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FACTS

G Limited is a company incorporated in Mauritius and holds a Category 1 Global Business Licence. Its principal activities are the provision of trade financing services, procurement of goods, freight, group treasury management and administrative services.

G Ltd is a subsidiary of H Limited, a company incorporated in Mauritius. H Ltd holds a Category 2 Global Business Licence and is ultimately owned by I Ltd a company listed on the Johannesburg Stock Exchange.

The board of directors of H Ltd decided to acquire 75% of the share capital of a German company. G Ltd entered into a Foreign Exchange Contract ("FEC") to hedge the group's exposure in relation to the above acquisition. The hedge was entered into on behalf of H Ltd and I Ltd. There is no written contract between G Ltd and H Ltd for securing the FEC as G Ltd is the treasury of the group of which forms part H Ltd.

G Ltd surrendered the FEC to I Ltd so as to enable I Ltd to capitalize H Ltd by way of issuing additional share capital to I Ltd. The capitalisation proceeds were applied to the settlement of the acquisition consideration. The surrender of the FEC at market value gave rise to a gain.

POINT AT ISSUE

Whether the gain arising on the FEC entered by G Ltd should be treated as exempt as per the Second Schedule to the Income Tax Act?

RULING

On the basis of the facts mentioned above, the gain on the FEC has accrued to H Ltd and I Ltd which are not taxable in Mauritius. On the other hand, for arranging the FEC, G Ltd would be deemed to have received an arm's length fee which is taxable in Mauritius.