

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.