TR 190

Facts

M will be the promoter of an external pension scheme ("EPS") under the Private Pension Schemes Act 2012 ("PSSA 2012"). In that respect, an EPS application shall be made in accordance with Section 12 of the PPSA 2012. Pursuant to Section 9 of the aforesaid Act, the EPS shall hold a Category 1 Global Business Licence ("GBL") under the Financial Services Act 2007 ("FSA 2007").

The EPS will be established as a trust under the Trusts Act 2001 ("TA 2001") with Mauritian trustees. A Pension Scheme Administrator licensed by the FSC under Part IV of the FSA 2007 will be established in Mauritius employing Mauritian based individuals, and the membership of the EPS will be confined to non-residents whose economic activities are wholly outside Mauritius. Individuals who would advance funds to the EPS will be individuals who will not be tax resident in Mauritius. The EPS will also provide pension benefits (comprising pensions/annuities/lump sum benefits) to non-residents and/or their beneficiaries on retirement, disability or death, as the case may be.

The EPS will be a defined contribution scheme within the provisions of the PPSA 2012 offering membership to non-resident members who may be either employed or self-employed, and whose membership will not be sponsored by their employers. The EPS will not be comparable to a conventional occupational pension scheme. It will also not be a superannuation fund set up for the benefits of employees of a Mauritian employer.

The EPS will accept contributions from non-resident members and pay pension benefits to non-resident members and /or their beneficiaries on retirement, disability or death, as the case may be. To this extent, the EPS will accept capital contributions from non-resident employees and contributions for the benefit of non-resident members from their employers and the latter may or may not be resident in Mauritius. It will also accept transfers from existing non-resident pension plans for the benefit of its non-resident members.

The EPS will invest members' contribution in global investments comprising deposits, shares, bonds, debentures, collective investment schemes and similar global securities. The investments will accordingly be invested internationally.

The effective place of management of the EPS and the Mauritian pension administrator will be in Mauritius.

Points at issue

(1) Whether the EPS will be exempt from income tax in Mauritius?

(2) Whether pension benefits (comprising pensions/annuities/lump sum benefits) paid to the non-resident members and / or their beneficiaries on retirement, disability or death, as the case may be, will be considered to be Mauritian source income subject to income tax in Mauritius?

(3) Whether the EPS will be required to comply with the Mauritian income tax obligations to withhold income tax under the Pay As You Earn - ("PAYE") system?

(4) What will be the income tax treatment of any Mauritian sourced pension benefit paid to an individual who is resident in a treaty partner country?

Ruling

On the basis of the facts mentioned above, it is confirmed that:

(1) as the EPS will not be a superannuation fund set up for the benefits of the employees of an employer, its income will not be exempt from income tax under Item 8, Part 1 of the Second Schedule to the Income Tax Act. However, as the EPS will be a trust established under the Trusts Act 2001, holder of a Category 1 Global Business Licence and its beneficiaries will be non-resident individuals, its income will be exempt upon filing a declaration of non-residence for each income year under the provisions of Section 46(3) of the Income Tax Act.

(2) pension benefits (comprising pensions/annuities/lump sum benefits) paid to the non-resident members and / or their beneficiaries on retirement, disability or death, as the case may be, will be considered to be Mauritian source income subject to income tax in Mauritius in accordance with Section 10(1)(a)(ii), Section 10(1)(d) and Section 74(1)(b) of the Income Tax Act 1995. The pension benefits paid will also not fall within the ambit of the exemption provided in section 46(4) of the Income Tax Act, as Regulation 17, sub-section (7)(c) of Income Tax Regulations 1996 provides that payment of such benefits

will be considered as a recurrent expenditure and will be deductible in ascertaining the net income of a pension business.

(3) Subject to paragraph (4) below –

(a) the EPS will be required to comply with the Mauritian income tax obligations to withhold income tax under the PAYE system for pensions falling under Section 10(1)(a)(ii) of the Act.

(b) the recipients of pensions falling within Section 10(1)(d), may make a request to apply PAYE in accordance with Section 93(2)(b) of the Income Tax Act.

(4) The Pensions and Annuities Article of the DTAA in force between Mauritius and the relevant treaty partners will apply to pension benefits payable to non-residents. However, any Mauritian sourced pension benefit paid to an individual who is resident in a country with which Mauritius has not signed a DTAA will be subject to Mauritius taxation as gross income derived under Section 10(1)(a)(ii) and 10(1)(d) of the Act.