the DTAA in force between Mauritius and the relevant treaty partners will apply to pension benefits payable to non-residents. However, any Mauritian sourced pension benefit paid to an individual who is resident in a country with which Mauritius has not signed a DTAA will be subject to Mauritius taxation as gross income derived under Section 10(1)(a)(ii) and 10(1)(d) of the Act.

TR 191

Facts

G is a private company incorporated in Mauritius in June 2018. G will be involved in creative and innovative activities geared towards the development of Intellectual Property (IP) assets in Mauritius, mainly in the virtual gaming and betting industry. G in Mauritius aims to be a self-sufficient development hub where the latest ideas and innovations in the gaming sector can be produced and brought to life.

G's product teams have outlined the concepts for 5 new products / features which currently do not exist in the market. G will be tasked with developing the concepts and turning them into fully operational products and features. The products will be developed and maintained by G in Mauritius. The IP rights will be registered in Mauritius and the ownership of such products will exclusively belong to G.

To help in the development process of the 5 innovative products, G will employ highly experienced coding developers and gaming technical officers from Europe. These people will be highly qualified in the IT and gaming sector. To support these people, G will hire talents locally in Mauritius. G plans to employ 20 full-time employees in its IT department in Mauritius which includes:

- 1 Chief Technology Officer
- 4 Senior Developers
- 10 Junior Developers
- 3 Graphic Designers
- 2 Project Managers

Once the products are ready in Mauritius, they will then be distributed through current and prospective gaming operators overseas in Europe and Africa. G will enter into provider agreements with the different operators and will be remunerated on a revenue share basis.

Point at issue

Whether the income of G will be exempt from income tax for a period of 8 income years in accordance with Items 34(a) and 34(b) of Sub-Part C of the Second Schedule to the Income Tax Act which reads as follows:

“34(a) Subject to sub-tem (b), the income of a company set up on or after 1 July 2017and involved in innovation-driven activities for intellectual property assets which are developed in Mauritius.

(b) The exemption shall be for a period of 8 income years as from the income year in which the company started its innovation-driven activities.”

Ruling

On the basis of the facts submitted, it is noted that:

- G was set up in Mauritius after 1 July 2017;
- G is going to develop 5 new products which currently do not exist in the market;
- the activities of G will generate IP assets in Mauritius;
- G will be the exclusive owner of the IP rights of the products which it will develop in Mauritius and will be registered in Mauritius;
- G will have substance in Mauritius as all software development will be done in Mauritius through a team of 20 IT Professionals who will all be in Mauritius and whose ideas will be incorporated in gaming products developed in Mauritius.

Based on the above, the activities of G would fall under the provisions of Items 34 (a) and 34 (b) of the Sub-Part C of the Second Schedule to the Income Tax Act and hence be exempt from income tax for a period of 8 income years as from the income year in which G starts its innovation-driven activities.

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Facts

G is a private company incorporated in Mauritius and holds a Category 1 Global Business License ("GBC1"). G is engaged in holding of investments, ownership and commercialisation of Intellectual Property ("IP") rights and enters into license agreements with affiliates for the manufacture and commercialisation of pharmaceutical products, manufacturing and distribution of pharmaceutical, over the counter and infant nutritional products.

G is involved in the transactions mentioned below:

Transaction 1

G acts as a guarantor for the loans raised by its related parties by either signing bank guarantee documents, or offering G's assets as guarantee for the bank loans raised by the related parties.

G charges a guarantee fee to the related parties for acting as guarantor. Furthermore, it also has to pay guarantee fee to the banks for the issue and maintenance of the guarantee documents.

Transaction 2

G has contracted a loan from F, a related company incorporated in South Africa. The principal activity of F is to provide financing services to its related parties.

F entered into a Facility Agreement with several banks and out of which a percentage of the funds received were lent by F to G. F incurred and as applicable, will continue to incur over the term of the loan various fees such as utilisation fees, arrangement fees, participation fees, commitment fees, commission fees, and service fees (collectively referred to as "the Fees") in relation to the Facility Agreement. F recharges to G as applicable over the term of the loan the Fees incurred in the proportion determined by benchmarking exercises.

The loan contracted from F will be used by G for the following purposes:

- to refinance G’s existing loan facilities; existing loan facilities were mainly for IP acquisitions;
- to finance Permitted Acquisition which include acquisition of securities, business or undertaking; and /or
- for general corporate purposes.

<u>Points at issue</u>

<u>Transaction 1</u>

1. Whether the guarantee fee that G charges to its related parties will be subject to tax; and

2. Whether the guarantee fee payable by G to the banks will be treated as deductible for tax purposes?

<u>Transaction 2</u>

1. Whether the Fees paid by G to F will be treated as deductible for tax purposes?

<u>Ruling</u>

Based on the facts mentioned above, it is confirmed that:

<u>Transaction 1</u>

1. The guarantee fee which G charges to its related parties should be at arm’s length and will be subject to tax.

2. The guarantee fee paid by G to the banks will be deductible for tax purposes, provided the expenditures are exclusively incurred in the production of the company’s gross income in accordance with Section 18 of the Income Tax Act.

<u>Transaction 2</u>

1. The Fees payable by G to F should be at arm’s length and will be deductible for tax purposes, provided the expenditures are exclusively incurred in the production of the company’s gross income in accordance with Section 18 of the Income Tax Act

TR 193

Facts

L is licenced by the Financial Services Commission ("FSC") as an external pension scheme holding a Category 1 Global Business Licence under the Private Pension Schemes Act 2012.

L is set up as a Trust through a declaration of Trust and is a defined contribution scheme. The trustees of L are resident in Mauritius. L allows only non-residents to join as members and its main objective is to provide pension benefits to its beneficiaries. The pension benefits may be in the form of a pension, a compensation, gratuity or allowance payable to a beneficiary and includes a retirement benefit, a death benefit, disability benefit or such other allowance as may be specified in the Rules.

The beneficiaries can be the members as well as persons nominated by the members or entities set up by the Trustees to receive the benefits when they are due. L offers various investment choices to the members and pursues a unique investment program with respect to each investment choice. L's assets are principally invested in foreign markets and the level of return is not guaranteed and depends on the performance of L. L's prudent written investment policy as approved by the trustees has been filed with the FSC. L provides various pension benefit options to its members at retirement.

Points at issue

(i) Whether L will be resident for tax purposes in Mauritius?

(ii) Whether L will be exempt from payment of tax if it deposits a declaration of non-residence within 3 months of its financial year end?

(iii) Whether L is subject to tax in Mauritius?

(iv) Whether L can apply for a Tax Residence Certificate and claim credit for foreign taxes paid on foreign source income?

(v) Whether gains derived by L from the disposal of shares/investment will be subject to tax?

(vi) Whether the distributions made out of L to the members/beneficiaries, as and when the distributions become due under a Declaration of Trust will be subject to tax in Mauritius?

Ruling

On the basis of facts provided, it is confirmed that:

(i) L will be resident in Mauritius in accordance with section 73(1) (d) of the Income Tax Act.

(ii) L is entitled to file a declaration of non-residence in accordance with section 46(3) of the Income Tax Act since it has been set up as a trust, holds a Category 1 Global Business Licence and its beneficiaries will be non-residents. Once such a declaration is deposited within 3 months after the expiry of the income year, it shall be exempt from payment of income tax in respect of that income year.

(iii) L does not fall within the definition of a superannuation fund as laid down in section 2 of the Income Tax Act since it was not set up for the benefit of employees of an employer. As such, it is not an exempt body by virtue of item 8 of Part I to the Second Schedule; hence it will be subject to tax in Mauritius, unless it deposits a certificate of non-residence as mentioned at paragraph (ii) above.

(iv) L is entitled to apply for a Tax Residence Certificate and claim foreign tax credit in accordance with section 77 of the Income Tax Act, if it does not file a declaration of non-residence.

(v) Gains derived by L from the disposal of securities/investment falling within the ambit of items 7 and 7B of Sub-Part C of Part II of the Second Schedule to the Income Tax Act will be exempt.

(vi) Distributions made out of L in the form of pension benefits (comprising pensions, annuities and lump sum) to non-residents members and/or their beneficiaries, as the case may be, will be considered to be Mauritius source income subject to income tax in Mauritius in accordance with section 10(1) (d) and section 74(1) (b) of the Income Tax Act. The pension benefits paid will thus not fall within the ambit of section 46(4) of the Income Tax Act.

TR 194

Facts

M applied for the Mauritian Diaspora Scheme on 1 May 2017. On 10 August 2017, the Board of Investment issued a Mauritian Diaspora Registration Certificate as a professional to M.

M derives rental income and income from his profession.

Point at issue

Whether the total income derived by M as a member of the Mauritian Diaspora under the Mauritian Diaspora Scheme prescribed under the Investment Promotion Act will be exempt from income tax?

Ruling

On the basis of the facts mentioned above, it is confirmed that by virtue of Item 27 of Sub-Part C of Part II of the Second Schedule to the Income Tax Act as amended by the Finance Act 2017, and the certificate dated 10 August 2017 issued by the then Board of Investment, only the professional income derived by M will be exempt from income tax. The rental income derived by M will not fall within the ambit of the exemption.

TR 195

Facts

B is incorporated in Mauritius and holds a management licence issued by the Financial Services Commission. It provides trust and corporate services in Mauritius and acts as an Authorised Trustee for trusts administered in Mauritius.

B forms part of a group comprising:

(a) T

T is incorporated in Nevis and provides professional trustee services for trusts formed under Jersey or other foreign laws (excluding Mauritian law). The Settlors and beneficiaries of the trusts are not resident in Mauritius.

Each trust is the sole shareholder of a separate C. Each client of T has its own trust and C.

(b) S

S is incorporated in Nevis and provides administration services for C and trusts mentioned at (a) above.

(c) W

W is incorporated in Nevis and provides investment portfolio management services to the trusts and C mentioned at (a) above.

(d) H

H is incorporated in Bahamas and is the group holding company for S, T, W and B.

The executive directors of T, C, S, W and H are not tax resident in Mauritius. The board directors of S, T and W meet outside Mauritius where key operational and investment decisions are taken.

The proposed transaction involves:

(i) the transfer of trusteeship, administration services, investment portfolio management services of several trusts formed under foreign laws from T, S, and W, to B; and

(ii) the resignation of existing board of directors of C and the appointment of B as the new corporate director of those companies.

On the completion of the proposed transaction, the sole trustee and administrator of the trust and corporate services will be B in Mauritius and the central control and management of C will take place in Mauritius.

Points at issue

(i) Whether the Trusts formed under Jersey law will be considered as tax resident in Mauritius on the basis that the sole trustee, B is tax resident in Mauritius and B will administer the Trusts from Mauritius?

(ii) Whether the Trusts will be required to register for income tax purposes in Mauritius and pay income tax at the rate of 15 % on their foreign source income?

(iii) Whether C incorporated under the laws of A will be considered as tax resident in Mauritius on the basis of having their central management and control in Mauritius?

(iv) Whether C will be required to register for income tax purposes in Mauritius and pay income tax at the rate of 15 % on their foreign source income?

(v) Whether for purposes of the Common Reporting Standard (“CRS”),

(a) the Trusts will be required to report any reportable accounts as a Financial Institution that is managed by B?

(b) C will be considered as passive Non-Financial Entities and therefore will not be required to report any reportable accounts as a Financial Institution?

Ruling

On the basis of facts provided, it is confirmed that:

(i) The trusts will be considered as resident in Mauritius by virtue of section 73 (1) (d) of the Income Tax Act as the sole trustee will be resident in Mauritius and the trust will be administered in Mauritius.

(ii) Each trust will be required to apply for a Tax Account Number at the Mauritius Revenue Authority and file income tax returns. The trusts will be liable to income tax on their chargeable income at the rate specified in Part IV of the First Schedule.

(iii) C will be considered as tax resident in Mauritius by virtue of section 73(1) (b) of the Income Tax Act since their central management and control will be in Mauritius.

(iv) C will be required to apply for a Tax Account Number at the Mauritius Revenue Authority and file income tax returns. They will be liable to income tax on their chargeable income at the rate specified in Part IV of the First Schedule.

As regards Point at Issue (v), the Trusts and C will have to decide on the basis of all facts and circumstances whether for purposes of the CRS, they should be classified as Financial Institutions and be required to report any reportable accounts.

TR 196

Facts

F, together with its sub-funds (collectively N) is an investment fund domiciled in the Cayman Islands, managed globally by U.S. based Q and affiliated investment management firms (together J). J was founded in 1989 by E, who, together with affiliated entities, remains the ultimate owner.

J undertakes investment management activities, including determining the strategic direction of the J, making discretionary investment management decisions, overseeing group risk management, generally executing all trades undertaken by N, management of collateral, portfolio valuation, and support services, such as capital raising and investor relation. J is contemplating entering into an arrangement with a Mauritian Investment Manager.

The Mauritius Investment Manager will be wholly owned by Q and will be appointed by Q to manage a portion of the investment portfolio of N outside Mauritius, pursuant to one or more Sub-Management agreements. For the avoidance of doubt, it is currently contemplated that the Mauritius Investment Manager will only manage the investment portfolio of N.

The Mauritius Investment Manager will provide management and advisory services to N and will have discretionary powers to carry out certain trading activities on behalf of N, subject to the investment strategies, policies, risk guidelines and investment restrictions of N and J. The Mauritius Investment Manager will be authorised to provide the services detailed above to N by way of sub-delegation from Q through one or more Sub-Management Agreement.

The Mauritius Investment Manager will have a dedicated office in Mauritius and will initially employ one Portfolio Manager ("PM"). The PM will likely have an analyst or analysts, based either in Mauritius or an affiliated K. The scale of resources within the Mauritius office may grow as the level of activities increase. The PM will be resident in Mauritius and his primary responsibility will be to trade on behalf of the non-resident funds and manage his team. The PM will be allocated a specified amount of capital to trade listed securities and associated derivatives and will be subject to risk oversight and supervision from senior professionals of J.

The Mauritius Investment Manager will receive management and performance fees for the management and advisory services provided to the investment manager / non-resident funds. The terms of the service agreement will be in accordance with the OECD transfer pricing guidelines which will be consistent with other similar arrangements and investment strategies of the non-resident investment funds.

The management and performance fees will be subject to corporate tax in Mauritius.

N are all non-resident investment funds and are comprised of the master fund, domiciled in the Cayman Islands and a number of sub-funds domiciled in different jurisdictions, including Luxembourg and Singapore, amongst others. For avoidance of doubt, none of N are Mauritius incorporated or tax resident funds.

N principally invest in the public equity, fixed income, commodities and derivatives markets across the globe as advised by Q and its numerous affiliated foreign investment managers. Notwithstanding the management activities performed by the Mauritius Investment Manager in Mauritius, N will continue to be centrally managed and controlled outside of Mauritius since the overall corporate governance of N will be taken in the jurisdictions where the funds are domiciled and/or where J has its primary office locations. N will continue to hold board meetings in various foreign countries and the records of N will be retained at the N's foreign offices.

Points at issue

Whether the N may be deemed to derive income in Mauritius through the Mauritius Investment Manager's discretionary trading activities in Mauritius and whether the N will be subject to tax in Mauritius?

Ruling

Based on the facts mentioned above, it is noted that the N will not have Mauritian sourced income and will not be centrally managed and controlled from Mauritius. It is confirmed that N will not be deemed to derive income in Mauritius and therefore will not be subject to tax in Mauritius.

TR 197

Facts

V and W are tax residents in Mauritius by virtue of Section 73 of the Income Tax Act and are the settlors and beneficiaries of X and Y respectively.

X and Y are resident in Jersey and are administered from Switzerland. The trustee of each trust is a company incorporated under the laws of the Island of Nevis.

X and Y each own 100% shares in C and D respectively. C and D are non-resident companies and are incorporated in Nevis.

Each company owns 25.5% of a GBC entity in Mauritius, namely E which is a money transfer service company.

E owns subsidiaries in several other offshore jurisdictions.

The proposed transaction consists of:

(i) the migration of C and D to Mauritius.
C and D will be incorporated in Mauritius as GBC companies and their effective management and control will be in Mauritius. This migration will result in inward capital assets remittances into Mauritius.

(ii) the sale by C and D of the shares they each hold in E.
The proceeds from the E shares will result in payment of dividends by C and D to the non-resident trusts, that is, X and Y which will in turn distribute dividends to their respective beneficiaries, that is V and W who are both resident in Mauritius.

Points at issue

(i) Whether distributions from X and Y to V and W will be subject to income tax at 15% plus an additional solidarity levy on the balance of the dividend income exceeding the prescribed threshold in any given year?

(ii) Whether, in the event V and W elect to receive their distributions in bank accounts which are outside of Mauritius, such receipts will be regarded as being received in Mauritius for income tax purposes?

(iii) Whether in case V and W elect to utilise funds received in their offshore bank accounts to invest in capital assets, which in turn generate capital gains later upon disposal, whether this amount would be included in “gross income”?

(iv) Whether the remittance of capital into Mauritius upon C and D redomiciling will be subject to tax in the hands of each company? Furthermore, whether the disposal of such equity after re-domiciling would be subject to income tax?

(v) Whether the sale of E’s shares by the C and D will have any prejudicial tax consequences in Mauritius?

Ruling

On the basis of facts provided, it is confirmed that:

(i) (a) Where the distributions made by X and Y to V and W are remitted to Mauritius, the distributions will be subject to income tax at the rate of 15%.

(b) Any amount of distribution exceeding 3.5 million rupees will be subject to solidarity levy by virtue of Section 16C of the Income Tax Act.

(ii) In the event V and W elect to receive their distributions in bank accounts which are outside of Mauritius, such receipts will not be regarded as being received in Mauritius for income tax purposes. However, in case such receipts are remitted to Mauritius, they will be subject to tax in Mauritius.

(iii) In case V and W elect to utilise funds received in their offshore bank accounts to invest in capital assets, which in turn generate capital gains later upon its disposal, such capital or capital gains would fall outside the scope of income tax and hence will not be taxable in Mauritius.

(iv) The remittance of capital into Mauritius as a result of the re-domiciling of C and D would not give rise to any tax liability. The sale of shares held by C and D in E would be considered as capital gains and would thus not be amenable to income tax in Mauritius.

(v) The sale of the E shares by C and D would give rise to either capital gains which are not amenable to tax or capital losses which do not qualify as deduction under the Income Tax Act.

TR 198

Facts

Mr F, a South African national lives in Mauritius since February 2017. In July 2018, F acted as settlor to T, a trust formed under the Cayman Islands Trust law.
All beneficiaries of T including Mr F are tax resident in Mauritius since January 2018.
The factors enumerated in section 60 (2) of the Trust Act 2001 are not applicable to T.
S, a company formed under the Cayman Islands Company law acts as trustee of T.

Points at issue

(i) Whether T is a trust recognised under the laws of Mauritius and as such falls within the definition of Trust under the Income Tax Act?

(ii) Whether T shall be considered as tax resident in Mauritius by virtue of section 73 of the Income Tax Act?

(iii) Whether T shall have any obligation to file tax returns in Mauritius and pay any tax accordingly?

Ruling

On the basis of facts provided, it is confirmed that:

(i) T is a trust recognised under the laws of Mauritius since the factors enumerated in section 60 (2) of the Trust Act 2001 are not applicable to that trust.

(ii) T will be considered as tax resident in Mauritius in accordance with section 73(d) of the Income Tax Act since the settlor was resident in Mauritius at the time the instrument creating the trust was executed.

(iii) T shall be liable to income tax by virtue of section 46(1) of the Income Tax Act and shall have to file income tax returns accordingly.

TR 199

Facts

P is a Category 1 Global Business Company offering investment management and advisory services.
A is a Category 1 Global Business Company involved in investment holding activities as per a defined Investment Guideline.
P is in the process of being appointed as the investment advisor of A and the advisory services shall include the following:

(i) Identifying potential new investment opportunities;
(ii) Providing regular feedback in relation to the performance and liquidity of A's various investments;
(iii) Rendering specific investment research, advice and related advisory services;
(iv) Assisting with due diligence investigations and reviews;
(v) Recommending which investments or follow up investments are to be made or disposed of;
(vi) Providing advice on any terms and conditions imposed in relation to investments;
(vii) Preparing transaction documents and appointing external advisors where necessary; and
(viii) Managing issue allotment and allocation of shares and facilitating loans.

A will derive foreign source income in the form of dividend and interest as well as capital gains or loss upon realisation of the investment.

Points at issue

Whether the advisory fees to be charged by P to A shall be considered as an allowable deduction against the gross income of A in A's tax return?

Ruling

On the basis of facts provided, it is confirmed that advisory fees which are exclusively incurred in the production of gross income other than gross income specified in section 10 (1) (a) of the Income Tax Act will qualify as allowable deduction in accordance with section 18 (1) of the Act.

Thus, the proportion of advisory fees attributable to non-taxable income including capital gains would not be allowed.

TR 200

Facts

A was registered in Mauritius by way of continuation on 12 August 2009 as a private company limited by shares. It holds a Category 2 Global Business Licence ("GBL 2") and carries out investment holding activities through its subsidiaries, in United Kingdom and Singapore.

Further to the amendments brought by the Finance Act 2018 to the Financial Services Act 2007 and the Income Tax Act 1995, A is contemplating conversion of its legal regime from a GBL 2 into a company holding a Global Business Licence.

A holds a 100% shareholding in B, a company incorporated in Singapore. B operates in the financial services industry of Singapore and provides fund management and investment advisory services to Investment Funds based in, as well as outside, Singapore.

While the standard income tax rate in Singapore stands at 17%, B has applied to the Monetary Authority of Singapore ("MAS") and obtained a tax incentive award under Singapore's Financial Sector Incentive (Fund Management) Scheme for Fund Managers, a scheme put in place for the promotion of fund management activities in Singapore.

Under this tax incentive award which is granted for five-year renewable periods, B is eligible for a concessionary tax rate of 10% on income from its qualifying activities, that is, fund management and investment advisory activities, subject to the satisfaction of prescribed conditions. Its income from other sources is taxed at the standard Singapore tax rate of 17%.

Point at issue

Whether A, upon the conversion of its legal regime from a GBL 2 company to a company holding a Global Business Licence, will be eligible to claim credit for foreign tax suffered in the form of tax sparing relief in respect of dividend received from B?

Ruling

Based on the facts of the case, it is confirmed that in accordance with regulation 9 of the Income Tax (Foreign Tax Credit) Regulations 1996, A will be entitled to a tax sparing credit on the dividend received from B provided that this dividend is paid out of the income derived from qualifying activities under the Singapore's Financial Sector Incentive (Fund Management) Scheme for Fund Managers.