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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.