TR 51

Facts

A company holds a Building and Civil Engineer licence.

Its business activities include amongst others:-

- Construction and rehabilitation of reservoirs, dams, etc.
- Construction of sewer network (i.e. laying of pipes and asphalting of roads etc.).
- Construction of potable water distribution main, sub-main and house connection.

Point at issue

Whether the company can be considered as a tax incentive company under item 24 of Part IV of the First Schedule to the Income Tax Act which reads as fol1ows:

"A company deriving at least 75 per cent of its gross income from construction activities in Mauritius"

Ruling (issued in May 2006)

"Construction of sewer network"(i.e laying of pipes and asphalting of roads, etc) and "construction of potable water distribution main, sub-main and house-connection" although labelled as "construction" are not construction. These activities would only fall within the term "construction" if they form an integral part of the construction of a building or a road construction project.

Since the company did not derive at least 75 per cent of its gross income from construction activities, it cannot be considered as a tax incentive company.

TR 52

Facts

A foreign parent company, issued zero coupon bonds to its subsidiary, which is incorporated in Mauritius. The bonds were issued for a subscription amount of GBP 243.7 million and the amount payable on maturity would be GBP 297 million.

On the early redemption of the zero coupon bonds, the bonds had appreciated to GBP 265.9 million. In addition a late payment fee of GBP 0.76 million was paid since the redemption date as per the agreement was set on 5 April or 5 October whereas the redemption took place on 28 April 2006.

Point of Issue

A ruling is being sought as to whether

a) the appreciation of the bonds, of GBP 22.2 million; and
b) the late payment fee of GBP 0.76 million

will be subjected to income tax in the hands of the subsidiary.

Ruling

The subsidiary, being resident in Mauritius is liable to tax on its worldwide income. Pursuant to section 51 of the Income Tax Act, the gross income of a company includes the income referred to in section 10(1) (b), (c), (d) and (e).

In the present case the sum of GBP 22.2 million is the return on the bonds subscribed by the subsidiary. It is an income which is in the nature of interest and will fall under section 10(1)(d) of the Income Tax Act.

As regards the GBP 0.76 million, although described as a penalty fee, it is a return for holding the investment for a further 23 days and again falls under the purview of section 10(1)(d) of the Income Tax Act.

TR 53

Facts

An employee was paid severance allowance on termination of his employment as from 1 July 2005. The severance allowance was computed on the basis of current monthly remuneration receivable by him at the time of termination of employment and included the following benefits:

- overseas passage
- car expenses
- telephone rental
- medical benefits contribution

Tax was withheld from the severance allowance after taking into consideration the first Rs 1,400,000, which is exempt from income tax under Part II of the Second Schedule of the Income Tax Act 1995.

Point of Issue

Whether the benefits included in the monthly remuneration used as basis for the computation of the severance allowance should not be excluded in the calculation of the tax liability of the employee on the grounds that overseas passage is not taxable by virtue of Section 10 (1) (a) (i) of the Act, and benefits under items (ii) to (iv) are expenditure wholly, exclusively and necessarily incurred in performing the duties of employment.

Ruling

Only the first 1,400,000 rupees of the sum received by way of severance allowance determined in accordance with the Labour Act is exempt from tax as provided under item 4 of Part II of the Second Schedule to the Income Tax Act.

The fact that non-assessable benefits have been included in the monthly remuneration used as the basis for the computation of severance allowance payable has no incidence on the amount of severance allowance provided as exempt under the Income Tax Act.

TR 54

Facts

A company terminated the contract of employment of all its seven employees upon the decision of the shareholder to close the company and, in consideration of the termination of the employment contracts, effected the following payments:

- Severance allowance in accordance with the Labour Act.
- Three months' remuneration in lieu of notice.

A payment made purportedly to restrain the employees from competing in Mauritius with another operation, a related company, owned by the same shareholder as that of the former company.

Point of Issue

Whether item 3, that is the payment which according to the company was made to restrain the employees from competing in Mauritius with the related company, is taxable in the hands of the recipients.

Ruling

On the facts and information provided, the amount paid under item 3 to the former employees of the company falls within the ambit of section 10 (1) (a) of the Income Tax Act which includes as taxable item any compensation for loss of office or other reward in respect of or in relation to loss or reduction of future income.

TR 55

Facts

An individual born in Mauritius is married to a citizen of France, and is a citizen of both countries. Although he has retained a family home in Mauritius, which he visits from time to time, his personal and economic relations where he maintains permanent places of abode are principally in the UK, the United States and in the Bahamas.

Point of Issue

Whether under Section 73(a) of the Income Tax Act, for the purpose of considering a person resident in Mauritius, days of arrival and of departure are included for the calculation of 183 days or 270 days, as the case may be.

Ruling

For the purpose of considering a person resident in Mauritius under Section 73(a) of the Act, days of arrival and days of departure are included in the calculation of 183 days or 270 days, as the case may be.

TR 56

Facts

Company A is incorporated in Mauritius. It is in the process of applying for a GBL 1 under the Financial Services Development Act 2001. Company A will acquire a proportion of the share capital of Company B, a company registered in China. The acquisition will be financed by an interest bearing loan from Company C, the holding company of Company A. Company C is registered outside Mauritius and does not have any permanent establishment in Mauritius. The interest rate on the loan will be computed on an arm's length basis.

Points in issue

Whether it can be confirmed that:

a) Company A would be taxable on any dividend received from Company B;
b) Company A would be taxable at the rate of 15%;
c) Underlying Foreign Tax Credit would not be available to Company A;
d) Company A would be entitled to claim presumed tax credit and that no grossing up would be required for the purposes of computing the presumed tax credit;
e) Capital gains arising on disposal of shares would not be taxable and any trading profits from sale of securities would be exempt;
f) Any tax loss incurred by Company A can be relieved in a maximum of five succeeding years of assessment;
g) Company C would be exempt from tax in respect of any interest expense it would receive from Company A and no TDS would apply;
h) Any interest payable by Company A to Company C in respect of loan to finance the purchase of shares would be deductible:
i) For the purposes of Alternative Minimum Tax "book profit" excludes any profits on sale of securities and that the tax payable is before deduction of foreign tax credit; and
j) Any distribution made by Company A to its holding company which does not satisfy the definition of "dividends" in Section 2 of the Income Tax Act would be taxable in the hands of Company C.

Rulings

a) Dividend received by Company A from Company B: It is confirmed that Company A would be taxable on any dividend received from Company B

b) Corporate tax rate Company A as a GBL 1 company would be taxable at 15%.

c) Underlying Foreign Tax Credit: It is confirmed that Company A would not be eligible to underlying tax credit.

d) Presumed Foreign Tax Credit Company A would be entitled to claim presumed tax credit. No grossing up would be required for the purposes of computing the presumed tax credit.

e) Capital gains: It is confirmed that capital gains arising from disposal of shares are not taxable. Any trading profits that Company A would derive from sale of securities would be exempt from income tax.

f) Tax losses: Any unrelieved tax loss incurred by Company A may be carried forward for a maximum of five income years, subject to the conditions provided in the income tax law.

g) Interest expense: It is confirmed that Company C would be exempt from tax in respect of any interest it would receive from Company A. Such interest would also not be subject to tax deduction at source.

h) Deductibility of interest payable by Company A: Any interest payable by company A in respect of loan used to finance purchase of shares of company B would be deductible.

i) Alternative Minimum Tax (AMT): It is confirmed that for AMT purposes book profit excludes any profits derived from sale of securities and the tax payable is the amount before deduction of any foreign tax credit.

j) Dividends payable by Company A to Company C: It is confirmed that any distribution made by Company A to its holding company and which does not satisfy the definition of "dividends" in section 2 of the Income Tax Act would be taxable in the hands of the recipient

TR 57

Facts

A Company is tax resident in Mauritius and operates a gaming house. It has entered into a lease contract with a company registered and tax resident in South-Africa, in respect of the lease of certain Wheel of Gold Machines. The latter company does not have a PE in Mauritius. The consideration of the lease is based on the number of machines used per day and per machine, and lease payments are made accordingly. The Mauritius - South Africa DTA does not make specific mention of income in respect of operating lease.

Point of Issue

Can it be confirmed that the lease payments made by the company to the South African company are not Mauritian sourced income and therefore outside the scope of the Mauritian tax system?

Ruling

Lease income derived by the South African Company, from lease of equipment made to the company, constitutes income which falls under Article 22(1) of the Mauritius-South Africa Double Taxation Agreement and therefore taxable only in the country of residence of the recipient of the income, i.e. South Africa.

TR 58

Facts

An investment company was incorporated in Mauritius. It holds a Category 1 Global Business Licence (GBC 1) and earns interest income on inter-group loans. Its central management and control is in Mauritius, but its effective management is in South Africa, so that it is tax resident in both countries as per the Mauritius-South Africa Double Taxation Agreement.

Point of Issue

Whether it can be confirmed that the company

a) is a tax resident of South Africa and therefore has to comply with South African tax filing and tax payment requirements; and
b) is not a tax resident of Mauritius, which therefore means that it does not have to file a tax return or pay any tax in Mauritius.

Ruling

On basis of facts given, the company is deemed to be resident in South Africa by virtue of the tie-breaker clause in Article 4(3) of the Mauritius-South Africa Double Taxation Agreement (DTA). The taxation of income derived by the company from Mauritius and South Africa will be governed by the DTA. Thus, where the DTA confers the taxing right to the source country in respect of an item of income derived by the company from Mauritius, the company will have to file a tax return with the MRA with regard to that income and pay any tax accruing thereon.

In the event the company derives income from abroad from a country other than South Africa, the company will have to declare such income in Mauritius as a resident of Mauritius taxable on its worldwide income. The company will however be entitled to claim foreign tax credit or presumed tax credit in respect of such foreign source income. Where a DTA is in force, the taxation of the foreign source income will be governed by the provisions of the DTA.

TR 59

Facts

A company incorporated in the Netherlands forms part of an international group. Its core activities consist of the construction and maintenance of ports and waterways, land reclamation, coastal defence and riverbank protection. It was awarded a contract by the Mauritius Ports Authority for the execution of certain dredging works in view of the construction of an oil jetty and the extension of the berthing facilities at the Mauritius Container Terminal in the English Channel.

Points in issue

a) Whether it can be confirmed that the company which is a foreign company will be taxable only on its Mauritian sourced income?

b) Whether in accordance with Section 117A (2) of the Act it is correct to state that the return and accounts which the company will submit for the three months ended 31 December 2006 shall be deemed to be in relation to the income year ended 30 June 2007 ?

c) Whether it can be confirmed that the company is involved in construction activities and its corporate tax rate would be 15% and not 22.5%?

d) Whether the expenses incurred by the Head Office in respect of the contract executed by the branch are deductible under Section 57 of the Income Tax Act ?

Ruling

a) It is confirmed that the company which is a foreign company will be taxable only on its Mauritian sourced income.

b) The statutory date for the submission of its return in respect of the accounts for the period ended 31 December 2006 will be 30 September 2007, which shall be deemed to be in relation to the income year ending 30 June 2007.

c) The tax rate applicable to the company for the income year ending 30 June 2007 will be 22.5% as the company will be engaged in dredging activities and not construction works.

d) Expenses incurred by the Head Office in respect of the contract executed by the branch in Mauritius is deductible under section 57 of the Income Tax Act.

TR 60

Facts

A non-resident societe acquired the entire share capital of five resident companies forming part of two different groups carrying business in the same business activity. For administrative reasons the boards of the said companies, referred to as the amalgamating companies, have proceeded to an amalgamation into one single company, via Company A (Mauritius) Ltd, the amalgamated company.

Point of Issue

Whether consequent to the effect of amalgamation, the "property, rights, powers and privileges" of the amalgamating companies under the Companies Act are also the property, rights, powers and privileges of the amalgamated company, and as such whether the tax losses accumulated by the amalgamating companies can be used for carry forward and set off against the net income of the amalgamated company.

Ruling

Notwithstanding the fact that the "property, rights, powers and privileges" of the amalgamating companies continue to be the property, rights, powers and privileges of the amalgamated company under the Companies Act 2001, for income tax purposes the tax losses accumulated by the amalgamating companies cannot be said to have been incurred and accumulated by the amalgamated company. The amalgamated company can, under Section 59 of the Income Tax Act, carry forward only losses that it has itself incurred.

TR 61

Facts

Company A and Company B are two companies registered in Mauritius forming part of a group. Company A is a company registered with the BOI under the Investment Promotion Act and will be engaged in the provision of health services. Company B is engaged in construction activities and has been awarded a contract for the construction of a clinic for Company A.

Point of Issue

Whether "additions, extensions and substantial renovations to building", subsequent to the initial construction, are "works" as defined in Section 111A of the Income Tax Act and the "supply of labour" for the execution of works incidental to civil construction by Company B will, as such, fall under the TDS mechanism, i.e. under the provisions of Sub-Part BA of the Act.

Ruling

It is confirmed that the "additions, extensions and substantial renovations to building" made to the initial construction and the "supply of labour" will be subject to tax deduction at source under Sub-Part BA of the Income Tax Act.

TR 62

Facts

C Ltd, a company registered as a Grade A civil engineering contractor, has been awarded a contract for the construction of trunk sewer by an authority for a sewerage project. The main scope of the work under the contract includes the following:

- the construction of 450 reinforced concrete manholes along the pipeline route;
- the excavation of trenches;
- the installation of the pipes into the trenches and the backfill of the trenches after the pipeline has been laid;
- the road reconstruction and the reinstatement of services;
- any ancillary works required under the contract.

Under the contract it is agreed that the company will supply all material and labour required for the project, and subcontract the road reinstatement works.

Point in Issue

Whether in respect of the 'construction of sewer' contract in Mauritius, the company is involved in "construction activities" pursuant to item 24 of Part IV of the repealed First Schedule to the Income Tax Act , and therefore liable to tax at the rate of 15% for the year of assessment 2007/08.

Ruling

Construction of trunk sewers, which includes activities such as laying of pipes and road reinstatement, is not construction proper, although labelled as 'construction' This activity would only fall within the meaning of the term 'construction' if it formed an integral part of a construction undertaking, e.g. a building or a road construction project.

The company will therefore be liable to tax at the rate of 22.5% for the year of assessment 2007/08 and not 15%.

TR 63

Facts

P Ltd, an insurance company, has a number of corporate clients which do not have their own pension schemes. However, they provide a pension benefit by making contributions to the respective Personal Pension Schemes of their employees.

Points in issue

Whether contributions made by an employer to a personal pension scheme subscribed by an employee

a) is an allowable deduction to the employer?
b) is a taxable benefit to the employee?

Ruling

The law entitles an employer to claim a deduction in respect of an amount irrevocably paid by him under a superannuation fund which is defined to mean "a fund or scheme established for the benefit of the employees of an employer and approved by the Director-General." The contributions made in this case, though not made under a superannuation fund but to a personal pension fund instead, is nonetheless an expenditure exclusively incurred in the production of gross income of the employer.

The contribution made by the employer to the personal pension scheme of the employee is therefore an allowable deduction to the employer under section 18 (1) of the Income Tax Act 1995, provided the following conditions are satisfied:

a) the employee's contribution to the scheme is reasonable, having regard to the grade of the employee and his position in the organization ; and
b) the contribution is not made by reason of any close connection existing between the employer and the employee such as blood relationship, marriage or share-ownership, etc.

On the other hand, the contribution is a taxable benefit in the hands of the employee in accordance with Section 10 (2) of the Income Tax Act 1995.

TR 64

Facts

S Ltd, incorporated in the Netherlands Antilles, is a 100% owned subsidiary of S Ltd Paris, a corporation which has the status of a bank. It proposes to issue a capital guaranteed product, viz Euro Medium Term Note to be distributed through a local bank, referred to as the dealer.

The issue price will be 100% of the Nominal Amount in USD (to be determined) and the term will be for a period of 5 years. The investment is subject to a final redemption which will be an amount that corresponds to the amount initially invested on the issue date, plus the payment of an amount linked to the performance of the underlyings, if any. The issuer will redeem the Notes on the maturity date in accordance with the following formula:

Specified Denomination x [100% + Max (0; A% x Averaged Performance)]
(USD 100)

A% represents an amount that would be determined and may have a probable range of 140% to 200%, depending on the market conditions at the time of launch.

The underlyings used will normally be the indices shown below but other equity benchmarks may be used, provided the total weightings will always equal 100%:

	Index Name	**Exchange**	**Weight**
1	S & P 500	New York Stock Exchange	25%
2	Dow Jones Euro	-	25%
3	Nikkei 225 Index	Tokyo Stock Exchange	50%

Points in Issue

Whether any of the amounts, being either

1. the repayment of the principal; or
2. the payment of the amount linked to the performance of the underlyings (if any)

is subject to income tax, upon remittance to Mauritius.

Rulings

1. The repayment of the principal does not constitute an income for the investor within the meaning of gross income under Section 10 of the Income Tax Act 1995 and therefore is not subject to income tax.
2. Based on the facts provided, the payment of the amount linked to the performance of the underlyings represents a return from an investment and is more in the nature of an interest. Accordingly, any such payment would constitute an income accruing to the investor within the meaning of gross income under Sections 2 and 10 of the Income Tax Act 1995.

Please note that the Practice Notes of the MRA on taxation of gains from the sale of shares or other securities does not apply in the present case since a payment on redemption is quite different from a gain on the sale of securities.

TR 65

Facts

A Mauritian national has taken employment with a construction company resident in Mauritius. He has left for Dubai with all the members of his family and is not expected to return to Mauritius. He has a contract of employment for an indefinite period in Dubai where he performs his duties as supervisor. His salary is paid in Mauritius and is banked in a local bank. He owns a property in Mauritius, viz. an apartment of the NHDC in co-propriété with the Mauritius Housing Company Ltd. The property is unoccupied.

Point in issue

Whether it can be confirmed that the Mauritian national who is resident in Dubai is not liable to tax in Mauritius by virtue of Article 15 of the Mauritius-United Arab Emirates Double Taxation Treaty.

Ruling

It is confirmed that on the basis of facts submitted the Mauritian national is resident in the United Arab Emirates (UAE) and therefore not liable to tax in Mauritius on remuneration derived in respect of the employment exercised in UAE by virtue of Article 15 of the Mauritius-United Arab Emirates Double Taxation Treaty.

TR 66

Facts

L Ltd, incorporated in Mauritius on 4 December 2007, has not yet started its proposed business activity which will be to provide services consisting mainly of advisory and related services to its parent company in Hong Kong (HK Co) and affiliates in the group. The group entities will involve the parent company which is in the business of purchasing, processing and selling diamonds and ancillary activities related thereto, and one or more entities in Israël and elsewhere which will buy and distribute the finished products. The HK Co will sell the finished goods principally to a related company in Israël and possibly to other affiliates in the group, but may also sell to third parties.

The HK Co will require the services of L Ltd for back office and high level advisory services. The back office services will entail processing invoices and providing administration, financial and management services of a general nature, while high level advisory work will, inter alia, constitute business planning, development, co-ordination, marketing, raw material sourcing and regional technical support services. The marketing services will be purely of advisory nature and L Ltd will not have the right or ability to bind the HK Co by entering into any contractual agreements on the latter's behalf in respect of any marketing services.

In consideration for such services, L Ltd will earn a service fee which will be set out in a Service Agreement with the HK Co. The fee will be determined on a cost plus basis which will be at arm's length.

Points in issue

Whether it can be confirmed that -

1) by reason of L Ltd providing back office and advisory services to the HK Co, any profits arising at HK Co level through its selling activities will not be taxed in Mauritius;
2) L Ltd will be taxed only on the net service fee arising under the Service Agreement with the HK Co.

Ruling

It is confirmed that as L Ltd will be providing back office and advisory services, including marketing services of a purely advisory nature, any profits arising to the HK Co through its selling activities performed overseas will not be taxed in Mauritius as these will not constitute income derived from Mauritius under Section 74 of the Income Tax Act 1995.

It is confirmed that L Ltd will be taxed in Mauritius only on the service fee arising under the Service Agreement and determined on arm's length principles.

TR 67

Facts

A company holding a Category 1 Global Business licence, will invest in a subsidiary in France. The subsidiary will not own any immovable property in France.

Points in issue

Whether, in the event of the sale of part or the whole of the shares in the subsidiary in future:

a) the sale of the shares will fall under paragraph 2 of Article 13 of the DTA between Mauritius and France, i.e. gains from the alienation of movable property, or under paragraph 4 of the Article, i.e. gain from the alienation of any property other than that referred to in paragraphs 1,2 and 3 of Article 13;
b) the gains from the sale of the shares will be taxable only in Mauritius, and therefore exempt.

Ruling

The sale of the shares will fall under paragraph 4 of Article 13 of the Mauritius-France Double Taxation Treaty, i.e. gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 of Article 13.

The gains from the sale of shares will be taxable only in Mauritius, in accordance with paragraph 4 of Article 13 of the DTA. Since there is no capital gains tax in Mauritius, those gains will not be subject to tax.

TR 68

Facts

F Ltd is incorporated in Thailand and holds 99.99 % of shares in another Thai company - E, which holds 100% shares in a Singaporean company - D. D holds 95% shares in a first Indonesian investment holding company - C, which in turn holds 73% shares in a second Indonesian investment holding company - B, a publicly listed company on the Indonesian Stock Exchange. B holds 100 % investments in an Indonesian coal mining company - A. This latter company generates income and pays Indonesian corporate income tax at the rate of 30 %.

Z Ltd has a plan to set up a GBL 1 company in Mauritius (MU Co) which will acquire 100% of shares in D from E.

Based on the above respective shareholdings, it follows therefore that

- A will pay dividends to B
- B will pay dividends to C
- C will pay dividends to D
- D will pay dividends to E
- E will pay dividends to F

Dividends to be received by B from A and by C from B are exempted from tax under Indonesian tax laws, and so also are dividends receivable by D from C under Singaporean tax laws.

Points in issue

Whether corporate taxes paid by A can be used as credit for foreign tax against corporate tax of MU Co, and if so the extent of the credit;

What documents would be required to be produced in respect of corporate tax paid by A in order for MU Co to apply for foreign tax credit against Mauritius tax?

Rulings

It is confirmed that by virtue of regulations 7 (2) and (3) of the Income Tax (Foreign Tax Credit) Regulations 1996, as MU Co will hold directly or indirectly more than 5 % of the shares in D, it will be able to claim as foreign tax credit the underlying tax charged on the income out of which the dividends was paid against its Mauritius tax. The credit to which the company will be entitled will be in proportion of its shareholding in the company paying the dividends.

For the purpose of applying for credit in respect of foreign tax and underlying tax against Mauritius tax, MU Co will be required to produce a certificate of its shareholding in D as well as an official receipt from the relevant Tax Authorities in support of the foreign tax paid.

TR69

Facts

A foreign company Z, proposes to be resident in Mauritius for tax purposes, and will hold 100% shares in Company Y registered in Singapore. The latter company will hold 100% shares in each of two sub-companies, one based in Singapore and another in Cayman Islands. The Singaporean sub-company will hold 70% shares in an operating company A in China while the Cayman sub-company will hold 100% shares in company B, also operating in China.

The operating companies A and B will pay tax at the rate of 15% to 30 % in normal circumstances. However, no tax will be payable by operating company A as it will benefit from a tax holiday period.

Points in issue

1) Whether or not income tax payable by the operating companies A and B in China, including the tax spared in case of tax holidays, would be available for credit against Mauritius tax payable by foreign company Z after passing through the number of intermediate companies in the proposed structure;

2) Whether, based on the proposed shareholding structure provided and the Double Taxation Agreement (DTA) between Mauritius and China which provides a special rate of 5 % tax on dividends payable by Chinese companies to Mauritius beneficial owners, company Z can avail itself of the DTA privileges in the capacity of beneficial owner of shares in the Chinese companies;

3) If answers to (1) and (2) are positive,
    - what documents would be required in respect of corporate income tax and tax sparing credit of the operating companies A and B for company Z to apply for credit against its Mauritius tax ?;
    - what documents or evidences would be required for company Z to substantiate its status as 'beneficial owner' of the Chinese companies?

Rulings

a) It is confirmed that in accordance with regulations 7 and 9 of the Income Tax (Foreign Tax Credit)Regulations 1996, any income tax, including the tax spared in case of tax holidays, payable by the operating companies A and B in China, would be available for credit against Mauritius tax payable by company Z in the proposed structure;

b) On the basis of the proposed shareholding structure, as company Z will receive dividends from Singapore and not from China, the taxation of the dividends in Singapore will be governed by the Mauritius-Singapore DTA and not by the Mauritius-China DTA. In any case it would be for the Chinese Tax Authorities to decide whether the provisions of the Mauritius-China DTA could be applied for the taxation of dividends receivable by company Z;

c) (i) For the purpose of applying for credit in respect of foreign tax and tax sparing against Mauritius tax, company Z will be required to produce a certificate of its shareholding in the Singaporean company, together with evidence of its shareholding in the operating companies A and B through its investment in the Singaporean and Cayman sub-companies, as well as official receipts from the relevant Tax Authorities in respect of foreign tax paid.

   (ii)In view of the ruling given at (2) above, the question does not arise.

TR 70

Facts

T Fund Limited holds a category 1 Global Business Licence and has been issued with a Tax Residence Certificate by the Office of the MRA. It invests in India securities or other vehicles which provide exposure to the Indian Stock Market for capital appreciation and, under an agreement, avails itself of the management services of an investment manager based in India. The income of the company is stated to consist of dividends and gains on disposal of securities.

Point in Issue

Whether expenses incurred in the production of both dividend income and capital gains on disposal of securities, i.e. expenses that cannot be attributed directly to the sale of shares, would be allowed for income tax purposes?

Ruling

Foreign dividend income being taxable, any expenditure which is exclusively incurred in the production of such income would be allowable. However, profit on sale of securities will be either capital gains not subject to income tax or revenue profit which is exempt, being derived by a GBL 1 company. As such, any expenditure incurred in the production of the profit on the sale of securities will not be deductible for income tax purposes.

As regards common expenses, i.e. expenditure incurred in the production of both foreign dividend income and profit on sale of securities, only a part of the expenses will be allowed for income tax purposes, which will be in the same proportion as the amount the foreign dividend income bears to the sum of foreign dividend income and the profit on sale of securities.

TR 71

Facts

B is incorporated as a private company and holds an investment certificate issued by the BOI under the Investment Promotion Act. The company will be engaged in setting up a high-tech 200-bed multi-specialty hospital. The central management and control of B is in Mauritius.

A is incorporated as a public listed company in India and tax resident in India. Its principal activity as well as those of its subsidiaries and associates inside and outside India is to own, operate and manage health care institutions of international standards, and to provide comprehensive health care related consultancy, management and training services. Under an agreement (LOMA), certain staff members of A will be seconded to B, their emoluments will be borne in full by B and they will report to the Board of B.

Point in Issue

1. **Corporate Status**

   Whether it can be confirmed that

   i. the income derived by B will be exempt from income tax for the first five succeeding income years starting as from the first year of operation;
   ii. should the company incur a loss during the exemption period, the loss would be allowable notwithstanding the provisions of Section 26 (1) (b) of the Income Tax Act;
   iii. any loss incurred during the exemption period will be subject to the restriction under Section 59 (b) of the Income Tax Act;
   iv. losses attributable to annual allowance in respect of capital expenditure incurred on or after 1 July 2006 will not be restricted to the five- year time limit and therefore available for carry forward indefinitely.

2. **Capital Allowances**

   Transitional Rules

   i. Whether for the purpose of complying with Section 153 of the Act, such documents as the supplier's invoice, the construction contract, the leasing agreement and the maintenance contract are sufficient evidences in as much as keeping of books and records are concerned;
   ii. Whether it can be confirmed that in the event the company decides to exercise option to claim annual allowances under the pre-FA 2006 regime,
      a. this will apply to all class of assets and for the three years of assessment 2007/08,2008/09 and 2009/10;
      b. annual allowance would be available on the construction of the hospital;

c. the irrevocable notice to be made to the Director-General should at latest be at the time the company submits its return for the year of assessment 2007/08.

Qualifying Expenditure

a) whether B will be entitled to claim annual allowance at the rate of 5% on the construction of the hospital under the provisions of Section 63 of the Act;

b) whether it can be confirmed that the items of capital expenditure, viz land development, landscaping and horticultural works and earthwork will not attract annual allowances as they are excluded from the definition of "industrial premises" ;

c) whether it can be confirmed that the capital expenditure incurred by the company in respect of the construction of the road access to the hospital will be eligible for annual allowance.

3. Payments made by B to A

Whether it can be confirmed that:

(i) the payment B will make to A for the services provided by the latter company will be tax deductible under Section 57 of the Act;

(ii) the royalty payment B will make to A will be considered as Mauritian sourced income and therefore taxable in Mauritius at the rate of 15 %;

(iii) any other fees A will receive from B will not be subject to tax;

(iv) B will have to apply TDS on the royalties payable to A at the time of the transfer of such amounts to the latter;

(v) A will have to furnish an annual tax return to the MRA and pay any residual tax at the rate of 5% on the gross amount of royalties as, pursuant to the DTA, the tax rate on the royalties is 15%.

4. Emoluments derived by staff members of A seconded to B

Whether it can be confirmed that the staff members seconded to B will be subject to income tax in Mauritius on their emoluments derived in Mauritius.

Ruling

1. Corporate Status

It is confirmed that:

(i) B will be exempt from income tax by virtue of item 13(a) of Sub-Part C of Part II of the Second Schedule to the Act for the five succeeding income years as from the income year it starts its operation;

(ii) in case the company incurs a loss during the period of exemption of its income, the loss will be allowable for deduction and carry forward under Section 59 (b) of the Act, in accordance with the provisions of item 13 (b) of Sub-part C of Part II of the Second Schedule to the Act;

(iii) any loss incurred during the exemption period will be subject to the restriction under Section 59 (b) of the Income Tax Act;

(iv) losses attributable to annual allowance claimed in respect of capital expenditure incurred on or after 1 July 2006 will not be restricted to the five year time limit and therefore available for carry forward indefinitely in accordance with Section 59 (c) of the Act.

2. Capital Allowances

Transitional Rules

(i) Although the Company would be expected to keep documents for a period of five years, these documents will not be sufficient to comply fully with Section 153 (1) of the Act, the provisions of which will need to be satisfied in full in order for a person to be entitled to annual allowance under Section 63 of the Act;

(ii) It is confirmed that:

(a) in the event the company decides to exercise option to claim annual allowances under the pre-FA 2006 regime as provided under the transitional provisions of Section 161A of the Act, this will apply to all class of assets and be in respect of the three years of assessment 2007/08,2008/09 and 2009/10;

(b) annual allowance would be available on the construction of the hospital under the current provisions of Section 63 of the Act;

(c) the irrevocable notice to the Director-General should be made as early as possible but at any rate not later than the due date for the submission of the annual return of the company for the year of assessment 2007/08.

Qualifying Expenditure

It is confirmed that:

(i) B will be entitled to claim annual allowance at the rate of 5 % on the construction of the hospital under the current provisions of Section 63 of the Act;

(ii) the items of capital expenditure ,with land development, landscaping and horticultural works and earthwork will not attract annual allowances as they are not subject to depreciation under normal accounting principles in as much as these are excluded from the definition of " industrial premises" under Section 2 of the Act;

(iii) capital expenditure incurred by the company in respect of the construction of the road access to the hospital will be eligible for annual allowance at the rate of 5 % on the cost, as the capital expenditure is subject to depreciation under normal accounting principles.

3. **Payments made by B to A**

   It is confirmed that:

   (i) the payment B will make to A for the services provided by the latter company will be tax deductible under Section 57 of the Act;

   (ii) the royalty payment B will make to A will be considered as Mauritian sourced income under Section 74 of the Income Tax Act and therefore taxable in Mauritius at the rate of 15 %;

   (iii)any other fees A will receive from B will not be subject to income tax in accordance with paragraph 1 of Article 22 of the Mauritius -India DTA;

   (iv)B will have to apply TDS at the rate of 10 % on the royalties payable to A at the time any amount of royalties is made available to A in accordance with Section 111 C (1) of the Act;

   (v) A will have to furnish an annual tax return to the MRA and pay any residual tax at the rate of 5% on the gross amount of royalties as, pursuant to the DTA, the tax rate on the royalties specified at paragraph 2 of Article 12 of the Mauritius-India DTA is 15 %.

4. **Emoluments derived by staff members of A seconded to B**

   It is confirmed that the staff members of A seconded to B will be subject to income tax in Mauritius on their emoluments derived in Mauritius in accordance with paragraph 2 of Article 15 of the Mauritius- India DTA.

TR 72

Facts

Company P is a UK Fund Manager appointed under an umbrella agreement to manage a number of investments on the balance sheet of AQ, a UK company. The investments are held all over the world. Company P and AQ are not related companies and do not have common directors.

Company P intends to subcontract the management of some of the investments to a Mauritius company (Company M), and this is permissible under the umbrella agreement. Company P will meet in London to provide recommendations to Company M which will consider these recommendations to decide whether or not to invest or disinvest. In this respect there will be an agreement between Company P and Company M.

Company M is a wholly owned subsidiary of Company P and holds a GBL 1 licence. It will receive an investment management fee for its services on which it will pay Mauritius income tax. The fee will reflect the management of assets already identified to be managed in Mauritius. Company P is also considering subcontracting management of more or all AQ securities to Company M at a second stage.

Point in Issue

Whether it can be confirmed that as a result of subcontracting of investment management by Company P to Company M, the mere management of part of or the majority or all of the AQ assets by Company M will not create a permanent establishment for AQ and Company P in Mauritius and AQ and Company P will not have any tax filing requirement with the Mauritian Tax Authorities.

Ruling

Company P is a Fund Manager and manages the investments of AQ under an umbrella agreement with the latter. Company P and AQ are not related companies. The management of the assets of AQ is subcontracted by Company P to Company M which has the power to act in an independent capacity. It is confirmed that Company M will not be considered as a permanent establishment of either AQ or Company P. Neither Company AQ nor Company P will have to file any tax return in Mauritius with regard to the activities carried out by Company M.

TR 73

Facts

F company Limited has been registered in Mauritius as a foreign company. The company (Head Office) is incorporated in India. The company has been awarded a contract by the Mauritius Ports Authority to construct an oil jetty in Port Louis harbour. The contract is expected to last for a period of 18 months.

The project is managed by personnel delegated from the Head Office. The Head Office has financed the working capital and also made arrangements for the materials, equipment and the workforce for the project to be made available to the branch. The human resource employed on the project is constituted of the following:

i. personnel from the Head Office to supervise the engineering works, monitor the project and carry out all administrative and accounting functions.
ii. the workforce which is actually carrying out the project work.

The workforce is supplied by an Indian subcontractor who has to be present in Mauritius for the duration of the contract. The workforce is paid by the Indian subcontractor and receive their remuneration from India.

The Head Office has incurred expenditure on the acquisition of materials in India for exclusive use on the project. Second hand heavy duty equipment has also been brought in from India and Europe in respect of which Head Office has incurred transport and freight charges. These equipment will have to be rehauled and returned to their respective locations at the end of the project. In addition, Head office provides service of administrative nature and technical knowhow.

The branch has incurred air transport expenses for and in respect of the technical and administrative staff.

Points in issue

1. **Expatriate Staff**

   Whether

   a. the Indian subcontractor should register with the MRA in respect of the supply of labour for the project.
   b. the members of the workforce are subject to PAYE.
   c. the branch should apply tax deduction at source in respect of the amounts made available to the Indian subcontractor for carrying out works.
   d. the members of the workforce are entitled to income exemption threshold.

2. **Cost of Materials**

   Whether the actual amount expended as the cost of materials which will be wholly and exclusively used on the project is deductible as input cost.

3. **Equipment Wear and Tear**

   Whether wear and tear in respect of second hand heavy duty equipment imported from overseas and used on the project can be claimed as annual allowance under Section 24 of the Act.

4. **Jack Up**

   Whether the amount paid to subcontractors in India by Head Office for dismantling the jack up used in the project can be claimed by the branch as an allowable expense.

5. **Transport of Equipment and Freight Charges**

   Whether maritime freight and transport charges incurred by Head Office are allowable expenses to the branch.

6. **Air Transport Expenses**

   Whether air transport expenses incurred by the branch for the technical and administrative personnel can be claimed as allowable deductions.

7. **Head Office Administrative Expenses and Transfer of Technical Know-how**

   Whether administrative expenses and services provided for the transfer of know-how by Head Office can be claimed by the branch as allowable expenses.

Ruling

1. Expatriate Staff

a) The Indian subcontractor is making a supply of labour for carrying out works in respect of civil construction and will have a permanent establishment in Mauritius in accordance with Article 5 of the Mauritius-India Double Taxation Agreement (DTA). As it will be liable to tax on income derived from this project, it will have to register with the MRA.

b) The members of the workforce will be subject to PAYE on their emoluments as it is income derived from their employment in Mauritius in accordance with the provisions of Section 74 (1) (a) of the Income Tax Act and liable to tax in Mauritius by virtue of the Mauritius-India DTA.

c) The branch should apply tax deduction at source in respect of the amounts made available to the Indian subcontractor for carrying out works in respect of civil construction in accordance with Sections 111A (1) (k) (ii) and 111B (d) of Sub-Part BA of the Act.

d) The members of the workforce will be entitled to IET in accordance with Section 27 (1) of the Act provided that they are resident in Mauritius during the period of the contract.

2. Business Expenses

a) Items 2, 3, 5, 6 and 7 will be business expenses wholly and exclusively incurred in the production of gross income and may be claimed by the branch as allowable expenses, but subject to the application of the arm's length principle with regard to such expenditure incurred on its behalf by the Head Office.

b) Expenditure incurred on the Jack up(item 4)has been incurred and paid outside Mauritius and cannot be said to be an expenditure wholly and exclusively incurred in the production of gross income for the project in Mauritius and therefore cannot be claimed as an allowable expense.

TR 74

Facts

E Ltd are consultants providing services to insurance companies in respect of

i. insurance loss adjustment, and
ii. investigations into suspected fraudulent insurance claims

in addition to other types of services on which tax deduction at source apply.

The principal and associate of the company are Chartered Quantity Surveyors. The fees receivable by the company from insurance companies in respect of the services at (i) and (ii) are subjected to tax deduction at source by the payers.

Point in issue

Whether it can be confirmed that the services of loss adjustment and/or investigations into suspected fraudulent insurance claims fall outside the scope of TDS under Section 111B (e) of Sub-Part BA of the Income Tax Act i.e. specified services under the Fifth Schedule to the Act.

Ruling

E Ltd is a company whose principal and associate are registered Chartered Quantity Surveyors and the company provides consultancy services to insurance companies in its capacity as Quantity Surveyor. The services therefore fall under the scope of TDS under Section 111B (e) of Sub-Part BA of the Act i.e. specified services under the Fifth Schedule to the Act.

TR 75

Facts

G Inc., a company incorporated in BVI, is proposed to be re-domiciled to Mauritius as a registered domestic company under the Companies Act 2001. It is the ultimate holding companyof the following companies in the G group:

G LUX	- incorporated in Luxembourg
G Capital S.A	- incorporated in Switzerland
G Corporate Services Ltd	- incorporated in Mauritius by way of continuation (holds a GBL 1 licence)
G Trust Ltd	- incorporated in Mauritius (licensed as a Management company by the FSC)
G Capital Management Ltd	- incorporated in Mauritius (holds a GBL 1 licence)

According to the corporate structure of the Group,

- G LUX holds 100 % of the shares in G Capital S.A
- G LUX holds 100 % of the shares in G Corporate Services Ltd
- G Inc. holds 100 % of the shares in G Trust Ltd
- G Inc. holds 100 % of the shares in G Capital Management Ltd

Dividends will be paid by each operating company to its holding company which will in turn pay dividends to the ultimate holding company. As a domestic company G Inc. will be subject to tax at the rate of 15% as from year of assessment 2007/08.

Points in issue

1. 1A. Whether it can be confirmed that as the dividend income G Inc. will receive from G LUX is sourced abroad, the company will benefit from foreign tax credit and underlying tax credit, i.e any dividend withholding tax and any underlying taxes suffered by G LUX S.A and G CAPITAL S.A can be claimed back, and by the application of the foreign tax credit and underlying tax credit the tax liability of G Inc. can be reduced to 0 % if the tax credit (including the underlying tax credit) is equal to or more than 15 %.

   1B. Whether it can be confirmed that, as part of the dividend distribution G Inc. will receive from G LUX S.A has a Mauritian source element, dividend received from G Corporate Services Ltd , being a Mauritian source income, will not be treated as ordinary income by G Inc. in its books and therefore be exempt from income tax and no foreign tax credit will be applicable.

2. Whether it can be confirmed that any dividend income received by G Inc. from G TRUST LTD will not be subject to withholding tax and be an exempt income. Also, as this will not be a foreign source income G Inc. will not be able to apply for foreign tax credit and underlying tax credit in respect of this income.

3. Whether it can be confirmed that irrespective of G Capital Management Ltd holding a GBL1 licence, any dividend income received by G Inc. from G Capital Management Ltd will not be subject to withholding tax and be an exempt income. Also, as this will not be a foreign source income, G Inc. will not be able to apply for foreign tax credit and underlying tax credit in respect of this income.

Ruling

1. 1A. It is confirmed that as the dividend income G Inc. will receive from G LUX is sourced abroad, the company will benefit from foreign tax credit and underlying tax credit, i.e. any dividend withholding tax and any underlying taxes suffered by G LUX S.A and G CAPITAL S.A can be claimed back, and by the application of the foreign tax credit and underlying tax credit the tax liability of G Inc. can be reduced to 0 % if the tax credit (including the underlying tax credit) is equal to or more than 15 %.

   1B. G Inc. will receive dividend income from G LUX S.A. This dividend income cannot be said to be income derived by G Inc. from Mauritius, and is therefore not exempt from income tax. It is a foreign source income on which G Inc. will be liable to tax and can apply for foreign tax credit and underlying tax credit.

2. It is confirmed that dividend income received by G Inc. from G TRUST LTD will not be a foreign source income and is therefore exempt. G Inc. will not be able to apply for foreign tax credit and underlying tax credit in respect of this income.

3. It is confirmed that dividend income received by G Inc. from G Capital Management Ltd will not be a foreign source income and is therefore exempt. G Inc. will not be able to apply for foreign tax credit and underlying tax credit in respect of this income.

TR 76

Facts

L India Holdings, which holds a GBC 1 Licence, is proposing to its investment advisers based overseas an option to acquire shares in the company at a price which will be below market value at the time the option to acquire the shares is exercised. This will constitute part of the consideration for services rendered as investment advisers, and will give rise to a benefit-in-kind to the overseas investment advisers, to whom also capital gains would accrue in case of disposal of these vested shares.

Points in issue

1. Whether the difference between the exercise price and the market value of the shares in question would be taxed on the overseas investment advisers as benefits- in- kind at the time the options are exercised.
2. Whether the profits made on the disposal of the exercised shares vested on the overseas nonresident investment advisers are subject to taxation in Mauritius under the scenarios below:
   (i) Investment advisers are based in Treaty Countries;
   (ii) Investment advisers are based in Non-Treaty, Third Party Countries

Rulings

1. It is confirmed that by virtue of Section 74 (1) of the Income Tax Act 1995 and paragraph 1 of Article 14 of a Double Taxation Treaty based on the OECD model, the overseas investment advisers would not be liable to tax in Mauritius on the difference between the exercise price and the market value of the shares at the time the option is exercised, as the benefit-in-kind accruing to them will constitute an income derived for proferring independent professional services from overseas and not from Mauritius.
2. It is confirmed that the profits made on the disposal of the exercised shares vested on the overseas non-resident investment advisers in both scenarios, i.e. being based either in Treaty Countries or in Non-Treaty, Third Party Countries, will not be subject to income tax in Mauritius, being given that the investment advisers will not have a permanent establishment for trading in shares in Mauritius.

TR 77

Facts

M Ltée is a company incorporated in Mauritius as a private company on 2 October 1985. It is the owner of land of an approximate acreage of 1200 Arpents since 17 March 1986, purchased in several lots on account of the existence of the main road dividing these lots. Out of these owned lands the company had in the year 2000 extracted 18 Arpents, 75% of which being for the purpose of subdivision and development into residential plots sold to the public under a special scheme, and whereby also 25% was sold to the Government at nominal prices.

It is engaged mainly in sugar cane plantation since 1986, and approximately 50 % of the land not suitable for cane cultivation is used for deer farming. It is also, since recently, engaged in the export of monkeys, but this is only ancillary. Though the company's objects include purchase and resale of lands and other property, its primary object has always been the cultivation of sugar cane, and throughout its existence the company has been engaged in agricultural activities. The land was acquired for the purpose of cane cultivation. It was not acquired for the purpose of being sold at a profit. The land is situated in the south-western part of the island which is the driest region, and according to the company it is not profitable to cultivate sugar cane, given that the cost of production is constantly rising while it is also known that revenue will be decreasing in the near future. For this reason the shareholders have decided to sell a certain portion of the land.

As it has been found to be practically impossible to sell the land in one lot on account of its size, an area of 419 acres divided into five different lots will be sold to one single purchaser, not related to the company. There is no agreement of any kind with the eventual purchaser, and it is confirmed that the company will not carry out any land development prior to the disposal of the said lands.

Point in issue

Whether the proceeds of the sale will be subject to income tax.

Ruling

On the basis of the facts given, it is confirmed that the gain on the sale of the five plots of land of a total area of 419 acres will not be subject to tax as it will constitute a gain of a capital nature derived on the realization of a capital asset and therefore outside the scope of Section10 of the Income Tax Act 1995.

TR 78

Facts

V Ltd is a private limited company incorporated in Mauritius and has the activity of running a hotel in the island and offers its services to T, a tour operator in Italy. T is the sole proprietor of V Ltd and sends tourists to this company; so that the latter's turnover is mostly made up of amounts invoiced to the tour operator.

V Ltd has two bank accounts, one held in the Euro currency and the other in the Mauritian currency (MRU). Invoices are issued by V Ltd to T in Euro, and all payments by the latter for amounts invoiced by the company are made in Euro and subsequently transferred to the MRU account as and when needed. Therefore, on account of the fact that payments are received in Euro, exchange gains and losses arise to the company.

Point in issue

At what point in time is gain or loss on exchange realized by the company:

a) when the amounts invoiced by V Ltd are settled by T and credited in the Euro account?, Or
b) when the amounts in the Euro account are transferred by the company to the Mauritian Rupee account?

Ruling

On the basis of facts given, the gain or loss on exchange arising as a result of the fluctuation in the rate of exchange is, in accordance with the provisions of Section 6 (3)(a) of the Income Tax Act, deemed to be realized by V Ltd on the date on which the amount invoiced to T is settled by the latter.

Where the amount invoiced is remitted in an income year other than the income year in which the transaction occurs, apart from accounting for the gain or loss on exchange at the date of settlement as stated above, any difference on exchange arising as a result of the fluctuation in the rate of exchange between the date of the invoice and the end of the income year in which the invoice is issued, should also be taken into account for income tax purposes by virtue of Section 6 (3) (b) of the Act.

Please note that any gain or loss on exchange arising on transfer of the amount from the Euro account to the MRU account should also be recognized and accounted for in the income tax return in respect of the year in which the transfer is made.

The treatment set out in the foregoing paragraphs is also in accordance with the principles laid down by IAS 21.

TR 79

Facts

An individual is contemplating to set up a business as tour operator. A company will be formed for the purpose of undertaking the said business. In carrying the tour operator business, the company will incur expenses, including expenses connected with overseas marketing and trade fairs which qualify for a 200% deduction under the law. It is assumed that in the event the company will have already started its operations, in the first instance it will be allowed to deduct the total amount of the overseas marketing and trade fair expenses from its profit and loss account; and to a deduction in respect of the same item of expenditure a second time, when computing its chargeable income for income tax purposes.

Point in issue

Whether it can be confirmed that the tour operator company will be entitled to a 200% deduction in respect of overseas marketing and trade fair expenses.

Ruling

It is confirmed that the tour operator company will be entitled to a deduction of 200% of the amount of overseas marketing and trade fair expenses, in accordance with the provisions of Section 67A of the Income Tax Act 1995.

TR 80

Facts

L Investments Ltd is a GBL 1 company incorporated in Mauritius. It holds 100% shares in P Holdings (Pty) Ltd, a company incorporated in South Africa, since November 2002. The only employee and director of the company is Mr T. P Holdings (Pty) Ltd holds 74% of the shares in a subsidiary in South Africa, viz. M (Pty) Ltd, an investment company. The difference, 26% shares are owned by Mr T. A resolution has been passed on December 2002 to transfer the effective management and control of both companies to Mauritius and all operations of the companies are done in Mauritius. By letter dated 20 March 2008, the South African tax authorities (SARS) have been informed of these operations and also requested to remove the companies from the South Africa tax register.

Both companies have 30 September as the date of annual balance of accounts. They do not have taxable income until September 2005, but M (Pty) Ltd is liable to tax since the year to 30 September 2006.

Point in issue

A guidance is sought as to what procedures should be followed to get the companies registered as taxpayers in Mauritius.

Ruling

Based on the facts provided, being given that P Holdings(Pty) Ltd and M (Pty) Ltd have their effective control and management transferred to Mauritius, they are resident in Mauritius for income tax purposes and therefore liable to tax on their worldwide income. As these companies are not incorporated in Mauritius, it is the obligation of the taxpayer companies to officially inform the Mauritius Revenue Authority that their control and management have been transferred to Mauritius. But this does not seem to have been done.

Under the provisions of Section 116 (1) of the Income Tax Act 1995, and subject to other provisions of the law, every company, whether or not it is a taxpayer, has the obligation to submit to the Director-General a return in such manner and in such form as may be approved by him and at the same time pay any tax payable in accordance with its return.

The Income Tax Act lays the obligation on all companies resident in Mauritius to submit their returns of income within the due date, whether or not they are registered with the MRA or have received a return form from the MRA.

Both companies should therefore comply with the requirements of the Income Tax Act with regard to submission of returns of income and payment of tax.

TR 81

Facts

ZM, a limited partnership formed in Cayman Islands, proposes to incorporate a subsidiary in Mauritius (P Ltd) which will hold a Global Business Category 1 Licence. P Ltd will invest in an Indian company which would be engaged in the business of development of a Special Economic Zone (SEZ) in India, under the Special Economic Zones Act. Section 80-IAB of the Indian Income Tax Act 1961 allows a deduction in respect of profits and gains derived from development of a SEZ. Additionally, Section 115-O of the said Act grants an exemption to undertakings engaged in the development of a SEZ from dividend distribution tax payable at 16.995% on distribution of dividends. The Mauritius company will hold 49% interest in the Indian company.

Point in issue

Whether, in relation to the profits and gains derived by the Indian company from its business of developing a Special Economic Zone in India, P Ltd is eligible for a tax sparing credit under Regulation 9 (1) of the Income Tax (Foreign Tax Credit) Regulations 1996 in respect of Indian profits tax which would otherwise have been payable but for the exemption effectively given as a result of the enactment of Section 80-IAB and Section 115-O of the Indian Income Tax Act

Ruling

Regulation 9 (1) of the Income Tax (Foreign Tax Credit) Regulations 1996 of the Income Tax Act 1995 provides that, where the Director-General is satisfied that provisions have been introduced in the law of a foreign country with a view to promoting industrial, commercial, scientific, educational or other development in that country and that under those provisions income has been exempted from tax which would otherwise have been chargeable to foreign tax, "he shall allow a credit for the amount of foreign tax which would have been chargeable had those provisions not been enacted." A similar tax sparing clause has been provided in the Mauritius-India tax treaty. Section 80-IAB of the Indian Income Tax Act does not satisfy the above conditions since no relief is provided either by exemption of income or by reduction in the amount of income tax payable. However, Section 115-O provides for an exemption of tax on distributed profits derived by enterprises operating in a SEZ. In accordance with the provisions of Section 115-O of the Indian Income Tax Act 1961 P Ltd will be eligible for a tax sparing credit in respect of the dividend distribution tax which would otherwise have been payable.

The tax sparing credit, however, will be limited to and in the proportion of the share of interest of P Ltd in the Indian company.

TR 82

Facts

A Ltd holds a Category 1 Global Business Licence, and operates as a collective investment scheme. The preference shares issued by the Company have been categorized as liabilities in the balance sheet, in accordance with International Accounting Standards, and are therefore debt in nature. In lieu of a performance fee, which is usually an allowable expense, a preference share dividend is declared and payable to the manager, based on the performance of the Company.

Point in issue

Confirmation as to whether preference share dividend should be treated as an allowable expense.

Ruling

On the basis of facts provided, it is confirmed that dividends paid on the preference shares which have been classified in the balance sheet as a liability in accordance with International Accounting Standards, should be treated as an allowable expense.

TR 83

Facts

ASB (hereinafter referred to as the "Board") has been granted land conversion permit to sell land in order to recover the cost of the Voluntary Retirement Scheme (VRS 1) in the year 2001.The lands were used for sugarcane plantation and have been owned by the Board for a considerable length of time. The Board has never been engaged in property development.

The land for sale was divided into 9 lots after obtaining Land Conversion Permit under Voluntary Retirement Scheme, in accordance with the Sugar Industry Efficiency Act 2001. Two of the lots were sold in 2007 for a total sum of Rs X million odds. The remaining lots have not yet been sold. The Board was directly involved in the conversion, development and parceling of the land and the only development costs were the survey fees, which were minimal.

The Board has spent some Rs Y million for the VRS scheme, financed by two loans contracted in 2001 and 2005 respectively from a domestic bank, and from its own working capital. The proceeds of the sale are being used to service the debts contracted.

Point in issue

Whether the surplus realised will be taxable or not.

Ruling

On the basis of facts provided, as the proceeds are used by the Board exclusively for the implementation of the 2001 Voluntary Retirement Scheme, the surplus realised on the sale of lands will not be taxable, in accordance with item 1 of Sub-Part C of Part II of the Second Schedule to the Income Tax Act.

TR84

Facts

A company intends to purchase a villa under the IRS scheme which will be financed wholly by an interest-free loan advanced by its sole shareholder. The latter intends to make use of the villa as his residence. It is not intended to be let to others. No business will be carried out by the company, and any surplus of the loan remaining after the purchase of the villa will be deposited in a bank. The interest accruing to the company on any such deposit will be used for paying the maintenance costs of the villa. Also, the interest receivable by the company will be subject to tax without any claim for deduction in respect of expenses incurred for the maintenance of the villa. The company is only a vehicle through which the property is to be purchased and held.

Point in issue

1. Whether in the above circumstances, the shareholder will be subject to tax whilst residing free of charge in the villa.
2. Whether the company will be subject to tax on an "adequate rent" to be determined by the Mauritius Revenue Authority (MRA).

Ruling

1. **The provisions of Section 86A (Benefit to Shareholder) are as follows:**

   "Where a benefit of any nature, whether in money or money's worth, other than payment of dividend, is made by a company to any shareholder or a relative of the shareholder, the value of that benefit, to the extent that it exceeds the payment, if any, made therefor, shall be deemed to be income referred to in section 10 (1)(f) and received by the shareholder or the relative of the shareholder, as the case may be."

   On the basis of facts provided, whilst residing free of charge in the villa belonging to the company, a benefit is deemed to accrue to the shareholder, which is therefore a taxable benefit in accordance with the above provisions.

2. **The provisions of Section 88 (1) of the Act state that**

   "……….where property owned by a company is leased to a shareholder or a relative of a shareholder or to any other person, and the rent is not an adequate rent for the property or the lease makes no provision for the payment of rent, there shall be deemed to be payable under the lease a rent that is equal to an adequate rent for the property, and that rent shall be deemed to be income derived by the lessor-

   (a) ....

   (b) where no rent is payable under the lease, in respect of such periods as the Director-General determines."

3. In accordance with the above provisions, the company will be subject to tax on an adequate rent which shall be determined by the MRA.

TR 85

Facts

Company A, holding a Category 1 GBL licence, has acquired USD 200m bonds having a maturity period of 24 months and bearing interest at the rate of 10% p.a payable quarterly from a resident of the People's Republic of China (The Issuer). It has invested in the bond as a mechanism to acquire shares in the Initial Public Offer (IPO) vehicle at a more advantageous price. Obtaining the shares was the sole objective of making the investment in the bonds. The other salient facts and terms of the bonds are thus:

- Company A funded the purchase by issuing equity of USD 5m and an overseas loan of USD 195m from one of its shareholders at 9.5% p.a interest payable quarterly.
- The issuer will repay the bond by cash or by the transfer of shares in another overseas company (Company B/The IPO Vehicle) in which the issuer has substantial interests.
- If the obligations are extinguished as above, Company A will derive a premium depending on the timing of the transfer.
- The purpose of the premium is an inducement to Company A to commit early to the investment in the form of bonds and allowing its name to be used in marketing the shares in the IPO vehicle to other investors.
- If Company A receives shares, it may, in due course, sell them at the prevailing price, which may result in a profit.
- Company A may also sell the bonds at market price, resulting in a profit or loss.
- In line with IAS 39, Company A will record the bond as a non-current asset in its Balance Sheet and will periodically recognize mark-to-market adjustments in its financial accounts to reflect the fair value of the stocks.

Points at Issue

- Whether interest paid by Company A on the USD 195m loan will be deductible against income received and whether the interest margin of 0.5% will be considered to be compliant with the arm's length principle?
- Whether the premium/gain derived by Company A on exchange of shares in Company B is exempt from income taxation in Mauritius?
- Whether, the premium paid by the Issuer on retirement of the bonds to Company A will be exempt from taxation in Mauritius, if the bonds are repaid in cash?
- Whether gains derived by Company A from sale of the Company B shares shortly after conversion will be exempt from taxation in Mauritius?
- Whether gains derived by Company A from sale of bonds prior to their maturity or early redemption, will be exempt from income taxation in Mauritius?

- Whether the mark to market adjustments that will be recognised under IAS 39 in Company A's accounts will be considered capital in nature and thus not subject to taxation?

Ruling

a) Any expenditure incurred on interest in respect of capital employed exclusively in the production of gross income specified in Section 10(1)(b), (c) or (d), of the Income Tax Act as the case may be will be allowed as a deduction in accordance with Section 19 of the Act.

   Regarding the issue of arm's length, MRA will not rely solely on interest margin to decide whether the arm's length principle is being adhered to. Other factors as laid down in Section 75 of the Act will also be considered in the application of the arm's length test to arrive at a reasonable amount of net income that would normally be expected from this type of activity undertaken by Company A.

b) (b)&(c) On the basis of the facts provided, and having regard to the risk taken by Company A, the rate of interest applicable on the bonds considered as a reasonable commercial interest rate under the current economic environment and the fact that Company A is acting as a force of attraction for other prospective investors, it is ruled that premium/gain derived by Company A either on exchange of shares in Company B or paid in cash is of a capital nature and not subject to tax.

c) Gains derived by Company A from the sale of shares are exempt from income tax by vitue of Item 8 of Sub-part C of Part II of the Second Schedule to the Income Tax Act.

d) Gains derived by Company A from the sale of bonds prior to their maturity or early redemption is exempt from income tax as in (d) above.

e) The mark to market adjustments under IAS 39 will not be subject to taxation as in (d) above inasmuch as the gain is not yet realised.

TR 86

Facts:

The Directors of a Category 1 GBL company wish to transfer the registration of the company to another jurisdiction in accordance with Section 301 of the Companies Act 2001. On re-registration of the company, it will cease to be Mauritius resident and will forego its Global Business Licence. The assets of the company comprise quoted and unquoted investments.

Points in issue:

a) Whether the migration will be treated as a cessation of business in Mauritius and deemed disposal of the investments?

b) If deemed disposal applies, whether:
   i. the transfer of the assets will be taxable?
   ii. any capital gains arising will be considered as 'exempt income' and whether there will be an implication of 'expenditure incurred in the production of income'?
   iii. there will be any other tax implications on the re-registration of the company?

Ruling:

a) The migration will be treated as a cessation of business in Mauritius as the company will be removed from the register of companies and the transfer of the quoted and unquoted investments will be treated as deemed disposal.

b) (i) By virtue of Item 7 of Sub-part C of Part II of the Second Schedule to the Income Tax Act 1995, gains or profits derived from the sale of units or of securities by a company holding a Category 1 Global Business Licence is exempt from income tax.

   (ii) By virtue of Section 26(1)(b) of the Income Tax Act, no deduction shall be made in respect of any expenditure or loss to the extent to which it is incurred in the production of income which is exempt income.

   (iii) There will be no other tax implication in Mauritius on re-registration of the company in another jurisdiction. However on deregistration in Mauritius, the company has an obligation to:

   - furnish to each employee, within 7 days, a Statement of Emoluments and Tax Deduction for such period as appropriate;
   - submit forthwith, a return of income for the period ending with the cessation of the business; and
   - pay any tax due by the company

TR 87

Facts:

G an Indian company is incorporated in Mauritius and holds a GBL 1 licence. Appointed as Investment Manager, it provides investment advisory services to an Indian closed-ended fund incorporated in Mauritius holding a GBL 1 licence. In addition to a fixed advisory or management fees ranging between 1.5% to 2% it earns from the Fund, it may get a variable element alongside the investors in the economic benefits of the Fund, in accordance with the distribution waterfall which sets out how the proceeds from the sale of investments should be distributed between the investors and the Advisor. The Fund has two classes of shares, viz. Preference Shares and Management Shares. The Preference Shares are issued to investors who commit capital in the Fund and take the risks. G holds Management Shares which are of a nominal amount of USD 10 in the Fund, and is not entitled to receive any dividend. In case of winding up, it will receive the nominal paid up value of the Management Shares, after holders of Preference shares will have received the nominal paid up value of the Preference Shares.

The Fund has subscribed for units in an Indian Trust, a contributory trust incorporated in India. The Indian Trust has, in turn, made direct equity investments in Indian companies. The Indian Trust has remitted proceeds from divestments to the Fund by way of redemption of the units subscribed. In accordance with the constitutive documents of the Fund, the allocation of the redemption proceeds representing the cost of the units and any capital gains from the transaction is as follows:

i. return of the cost of capital contributed by the shareholders in the Fund;

ii. an additional amount (a preferred return) to the Fund's shareholders to be calculated at an annual rate of 9% compounded semi-annually on all capital contributions from the time of drawdowns; and

iii. the balance of divestment proceeds in the ratio of 80% to the Fund's shareholders and 20% to G.

G may be entitled to a share of 25% of the preferred return at (ii) above varying between 6% and 9%; and in addition to this preferred return, a 20% share in the allocation of the balance of divestment proceeds.

Points in issue

Whether the allocation of the redemption proceeds of the units to G will qualify either as exempt income or capital gains, and hence not be taxable in Mauritius.

Ruling

Unlike other investors who commit capital in the Fund, G holds Management Shares which are of a nominal amount of USD 10, which do not entitle it to dividends. It cannot therefore, in the circumstance, be said that the allocation of the redemption proceeds represents a capital gain in the hands of G. The amount receivable by G is in fact remuneration for the advisory and management services it provides to the Fund, and is therefore subject to tax in Mauritius, in accordance with Section 10 of the Income Tax Act 1995.

TR 88

Facts

A Limited is incorporated in Mauritius as a domestic company and has its registered office in Port Louis. Its sole shareholder and director is a UK national resident in Mauritius. The company will be engaged in arranging for the purchase of commodities from suppliers worldwide and its resale to clients overseas. For that purpose, under an agreement, A Limited will act as an agent for a UK company (the Principal) by offering procurement services from Mauritius. The agreement will not constitute any association, partnership, joint venture or other relationship.

For the purpose of this operation, ’procurement services' has been defined in the Memorandum of Agreement entered into between the UK company and A Limited to mean as acting for the Principal, opening and operating a bank account, co-ordinating the purchase and shipment of commodities, clearance of commodities from Customs & Excise in the respective countries of the suppliers and customers, arranging for payments to suppliers and receiving payments from customers, placing orders, entering into correspondences, invoicing and the preparation of all documentation relative to conducting the supply of commodities.

A Limited has made arrangements with a local clearing and forwarding agent to oversee trans-shipment of goods both by air or sea routes from suppliers to clients. All transactions and settlements on supplies and sales will be undertaken on the Agent's name (A Limited). The latter will manage funds on behalf of the Principal and maintain accounting records in Mauritius to disclose all such transactions in its books. Billing to customers will be initiated from here. Also, Board meetings will be conducted in Mauritius.

As consideration for acting as Agent on behalf of the Principal, A Limited will receive an amount equal to 8% of the gross profit on the transactions, and this will be used as the tax base to calculate its tax liability, if any. Any profit remaining shall belong to the Principal and will be repatriated to the United Kingdom where it will be subject to UK tax laws. The income of 8% pertaining to A Limited will be calculated at the end of the financial year and will be based on the accounting profit made out of the above transactions. The accounting profit will be determined by using the generally acceptable accounting principles and standards.

Points in issue

Whether:

1) the way of determining the tax base for computing the tax liability of A Limited is acceptable;
2) A Limited will receive deduction for all the business expenses and disbursements.

Ruling

1 & 2. For the purpose of determining the chargeable income and tax liability of A Limited, the MRA will apply the arm's length test and allow such business expenses to which it will be entitled, in accordance with section 57 of the Income Tax Act 1995.

However, being given that A Limited will be acting as a dependent agent for and on behalf of the UK company, it will constitute a permanent establishment in respect of the latter. The UK company will therefore be taxed on the profit attributable to the permanent establishment.

TR 89

Facts:

S is a GBC 1 company, and its main activities are the licensing of IPR's (intellectual property rights), manufacture of pharmaceutical products under licence and the purchase of patent and generic medicines for distribution, all carried out overseas. It maintains an office in Mauritius which acts as operational headquarters and employs local as well as expatriate staff. For the expatriate staff, S pays relocation expenses equivalent to one month's salary as part of their contract of employment to enable the employees to shift to Mauritius with their personal belongings.

Point in issue

Whether the relocation expenses paid by S

a) while the staff is still overseas;
b) to the staff on reaching Mauritius but before obtaining an occupational permit from Government;
c) to the staff on reaching Mauritius and after obtaining an occupational permit from Government

is a benefit in kind on which tax is payable in Mauritius.

Ruling

On the basis of facts provided, the relocation expenses payable by S to the expatriate staff equivalent to one month's salary as part of their contract of employment for enabling them to shift to Mauritius with their personal belongings fall within the meaning of emoluments as defined in Section 2 of the Income Tax Act. The payment thus constitutes emoluments receivable by the expatriate staff in each of the above circumstances, and therefore subject to income tax by virtue of the provisions of Section 10 (1) (a) of the Act.

TR 90

Facts:

H has been incorporated in Mauritius as a private company, and holds a GBL 1 Licence to carry out investment holding activities. No investments to-date, however, have been made by the Company. It has uninvested cash in its bank account in Mauritius, and earns interest thereon at commercial rates. It has no other income from any other source and incurs usual business operating expenses.

Points in issue

Confirmation that

a) interest income earned by the Company on its uninvested cash would not be considered as exempt income for the purposes of Section 26 of the Income Tax Act and GN 140 of 2003;

b) the Company would be allowed to carry forward its tax losses for set-off against future taxable income in five subsequent income years;

c) in the event that the Company derives both taxable income (e.g. dividends), exempt income (e.g. gains from disposal of shares) and interest income on uninvested cash from its Mauritian bank account in future, such interest income would not be taken into account for the purposes of applying the formula set in GN 140 of 2003 to calculate the quantum of unauthorized deductions.

Rulings

a) Item 3 (b) of Sub-Part B of Part II of the Second Schedule to the Income Tax Act provides that the interest payable on a call and deposit account held by a corporation holding a GBL 1 Licence with any bank under the Banking Act 2004 is exempt. It is therefore clear that the interest income earned by the Company on its uninvested cash in a bank account in Mauritius should be treated as exempt income.

b) It is confirmed that the Company would be allowed to carry forward its tax losses for set-off against future taxable income in five subsequent income years in accordance with the provisions of Section 59 (b) of the Income Tax Act. However, these tax losses would not include any expenditure or loss incurred in the production of interest income referred to above, given that expenditure or loss incurred in the production of income which is an exempt income is not deductible by virtue of the provisions of Section 26 (1) (b) of the Act.

c) In view of the ruling given at (a) above, in the event the Company derives both taxable income (e.g. dividends) and exempt income (e.g. interest income and gains from disposal of shares) such exempt income would be taken into account for the purpose of applying the formula set out under GN 140 of 2003 of the Act to calculate the quantum of unauthorized deductions.

However, in accordance with regulation 8 (2) of the Act, no proportion of the common expenditure will be disallowed where the proportion of exempt income to total gross income is 10 per cent or less.

TR 91

Facts:

X is a private limited company incorporated and domiciled in Mauritius, and is engaged in property development for the benefit of companies within a Group. It holds an appropriate licence as land promoter and property developer from the relevant authority. Y is another private limited company incorporated and domiciled in Mauritius and operates a chain of supermarkets throughout the island. X and Y are wholly owned subsidiaries of Z and are both VAT registered. All land and buildings belonging to X are presently rented to Y under an operating lease. The Management of X is considering the sale of all X's properties to Y. The capital expenditure incurred by Y will be exclusively incurred in the production of gross income.

Points in issue

1. In case the disposal of the land and buildings by X is treated in accordance with Section 21 (7) (a) of the VAT Act, whether-
    a) the profit arising on disposal of the said assets in the books of X will be treated as a capital gain; and
    b) the credit for input tax will be allowed as a deductible expense for the purpose of corporate tax.
2. Whether Y will be able to claim capital allowances on the amount attributable to the buildings?

Ruling:

1. It is confirmed that the sale of land and buildings is subject to VAT in view of item 48 (b) of the First Schedule to the VAT Act which reads as follows:
    - for any other purposes except land with any building, building or part of a building, apartment, flat or tenement together with any interest in or right over land, sold or transferred by a VAT registered property developer to a VAT registered person.
    - On the basis of the ruling given above, the issues raised do not arise.
2. It is confirmed that Y will be entitled to claim annual allowance on the amount attributable to the buildings, in accordance with the provisions of Section 24 of the Income Tax Act 1995.

TR 92

Facts

A Ltd is a Mauritian freeport operator engaged in clearing, freight forwarding and other associated activities. It is 100% owned by B Ltd a Mauritian company holding licence as third party freeport developer engaged in handling, storage, transshipment of frozen fish, and rental of building. X is a foreign company registered in the United States of America and is a client of A Ltd and of D Ltd, a Mauritian company which operates a fish processing plant.

X purchases fish from Y, a foreign company registered in Taiwan and which has a subsidiary in Mauritius, namely C. The latter purchases fish from fishing vessels for resale, and is also a client.of A Ltd. Fish purchased by X is subsequently sent to D Ltd for processing and thereafter the value-added finished product is forwarded to X, its rightful owner in USA, or to other destinations chosen by the latter. The whole transaction of the purchase and re-export of fish is carried out under the control of the freeport zone of Mauritius. Fish offal is sold by D Ltd to G and H, two Mauritian companies which treat fish offal and produce fish meal which is sold to animal feed producers. All the Mauritian companies referred to above form part of the same Group of Companies.

The whole Customs transaction is handled by A Ltd within the Mauritian Freeport zone by preparing the appropriate Customs Declaration Form to which are allocated a Customs Procedure Code (CPC) for each specific transaction, in accordance with Customs procedures. On the Customs Declaration form A Ltd has to appear as an importer and exporter of fish when in substance it is only an independent facilitator and a clearing and forwarding agent for X. Its only income is the fees it receives from different clients or parties to the transactions for handling the product.

Point in issue

Whether, in view of the Customs Declaration Form, A Ltd will be considered as the purchaser and seller of fish and deemed to derive income as such under Section 5 of the Income Tax Act, and therefore liable to income tax?

Ruling

On the basis of information provided to the effect that the fish is actually owned by X, and on the understanding that A Ltd does not operate as a dependent agent for X but is only acting as a facilitator and clearing and forwarding agent for X, it will be liable to income tax only on the fees it derives in that capacity. It will therefore not be considered as the purchaser and seller of fish.

TR 93

Facts

P Ltd is a company engaged in the distribution of petroleum products, and has a distribution network which comprises various retail outlets spread all over the island. In respect of a few recent retail outlets, the company has had to bear the cost of the access road to and exit from the retail outlets. The roads are set up either on leased property or form part of public roads.

Points in issue

a) Whether the initial costs of the roads are eligible for annual allowance?
b) Whether the future costs of maintaining the roads are allowable expenses?

Rulings

(i) The provisions of Section 24 (1) (a) of the Income Tax Act apply to capital expenditure incurred on the acquisition, construction or extension of commercial premises, while the provisions of Section 24 (1) (f) apply to "the acquisition or improvement of any other item of a capital nature which is subject to depreciation under the normal accounting principles. "

The access roads to and exit from the retail outlets do not form part of the commercial premises of the company and are also not capital expenditure of a nature which is subject to depreciation under normal accounting principles. The initial costs of the roads are therefore not eligible for annual allowance.

(ii) It is confirmed that the future costs of maintaining the roads will be allowable as a deduction in the accounts of the Company, in accordance with the provisions of Section 18 of the Income Tax Act.

TR 94 (Replaced by TR 99)

Facts

K Limited is a company incorporated in Mauritius and holds a Category 1 Global Business Licence. It invests in securities in India and has percentage holding in Indian companies which is less than 5%. It derives dividend income from the Indian companies; and on payment of dividends, Dividend Distribution Tax (DDT) is payable to the tax authorities.

Point in issue

Whether K Limited is eligible to claim the DDT as a credit against Mauritius tax payable.

Ruling

It is confirmed that K Limited is eligible to claim the DDT as a credit against Mauritius tax payable, in accordance with the provisions of Regulation 3 of the Income Tax (Foreign Tax Credit) Regulations 1996. DDT is regarded as a direct tax paid on dividends receivable by the shareholder.

TR 95

Facts

P (the Company) is a company registered and incorporated in Mauritius. It carries on business as promoter and distributor of pharmaceutical products. The Company has incurred expenditure to secure intellectual property as set out below:

1. During June 2008, USD 338,024,265 to acquire X intangible assets.
2. During April 2003, USD 8,028,090 to acquire Y intangible assets.
3. During April 2008, USD12,856,189 - an upfront royalty payment to acquire the right to use Z intangible assets, with regular payments thereafter.
4. During December 2008, USD26,225,000 - an upfront royalty payment to acquire the right to use G intangible assets, with regular payments thereafter. The Company has assessed the intangible assets at 1 and 2 above to have an indefinite useful life and is therefore not amortizing these assets yet. It is of the view, however, that it is inevitable at some point in the future the indefinite life assessment will be reviewed, and that events and circumstances will no longer support an indefinite useful life. At that point the assessment will be changed to a finite useful life assessment and the. assets will become subject to amortization in terms of normal accounting principles. The Company is therefore of the view that the expenditure incurred to acquire these assets must be allowed to be deducted at the prescribed rate from the date the assets would be first available for use in terms of Section 24 of the Income Tax Act.

As regards the intangible assets at 3 and 4 above, the Company has assessed their finite useful life to be 25 years. In its books of accounts, the Company has already recognized a deferred tax liability equal to the deductions in respect of these assets. In other words, if it were to dispose of the assets, it would recoup the deductions allowed, and this recoupment is already recognised as a deferred tax liability. The Company is therefore of the view that the upfront expenditure incurred to acquire these assets must be allowed to be deducted at the prescribed rate in terms of Section 24 of the Income Tax Act.

Points in issue

Whether it can be confirmed that -

i. in respect of each of the items 1 to 4 , the Company may claim annual allowance on the cost of expenditure incurred to acquire the intangible assets in terms of Section 24 of the Act, notwithstanding that currently for accounting purposes the assets at items 1 and 2 are regarded by the Company as having an indefinite useful life, and are thus not amortized in terms of normal accounting principles, but will be changed to a finite useful life assessment in the future and become subject to amortization in terms of normal accounting principles.

ii. the annual allowance rate of 5% per annum on cost is acceptable.

Rulings

i. It is confirmed that by virtue of the provisions of Section 24 of the Income Tax Act, the Company will be entitled to claim annual allowance on the capital expenditure incurred to acquire the intellectual property rights as follows:

   a. in respect of items 1 and 2 , from the date the intangible assets will be considered to have a finite useful life and thus become subject to amortization in terms of normal accounting principles.

   b. in respect of items 3 and 4, since the time they are first available for use.

ii. It is confirmed that the annual allowance rate of 5% per annum on cost is acceptable, in accordance with item 8 of the Second Schedule to Regulation 7 of the Income Tax Regulations 1996.

TR 96

Facts

X Ltd is incorporated and registered in Mauritius and holds a GBL I Licence. It owns 100 % share in

Y Ltd, a company resident in Hong Kong which in turn holds 100% share in Z Ltd, another company registered in Mauritius holding a GBL 1 Licence. Z Ltd owns 70 % share in A Ltd, a company incorporated in China.

In accordance with the above shareholding structure, the dividends flow is as follows: A Ltd (China) pays dividends to Z Ltd (Mauritius)

- Z Ltd pays dividends to Y Ltd (Hong Kong)
- Y Ltd pays dividends to X Ltd (Mauritius)
- Y Ltd has not suffered any tax on dividends received from Z Ltd, and the dividends flow from Y Ltd to X Ltd is free of withholding tax.

Point in issue

Whether X Ltd (Mauritius) is entitled to underlying foreign tax credit in respect of dividends received indirectly from A Ltd (China) by virtue of Regulation 7 of the Income Tax (Foreign Tax Credit) Regulations 1996 (GN 80 of 1996) although Z Ltd (Mauritius), one of the payers of dividend, is a GBL I company?

Ruling

Regulation 7 (2) of the Income Tax (Foreign Tax Credit) Regulations 1996 lays down that a company resident in Mauritius can make a claim for underlying tax where it has received dividends from a company not resident in Mauritius which *"has itself received a dividend, from another company not resident in Mauritius... "*, provided that the company paying the dividend holds directly or indirectly not less than 5% of the share capital in that company.

As Y Ltd (Hong Kong) has received dividends from Z Ltd, which is a company resident in Mauritius, X Ltd will not be entitled to claim underlying tax credit, in respect of dividends received indirectly from A Ltd (China) through the intermediary Y Ltd, in accordance with the above regulation.

TR 97

Facts

Z, a company incorporated in Mauritius as a private company, holds a GBL 1 Licence. It employs professionals, mainly expatriates of different nationalities, who provide consultancy services to Y, another GBL 1 company, and to all companies under the portfolio of this latter company with respect to the day-to-day management and general administration. Y is an investment holding company based in Mauritius with offshore portfolio companies.

Certain employees of Z have `professional permit' pursuant to Part III of the Investment Promotion Act 2000, and the rest hold `occupational permit' issued under Section 9A of the Immigration Act. These employees carry out work outside Mauritius. Presently all employees have been seconded to the portfolio companies of Y, based in various African countries outside Mauritius.

Point in issue

Whether the expatriate employees of Z are subject to income tax in Mauritius.

Ruling

As the expatriate employees of Z are based outside Mauritius and their services are wholly performed outside Mauritius, they are not subject to income tax in Mauritius, in accordance with the provisions of Section 5 of the Income Tax Act.

TR 98

Facts

A major multinational operating in the technological industry worldwide is proposing to set up a Category 1 Global Business Licence company (Company A) in Mauritius for investment in Country X. Company A will hold 100% stake in the investee company (Company B) to be situated in Country X and which will in turn set up operations in that country to manufacture technology-related products. Given the substantial amount of foreign direct investment involved and the likely impact on its economic, industrial and commercial development, Country X has entered into a Memorandum of Understanding (MOU) with the multinational to, inter-alia, refund 100% of the corporate income tax to be paid by Company B in Country X for a period of 10 years.

Under the provisions of the accounting standard to be adopted by Company B, the income tax refund will be treated as income and will be subject to income tax in the next accounting period; and the. "additional" tax suffered in that accounting period will also be refunded as part of 100% refund of corporate tax referred to above.

Points in issue

Whether it can be confirmed that -

a) Notwithstanding a corresponding refund/amount of tax suffered in the first year being refunded in the subsequent year, Company A can claim the underlying tax credit, and/or;

b) Company A will be allowed to claim tax sparing credit in respect of the income tax refunds received by Company B, and in the affirmative;

c) the relevant extract, certified and apostilled, of the MOU will be sufficient to substantiate the claims.

Rulings

a) It is confirmed that Company A can claim the underlying tax credit on the corresponding amount of income tax refunded in respect of a year which will be treated as income in the subsequent year, by virtue of the provisions of Regulation 7(1) of the Income Tax (Foreign Tax Credit) Regulations 1996.

b) It is also confirmed that Company A will be allowed to claim tax sparing credit in respect of the income tax refunds received by Company B, on the understanding that the agreement reached through the MOU by Country X with the multinational is tantamount to provisions having been introduced in the law of Country X with a view to promoting industrial, commercial and economic development in that country, pursuant to regulation 9 (1) of the above Regulations.

c) It is confirmed that for the purpose of regulations 8 and 9 of the Income Tax (Foreign Tax Credit) Regulations 1996), the relevant extract, certified and apostilled, of the MOU will be sufficient to substantiate the claims.

d) Notice is hereby given that Ruling TR 94 issued by the MRA and published in the Government Gazette No. 99 of 7 November 2009 is hereby revoked as from this date and replaced by a new ruling TR 99 as shown hereunder.

TR99

Facts

K Limited is a company incorporated in Mauritius and holds a Category 1 Global Business Licence. It invests in securities in India and has percentage holding in Indian companies which is less than 5%. It derives dividend income from the Indian companies; and on payment of dividends, Dividend Distribution Tax (DDT) is payable to the tax authorities.

Points in issue

Whether K Limited is eligible to claim the DDT as a credit against Mauritius tax payable.

Rulings

DDT, being tax paid out of the profits/reserves of the company declaring dividend, cannot be considered as a withholding tax suffered by the recipient of the dividend. In fact the liability to DDT rests with the paying company and not with the shareholder.

DDTwill therefore be treated as an underlying tax in accordance with the provisions of Regulation 7 of the Income Tax (Foreign Tax Credit) Regulations 1996.

TR100

Facts

A Ltd is engaged in the provision of management services, including financial and human resource services to related companies. B Ltd which operates a Beach Resort Hotel is a related company in which A Ltd holds shares, representing 23% of the total shares. A Ltd derives management fee from B Ltd as a consideration for the service it provides to this company under a management agreement. There is, however, no formal written management agreement between the two companies.

Pursuant to a restructuring exercise, the management agreement between the two companies has terminated and consequently B Ltd has to compensate A Ltd. The compensation has been computed at some Rs 203 m and is based on an independent valuation. The consideration for the compensation will be by way of shares, so that B Ltd will issue new shares to A Ltd.

Points in issue

Confirmation that pursuant to the termination of the management agreement between A Ltd & B Ltd -

a) the compensation payment that will be made by B Ltd (by way of issue of new shares) should be treated as capital income to A Ltd and therefore should be outside the tax net.

b) in the event the compensation payment is capitalized in the books of B Ltd for accounting purposes and is depreciated, annual allowance at the rate of 15 % would be available to B Ltd on a straight line basis.

Rulings

a) Facts provided show that there did not exist between the two companies a formal written contract agreement requiring the mandatory payment of compensation in the event of its termination, nor the amount thereof. Also, the management fee derived by A Ltd from B Ltd did not constitute a substantial part of the income of A Ltd for provision of such services to related companies, so that the termination of the said agreement did not fundamentally affect the structure of its business. It cannot therefore be confirmed that the compensation receivable by A Ltd is a capital receipt and therefore outside the tax net. It is a receipt of revenue nature constituting gross income under Section 51 of the Income Tax Act, and therefore subject to tax.

b) On the basis of the ruling given at (a) above no annual allowance will be available to B Ltd.