

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:

$$\text{Specified Denomination} \times [100\% + \text{Max}(0; A\% \times \text{Averaged Performance})]$$

(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.