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.