

TR 161

Facts

X, [hereinafter referred as the “Company”] was incorporated in Mauritius as a private limited liability company and holds a Category 1 Global Business Licence issued by Financial Services Commission (“FSC”) to operate a Closed-End Fund. Its business activity is to make equity and equity-related investments in Africa. The shareholding of the company is broad-based, constituting primarily of institutional investors based outside Mauritius.

The Company has a significant interest in Y (thereafter referred as the “Underlying Partnership”), a limited partnership registered in Jersey, Channel Islands. The Underlying Partnership holds investment in several companies incorporated in Mauritius, each holding a Category 1 Global Business Licence issued by FSC (collectively as the “Mauritian SPVs”). The Mauritian SPVs, in turn, hold investments in African based countries, directly or indirectly.

The Underlying Partnership has a tax transparent status in Jersey. It is exempt from income tax under the domestic tax laws applicable in Jersey. However, its limited partners are subject to income tax on their respective share of profits, in their own country of residence.

The Mauritian SPVs being investment holding entities, are expected to derive the following two streams of inflows from their business activities:

- (i) Foreign dividend income ; and/or
- (ii) Capital gains on disposal of shares.

The Underlying Partnership, in turn, is expected to derive the following two streams of inflows from the Mauritian SPVs:

- (i) Dividend income; and/or
- (ii) Capital gains arising from the buy-back of shares held in Mauritian SPVs.

The Company is expected to be attributed a share of profits from the business activities of the Underlying Partnership, the taxability of which will be determined by the income tax legislation and framework prevailing in Mauritius.

Point at issue

What will be the income tax implications in Mauritius to the Company on its share of profits derived from the Underlying Partnership?

Ruling

The profits derived by the Company from the Limited Partnership will retain their characteristics. Hence, the Company's share of profit originating from dividend income earned by the Underlying Partnership from the Mauritian SPVs would be exempt income by virtue of items 1(a) and 2 of Sub-Part B of the Second Schedule to the Income Tax Act.

As regards the Company's share of profit originating from gains on disposal of shares earned by the Underlying Partnership from the Mauritian SPVs, they would be exempt from income tax by virtue of item 7 of Sub-Part C of the Second Schedule to the Income Tax Act.