

TR 164

Facts

X is Zimbabwe's sole fixed telecommunication services provider that is 100% owned by the Government of Zimbabwe.

Following a court judgment, Y, a company incorporated in the Netherlands, became a judgment creditor of X for a sum of EUR 14,573,289.11 with interest as at 24 May 2014, due to a default of banking facilities contracted in or about 1997.

Since X was unable to meet its obligation vis-à-vis Y, the latter seized the shares of X held in Z (Mauritius) and was in the process of auctioning these shares in 2014 to recover its debt.

Prior to engaging in the sales of the shares, Y requested X for an immediate payment of EUR 3 million, in exchange for a full and final settlement, which X accepted in order to avoid foreclosure of its shares in Z (Mauritius). Both entities entered into a settlement agreement on 23 May 2014.

However, X was unable to raise the sum of EUR 3 million for payment to Y. AB, a company incorporated in Mauritius, offered to provide the EUR 3 million to X in exchange of a payment of USD 15,239,741 by the latter to BC. The amount of USD 15,239,741 was to be payable by X to AB in instalments over 5 years in accordance with a payment schedule as per the judgment dated 23 May 2014.

Point at issue

Whether the profit on debt settlement can be considered as capital gain by AB?

Ruling

The EUR 3 million is a loan/an advance made by AB to X to enable the latter to settle its debt with Y. The loan/advance of EUR 3 million is repayable over 5 years. The difference between EUR 3 million and USD 15,239,741, being the amount repayable over 5 years, represents interest falling under Section 10(1)(d) of the Income Tax Act, which is subject to income tax. It cannot therefore be considered as a capital gain.