**Facts**

Company A (a company to be incorporated in Mauritius which will hold a Category 2 Global Business Licence) (“Co A”) issues a convertible debenture (“CD”) of ZAR 500 million to Company B (a company to be incorporated and to be listed in Mauritius on the SEM, and which will hold a Category 1 Global Business Licence) (“Co B”).

The terms of the CD are as follows:

- Interest accrues at 8% per annum on the CD over a 5 year period but is only paid on redemption;
- Capital and accrued interest on the CD is paid at the option of Co A after 5 years either:
  - in cash; or
  - the issue of shares in Co A (“the Shares”).

Co B will therefore realise its investment (“the Disposal”) either through:

- redemption of the CD in cash by Co A; or
- sale of the CD or the shares by Co B.

The CD and the interest earned on the CD will be disregarded for accounting purposes and will be reflected as a share investment (“the Investment”). The carrying value of the investment will be either at:

- Fair value; or
- Amortised cost

with any changes in the value being reflected as a profit or loss in the income statement.

**Points at issue**

a) Whether the proceeds realised on the disposal of the CD or Shares will be treated as a capital gains realised by Co B?; or

b) Whether Co B will be subject to income tax in Mauritius on the proceeds realised on the disposal of the CD or Shares?

**Ruling**

a) Section 5(2) (a) of the Income Tax Act 1995 provides that “income shall be deemed to be derived by a person when it has been earned or has accrued”. In the light of the foregoing, though the interest is accrued and is only payable on redemption, Company B will be subject to income tax on the yearly interest accrued.

b) Company B being holder of a Category 1 Global Business Licence, the net gain on the disposal of the investment (excluding the accrued interest) will not be subject to tax in accordance with Items 7 and 8 of Sub-Part C of Part II of the Second Schedule to the Income Tax Act 1995.