

## **TR 154**

### **Facts**

V was registered in Mauritius as a Category 1 Global Business Licence (“GBC1”) company on 12 January 2006 under the name of W with its registered address at Port Louis, Mauritius. V is a wholly owned subsidiary of the X group whose main activity is investment.

V currently has an effective shareholding of 37.06% in Y, a South African based company acquired in July 2011 at a cost of ZAR 4.1 bn.

V intends to dispose of all its investment in Y to Z, a publicly traded South African based company. The effective date of the disposal is expected around late March 2015/April 2015. The consideration for a minimum total amount of ZAR 26.4 bn for the disposal of Y will be settled as follows:

- Cash consideration of ZAR 15bn; and
- Shares in Z for a minimum value of ZAR 11.4 bn, that is 200m shares at a guaranteed price of ZAR 57 per share.

The Z shares which were acquired as part of the disposal proceeds from the sale of Y will be disposed of and the proceeds may be reinvested when better investment opportunities are identified.

### **Points at issue**

1. Whether the gain on disposal of shares in Y is capital gain or exempt income?
2. Whether the gain on disposal of shares in Z, received as part of the sales consideration for Y, is capital gain or exempt income?
3. Whether the expenses directly or indirectly attributable to the gain on disposal of shares in Y and Z will be tax deductible or not?

### **Ruling**

1. The gains derived from the disposal of the shares in Y will be treated as capital gain.
2. Where the shares in Z are held for a period of more than 6 months, the profit realised will be regarded as capital gain. Gains or profits derived from the sale of shares by a company holding a Category 1 Global Business Licence is an exempt income by virtue of item 7 of Sub-Part C of Part II of the Second Schedule to the Income Tax Act.
3. Expenses directly attributable to non-taxable income will not be allowable while expenses indirectly attributable to the gain on disposal will be disallowed on a proportionate basis.