

TR 103

Facts

A Ltd intends to set up a wholly owned Mauritius subsidiary, B Ltd (the Company), which will be incorporated in Mauritius and hold a GBL 1 Licence. The Company will be the 100% beneficial owner of a US trust which will be engaged in aircraft leasing. Currently a Bermuda company is the beneficiary of the trust. The nature of the trust will be similar to that of a bare trust in that the beneficiary, i.e. B Ltd, will be considered the owner of the aircraft for US tax purposes. The Company will have full control on the aircraft with power to instruct the trustee, and the interests and rights of the trust will be transferred to the Company when it will have been set up.

The US trust will lease an aircraft from a Cayman Island company under a finance lease, and the principal and interest payments will be payable to this latter company. The US trust will lease the aircraft on operating lease to a South African airline company for a period of 10 years. The sole income of the US trust will consist of rental income from the South African airline company. It will not derive any income from Mauritian source.

Points in issue

Confirmation as to whether -

- 1) the US trust will be considered as transparent for Mauritius tax purposes so that the finance lease will be treated as if entered into between the Cayman Island company and B Ltd, and the operating lease entered into between B Ltd and the South African airline company;
- 2) B Ltd may claim treaty benefits under the Mauritius-South Africa Double Taxation Agreement;
- 3) B Ltd will be entitled to claim capital allowances on the aircraft which would be leased by the trust to the South African airline company as if it had itself purchased the aircraft on finance lease, and the rate of capital allowances will be 100% of cost.

Rulings

(i)&(ii) The US trust will, for all intents and purposes, be considered as a company in accordance with the Income Tax Act, and therefore no issue of transparency for tax purposes arises. B Ltd will be the beneficial owner of the US trust, and therefore will not be concerned with the Mauritius-South Africa Double Taxation Agreement. As such, it will be liable to tax on any distribution it will receive from the trust.

(iii) As B Ltd will not be involved in any leasing activities but will receive distribution income from the US trust, it will not be entitled to any capital allowances.