TR 201

Facts

S is a company registered in Canada and is engaged in gold and base metal minings. Following the merger of S with P, a Jersey based company operating in the same industry, with effect from 1 January 2019, Y was appointed President and Chief Executive Officer ('CEO') of S for the new merged operations.

S currently has operations in Canada, United States of America, Argentina, Chile, Peru, Dominican Republic, Mali, Senegal, Côte d'Ivoire, Democratic Republic of Congo, Zambia, Mozambique, Saudi Arabia and Australia.

S recently incorporated a Mauritius holding company, RRM, to hold certain of its Africa based interests and to remunerate, Y on a month to month basis. It is intended that Y's employment contract, for his role as CEO of S, is to be with RRM which will pay his salary into his offshore account, currently in Jersey. Costs incurred by RRM to accommodate for Y's salary costs will be recharged to S.

Y, who is a South African citizen, currently owns and resides in a house in Mauritius under the Integrated Resort Scheme ('IRS'). The IRS house is Y's permanent place of residence where he and his wife have been residing for the past ten years.

Due to the international nature of his employment, Y travels extensively and returns to Mauritius throughout the year from various countries.

As CEO, Y has ultimate responsibility for the group's operations in all the aforementioned countries and for interfacing with major investors in the key investor markets of Canada, United States and Europe. Consequently, his duties will often be carried out via electronic media across international borders and airports depending on his schedule and travel requirements or whilst returning home to Mauritius.

It is expected that Y will spend approximately one to two months at his home in Mauritius over the course of any tax year. Some of this time will be on annual leave whilst other time will be spent working on various aspects of S's global operations.

Points at issue

1. (a) Whether only the portion of Y's emoluments from Mauritius-based performance will be taxed in Mauritius?

   (b) Whether emoluments derived by Y (and paid in his Jersey account) from performance of employment duties abroad will be taxable in Mauritius only on remittance.

2. Whether the recharge of Y's salary costs can be made to S at cost?

Ruling

On the basis of facts provided :-

1. It is confirmed that -
   (a) in accordance with Sections 73 and 74 of the Income Tax Act, Y will be subject to tax on emoluments derived from performance of duties whilst physically in Mauritius. For that purpose, the length of stay includes the date of arrival, date of departure, non-business days and annual leave spent in Mauritius.

   (b) in accordance with Section 5 of the Income Tax Act, emoluments derived by Y in respect of duties performed abroad and paid in his Jersey account will be taxable in Mauritius only on a remittance basis.

2. The recharge of Y's salary cost made to S must satisfy the arm's length principles in accordance with Section 75 of the Income Tax Act.

TR 202

Facts

D was incorporated in Mauritius on 12 November 2014, holds a Category 1 Global Business Licence and carries out investment holding activities. It invests principally in listed securities and debt instruments in India and Indian businesses. D is 100 % owned by E, another company holding a Category 1 Global Business Licence. D and its parent are referred to as the "Group".

The Group has invested in T, a public limited company incorporated in India, with an operational presence in India and Egypt. T also manufactures caustic soda, calcium chloride, chloromethanes, refrigerant gases, industrial salt and specialty chemical intermediates.

E holds a 30% equity shareholding in T while D has invested in 19,902 fully redeemable non-convertible secured debentures of INR 1,000,000 each of T.

The above debentures are listed on the Wholesale Debt Market segment of the Bombay Exchange ("BSE") and have a maturity date of 22 April 2023.

The debentures have the following terms:

- Coupon rate of 3 % per annum, compounded annually, and payable at the time of redemption; and
- 10 % redemption premium payable upon redemption of the debentures, such that it provides an aggregate yield of 13% compounded annually

In D's books, the debentures have been recorded at an estimated fair value since acquisition in accordance with the International Financial Reporting Standards.

In September 2018, D entered into an agreement with T for the debentures held by D to be either redeemed by T or alternatively sold to an affiliate of T by 30 June 2019, that is, prior to its maturity date, at a consideration equivalent to the principal amount of the debentures with all outstanding coupon interest payments and the redemption premium.

A significant proportion of the proceeds from the redemption or sale of the debentures will be distributed by D to E to enable the latter to invest in additional shares of T, thereby increasing its equity stake from 30 % to 42.9 %.

Point at issue

Whether gains derived by D, in terms of the redemption premium, from either the disposal of the debentures to an affiliate of T or the redemption of the debentures by T prior to their maturity, will be exempt from income tax in Mauritius?

Ruling

Based on the facts provided, the redemption premium represents income falling under Section 10 (d) of the Income Tax Act and is subject to tax at the rate of 15 %.

TR 203

Facts

K holds a global business licence. K is engaged in the activity of financing green energy projects in India. It therefore acts as a pure funding vehicle. K raises funds from overseas lenders in USD which are then on-lent in INR to companies involved in green energy projects. The funds raised in USD are used to purchase Masala bonds from green energy companies based in India. The Masala bonds are denominated in INR. K will therefore be deriving interest from the Masala bonds in INR and paying interest in USD. K is engaged in financing activities and is thus exposed to two main financial risks namely:

- Credit risk; and
- Foreign currency risk.

Since K is dealing in two different currencies and reimbursement of the loan must be made in USD, K is exposed to high foreign currency risks. In order to minimise the potential adverse effects of unfavourable exchange rates between USD and INR, K entered into currency swap agreements to hedge against foreign exchange fluctuations. The swap agreements have been concluded at arm's length and all swap counterparties are unrelated. The purpose of the hedging instrument is to prevent a business loss and K is not involved in any speculation activities. The hedge against foreign exchange fluctuations would either result in a hedging cost or hedging income.

Points at issue

1. Whether the entire hedging costs paid on foreign currency swap agreements to mitigate foreign currency risks is deductible?
2. Whether hedging income earned on foreign currency swap agreements is subject to tax?

Ruling

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

1. The nature of the business undertaken by K necessitates hedging activities. Hedging is a tool for risk management and risk minimisation. Fluctuation in exchange rate may have adverse effect on the profitability of K. Hedging against such fluctuations is considered as a business expense and is an allowable deduction under Section 18 of the Income Tax Act.
2. Hedging, in the present case is incidental to the borrowing and lending activity. Therefore, any income derived from the hedging business is taxable under Section 10 (1) (b) of the Income Tax Act.

TR 204

Facts

V is a public company limited by shares. V owns and operates several hotels in Mauritius, Seychelles and Morocco. V also has land available for development in Mauritius, Seychelles and Morocco (the "Land Bank"). The Land Bank includes land for property development currently undertaken in Morocco by F. F is a private company established in Morocco and is a wholly-owned subsidiary of V.

V has set up a wholly-owned subsidiary: G, a Mauritian company, to concentrate on property development. V intends to transfer the Land Bank to G: it will also transfer its investment in F to G. The investment and proposed restructuring exercise in so far as it concerns F is described below.

V would distribute its investment in G to its shareholders by way of dividend in specie. Subsequent to the distribution, V and G along with their respective subsidiaries or associates, as the case may be, would be two distinct companies with separate and distinct business activities. G would engage the required property development specialists, enabling V to focus on its hotel operations.

V has since the inception of F's property development project injected capital into F by way of equity and current account receivable. The receivable component is made up of:

(i) funds transferred from V to F ("the intercompany financing"); and

(ii) project related expenses borne on behalf of F. V recharged the project related expenses to F at cost plus 5% so that the total amount recharged by V formed part of its gross taxable income.

V in its books initially recognized –

(i) equity investment in F ; and

(ii) current account receivable from F.

These two components are assessed for impairment annually for financial reporting purposes.

V has gradually reclassified the current account receivable from F into investment (quasi equity): over the last two years, all the receivables from F have been reclassified as investment (quasi equity) by V in accordance with the relevant accounting standard. F, however, still accounts a payable in favour of V instead of equity.

The carrying value of the total investments in F is made up of:

- Original value of equity investment
- Current account: reclassified into quasi equity
- Gross value
- Total Impairment

V has accounted the impairment losses as unauthorized deductions for income tax purposes.

V would transfer its total investments in F at its existing carrying value to G.

V would also give G the rights to receive any future refund of current account payables recognized in the books of F. F will continue to recognize V as the creditor in its books as it is onerous and financially unfeasible to register a change of creditor from V to G in Morocco. F will therefore continue to account the payable in favour of V, and V will surrender the rights to the receivable to G by executing a proper deed with G in accordance with the Moroccan and Mauritian laws. A share transfer form would be executed under the Moroccan laws such that V would no longer be the shareholder of F.

V would record the following in its income statement:

(i) the ‘refund’ relating to the transfer of debt receivables will be accounted as ‘other income’.

(ii) the cession of debt receivable to G will be accounted as ‘other expenses’

G will account for the cession of debt receivable from V as ‘other income’ in its income statement.

Points at issue

V

(a) Whether the 'refund' relating to the transfer of debt receivable will be considered as capital in nature and therefore, outside the purview of the Income Tax Act?

(b) Whether the other expenses arising on account of cession of debt receivable to G will be treated as an allowable deduction?

G

Whether the other income arising on account of cession of debt receivable by V will be considered as capital in nature and therefore, outside the purview of the Income Tax Act?

Ruling

Based on the above facts of the case it is confirmed that:

In the books of V:

(a) the refund is in relation to a debt and is capital in nature ; and

(b) the other expenses are in connection to the cession of debt receivable to G and will not be an allowable deduction for income tax purposes.

In the books of G, the other income arising on account of cession of debt receivable by G will be capital in nature and will not be subject to income tax.

TR 205

Facts

X will be incorporated as an investment holding company in Mauritius and will hold a Global Business licence.

C will be registered as a Limited Partnership in Mauritius and will hold a Global Business Licence and a CIS Manager licence. It will be a tax transparent entity and all its limited partners will be non-resident Egyptian individuals. It will also hold shares in X.

B, a resident company holding a Global Business Licence will act as the General Partner of C. It will also hold interest in C.

C will provide investment management/advisory services to X in return for fees which include incentive/performance fees.

Points at issue

i. Whether fees received by C from X will be regarded as "foreign source income"?
ii. Whether the share of income paid by C to B will be treated as exempt income?
iii. Whether the non-resident limited partners of C have an obligation to file tax returns in respect of their share of income from C?

Ruling

Based on the facts provided above, our stand is as follows -

i. as the investment management/advisory services will be provided in Mauritius by C to X, the fees received by C will be regarded as Mauritian source income in accordance with the provisions of Section 74 of the Income Tax Act.
ii. the share of income derived by B from C will be subject to tax in Mauritius by virtue of Section 47(2) of the Income Tax Act.
iii. the share of income of the non-resident limited partners from C will be Mauritian source income and will be treated as gross income under section 10(1)(b) of the Income Tax Act. The non-resident limited partners will therefore have an obligation to file their income tax returns in Mauritius as provided under Section 112 of the Income Tax Act.

TR 206

Facts

Z is a domestic company whose main activity is the breeding and selling of primates to A only.

The shareholder of Z is A which holds 100% shareholding of Z. The main activity of A consists of breeding and export of primates.

Z intends to transfer its stock which is made up of Bearer Biological Assets ("BBAs") and Consumable Biological Assets ("CBAs") to A

BBAs are defined as breeders and do not have any increase in value. CBAs are defined as Babies and Growers which mature at the age of 24 months. These monkeys are then exported to laboratories outside Mauritius.

The stock of the Z has been valued at 'fair value less costs to sell' in accordance with IAS41. Accordingly, both companies have in their accounts revalued their stock each year and any increase in the stock has been reflected in the chargeable income of the respective companies.

Point at issue

Whether Z can transfer its stock to A at 'fair value less costs to sell' as declared in the accounts of Z for the year ended 31 December 2018?

Ruling

Based on the above facts, Z should transfer its stock at 'fair value less costs to sell' on the day of the transfer in accordance with Section 14(4) of the Income Tax Act and not on the balance sheet date.

TR 207

Facts

V is tax resident in Mauritius as from the income year ended 30 June 2019. Before her relocation to Mauritius in August 2018, she was residing in the United Kingdom. She holds dual citizenship in South Africa and United Kingdom.

V is the beneficiary of T, a trust established under the laws of Island of Guernsey and administered in Jersey. T is tax resident in Jersey. Its Trust Fund comprises of the following assets:

(i) investment in P, a company registered in the British Virgin Islands; and

(ii) loan receivable from P funded out of an initial settlement of the settlor of T

The Trust Fund is held in primary discretionary trusts as to both capital and income for the benefit of the beneficiaries.

The Trustees are in the process of liquidating T and as such the shares held in P will be disposed and the Loan will be repaid. Subsequently, V will receive a distribution from the capital account of T in her capacity as the beneficiary of T.

The distribution to the V will be made up of the following:

(i) the capital amount of the Loan receivable (representing the initial trust capital); and

(ii) the balance will represent the gain on liquidation of P.

Post distribution, T will be wound up. T will remit the distribution either in the Mauritian bank account of V or in her foreign bank account.

Point at issue

Whether the capital distribution received by V, in her capacity as the beneficiary, and remitted to Mauritius will be taxable in Mauritius?

Ruling

Based on the facts mentioned above, our rulings are as follows:

(i) the distributions made to V out of the capital amount of the Loan receivable from P will constitute a remittance of a capital nature into Mauritius. As there is no capital gains tax in Mauritius, the remittance will not be taxable in Mauritius.

(ii) any accumulated net profit of P forming part of the assets of T that will be distributed to V will not be a distribution of capital nature. Hence, the remittance of such accumulated net income will be taxable in Mauritius

TR 208

Facts

C was incorporated with the aim of offering services such as consultancy and supply of labour internationally by employing skilled and specialised Mauritians and /or foreigners **(the "Employees")** to perform work abroad under a contract of employment of determinate and indeterminate duration. The Employees working abroad will be officially hired under a first contract of employment with C and seconded for duty to its overseas corporate clients.

The Employees will initially live and work mainly in Madagascar with a full-fledged work/residence permit. They will be engaged in the manufacturing and /or distribution of biscuits, yoghurt and other consumer goods.

The Clients will apply for work/residence permits of the Employees in their host countries respectively. C will pay the salaries of the Employees. C will then invoice the Clients for consultancy services. The Employees will receive a living allowance and a housing allowance directly from the Clients under a second contract in Madagascar.

The salaries of the Mauritian employees seconded abroad under the first contract of employment will be banked in their respective bank accounts held in Mauritius. The salaries of the non-Mauritian employees will be banked in their respective bank accounts held abroad.

Points at issue

1. Whether the income of the Mauritian and non-Mauritian employees of C performing work abroad will be subject to PAYE in Mauritius?
2. Whether the Employees of C will be entitled claim an income exemption threshold under section 27 of the Income Tax Act?
3. Whether C will have any obligation to register as an employer with the MRA?
4. Whether C will have to declare information and particulars of the non-Mauritian employees for the purpose of the Return of Employees ("ROE")?
5. Whether the salaries paid by C to the the Employees working abroad will be allowed as a deductible expense?

Ruling

On the basis of the facts mentioned above, we are of the view that -

1. The salaries remitted in Mauritius by the Mauritian employees under the first contract of employment will constitute income derived from Mauritius. Therefore, the income of the Mauritian employees performing work abroad will be taxable in Mauritius and subject to PAYE. The Mauritian employees will have to submit an annual return of income and where income tax has been paid on the income in the country where the duties have been performed, they may claim credit in respect thereof.

   As the salaries of the non-Mauritian employees performing duty abroad will not be remitted in Mauritius, such salaries will not be taxable in Mauritius and therefore not subject to PAYE in Mauritius.

2. The Mauritian employees having their permanent place of abode in Mauritius will qualify as resident and will be entitled to income exemption threshold. The question of income exemption threshold to the non-Mauritian employees does not arise.

3. As a person responsible for the payment of the emoluments of its employees, C will have an obligation to register as employer with MRA.

4. C will have to declare information and particulars of the non-Mauritian employees in its annual Return of Employees (ROE).

5. The salaries paid by C to the employees working abroad comprised in the claim for consultancy services invoiced to the clients will be allowed as deductible expenses.

TR 209

Facts

G is a UK registered not-for-profit body corporate and is registered as a Scottish Charity. It offers degree programmes.

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

G and P are not related entities. They have entered into an Agreement whereby G and P 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 G as the sole awarding body.

Delivery of teaching service will be at the premises of P.

The Agreement will span over 12 years for the delivery of the following degree Programme(s):

- BA (Hons) Business Management
- BA (Hons) Social Sciences
- BSc (Hons) Computing
- BSc (Hons) Applied Psychology

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

An academic year consists of 3 trimesters. Each trimester lasts an average of 15 weeks. It is estimated that overall the fly-in-fly-out staff of G will spend not more than 3 weeks in Mauritius in any trimester

The delivery model 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. P 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.

P will allow G and its authorised representatives, at any reasonable time, to have access to the teaching premises for the purpose of ongoing assurance and confirmation of the academic environment to support the delivery of the Programmes.

The Agreement between G and P further provides for, inter alia the following -

- G will have ultimate responsibility and discretion in respect of the award of qualifications to students.
- All Programme Documents and teaching materials or content provided by P for the purpose of delivering the Programme(s) will be reviewed and approved by G prior to use of the same on the Programme(s).
- Both G and P recognise that the financial arrangements applicable to the Programme will be monitored and reviewed by both parties throughout the Term. Any changes required to the financial arrangements as a result of any monitoring or review activity will be discussed and agreed in writing by both Parties before implementation by the Parties without prejudice to the remainder of the Agreement.
- The Parties recognise and agree that all publicity and promotional activity relating to all programmes and awards offered or made in its name, including the Programmes or use of G's Trade Marks, service marks, trade names, logos or other references to G or other indicia is subject to final approval of G and P shall not issue any such public information or undertake any such publicity or use G's Trade Marks, service marks, trade names, logos or make other references to G or other indicia, without the prior written consent of G. P shall not publicise the Programmes in any way without the prior written consent of G.
- The Parties recognise and agree that all publicity and promotional activity relating to the Programmes (whether or not reference is made to the G) is subject to final approval of G.
- P will develop and operate an educational institution which will conform to the standards already in practice at G. The programme management structure specified in the programme documents will be developed (recognising the different organisational structures and personel of P) to maintain the university's quality assurance standards.

- P shall recruit academic staff that, in the reasonable opinion of G, shall be appropriately qualified to support the delivery of the Programmes to the standard set out in G Quality Enhancement and Assurance Handbook.
- G will provide to P the current generic role profiles for academic staff and where applicable the specific role profiles for the Programmes which can be used by P when developing the role profiles of their academic staff.
- G will ensure that external examining procedures for the Programmes are comparable to those of internal programmes and that these are applied in accordance with the system set out in the University Assessment Regulations.
- The Parties recognise and agree that the admission requirements and acceptable entry qualifications for students joining the Programmes shall be set by and be at the sole discretion of G. The final decision as to whether a student is accepted onto each Programme rests solely with G.
- The Parties recognise and agree that the responsibility and control for the production of degree parchments and academic transcripts for students exiting the Programmes rests solely with G.

According to the Financial Arrangements between the Parties, G will invoice P for two types of costs each year, namely –

(i) Separately billable amounts ; and

(ii) Per student per annum charge.

The separately billable amounts are to be agreed annually ahead of the start of the academic year.

<u>Points at issue</u>

1. Whether G will be subject to income tax in Mauritius?
2. Whether G will be subject to Tax Deduction at Source ("TDS") in Mauritius?
3. Whether payments made to G with relation to the services like access to G'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 P?

4. Whether employees of G coming to Mauritius for periods not exceeding six months to deliver courses with regards to the degree programmes will be subject to Pay As You Earn ("PAYE") in Mauritius?
5. Whether G should be VAT registered in Mauritius?
6. Whether reverse charge should be applicable on the services provided by G to P?

Ruling

On the basis of the facts provided : -

1. G is conducting business in Mauritius on the premises of P for the delivery of degree programmes, the award parchment of which bears the signatures of the authorities of G only as the sole awarding body. G will therefore be considered to have a permanent establishment in Mauritius and will be subject to income tax in respect of the income it derives from the delivery of the degree programmes in Mauritius.
2. G will not be subject to TDS in Mauritius. It will have to submit an annual return of income declaring the income derived and the related allowable deductions.
3. In the light of the reply to question (1) and (2), the issue of royalty does not arise.
4. Since G will have a Permanent Establishment in Mauritius, Article 15 of the DTAA between UK and Mauritius will apply regarding the taxation of the teaching staff of G. In accordance with sections 2 and 82(1)(c) of the Income Tax Act, G will be declared to be an absentee and P will be deemed to be an agent of the absentee respectively. P will be required to operate the PAYE system in respect of the lecturers sent by G. Being given that Article 15 is subject to Article 21 which provides for an exemption period of 2 years, the lecturers who qualify for the exemption may submit an income tax return on the due date and claim refund of the tax deducted under the PAYE system.
5. G 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 Value Added Tax Act.
6. Being given that G will have a Permanent Establishment in Mauritius and educational services are exempted from VAT, the question of reverse charge does not apply.

TR 210

Facts

C, a company incorporated in Mauritius has received an order from D, a company based in Zimbabwe. Owing to foreign exchange controls in Zimbabwe, D has suggested that the order be channelled through M.

M currently holds a Category 1 Global Business Licence under the Financial Services Act and forms part of the same group of companies as D. M will report each transaction as a purchase of goods from C and a corresponding sale to D but the goods will not be subject to any process by M.

For purposes of the Bill of Lading, the shipper and the consignee will be C and D respectively. The terms of the shipment will be Free on Board. The goods will leave the warehouse of C and will be loaded directly to a ship such that M will not take any physical possession of the goods. However, on the Customs declaration, M will appear as the exporter and D will be the importer.

C will receive cash from M and the trade debt of M will be settled by its holding company. D and M have certain financial arrangements whereby the trade debt of D from M will be settled over a period of time.

Point at issue

Whether the sales made by C to M will qualify for the 3% tax rate on export of goods?

Ruling

Based on the above facts, C will be selling goods to M, a company incorporated in Mauritius. Consequently, the sales to M will not be a transaction falling under Section 44B of the Income Tax Act and will be subject to tax at the rate of 15%.

TR 211

Facts

E is a UK registered not for profit body corporate and is a Scottish charity. It is tax resident in the UK and it delivers degree programmes.

P is a company incorporated in Mauritius and is engaged in the provision of educational services. It is registered with the Tertiary Education Commission **("TEC")** and Mauritius Qualification Authority **("MQA")** in Mauritius.

E and P which are not related entities have entered into a Collaboration Agreement whereby they will collaborate to deliver a degree programme in International Hospitality Management ("the Programme") to students in Mauritius.

The course will run over 2 years. Each year will comprise of 3 trimesters. E will supply the undergraduate degree course materials. The tutors will comprise of local tutors appointed by P as well as 3 members of E's staff who will teach in Mauritius for a total of 30 days per year.

Overall fees for the Programme in Mauritius will be collected by P. E will invoice P 50% of the overall fees. E will not contract directly with the Mauritius students.

The Collaboration Agreement between E and P is for an initial term of 5 years and may be renewed before the expiry of the term. The Agreement provides inter alia, for the following:-

- The degree Programme will be dispensed on the premises of P, which will have to maintain at its own expense appropriate offices, teaching facilities equipment, administration facilities and systems.
- E will have the responsibility for ensuring academic standards and quality assurance of the Programme. In particular –
    - E will ensure that all procedures and decisions relating to the Programme provided under the Agreement are based on E's Regulations which are systematic and open to scrutiny.
    - E will ensure that the academic standards of all awards provided under the Agreement are compatible with relevant benchmark information recognised within the United Kingdom.
    - The qualification conferred at the end of the Programme will be equal in academic standing to that conferred on successful completion of the same or comparable internal E programmes.

    - Both E and P recognise that the final responsibility and accountability for the academic standards of the Programme, or any element of the Programme, rests with E.
    - Both E and P recognise that final responsibility and accountability for quality assurance arrangements applicable to the Programme, or any element of the Programme, rests with E.
- Both E and P recognise that final accountability for the submission requirements and acceptable entry qualifications for students joining the Programme and the final decision as to whether a student is accepted rests with E.
- Both E and P recognise that final responsibility and accountability for the control and accuracy of all public information, publicity and promotional activity relating to all programmes and awards offered or made in its name, including the Programme or use of any E logo, name or indica rests with E and P shall not issue any such public information or undertake any such publicity or use any E logo, name or other indica, without prior written consent and approval of E.
- Both E and P recognise that final responsibility for the issue and control of award certificates, diploma supplements and transcripts associated with the Programme rests with E.
- Both E and P recognise that information provided to prospective students and to those registered on the Programme must be comparable with that given to internal E prospective or registered students.

Points at issue

1. Whether E will be treated as having a Permanent Establishment in Mauritius?
2. Whether E staff coming to Mauritius would be subject to PAYE?
3. Whether social security contributions are applicable for E staff sent to Mauritius?

Ruling

On the basis of facts mentioned above,

1. The Collaboration Agreement between E and P will span over several years and goes beyond the supply of course materials and three teaching staff for 30 days per academic year. Having regard to the many features or elements of a partnership business which is evident from the terms of the collaboration agreement, E will be considered to be conducting business in Mauritius on the premises of P. E will therefore be treated as having a Permanent Establishment in Mauritius.

2. As E will have a Permanent Establishment in Mauritius, Article 15 of the DTAA between UK and Mauritius will apply regarding the taxation of the teaching staff of E. In accordance with sections 2 and 82(1)(c) of the Income Tax Act, E will be declared to be an absentee and P will be deemed to be an agent of the absentee respectively. The Partner will be required to operate the PAYE system in respect of lecturers sent by E. Being given that Article 15 is subject to Article 21 which provides for an exemption period of 2 years, the lecturers who qualify for the exemption period of 2 years, the lecturers who qualify for the exemption may submit an Income Tax return on the due date and claim refund of the tax deducted under the PAYE system.

3. E staff in Mauritius will not be required to pay social security contributions.

TR 212

Facts

C is a company incorporated in Mauritius and is engaged in the BPO/ICT sector by providing computer consultancy and computer facility management.

In the United States and Canada, C is listed on the stock exchange and all employees in different geographies can buy shares at a discounted price under the “Employee Stock Purchase Plan” whereas Management are granted shares as part of their remuneration under the “Gift Stock Purchase Plan”.

Points at issue

i. Whether under the Employee Stock Purchase Plan, the taxable amount in the hands of the employees is the value of the discount they have benefitted on acquisition of the shares or the difference between the price paid for the share and the price the share was disposed of?

ii. Whether under the Gift Stock Purchase Plan, the taxable amount in the hands of the management staff is the value of the share at the time it was granted to them or the value the share was disposed of?

Ruling

On the basis of facts mentioned above,

i. The employees will be taxed under the Employee Stock Purchase Plan on the amount of discount they have benefitted at the time they purchased the shares. Any gain between the market value of the share at time of acquisition and the market value at time of disposal will be capital in nature and therefore will not be subject to income tax.

ii. The management staff will be taxed under the Gift Stock Purchase Plan on the value of the shares at the time they accepted the shares. Any gain between the market value of the share at time of acceptance and the market value at time of disposal will be capital in nature and therefore will not be subject to income tax.

TR 213

Facts

Z is a company incorporated in Mauritius and holds a Global Business Licence. Z equally holds an Investment Adviser (Unrestricted) Licence issued by the Financial Services Commission (the "FSC").

The principal activity of Z is to act as an Investment Advisor and authorized to manage, under a mandate, portfolios of securities and give advice on securities transactions though printed materials or any other means. Z will also facilitate partnerships, acquisitions and investments.

Points at issue

i. Whether Z, by virtue of holding an Investment Adviser (Unrestricted) Licence from the FSC, will benefit from a tax exemption in respect of 80% of its income?

ii. Whether the tax exemption applies to all income derived by Z or only to income covered by the Investment Adviser Licence?

Ruling

On the basis of facts mentioned above, it is confirmed that Z being holder of an Investment Adviser licence issued by the FSC will be eligible to claim the partial exemption as per item 41(a) of Sub-Part C of Part II of the Second Schedule to the Income Tax Act provided it carries out its core income generating activities relating to Investment Advisory services in Mauritius and it satisfies all the other prescribed conditions relating to the substance of its activities as laid down in Regulation 23D of the Income Tax Regulations 1996.

Where all the required conditions are met, the above exemption will apply only to income derived from investment advisory services offered by Z.

TR 214

Facts

L is incorporated in Mauritius and it currently holds a Global Business Licence and a Credit Finance Licence issued by the Financial Services Commission (FSC). L is engaged in the business of leasing equipment to customers under an Ijarah Finance Scheme (the "Ijarah Finance Scheme").

Ijarah Finance Scheme is an Islamic financing technique used to finance the acquisition of assets on terms compliant with the principles of Shariah. In an Ijarah transaction, the financing party would typically purchase property desired by its client and then lease it to the client for a lease fee. Some Ijarah transactions give the client the right (but not the obligation) to purchase the asset at or before the end of the lease term.

The structure of such Ijarah Finance Scheme of L is as follows-

- The customer identifies the equipment it requires and makes an application for finance at L;
- L performs a due diligence on the customer prior to approving the application;
- Once the application is approved, L requests authorisation from a Shariah Board. The Shariah Board certifies the Islamic financial products as being Shariah-compliant in accordance with the Islamic Law;
- L purchases the required equipment and appoints an agent to get the equipment delivered to the customer's premises;
- L leases the equipment directly to the customer under a lease agreement. The lease agreement will be based on the concept of Ijarah and all the rules of an Ijarah will be applicable;
- L will charge the customer a lease fee. The lease fee will comprise of –
  - (i) a capital element (the capital repayment); and
  - (ii) (ii) an effective return element (the finance income);
- At the end of the lease term, the customer has the option to either purchase the equipment from L or return the equipment to L. The Ijarah financing agreement is equivalent to a normal finance lease agreement; and

- L leases equipment directly to the final customer and there is no sub-lease agreement.

The customers of L are not tax resident in Mauritius and they are not related to L.

Points at issue

1. Whether the effective return element of the lease fee will be treated as interest income and the capital element as principal repayment for the purposes of the Income Tax Act?
2. Whether the effective return will be treated as interest income for the purposes of section 10 of the Income Tax Act and item 7 of Sub-Part B of Part II of the Second Schedule to the Income Tax Act?

Ruling

On the basis of facts mentioned above,

1. the effective return element of the lease fee under the Ijarah financing arrangement will be treated for income tax purposes as gross income derived from the leasing business. Repayment of the principal is not taxable.
2. the effective return element of the lease fee, although for accounting purposes may be characterised as interest income, will constitute the gross income of L for income tax purposes arising from the company's Shariah-compliant business of leasing equipment. Hence, it will be treated as gross income under section 10(1)(b) of the Income Tax Act rather than section 10(1)(d) of the Income Tax Act. Consequently, the income derived by L from its leasing business activities will not be treated as interest income for the purposes of item 7 of Sub-Part B of Part II of the Second Schedule to the Income Tax Act.

TR 215

Facts

D is incorporated in Mauritius on 20 October 2004 and holds a Category 1 Global Business Licence. The principal activity of D is that of investment holdings.

D is wholly owned by T, a company registered in the United States of America ("**USA**").

D currently holds 99.998% of the shares of S, a company incorporated in the Republic of India. The shares were acquired on 9 December 2004.

D proposes to transfer all its shareholding in S to its holding company T in USA. The transfer of the shares will be *cum div*.

For the purposes of ascertaining the 'gain' resulting from the transfer of the shares, the value of the shares of S will be based on its fair market value.

Point at issue

Whether the 'gain' resulting from the transfer of the shares held in S will be treated as exempt for income tax purposes in Mauritius?

Ruling

On the basis of facts mentioned above, it is confirmed that 'gain', exclusive of any dividends payable at the date of transfer, arising on the transfer of the shares in S will be exempt from income tax by virtue of the provisions of item 7 of Sub-Part C of the Second Schedule to the Income Tax Act. Such dividends, if any, will be liable to income tax in Mauritius.

TR 216

Facts

M is incorporated in Mauritius on 20 October 2004 and holds a Category 1 Global Business Licence. The principal activity of M is that of investment holdings.

M is wholly owned by P, a company registered in the United States of America (**“USA”**).

M currently holds 49.998% of the shares of R, a company incorporated in the Republic of India. The shares were acquired on 23 January 2008.

M proposes to transfer all its shareholding in R to its holding company P in USA. The transfer of the shares will be *cum div*.

For the purposes of ascertaining the ‘gain’ resulting from the transfer of the shares, the value of the shares of R will be based on its fair market value.

Point at issue

Whether the ‘gain’ resulting from the transfer of the shares held in R will be treated as exempt for income tax purposes in Mauritius?

Ruling

On the basis of facts mentioned above, it is confirmed that ‘gain’, exclusive of any dividends payable at the date of transfer, arising on the transfer of the shares in R will be exempt from income tax by virtue of the provisions of item 7 of Sub-Part C of the Second Schedule to the Income Tax Act. Such dividends, if any, will be liable to income tax in Mauritius.

TR 217

Facts

H is incorporated in Mauritius on 20 October 2004 and holds a Category 1 Global Business Licence. The principal activity of H is that of investment holdings.

H is wholly owned by E, a company registered in the United States of America (**"USA"**).

H currently holds 99.998% of the shares of N, a company incorporated in the Republic of India. The shares were acquired on 9 December 2004.

H proposes to transfer all its shareholding in N to its holding company E in USA. The transfer of the shares will be *cum div*.

For the purposes of ascertaining the 'gain' resulting from the transfer of the shares, the value of the shares of N will be based on its fair market value.

Point at issue

Whether the 'gain' resulting from the transfer of the shares held in N will be treated as exempt for income tax purposes in Mauritius?

Ruling

On the basis of facts mentioned above, it is confirmed that 'gain', exclusive of any dividends payable at the date of transfer, arising on the transfer of the shares in N will be exempt from income tax by virtue of the provisions of item 7 of Sub-Part C of the Second Schedule to the Income Tax Act. Such dividends, if any, will be liable to income tax in Mauritius.

TR 218

Facts

F is incorporated in Mauritius on 5 October 2005 and holds a Category 1 Global Business Licence. The principal activity of F is that of investment holdings.

F is wholly owned by V, a company registered in the United States of America ("**USA**").

F currently holds 99.998% of the shares of X, a company incorporated in the Republic of India. The shares were acquired on 26 October 2006.

F proposes to transfer all its shareholding in X to its holding company to V, USA. The transfer of the shares will be *cum div*.

For the purposes of ascertaining the 'gain' resulting from the transfer of the shares, the value of the shares of X will be based on its fair market value.

Point at issue

Whether the 'gain' resulting from the transfer of the shares held in X will be treated as exempt for income tax purposes in Mauritius?

Ruling

On the basis of facts mentioned above, it is confirmed that 'gain', exclusive of any dividends payable at the date of transfer, arising on the transfer of the shares in X will be exempt from income tax by virtue of the provisions of item 7 of Sub-Part C of the Second Schedule to the Income Tax Act. Such dividends, if any, will be liable to income tax in Mauritius.

TR 219

Facts

S is a French citizen residing in Mauritius. He is the holder of a residence permit for retired non-citizen issued on 07 December 2018 and which has been renewed until 03 December 2028. He is the owner of an apartment in Mauritius where he resides with his spouse, and which he considers to be his main residence. His two children are living in Mauritius; his son T is the managing director of N and his daughter is the owner of B since 2009. S has been present in Mauritius for more than 183 days during the year ended 30 June 2020.

During the income year ended 30 June 2020, S derived pensions under the French social security legislation and income from immovable property situated in France.

During the coming income year ending 30 June 2021, S will be present in Mauritius for more than 183 days with his spouse and he will continue to derive pensions under the French social security legislation and income from immoveable property situated in France.

Points at issue:

1. Whether S would be qualified as a resident in Mauritius during the income year ended 30 June 2020?
2. Whether the pensions paid to S under the French social security legislation in France and income derived from immovable property in France during the income year 30 June 2020 are subject to income tax in Mauritius and whether he will have to file an income tax return in Mauritius for the income year ended 30 June 2020?
3. Whether the pensions under the social security legislation received in France and income derived from immovable property in France during the year ended 30 June 2020 will be subject to income tax in Mauritius when repatriated to Mauritius?
4. Whether S will be qualified as a resident in Mauritius during the income year ending 30 June 2021?
5. Whether the pensions paid to S under the French social security legislation and the income derived from immovable property in France during the income year ending 30 June 2021 will be subject to income tax in Mauritius?

Ruling

On the basis of facts mentioned above,

1. It is confirmed that S would be resident in Mauritius by virtue of section 73 of the Income Tax Act for the income year ended 30 June 2020 as he has been present in Mauritius for more than 183 days. He would also be resident in Mauritius by virtue of Article 4 of the DTAA between Mauritius and the Republic of France as his centre of vital interest is in Mauritius. As a resident he will be entitled to the treaty benefits under Article 1 of the DTAA.

2. In accordance with Article 18 of the DTAA, pensions paid to S under the French social security legislation are taxable only in France. Therefore, the pensions paid to S under the French social security legislation during the income year ended 30 June 2020 will not be subject to income tax in Mauritius.

   In the event that S has paid income tax in France on his income derived from immovable property situated in France during the income year ended 30 June 2020, such income will be exempt from income tax in Mauritius under Article 24 of the DTAA between the Republic of France and Mauritius.

   However, S will be required to file an annual return of income in Mauritius in accordance with section 113 of the Income Tax Act.

3. Pensions derived by S under the French social security legislation will not be taxable in Mauritius when remitted to Mauritius.

   Income from immovable property situated in France will be exempted in Mauritius when remitted, provided that it has been subject to tax in France.

4. S will be considered to be resident in Mauritius for the year ending 30 June 2021 as well for the same reasons as per paragraph 1 above.

5. Paragraph 2 above will equally apply to the pensions paid to S under the social security legislation in France and the income derived from immovable property in France during the income year ending 30 June 2021.

TR 220

Facts

D is a company incorporated in Mauritius and is engaged in the ICT sector. It is wholly owned by K and its ultimate holding company is H, a publicly traded company on the New York Stock Exchange since April 2018.

H offers various options for employees and management to buy its shares for cash and/or on credit. For instance, H awards a facility plan whereby management ("managers") in Mauritius are granted stock options on credit, that is, at the time of acquisition of these shares, no money is disbursed. However, upon disposal of the said shares, the cost price of these shares has to be paid back to H. When H grants the option, the managers must acknowledge acceptance online to the terms and conditions on the E-Trade Securities platform and then the shares belong to them.

It is further confirmed that the shares cannot be disposed/ transferred to another person and the managers have the option to accept or reject the shares within a period of one year. Further, the managers will only be able to dispose the shares after one year and will receive, in Mauritius, the difference between the selling price and the cost price of the shares after deduction of charges.

Points at issue

(i) With regard to the management option, whether the gain realised on the sale of the shares is a taxable income?

(ii) Whether a normal bank interest rate on the share value at purchase has to be accounted for?

Ruling

On the basis of facts mentioned above,

(i) Any gain between the market value of the shares at the time the option is exercised and the cost price of the shares will be revenue in nature and therefore will be subject to income tax.

(ii) Any gain between the market value of the shares at time the option is exercised and the market value at time of disposal will be capital in nature and therefore will not be subject to income tax.

(iii) The credit provided by H is similar to an interest free loan provided by an employer to its employee. As such, the taxable fringe benefit will be in accordance with section 10(2)(d) of the Income Tax Act 1995 and regulations 3A of the Income Tax Regulations 1996. The monthly taxable benefit for interest free loan or loan at reduced rate is specified in the Second Schedule to the Income Tax Regulations which as at date, stands as follows:

'*Difference between the amount of interest for the month, calculated at 2 per cent per annum above the repo rate, prevailing at the end of that month, and the amount of interest paid in that month.*'

Notice is hereby given that Ruling TR 221 issued by the MRA and printed in the Government Gazette No. 8 of 23 January 2021, is hereby being republished as follows:

TR 221

Facts

B was employed as Chief Executive Officer of C by virtue of a contract of employment for a period of five years with effect as from 27th March 2003.

On 15th September 2005, C terminated the contract of employment of B without giving any reasons for the termination relying on clause 14.1 of the contract of employment, which provides that "*your employment may be terminated by you or by C by giving 6 month notice to the other party*".

B lodged a claim for severance allowance before the Industrial Court of Mauritius, which on 12th June 2007, found that B was not entitled to claim severance allowance on the ground of unjustified dismissal The Ruling also made mention that B could seek redress before the ordinary court under the provisions of the Civil Code.

B lodged a plaint with summons before the Supreme Court claiming damages and prejudice that he has suffered as a result of a breach of contract. The Court, having found that B failed to establish his case for breach of contract or for unfair dismissal, dismissed the said plaint on 1st July 2015.

Subsequently, B lodged an appeal against judgment dated 1st July 2015. On 25th March 2019, the Court of Appeal:-

(i) reversed the judgment of the learned trial judge dismissing the plaint;

(ii) directed the latter to find B's case proved; and

(iii) remitted the case to him to decide on the quantum of damages to be awarded

On 25th October 2019, the Supreme Court delivered a judgment in terms of the settlement reached between B and C, which is as follows:- ***"The Defendant in this matter, C, has pursuant to the present action agreed to pay to the plaintiff, B the sum of Rs.9,080,009 rupees in full and final settlement of all claims arising out of his***

former employment with C as a result of this amount being paid. The parties confirm and acknowledge that they have no further claim of whatsoever nature against each other be it past, present or future, actual or contigent, arisen or yet to arise, out of the employment of B at C under its former name. B also acknowledges and undertakes that any data information or documents which came to his knowledge or are to his knowledge pursuant to his employment to the bank shall be kept confidential at all times. In the light of the settlement reached, they have also agreed that each party shall bear their own costs of the present matter."

B received payment of a net amount of Rs.8, 275,000/- in November 2019, after payment of Rs.805, 000/- as Counsel professional fees.

Point at issue

Whether B will be entitled to the exemption amounting to Rs.2, 500,000/- provided under **item 6 of Sub-Part A of Part II of the Second Schedule to the Income Tax Act**?

Ruling

On the basis of above-mentioned facts, it is noted that B and C reached an out-of court settlement following a claim for damages and prejudice suffered as a result of a breach of his contract of employment and such payment does not fall within the ambit of **item 6 of Sub-Part A of Part II of the Second Schedule to the Income Tax Act**.

Therefore, B will not qualify for exemption on the first Rs.2,500,000/- of the aggregate amount received.

Furthermore, B will not be allowed to claim deduction in respect of the Counsel professional fees amounting to Rs.805,000/- as this expenditure has not been wholly, exclusively and necessarily incurred in the performance of the duties of his office or employment.

TR 222

Facts

L was incorporated in Mauritius on 18 October 2016 and holder of a Category 2 Global Business Licence. On 28 November 2017, L changed its status to a Category 1 Global Business Licence.

The principal activities of L are to act as an investment holding company in the forestry sector in Mozambique and trading operation for sourcing and onward sale of wood sourced from various forestry concessions held in African countries.

During the year ended 31 December 2019, L issued preference shares to third party investors and these preference shares were subsequently bought back by M, the immediate and ultimate holding company.

M presently holds 2 classes of shares : ordinary shares and preference shares in its wholly owned subsidiary, L. M intends to relinquish/walk away from the preferences shares. For the purposes of this relinquishment, L will debit the preference shares account and credit the Profit and Loss Account.

Point at issue:

Whether the amount credited in the Profit and Loss Account in respect of the relinquishment of the preference shares would be subject to tax?

Ruling

On the basis of the facts provided, the relinquishment of the preference shares will alter the capital structure of L. The amount credited to the Profit and Loss Account being capital, would therefore not constitute a taxable income for L.

TR 223

Facts

B was incorporated on 22 February 2013 in Mauritius as a domestic company with its central management and control in Mauritius. B is tax resident and VAT-registered in Mauritius.

B is held by C, a company incorporated in the British Virgin Islands, and ultimately held by D, a company based in Jersey having tax residency in the UK. D is engaged in the provision of online payment solutions.

B is engaged in the information technology sector and mainly performs research and development (**"R&D"**) activities related to online payment solutions for D. B currently has 83 employees who have been involved in the development of the Third Party Processing (**"TPP"**) software in the prior years and now assist with ongoing maintenance, updates and integrations in respect of the platform to be able to comply with regulations but also meet the demands of merchants.

In 2018, the D implemented a group wide change to their accounting policies under the IFRS accounting standards. These accounting standards allow for the costs incurred to develop internal-use software to be capitalised to the extent the benefit will be delivered over a number of years. The software platform is the result of the joint R&D activities of B and F. Accordingly, the identified software platform development costs incurred in Mauritius have been capitalised in the books of B. B has claimed annual capital allowance on the capitalised intangible asset at the rate of 5% on cost.

The market value of the Mauritius IP is in the range of USD 35m – USD 50m, and the intangible assets will be transferred at book value.

B has not made any disposal of the Mauritius IP as of date

D is undertaking a restructuring project seeking to simplify its international IP strategy in order to own all IP in one territory and has therefore decided that it will transfer all IP that is currently owned outside the United Kingdom to the United Kingdom.

As part of the restructuring, a new entity of D, F will be set up in the UK and intends to acquire the business of B including a software platform ("Mauritius IP/intangible asset") partly developed in Mauritius.

The proposed transfer of the Mauritius IP is mainly driven by the fact that most of the technological development is now being led out of the UK from where the future on going development and exploitation of the IP will be led from. Also, the most senior resources of the Group are based in the UK and the workforce based in the UK is several times that of B. D has slowly built a strong presence in Europe during the past years and found that they have access to both a greater pool of potential customers and skilled workforce in Europe to further drive their growth as a technology company.

At the time of acquisition of the Mauritius IP from B, F will neither have a taxable presence nor a permanent establishment in Mauritius. The transfer of the IP will legally take place at net book value.

F will register a branch in Mauritius in the future to further support its R&D activities after employees are transferred from B to F. In other words, the Mauritius Branch will act as an R&D centre and shall provide R&D service to its head office in the UK. Depending on future needs and success of Mauritian operation, the Mauritius Branch may also provide R&D services to other non-resident sister companies in the future.

The Mauritius Branch of the UK-headquartered entity will be remunerated at arm's length and its remuneration is likely to exceed MUR 6m annually.

Points at issue

1. Whether the gain arising from the transfer of the Mauritius IP from B to F will be considered as capital gain and hence not subject to income tax in Mauritius?
2. Whether the transfer of Mauritius IP should fall within the ambit of section 24(6) of the Income Tax Act and hence no balancing charge or allowances need to be computed? If not, whether the amount of consideration received further to the transfer of IP should be limited to the cost of the Mauritius IP capitalised in the books of B for the purpose of computing balancing charge as per section 24(5)(a) of the Income Tax Act ?

Ruling

On the basis of the facts mentioned above -

1. the gain arising from the transfer of the Mauritius IP from B to F is capital in nature and hence is not subject to income tax in Mauritius.
2. the transfer of the Mauritius IP from B to F does not fall within the ambit of section 24(6) of the Income Tax Act and has to be dealt with in accordance with section 24(5)(a) of the Income Tax Act.

TR 224

Facts

V is engaged in the Oil and Gas industry and has operations in 14 countries across the world. V operates through entities based principally in Bahamas for both the exploration /production segment and the services segment. Within the services segment, an important proportion of the business relates to the bareboat leasing of maritime assets to other group entities in Africa. The maritime assets which are leased are as follows:

(i) Barge
(ii) Floating storage offloading
(iii) Anchor handling tug supply
(iv) Multicat ; and
(v) Jack-up drilling/Self elevating platform

V intends to set up new entities in Mauritius (W). Each W will hold a Global Business Licence (**"GBL"**) issued by the Financial Services Commission. The maritime assets will be transferred to the entities in Mauritius. W will thus be engaged in bareboat leasing of the maritime assets to other group entities. The assets will not be registered in Mauritius.

Points at issue

(i) Whether the five types of maritime assets will qualify as *'ship'* for the purposes of application of the provisions set out in the Mauritius Income Tax Act?
(ii) Whether the W will be eligible to claim an 80% exemption on bareboat leasing income to be derived from the leasing of the five types of maritime assets pursuant to item 42 of Sub-Part C of Part II of the Second Schedule to the Income Tax Act, subject to satisfaction of substance requirements?

Ruling

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

1. The five maritime assets and the activity mentioned above will qualify as *'ship'* and will be considered as "ship leasing" respectively.
2. In accordance with item 42 of Sub-Part C of Part II of the Second Schedule to the Income Tax Act, W will be subject to 80% partial exemption provided that they satisfy the conditions as prescribed in Regulation 23D of the Income Tax Regulations 1996, which reads as follows:

"The exemption shall, for the purpose of item …….., 42(b),…… of Sub-part C of Part II of the Second Schedule to the Act, be granted provided the company -

(i) carries out its core income generating activities in Mauritius;

(ii) employs, directly or indirectly, an adequate number of suitably qualified persons to conduct its core income generating activities; and

(iii) incurs a minimum expenditure proportionate to its level of activities."

TR 225

Facts

N is a South African tax resident individual and he is the effective settlor and principle beneficiary of a trust. The trust is originally established on 8 March 2011 in the Island of Jersey.

- The trust instrument was signed at the time N was tax resident in South Africa.
- The trust holds cash, listed investments and equity funds.
- The current trustees of the trust are tax resident in the Isle of Man and it is administered in the Isle of Man.
- N intends to leave South Africa and relocate to Mauritius permanently.
- Post his relocation to Mauritius, and on becoming a tax resident in Mauritius, N shall donate additional assets to the trust. These additional donations will be made from assets held by N in South Africa and other foreign jurisdictions.

Point at issue

Whether the trust shall be considered as tax resident in Mauritius once N becomes a tax resident in Mauritius, and he donates additional funds from his assets held in South Africa and other foreign jurisdictions to the trust?

Ruling

On the basis of facts mentioned above and in accordance with section 73(1)(2) of the Income Tax Act, the trust is not considered to be tax resident in Mauritius given that the settlor of N was not resident in Mauritius at the time the instrument creating the trust was executed.

TR 226

<u>Facts</u>

C is based in the Bahamas and forms part of the D group of companies.

D is engaged in the oil and gas industry, with exploration and production operations across the world, including the following countries in Africa: Congo Republic, Democratic Republic of Congo, Gabon and Cameroun.

The entities operating in Africa are currently held by intermediate holding companies in the Bahamas.

D is now considering either to re-domicile the intermediate holding companies in Mauritius or to set-up new entities in Mauritius to take-over the investment holding functions.

The Mauritius-incorporated companies would hold the majority shareholdings of the operating entities ("**Op Co**"). Each of the Mauritius entities ("**Hold Co**") would be expected to hold a Global Business Licence (**"GBL"**) to be issued by the Financial Services Commission.

Hold Co, as tax residents of Mauritius, will be subject to income tax in Mauritius at the rate of 15% on dividend received from the respective **Op Co**. However, they will be eligible to claim:

(i) either a 80% partial exemption on the foreign dividends to be received from **Op Co** under the provisions of the Income Tax Act, provided relevant substance requirements are satisfied; or

(ii) ~~(ii)~~ credit for foreign taxes suffered on the foreign dividends in **Op Co** jurisdictions in the form of withholding tax, underlying tax and / or tax sparing relief, under the provisions of the Income Tax Act and the Income Tax (Foreign Tax Credit) Regulations 1996, whichever is more beneficial.

Op Co in each of the African countries exploit oil and gas concessions and are subject to tax either on the basis of local tax legislations or based on specific one-to-one agreements entered with the respective African Governments.

A Production Sharing Contract (**"PSC"**) is entered into by **Op Co** with the relevant African government. Such a contract/agreement between the relevant government and Z finds its legal basis under appropriate revenue legislations in the relevant African countries which may

provide for a Mining Royalty and corporate income tax to be paid ***in-kind*** through the delivery of specific quantity of oil barrels to the respective government tax authorities.

Under such a PSC, the relevant government gives **Op Co** the right to explore a specific area (i.e a concession) in search of oil or gas deposit. Once oil or gas is discovered, subject to completion of formalities with the relevant governments, exploitation of the concession is initiated.

Cost stop

During the exploration stage, all the exploration costs are borne by **Op Co**. However, when production is initiated, a part of the oil/gas production is allocated to reimburse both the exploration and exploitation costs to **Op Co**. This is termed in technical jargon as "Cost Oil" or "Cost Gas" and is capped at a fixed percentage of the hydrocarbon production level, a level called the “Cost Stop” and defined in the contracts.

Profit Oil

The surplus of hydrocarbon production, after deduction of the Mining Royalty payment to the relevant government and the Cost Oil or Cost Gas to **Op Co** is called the Profit Oil and is shared between **Op Co** and the relevant government at agreed proportions. The share of the relevant government is named “State Profit Oil”. Where the Cost Oil or Cost Gas is higher than the Cost Stop, the unrecovered costs of **Op Co** are usually carried forward to subsequent years.

The valuation of such profit is ascertained through a mechanism agreed with the relevant African government. In this connection, the relevant government determines an Official Price of the hydrocarbon which in practice is an average of the hydrocarbons sales of the relevant period. This Official Price is also referred to as the Agreed Selling Price.

Excess Oil

Where the Cost Oil is lower than the Cost Stop, the difference, i.e. the Excess Oil, is shared between **Op Co** and the relevant government at agreed ratios that may differ from that of the Profit Oil.

Super Profit Oil

The contracts may also provide for a threshold of the Official Price, known as “High Price”**.** Where the ‘Agreed Selling Price’ is higher than the ‘High Price’, the profit generated by the

excess is referred to as the Super Profit Oil and is shared between the relevant government and **Op Co** using a different sharing ratio from that used for the allocation of the Profit Oil. The share of the relevant government is referred to as the "State Super Profit Oil".

Payment in-kind

Op Co is required to pay to the relevant government: a Mining Royalty and the corporate income tax. The corporate income tax may be included in and covered by the State Profit Oil. The Mining Royalty and State Profit Oil may be paid ***in-kind*** in terms of oil barrels.

Royalty fees are payable, in kind, at values representing agreed percentages of gross revenue (e.g. 15% of gross revenue). As regards corporate income tax, called "Tax Oil" when included and covered in the State Profit Oil / Super Profit Oil, it is paid by **Op Co** *in-kind* (in terms of oil barrels or gas volumes) at the applicable rate of corporate income tax.

The Mining Royalty and the State Profit Oil/State Super Profit Oil (including the corporate income tax when included and covered in the Profit Oil/Super Profit Oil) are paid on a monthly basis. **Op Co** submits monthly provisional tax returns to the relevant tax authority to account for the tax payments.

Therefore, the Tax Oil is not paid separately by **Op Co** but is included in the government's share of the Profit Oil and Super Profit Oil.

In **Op Co** books, the share of **Op Co** Profit Oil and/or Super Profit Oil is considered to be net of taxes and is normally grossed up in the financial statements prepared and audited under the applicable accounting standards.

The annual tax returns of **Op Co** are also submitted to the relevant tax authorities based on the above-mentioned principles. The annual tax returns are appropriately stamped, dated and signed by the relevant tax authority.

Points at issue

(i) Whether, in respect of foreign dividends to be received by X from **Op Co**, **Hold Co** will be eligible to claim credit for underlying tax suffered, under the Income Tax Act and the Income Tax (Foreign Tax Credit) Regulations 1996, against their respective Mauritius tax liabilities, on the basis of the corporate income tax (i.e. Tax Oil) suffered by **Op Co** ***in-kind*** in the relevant African countries; and

(ii) in the affirmative, whether it would be sufficient to substantiate the claim for the above-mentioned underlying tax credit on the basis of the following documentary evidence:

(a) Certificate of confirmation of shareholding from the secretary of **Op Co** confirming the percentage of shareholding held by **Hold Co** in **Op Co**;

(b) Copies of audited financial statements of **Op Co**; and

(c) Copies of **Op Co** annual tax returns filed in the relevant African countries, duly stamped and signed by the relevant tax authorities?

Ruling

On the basis of the facts provided -

(i) the corporate income tax paid *in-kind*, in terms of barrels of petrol, falls within the meaning of 'foreign tax' as defined in the Income Tax Act. Therefore **Hold Co** will be entitled to claim credit for the underlying tax suffered in accordance with the provisions of the Income Tax (Foreign Tax Credit) Regulations 1996 provided they have not claimed partial exemption on the foreign dividends received; and

(ii) in support of its claim under (i) above, **Hold Co** will be required to produce, for the purposes of the provisions of regulations 7 and 8 of the Income Tax (Foreign Tax Credit) Regulations 1996, documentary evidence as follows:

(a) Certificate of confirmation of shareholding from the Secretary of **Op Co** confirming the percentage of shareholding held by **Hold Co** in **Op Co**;

(b) Copies of **Op Co** annual tax returns filed in the relevant African countries –

(i) duly stamped and signed by the relevant tax authorities; and

(ii) showing separately the amounts of the State Profit Oil/State Super Profit Oil and the Corporate Income Tax.

(c) Copies of audited financial statements of **Op Co**; and

(d) Certificate from the relevant foreign tax authorities in respect of the monetary value of the Corporate Income Tax paid *in-kind*.

TR 227

Facts

D is a private company limited by guarantee. It was incorporated in Mauritius in November 2016 and currently it holds a Category 2 Global Business Licence. D will no longer hold such licence by 30 June 2021 and it will apply to the relevant authorities so that it may be converted into a domestic company. It is a non-profit making association for the African infrastructure sector. D is financed by subscriptions from its members and by contributions from private sources, including grants. Its members are leading project developers, investors and development finance institutions.

D seeks to promote and enable project development activities in Africa by creating an eco-system and platform that will foster continuous dialogue amongst its members, standardize project development template documents and serve as a policy advocacy platform for the industry with a view to advance the development of more bankable projects in Africa.

X, a management company in Mauritius, is D's secretary and one amongst its ten Board Directors is resident in Mauritius while the other nine Directors are based in South Africa, Nigeria, Belgium, United Kingdom, Netherlands and Germany.

The objects and objectives for which D is established are in respect of the development of infrastructure projects in Africa and to represent the interests of its members.

Distribution by way of dividend, bonus or profits to members of D is prohibited.

In the event of dissolution, the remaining property of D will be distributed to its members pro-rata to the amount guaranteed.

Point at issue

Whether the subscriptions from members and grants received are subject to income tax irrespective as to whether D is a company which holds a Category 2 Global Business Licence or it is converted to a domestic company eventually?

Ruling

On the basis of the facts mentioned above, it is ruled that the subscriptions and grants received by D are not subject to income tax.

TR 228

Facts

G is incorporated in Mauritius and it holds a Category 1 Global Business Licence. The principal activity of G is that of investment holding.

G is listed on a foreign stock exchange and various non-resident directors (**"Directors"**) are entitled to director fees.

The Board of G wishes to compensate the Directors by granting them Restricted Stocks (**"RS"**).

Particulars of the RS will be as follows:

(i) on the grant date, a certain number of RS, determined by the value of the grant divided by the fair market value of the stocks at the date of the grant ("RS Value"), will be granted to the Directors by way of a letter of grant, which will not involve any transfer of stocks in the name of the Directors until the Period of Restriction expires or lapses;

(ii) the Directors will have no right to vote or be entitled to dividends on the RS during the Period of Restriction;

(iii) after the expiry of the Period of Restriction of 18 months, if a Director is still a member of the Board, RS granted will be considered as earned by the Director and the full number of stocks will be transferred in the name of the Directors;

(iv) in addition, if any of the Directors voluntarily leaves G without cause during the 18 months period, the Period of Restriction will lapse and the said Director will earn and be entitled to stocks pro-rata the time he/she has served as Director;

(v) however, if any of the Directors is removed with cause during the Period of Restriction of 18 months period, the said Director will lose all his or her entitlement to the RS granted and no stocks will be transferred to him/her.

In line with US GAAP, G will amortize the RS Value (computed as per Black-Scholes method of valuation) over the full Period of Restriction of 18 months by accruing and charging to its quarterly income statement three eighteenth of the RS Value.

For the purpose of calculating its chargeable income for an income year, G will disallow all provisions that have been made in respect of amortized RS Value.

Point at issue

Whether PAYE on the RS granted to Directors will apply on the date the Period of Restriction expires or lapses and be calculated on the fair market value of the stocks on that date and not at the end of every quarter based on three eighteenth of the RS Value?

Ruling

On the basis of facts mentioned above, it is confirmed that PAYE on the RS granted to Directors shall apply on the date the Period of Restriction expires or lapses, i.e. when the Directors are entitled to the RS and be calculated on the market value of the RS on that date.

TR 229

Facts

B is registered as a law firm under the Law Practitioners Act and is in the business of providing legal services to domestic and international clients.

B has 300 ordinary shares currently in issue and these will be consolidated into 3000 ordinary shares in accordance with the Companies Act. Thirty will remain as ordinary shares and 2,970 will be reclassified as Redeemable Participating Shares. The 30 ordinary shares and 2,970 Redeemable Participating Shares shall be held in equal proportion by the existing shareholders.

An existing shareholder is entitled to request B to purchase his Redeemable Participating Shares at a value determined by an independent valuation at the material time (the current value is USD 700 per share based on an independent valuation report dated 13th January 2021).

A new shareholder may join B and will be entitled to Redeemable Participating Shares at the value as determined by an independent valuer at the material time.

The Redeemable Participating Shares are not freely transferable, and can only be purchased by or sold to a third party, subject to shareholders' approval.

In accordance with International Financial Reporting Standards (IFRS), redeemed shares will be paid out of equity (stated capital plus retained earnings).

Point at issue

Is there income tax payable by the shareholders in connection with the redemption of Redeemable Participating Shares?

Ruling

Based on the facts provided, the redemption proceeds received by the existing shareholders are considered to be a benefit to shareholders in accordance with section 86A of the Income Tax Act and will therefore be subject to income tax.

TR 230

Facts

P is a company incorporated in Mauritius and it holds a Global Business Category 1 Licence issued by the Financial Services Commission. P also holds a valid Tax Residence Certificate issued by the Director-General, Mauritius Revenue Authority, under section 73 of the Income Tax Act.

P is engaged in investment holding activities, licensing and franchising of media rights and trade in infotainment products and services.

P enters into licencing agreements to acquire the rights to broadcast contents and channels from different content providers worldwide and provides content aggregation services in the broadcasting and TV cable industry including Over The Top and Video On Demand services. P enters into content or channel contracts with the content providers in its own name and capacity. The content providers are independent third parties and hence, are not related, whether directly or indirectly, to P. Under the licensing agreements entered into with the content providers, P has the right to sub-license the Licensed Rights to its affiliated company in the territory of Singapore.

P has sub-licensed the Licensed Rights to Q, a related company incorporated in Singapore, in consideration for a royalty fee equivalent to the actual license costs plus 10% mark-up. P also derives revenue from third party customers. P and Q are both 100% owned by R, a public listed company in Singapore. The Sub-licensing Agreement between P and Q is renewable on an annual basis, effective as from March 2009.

P does not have a permanent establishment in Singapore and does not perform independent personal services from a fixed base in Singapore.

Under the sub-licensing agreements, the royalties income should be transferred to P's bank account. P fully controls the royalty income stream from Q and has full discretion on the usage of the funds of royalty income. The Licensing and the Sub-Licensing arrangements are not pure back-to-back and P is not a pass through of the royalty income. If P's contract with Q is terminated, the license agreements with the content providers still stay in place.

In case of bankruptcy of P or defaulting payments, the content providers will only be able to recover funds from P. The content providers cannot recover funds from Q directly even if the latter owes P. P has control over the Licensed Rights that the content providers have granted

to it and P also bears any market risks, quality risks, foreign exchange risks and credit risks associated with the Licensed Rights. P is acting in its own capacity when procuring Licence Rights from content providers and sub-licensing the Licensed Rights to Q and is not acting in the capacity of an agent, a nominee or as a conduit company.

Points at issue

1. Whether P is tax resident in Mauritius for the purposes of Article 4 of the Double Taxation Agreement between Mauritius and Singapore; and
2. Whether P is the beneficial owner of royalties received from Q for the purposes of Article 12 of the Double Taxation Agreement between Mauritius and Singapore?

Ruling

On the basis of the facts provided, it is ruled that -

1. P is resident in Mauritius by virtue of the provisions of section 73 of the Income Tax Act and therefore, P is also tax resident in Mauritius for the purposes of Article 4 of the Double Taxation Agreement between Mauritius and Singapore and hence, P is liable to tax in Mauritius.
2. P's right to use and enjoy the royalties income is not constrained by any contractual or legal obligation to pass on the payment received to another person. Furthermore, P assumes the risks and control of the royalties received from Q. Hence, P is the beneficial owner of royalties received from Q for the purposes of Article 12 of the Double Taxation Agreement between Mauritius and Singapore.

TR 231

Facts

G is a private school in Mauritius which was founded and managed by H since September 2014 as the sole trader. H is a tax resident of Mauritius.

J is a company incorporated under the laws of Mauritius as a private company limited by shares and is engaged in providing pre-school and primary educational services.

On 16 July 2018, the owners of J approached H and sold 100% of the ordinary shares of J to H.

On 1 January 2019, J acquired G from H on a going concern basis for a consideration of MUR 244 million based on the terms and conditions of a Purchase Agreement. The consideration for the acquisition included all the assets of G based on the value of the business as at 1 January 2019, net of any cash of the business.

K, an Investment Adviser was appointed by J to perform a valuation of the business of G as at 1 January 2019 and as per the valuation report dated 25 March 2021, the components of value have been ascertained as follows:

Asset	**MUR(million)**
Student List (Customer List)	197
Others	128
Total	**325**

The other assets of MUR 128 million includes intangible assets such as the school curriculum and goodwill.

The financial statements of J for the year ended 31 December 2019 will be reinstated to reflect the value of MUR 325 million for the acquisition of G's business as per IAS 8.

Payment for the acquisition of G which amounted to MUR 244 million is still due and has been accounted as a loan payable to H in the books of J.

As per the Purchase Agreement, the loan from H to J bears interest at the annual rate of 5% as from 1 January 2021 payable semi-annually. The loan can be repaid at the Seller's or Buyer's call, in part or in full, prior to 1 January 2035.

The transitional period of 2 years from 1 January 2019 to 31 December 2020 is as per Clause 6.2 of the Purchase Agreement and represents a moratorium to allow time for J to absorb the business of G and secure a means to refinance the loan from H (the Seller), following which interest starts accruing.

Points at issue

1. Whether the repayment of the capital element of the loan payable to H is of capital nature and is therefore not taxable in the hands of H?
2. Whether J is eligible to claim annual allowance on the Student List at the rate of 5% on cost?
3. Whether J is eligible to be approved as a charitable institution as per the definition under section 2 of the Income Tax Act?

Ruling

On the basis of the facts provided, with regard to questions 1 & 2, it is ruled that the proposed transactions are designed solely to confer a tax benefit on both H and J. The transactions relating to the transfer of the business to J would therefore be caught under the anti-avoidance provisions of section 90 of the Income Tax Act and the tax liability of H and J shall be assessable as if the transaction or any part thereof had not been entered into or carried out.

With regard to question 3, it is noted that J is a company limited by shares and it is providing educational services to a selective section of the population against payment of school fees. As such the object of the company is not of a “public character”, and therefore J will not qualify to be approved as a charitable institution for the purpose of section 2 of the Income Tax Act.

TR 232

Facts

X is a domestic company incorporated and domiciled in Mauritius. It is engaged in water engineering consulting services and project management including works supervision and technical assistance. X is a wholly owned subsidiary of Y, a company incorporated and domiciled in France. Both the holding and subsidiary company are in the same line of business.

X has been awarded a contract as the sub-consultant from Z, a domestic company with regard to the M project in providing consulting engineering services. Besides, its own local employees on its payroll X does, for the purpose of executing the contract, hire the local services of consultants (mainly engineers) who are resident in Mauritius and also the services of its foreign holding company, Y.

The scope of the work does entail both the physical presence of the employees of Y in Mauritius for the proper execution of the work and also off-site work, that is work handled in the Office in France. The employees will be present in Mauritius for over 183 days.

Accordingly, Y does send its own engineers and technicians to Mauritius for the relevant tasks involved. These employees are remunerated in France by Y. There is no formal arrangement or contract between X and Y; the latter owns 100% shares of the former. X has been set up mainly to tap the local market and that of the Indian Ocean region.

Y is to charge a fee for services rendered to X. The former is to also charge a management fee to the latter. Being the holding company, Y is to provide financial assistance to X as and when required by way of inter-company loan with a reasonable rate of interest.

Points at issue

1. Whether X is to withhold TDS from the payments to Y in connection with:-

   (i) services as invoiced to X;

   (ii) loan interest payable on loan from Y and ;

   (iii) management fees ?

2. Are the employees of Y liable to income tax (i.e. PAYE) in Mauritius given that they will be here for over 183 days?

Ruling

On the basis of information provided, it is ruled that –

1. As the employees of Y will be present in Mauritius for more than 183 days to carry out construction works supervision in Mauritius, Y shall be deemed to have a permanent establishment in Mauritius in accordance with Article 5 (4) of the Avoidance of Double Taxation Agreement between Mauritius and the Republic of France. The profits of Y attributable to its permanent establishment in Mauritius will, in accordance with Article 7 (1) of the Avoidance of Double Taxation Agreement between Mauritius and the Republic of France be subject to income tax in Mauritius.

   X is to withhold TDS from any payment of interest and services to Y at the rate 15% and 10% pursuant to section 111B (a)(i) and section 111B(h) respectively of the Income Tax Act.

   No TDS is to be withheld on management fees by virtue of section 111B (i) of the Income Tax Act.

2. As the employees of Y will be present in Mauritius for more than 183 days, they will be resident in Mauritius for tax purposes. Those employees would be liable to tax on their emoluments even though paid in France. Y will have to register as an employer and deduct tax under the PAYE system.

TR 233

Facts

J is a domestic company incorporated in Mauritius. It was mainly engaged in the production of salt until it ceased production in the year 2015. J holds a BRN which provides for the activities of manufacturing of salt and general retailer of foodstuff and non-foodstuff.

For the purpose of carrying out its activities, J acquired substantial portions of freehold lands from K in Tamarin where it carried out its salt production operations. J sold a portion of land by way of a morcellement in 2008.

Since J ceased salt production activities, it did not make any development on the portion of land it held in Tamarin. It is now considering to sell the bare land in one bulk plot of 54 arpents without any further development.

Point at issue

Whether J would be subject to income tax on the gain derived from the sale of its land at Tamarin?

Ruling

Based on the facts provided, the gain arising to J on the disposal of the bare land situated at Tamarin in one plot of 54 arpents will be considered to be capital gain and therefore not subject to income tax.

TR 234

Facts

P is a domestic company incorporated in Mauritius. It runs a medical college under the name of Q. P offers the MBBS programme (Bachelor of Medicine, Bachelor of Surgery) which spans over five academic years. P is affiliated with a university in Mauritius. There are currently 388 students who are studying for the MBBS course. Most of the students enrolled for the MBBS course are from foreign countries, mainly from India.

P employs both local and expatriate staffs. Since November 2019, for the purpose of marketing, P has employed Indian representatives in offices in various cities of India, namely Chennai, Bangalore, Hyderabad and New Delhi. P neither owns an office in India nor pays any rent from Mauritius.

All the employees who are working in India are tax resident of India and offer their services to P from India. At no point in time, these employees come to Mauritius for the performance of their duties. P has not made any formal employment contract with the employees but amounts paid to them from Mauritius are directly remitted to them in India each month.

Points at issue

1. Whether the salaries paid to the Indian employees performing works in India for P will be subject to income tax and PAYE in Mauritius?
2. Whether the salaries paid to the Indian employees performing works in India for P will be subject to TDS in Mauritius?
3. Whether P has to declare information and particulars of the Indian employees performing work in India for P for the purpose of the Return of Employees (ROE)?
4. Whether the Indian employees of P working from India will have to file an income tax return in Mauritius?
5. Whether the Indian employees referred to herein-above will be eligible to take credit of any income tax paid in Mauritius while filing their income tax returns in India?

Ruling

On the basis of the facts provided and on the understanding that the Indian representatives are not related to P,

1. The Indian representatives working for the college would not be liable to PAYE in Mauritius.
2. Payments made to the Indian representatives performing marketing services for P in various cities in India will not be subject to TDS in Mauritius. However, such payments will only be allowed as a deduction to P provided they represent reasonable expenses which satisfy fully the conditions laid down in Section 18 of the Income Tax Act.
3. P has no obligation to declare information and particulars of the Indian representatives in the Return of Employees (ROE).
4. The Indian representatives of P working from India will not be required to file an income tax return in Mauritius.
5. In view of the above, the issue of taking credit in India in respect of Mauritius tax does not arise.

TR 235

Facts

L holds a Global Business licence and Collective Investment Scheme licence with the Financial Services Commission. L pools funds from various investors across the globe (excluding Indian residents) and invests in India through Alternative Investment Funds (hereinafter referred to as "AIF") Category II and Category III. The Investment Manager of L is N which is a company incorporated under the Companies Act (Cap 50) in Singapore and regulated by the Monetary Authority of Singapore.

AIFs are funds incorporated in India for the purpose of pooling capital from Indian and foreign investors, which in turn, invest as per the pre-determined strategy. They are similar to Mutual Funds. AIFs are registered in the form of trusts under the Indian Trusts Act, where the investments of AIFs are held by Trustees for the benefit of its investors (residents and non-residents). They are regulated by the Securities and Exchange Board of India. Investors hold units in AIFs and are beneficiaries in AIFs.

The AIFs trusts are already set up in India and they pool fund from several investors and will invest in different product depending on its strategy. The AIFs trusts will accrue different types of income from its investment mainly dividend, interest and capital gains from disposal of its investment and same will be distributed to the unit holders depending on their percentage holding. The AIFs trusts will then pass those income to the unit holders, i.e. dividend income will flow to L in the form of dividend, interest income will flow to L in the form of interest and capital gains realised by the AIF trust will flow to L in the form of capital gains.

Point at issue

Whether income earned by L through the AIF Category II and III will retain their characteristics, that is:

(a) whether dividend income accrued by the AIF Trust and distributed to L will be considered as dividend income for income tax purposes;

(b) whether interest income accrued by the AIF Trust and distributed to L will be considered as interest income for income tax purposes; and

(c) whether capital gains accrued by the AIF Trust and distributed to L will be considered as capital gains for income tax purposes ?

Ruling

On the basis of the facts mentioned above, as a unit holder in the AIF, L will receive dividend income and capital gains from the subsequent disposal of these units. It is ruled that all income distribution made by the AIF Category II and III to L will be treated as dividend income and therefore not retain their initial characteristics.

TR 236

Facts

X is a company incorporated in Mauritius as a Category 1 Global Business Licence company. The main purpose of X is to act as an intermediary holding and financing company for its subsidiaries and joint ventures in Africa.

X holds 90% in a Senegalese company, Y, and the remaining 10% is held by the Government of Senegal. Y's main activity is to carry out mining operations in Senegal.

In view of promoting the mining industry in Senegal, the Government of Senegal has granted several tax concessions through a mining agreement to companies operating in the Senegalese mining industry including exemption from corporate tax. These concessions were introduced in law by the Mining Code.

The Government of Senegal entered into a Mining Agreement with Z, a company based in Senegal to carry out surveys and research for the exploration of gold and related ores. Under Article 28 of the Mining Agreement, Z is exempt from corporation tax for a period of 7 years from the date a mining concession is signed. Subsequently, an amendment was made to the Mining Agreement through L'Avenant No 1 whereby the exemption from corporation tax was reduced to 5 years and under Article 10 of the Mining Agreement, the exemption of 5 years may be restored to the full 7 years in the event that the mining life can be extended by an additional year.

The survey and exploration rights were then transferred from Z to K in 2011 and on 14 July 2016, K was also granted a mining concession. The mining concession was later transferred from K to Y in 2017 which now operates the Mako mine.

Y has approved a dividend distribution on 7 December 2020 and X has accrued that dividend in its accounts for the year ended 31 December 2020. Hence, X will be subject to tax in Mauritius on the dividends when filing its return for the Year of Assessment (YOA) 2020/2021.

Points at issue

(1) Whether X will be eligible to claim tax sparing credit under Regulation 9 of the Income Tax (Foreign Tax Credit) Regulations 1996 on any dividend income derived from its investment in Y for:

(i) the YOA 2020/2021; and

(ii) any subsequent years during which Y would be exempted from corporate tax in Senegal?

(2) Whether X would be eligible to claim any underlying tax credit instead of the tax sparing credit on the dividend receivable from Y, its subsidiary in Senegal after the proposed exemption period lapses?

Ruling

On the basis of facts provided, it is ruled that -

(1) X is entitled to claim tax sparing credit in respect of dividend receivable from Y in accordance with the provisions of Regulation 9 of the Income Tax (Foreign Tax Credit) Regulations 1996 for the YOA 2020/2021.

(2) In the event Y no longer benefits from the corporate tax exemption, X would be entitled to claim underlying tax credit on dividends received from Y. However, no foreign tax credit shall be allowed where X has claimed a partial exemption in respect of that income under Part II of the Second Schedule to the Income Tax Act.

TR 237

Facts

M is a domestic company engaged in international trading which involves buying and selling of goods overseas without the goods coming into Mauritius or passing through Customs control in Mauritius.

N is another domestic company in Mauritius. It holds a scrap metal exporter licence obtained from the Ministry of Commerce and Industry. As a holder of this special licence, N is authorised to export scrap metal from Mauritius.

M is not holder of a scrap metal licence.

M and N are related companies as some shareholders are common. Both companies are registered for VAT.

M has received an order from a client in India for the supply of scrap metal. M will buy these scrap metal from N to be export to its client in India.

As M is not authorised to export scrap metal, N will export the scrap metal on behalf of M to M's client in India. For the purpose of the export and Customs declaration, N will be the exporter.

N will invoice M for the goods once the Customs export declaration procedures have been completed.

In its books, M will account as purchases the goods purchased locally from N, and the goods sold overseas in India as export sales.

Point at issue

(1) Whether M will be subject to income tax at the rate of 3% on the profit realised on the specific sales /purchase transaction?

Ruling

On the basis of the facts mentioned above and provided that M is duly authorised to deal in scrap metal, it is ruled that -

As N will be the exporter of the scrap metals, M will not be entitled to pay tax at the reduced rate of 3% as provided in section 44B of the Income Tax Act. It will therefore be liable to pay income tax at the normal rate of 15%.

TR 238

Facts

X is a company registered in Canada and is engaged in gold and base metals mining. X has operations in Canada, United States of America, Australia, several countries in Latin America and Africa.

X incorporated a Mauritius holding company, namely Y to hold certain of its Africa based interests and to remunerate some of its senior executive on a month to month basis. X is considering the contract of employment of Dr Z, its Chief Operating Officer ("**COO**") to be under Y which will pay his salary into his offshore account, currently in Jersey. Costs incurred by Y to accommodate for Dr Z's salary costs will be recharged to X.

Dr Z, who is a South African citizen, currently owns a villa in Mauritius under the Integrated Resort Scheme ("**IRS**"). As a holder of an IRS villa, Dr Z was issued a residence permit.

Given the extensive responsibilities Dr Z has across Africa and the Middle East and his extensive travel to fulfil his duties, Dr Z is not tax resident in South Africa but his family has been residing in South Africa for the past 38 years.

As COO, Dr Z has ultimate responsibility for the group's operations in the aforementioned region and for interfacing with major investors in the key investor markets of Canada, United States and Europe. Consequently, his duties will often be carried out via electronic media across international borders and airports depending on his schedule and travel requirements or whilst visiting Mauritius.

Due to the international nature of his employment, Dr Z travels extensively and he is expected to spend approximately 8 to 10 weeks in Mauritius over the course of any tax year. Some of his time will be on annual leave whilst other time will be spent working on various aspects of X's operations.

Points at issue

1. Whether only the portion of Dr Z's emoluments from Mauritius-based performance will be taxed in Mauritius?

2. Whether emoluments derived by Dr Z (and paid in his Jersey account) from performance of employment duties abroad will be taxable in Mauritius only on remittance ?

Ruling

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

1. in accordance with sections 73 and 74 of the Income Tax Act, Dr Z will be subject to tax on emoluments derived from performance of duties whilst physically present in Mauritius. For that purpose, the length of stay includes the date of arrival, date of departure, non-business days and annual leave spent in Mauritius.
2. in accordance with section 5 of the Income Tax Act, emoluments derived by Dr Z in respect of duties performed abroad will not be taxable in Mauritius.

TR 239

Facts

B, a company incorporated in Mauritius, started to carry out business with three shareholders who are also full-time employees as executive directors of B. The shareholders each hold 100 ordinary shares in B.

Prior to admitting new shareholders to B, B proposes to improve its financial ratios through a share buy-back. The price to be paid for the shares of B by the new shareholders will reflect the goodwill of B and will be determined by a professional valuer. B is already in preliminary talks with two potential new shareholders. B proposes to buy back 60 shares.

Point at issue

Whether the proceeds from the buy-back of the ordinary shares in the hands of the shareholders will be subject to tax in the event B proceeds with the buy-back of the 60 ordinary shares from the shareholders at the prevailing market value?

Ruling

On the basis of the facts provided, it is ruled that the proceeds received by the existing shareholders from the buy-back of the ordinary shares is considered to be a benefit to shareholders in accordance with section 86A of the Income Tax Act and will therefore be subject to income tax.

TR 240

Facts

B is part of a Group of companies in Mauritius and its principal activity is to act as a trading company for the sale of internet capacity across the African region.

Prior to November 2020, the sale of internet capacity was carried out by D, a sister company of B based in Madagascar. D was the owner of 2 submarine cables which use optical fibre technology to carry out internet capacity across different countries. D can also buy internet capacity from external suppliers to improve its network redundancy and quality of services for its end customers.

Post November 2020, the Group decided to expand its Telecom cluster in Mauritius and transferred all the rights and obligations of the cables from D to B. All contracts between B and external suppliers have also been novated such that B is now the entity buying capacity for resale from the said external suppliers.

On the basis that it is buying and selling/reselling bandwidth capacity to foreign clients, B is involved in the provision of international fibre capacity. The essential activities necessary to generate income from the sale of international fibre capacity are carried out in Mauritius by 14 full-time employees based in Mauritius. They provide shared services (such as legal, finance, treasury, etc.) to the Group, including to B and are employed by two entities within the Group, namely E and F. In return for the shared services provided, B incurs management and administrative services, payable to E. B also has a technical expert dedicated to the company who is the main point of contact for the negotiation and contractualisation with customer operators and international suppliers.

Point at issue

Whether by virtue of item 47(a) of the Second Schedule to the Income Tax Act, B is eligible to claim the 80% exemption available to a company deriving income from the leasing and provision of international fibre capacity, subject to meeting the prescribed conditions relating to the substance of its activities?

Ruling

On the basis of the facts provided, it is noted that B satisfies the conditions for eligibility to partial exemption as provided in section 23D of the Income Tax Regulations 1996. It is therefore ruled that the B is entitled to claim partial exemption on its income derived from the leasing and provision of international fibre capacity, by virtue of item 47(a) of Sub-Part C of Part II of the Second Schedule to the Income Tax Act.

TR 241

Facts

B intends, as a way to bolster its capital, to implement a scrip dividend scheme (the "Scheme"). Under the Scheme, the ordinary shareholders of B will have the option of receiving their future dividends, or part thereof, by way of ordinary shares in B (the "Scrip Shares"). The Shareholders will have new shares issued in lieu of dividends as contemplated under section 64 of the Companies Act 2001.

The details of the proposed Scheme are as follows:

(i) The issuance of Scrip Shares will be in conformity with section 64 (Shares in lieu of Dividends) of the Companies Act 2001; and

(ii) The shareholders will elect between availing of dividends in cash and/ or the issuance of Scrip Shares in proportion to be set out in the rules of the Scheme (the "Scrip Shareholders").

Point at issue

Whether Scrip Shares should be excluded from the determination of "leviable income" under Part III Sub-Part AB of the Income Tax Act 1995?

Ruling

On the basis of facts provided, it is ruled that the total value of the Scrip Shares, that is, shares in lieu of dividends should be included in leviable income for the purpose of calculating solidarity levy in accordance with the provisions in sections 2, 16B and 16C of the Income Tax Act.

TR242

Facts

X is incorporated in Mauritius as a private company limited by shares and holds a Global Business License.

X entered into an agreement with Y and Z, incorporated in Botswana for the sale of its investment in B, a South African Company **(the "Deal"**) for approximately USD 270M.

Y is a Botswana Government owned company and is unrelated to X.

After having fulfilled or waived all conditions precedent for the **the "Deal"** on 06 September 2016, C gave notice on the same day to the Z Respondents that all of the conditions of the **the "Deal"** had been satisfied and completion of the transaction was due to take place within five business days. Despite various attempts from C to reach an amicable solution within the framework of the agreement with the Z Respondents, the Botswana government made an abrupt decision to close the Z Group, by application for provisional liquidation which was granted by order of the High Court of Botswana on 9 October 2016.

Y failed to complete **the "Deal"** and as a result a dispute arose between X & Y.

The dispute was then referred to the London Court of International Arbitration ('**LCIA**') where the LCIA determined on the 29th of July 2020 that the **the "Deal"** became unconditional on the 6th of September 2016 and that Y and Z were liable to pay a compensation to X, which were to be determined during phase 2 of the hearings.

During phase 2 of the LCIA hearings the parties reached the settlement. The agreed settlement compensation was less than X's initial estimate of damages (which was around USD190-200M), but such compensation appears to be a positive result given that the prospects of recovering damages from Botswana were very remote, especially since Y was under liquidation.

The settlement was mutually agreed by all parties involved.

Point at issue

Whether the compensation income received by X is of capital nature and will be treated as anon-taxable item

Ruling

On the basis of the facts provided above, it is ruled that the compensation receivable by X as damages for breach of contract by B for purchase of shares is not taxable. However, any expense incurred by X in relation to the compensation received will not be an allowable deduction under section 18 of the Income Tax Act.

TR243

Facts

C was set up in Mauritius in July 2021 to operate as a biomedical research company, in collaboration with B, a biomedical research company based in India.

Activities of B

B is a Contract Research Organisation (**"CRO"**) which provides services to the global pharmaceutical industry including GLP toxicology/safety assessments, exploratory, analytical chemistry and basic research studies. B plays a key role in the development pipeline of its pharmaceutical clients by helping verify the optimal dosing strategies for new treatments and making sure these treatments are safe enough to enter and then progress through the various stages of human clinical trials. This field of research is known as pre-clinical research. A large proportion of current research on treatments conducted by B required that the final stage of safety and efficacy studies be undertaken using monkeys as part of the drug development and regulatory approvals process.

Activities of C

C was set-up to facilitate supply of monkeys as models for conducting pre-clinical research as well as conduct pre-clinical studies and investigations involved in the development and testing of pharmaceutical products and therapies.

There are different types of studies which shall be conducted wherein C shall be responsible to conduct Pharmacokinetic studies (**"PK"**) in Mauritius through the use of monkeys. Further to conducting the PK studies, a selection of the eligible monkeys shall be made and the selected monkey shall be sent for advanced testing which will be outsourced to B.

Expenditure incurred by C on medical research and development

The expenses in relation to the studies carried out in Mauritius include inter-alia:

- Rearing of primates and carrying out tests on the primates to assess their eligibility for advanced testing;
- Salaries for trained monkey handlers;

- Salaries of experts for the carrying out of the studies; Animal food purchases;
- Monkey medical costs; Viral testing;
- Pathology tests; Veterinary consumables; Staff amenities; and
- Marketing expenses for the medical studies and client relations with the end-pharmaceutical customers.

Experts would be relocated to Mauritius to bring their knowledge and expertise to carry out the relevant studies and their salaries would be borne by C.

The end-product of the research and development activities undertaken by C will either be:

(i) results of the bio-analysis of blood samples taken during the study period; or

(ii) drawing blood samples after the dosage study is completed and sending these samples directly to the client's laboratory.

Point at issue

Whether C would be eligible to claim double deduction on all expenditure incurred for the purpose of medical research and development carried out in Mauritius?

Ruling

On the basis of the facts provided above, it is ruled that C is not entitled to the double deduction under section 57 of the Income Tax Act as its activities do not consist of any original or planned investigation that has been undertaken with a view to gain new scientific or technical knowledge. Moreover C has not applied any research findings or other knowledge to plan or design new or substantially improved materials, devices, products, processes, systems or services.

TR244

Facts

G is a public company limited by shares incorporated in Mauritius in December 2011.

G's main activity is to provide hotel management and hotel operation services.

As part of a restructuring exercise, G intends to transfer its corporate domicile to Guernsey. Further to the migration, G will keep its operating model in Mauritius and continue to:

(i) take its key strategic and commercial decisions from Mauritius;

(ii) chair its Board meetings from Mauritius;

(iii) have a majority of directors who are tax resident in Mauritius;

(iv) carry out its core business activity, that is the provision of hotel management services from Mauritius;

(v) use its physical office in Mauritius as its registered premises, which will be used to carry out its business activities; and

(vi) employ its current local workforce, which currently stands at 125 individuals, who will perform their duties pertaining to the core business activity from Mauritius.

Points at issue

Whether upon migration,

(i) G will be tax resident in Mauritius?

(ii) dividend paid by G will be exempt from income tax?

(iii) G will be required to comply with applicable tax laws in Mauritius? and

(iv) G will be able to carry forward its accumulated tax losses?

Ruling

On the basis of the facts provided above, it is ruled that:

(i) G will continue to have its central management and control in Mauritius and will therefore qualify as a company resident in Mauritius in accordance with section 73 (1) (b) of the Income Tax Act. It will also be resident in Guernsey by reason of its incorporation. As a dual resident, its residence status for the purposes of the Mauritius-Guernsey tax treaty will be determined in accordance with the tie-breaker clause of Article 4(3) of the treaty between Mauritius and Guernsey. Since

G's place of effective management will remain in Mauritius, G will be deemed to be tax resident in Mauritius.

(ii) Dividends paid by G will be exempt pursuant to item 1 (a) of Sub-Part B of Part II of the Second Schedule to the Income Tax Act.

(iii) G will be required to comply with the provisions of the Income Tax Act, including the filing of annual returns under section 116 of the Income Tax Act.

(iv) G will be able to carry forward its accumulated losses provided that the conditions stipulated in section 59 of the Income Tax Act and in Regulation 19 of the Income Tax Regulations 1996 are satisfied.

TR245

Facts

Q is a private company with liability limited by shares registered in Mauritius in October 2021. It holds a Global Business Licence and a Family Office (Single) License (**"SFO"**) issued by the Financial Services Commission in November 2021.

Q is wholly owned by R and Q has 100% shareholding in each of the following companies:

1) V - a company based in Belize and which acts as an investment holding. V holds 100% shareholding in Y - a company based in Cyprus and which holds immovable property solely for family use;
2) X - a company based in Cyprus and which holds title for cars which are solely for family use;
3) Z - a company based in Cyprus and which acts as a Special Purpose Vehicle;
4) T - a company based in Cyprus and which owns a yatch and other personal water crafts solely for family use; and
5) Investment in a portfolio of securities, namely equities, bonds, commodities, alternative investments, private equity and structured products.

In addition to the above, Q currently has:

(i) Motor vehicle under its direct name for the sole use of R and is not meant for any business; and
(ii) Interest free loans, as well as interest bearing loans, granted to R and third parties.

Q is expected to earn income mainly from dividends, interests and profits/gains from disposal of securities. It may subsequently earn rental/lease/capital income on properties owned that could be rented or sold.

Point at issue

Whether Q will be eligible for the 10-year tax holiday in respect of its expected income streams namely dividend, interest, rental/leasing income and profits/gains from disposal of securities and other property?

Ruling

On the basis of the facts provided above, it is ruled that pursuant to item 30A of Sub-Part C of Part II of the Second Schedule to the Income Tax Act, Q being holder of a Family Office (Single) Licence issued after 1 September 2016 will be entitled to a 10-year tax holiday provided that -

(i) the income is derived from the activities covered under the SFO licence; and

(ii) the corporation satisfies the conditions-

  (a) of minimum employment; and

  (b) relating to the substance of its activities,

as specified by the Financial Services Commission under the Financial Services Act.

TR246

Facts

F is a private limited company incorporated in February 2016 and domiciled in the Republic of Mauritius. F holds a Category 1 Global Business Licence under the Financial Services Act 2007 and is regulated by the Financial Services Commission in the Republic of Mauritius.

F is a protected cell company with three cells namely Cell A, Cell B and Cell C. The principal activities of F are asset holding and debt financing. F has entered into an agreement with M for an uncommitted revolving structured trade and commodity finance facility for an aggregate amount equal to USD25m. M has agreed to pay the following fees for the loan:-

(i) An arrangement fee of 2% of the total commitment of USD25m. Effective from 1 January 2021 and pursuant to the second addendum dated 1 January 2021, the arrangement fee was changed to 3.5% ;

(ii) Interest income at the rate of 5% per annum ;

(iii) A commitment fee of 0.5% per annum on the available commitment amount for the availability period ;

(iv) Effective from 1 January 2021, a prepayment fee of 3.5% attributable to all or any part of the loan paid on a day other than on its original repayment date, pursuant to the second addendum agreement dated 1 January 2021. Following the second agreement dated 4 January 2020, a prepayment fee of 1.5% was charged for the year ended 31 December 2021 ; and

(v) A management fee of 1.5% of the total commitment of USD25m.

In addition, F has also entered into a second agreement with another company namely X for an aggregate amount of USD 9m. The latter has agreed to pay the following fees for the loan:

(i) An arrangement and management fee of 3.5% of the total commitment of USD 9m ;

(ii) Interest income at the rate of 5% ;

(iii) A commitment fee of 0.5% per annum on the available commitment amount for the availability period. Effective 1 January 2021 and pursuant to the second addendum dated 1 January 2021, the commitment fee was changed to 2% ; and

(iv) A prepayment fee of 1% attributable to all or any part of the loan paid on a day other than on its original repayment date. Pursuant to the first addendum agreement dated 4 January 2020, a prepayment fee of 3.7% is being charged for the year ended 31 December 2021.

As a result of debt financing agreement in place, F derives finance income such as arrangement fee, commitment fee, prepayment fee, gain on exchange and interest income.

Point at issue

Whether all the finance income which includes arrangement fee, commitment fee, prepayment fee, gain on exchange and interest income will benefit from the 80% exemption?

Ruling

On the basis of the facts mentioned above, it is ruled that since the arrangement fee, commitment fee, prepayment fee and gain on exchange are not included in Sub-Part B and Sub-Part C of the Second Schedule of the Income Tax Act, these income are not subject to 80% partial exemption.

As regards interest income, F will be allowed to claim 80% partial exemption by virtue of item 7 of Sub-Part B of the Second Schedule of the Income Tax Act provided that F satisfies the conditions prescribed in Regulation 23D of the Income Tax Regulations 1996.

TR 247

Facts

X was incorporated in Mauritius as a domestic company with its central management and control in Mauritius. X is a wholly owned subsidiary of Y, a bank founded and based in Bermuda with listing on the Bermuda Stock Exchange and New York Stock Exchange. Y offers a range of community banking and bespoke financial services from 8 leading international financial centres, supported by centralized service centres in Canada and Mauritius.

X acts as a support service centre which provides non-client facing and back-office services for entities of Y Group located in foreign jurisdictions, which include Bermuda, Guernsey, Jersey, Switzerland, Cayman Islands, United Kingdom and Singapore. The back-office and administrative support provided by X to its affiliated entities include inter alia accounting services, anti-money laundering compliance and various similar back-office support assistance. X provides support services to the Y Group. Such services are not provided to other third parties. Given that X does not contract with third party customers, it does not face significant market risk relating to the services.

In view of the supportive nature of the intra-group services being provided, X is remunerated based on a cost-plus model where all costs incurred by X are recharged with a margin of 7.5% to the serviced entities, except for certain accounting adjustments (e.g foreign exchange differences and provisions) made in the financial statement for financial reporting purposes.

X owns routine tangible assets such as office space, furniture and equipment required in the conduct of its business. The services are conducted by employees of X, who are based in Mauritius. X does not use any intangibles assets in its day to day operations.

X is subject to tax in Mauritius at the rate of 15%.

Point at issue

Whether the chargeable income of X may be ascertained using its accounting profit before tax after applying the predetermined cost-plus percentage of 7.5% to the costs incurred at the level of X?

Ruling

On the basis of the facts provided, it is ruled that the cost-plus method can be used to determine the chargeable income of X.

The proposal to apply a cost-plus percentage of 7.5% is acceptable taking into account that the services being provided to X are of supportive in nature and low-value intra-group services.

TR 248

Facts

C was incorporated in Mauritius as a private company and it holds a Global Business Licence issued by the Financial Services Commission. The principal activity of C is that of investment holding.

In 2010, C acquired 100% of the shares of J, a company incorporated in Singapore. In 2010, C entered into a loan agreement with J for a loan facility of up to SGD 78m. The loan advanced to J bear interest equal to the Singapore Dollar Swap Offer Rate plus a margin of 5% per quarter.

The income streams of C consist of dividend and interest income from J. The interest income is derived solely from the aforesaid loan facility provided to J during the years 2010 to 2013. C does not have any staff with the exception of its two Mauritian resident directors who are responsible for the monitoring of the aforesaid loan. The administrative activities are carried out by its management company and the total expenditure incurred by C for the two years ended 30 June 2021 are minimal.

Point at issue

Whether C is entitled to claim the interest exemption by virtue of item 7(b) of Sub-part B of Part II of the Second Schedule to the Income Tax Act?

Ruling

On the basis of the facts provided, it is ruled that C does not satisfy the conditions for eligibility to partial exemption as laid out in section 23D of the Income Tax Regulations 1996. Thus C is not entitled to claim partial exemption on interest income by virtue of item 7(b) of Sub-part B of Part II of the Second Schedule to the Income Tax Act.

TR 249

Facts

M was incorporated in Mauritius as a private company and it holds a Global Business Licence issued by the Financial Services Commission. The principal activity of M is that of investment holding.

M owns 100% of the shares of N, a Singapore incorporated company. In 2011, M entered into a loan agreement with N for a loan facility of up to SGD 442m. The loan advanced to N bear interest equal to the Singapore Dollar Swap Offer Rate plus a margin of 5% per quarter.

The income streams of M consist of dividend and interest income from N. The interest income is derived solely from the aforesaid loan facility provided to N during the years 2011 to 2014. M does not have any staff with the exception of its two Mauritian resident directors who are responsible for the monitoring of the aforesaid loan. The administrative activities are carried out by its management company and the total expenditure incurred by M for the two years ended 30 June 2021 are minimal.

Point at issue

Whether M is entitled to claim the interest exemption by virtue of item 7(b) of Sub-part B of Part II of the Second Schedule to the Income Tax Act?

Ruling

On the basis of the facts provided, it is ruled that M does not satisfy the conditions for eligibility to partial exemption as laid out in section 23D of the Income Tax Regulations 1996. Thus M is not entitled to claim partial exemption on interest income by virtue of item 7(b) of Sub-part B of Part II of the Second Schedule to the Income Tax Act.