

TR 196

Facts

F, together with its sub-funds (collectively N) is an investment fund domiciled in the Cayman Islands, managed globally by U.S. based Q and affiliated investment management firms (together J). J was founded in 1989 by E, who, together with affiliated entities, remains the ultimate owner.

J undertakes investment management activities, including determining the strategic direction of the J, making discretionary investment management decisions, overseeing group risk management, generally executing all trades undertaken by N, management of collateral, portfolio valuation, and support services, such as capital raising and investor relation. J is contemplating entering into an arrangement with a Mauritian Investment Manager.

The Mauritius Investment Manager will be wholly owned by Q and will be appointed by Q to manage a portion of the investment portfolio of N outside Mauritius, pursuant to one or more Sub-Management agreements. For the avoidance of doubt, it is currently contemplated that the Mauritius Investment Manager will only manage the investment portfolio of N.

The Mauritius Investment Manager will provide management and advisory services to N and will have discretionary powers to carry out certain trading activities on behalf of N, subject to the investment strategies, policies, risk guidelines and investment restrictions of N and J. The Mauritius Investment Manager will be authorised to provide the services detailed above to N by way of sub-delegation from Q through one or more Sub-Management Agreement.

The Mauritius Investment Manager will have a dedicated office in Mauritius and will initially employ one Portfolio Manager (“PM”). The PM will likely have an analyst or analysts, based either in Mauritius or an affiliated K. The scale of resources within the Mauritius office may grow as the level of activities increase. The PM will be resident in Mauritius and his primary responsibility will be to trade on behalf of the non-resident funds and manage his team. The PM will be allocated a specified amount of capital to trade listed securities and associated derivatives and will be subject to risk oversight and supervision from senior professionals of J.

The Mauritius Investment Manager will receive management and performance fees for the management and advisory services provided to the investment manager / non-resident funds. The terms of the service agreement will be in accordance with the OECD transfer pricing guidelines which will be consistent with other similar arrangements and investment strategies of the non-resident investment funds.

The management and performance fees will be subject to corporate tax in Mauritius.

N are all non-resident investment funds and are comprised of the master fund, domiciled in the Cayman Islands and a number of sub-funds domiciled in different jurisdictions, including Luxembourg and Singapore, amongst others. For avoidance of doubt, none of N are Mauritius incorporated or tax resident funds.

N principally invest in the public equity, fixed income, commodities and derivatives markets across the globe as advised by Q and its numerous affiliated foreign investment managers. Notwithstanding the management activities performed by the Mauritius Investment Manager in Mauritius, N will continue to be centrally managed and controlled outside of Mauritius since the overall corporate governance of N will be taken in the jurisdictions where the funds are domiciled and/or where J has its primary office locations. N will continue to hold board meetings in various foreign countries and the records of N will be retained at the N's foreign offices.

Points at issue

Whether the N may be deemed to derive income in Mauritius through the Mauritius Investment Manager's discretionary trading activities in Mauritius and whether the N will be subject to tax in Mauritius?

Ruling

Based on the facts mentioned above, it is noted that the N will not have Mauritian sourced income and will not be centrally managed and controlled from Mauritius. It is confirmed that N will not be deemed to derive income in Mauritius and therefore will not be subject to tax in Mauritius.