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.