

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 Section 10 of the Income Tax Act 1995.