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Facts

V and W are tax residents in Mauritius by virtue of Section 73 of the Income Tax Act and are the settlors and beneficiaries of X and Y respectively.

X and Y are resident in Jersey and are administered from Switzerland. The trustee of each trust is a company incorporated under the laws of the Island of Nevis.

X and Y each own 100% shares in C and D respectively. C and D are non-resident companies and are incorporated in Nevis.

Each company owns 25.5% of a GBC entity in Mauritius, namely E which is a money transfer service company.

E owns subsidiaries in several other offshore jurisdictions.

The proposed transaction consists of:

(i) the migration of C and D to Mauritius.
C and D will be incorporated in Mauritius as GBC companies and their effective management and control will be in Mauritius. This migration will result in inward capital assets remittances into Mauritius.

(ii) the sale by C and D of the shares they each hold in E.
The proceeds from the E shares will result in payment of dividends by C and D to the non-resident trusts, that is, X and Y which will in turn distribute dividends to their respective beneficiaries, that is V and W who are both resident in Mauritius.

Points at issue

(i) Whether distributions from X and Y to V and W will be subject to income tax at 15% plus an additional solidarity levy on the balance of the dividend income exceeding the prescribed threshold in any given year?

(ii) Whether, in the event V and W elect to receive their distributions in bank accounts which are outside of Mauritius, such receipts will be regarded as being received in Mauritius for income tax purposes?

(iii) Whether in case V and W elect to utilise funds received in their offshore bank accounts to invest in capital assets, which in turn generate capital gains later upon disposal, whether this amount would be included in "gross income"?

(iv) Whether the remittance of capital into Mauritius upon C and D redomiciling will be subject to tax in the hands of each company? Furthermore, whether the disposal of such equity after re-domiciling would be subject to income tax?

(v) Whether the sale of E's shares by the C and D will have any prejudicial tax consequences in Mauritius?

Ruling

On the basis of facts provided, it is confirmed that:

(i) (a) Where the distributions made by X and Y to V and W are remitted to Mauritius, the distributions will be subject to income tax at the rate of 15%.

(b) Any amount of distribution exceeding 3.5 million rupees will be subject to solidarity levy by virtue of Section 16C of the Income Tax Act.

(ii) In the event V and W elect to receive their distributions in bank accounts which are outside of Mauritius, such receipts will not be regarded as being received in Mauritius for income tax purposes. However, in case such receipts are remitted to Mauritius, they will be subject to tax in Mauritius.

(iii) In case V and W elect to utilise funds received in their offshore bank accounts to invest in capital assets, which in turn generate capital gains later upon its disposal, such capital or capital gains would fall outside the scope of income tax and hence will not be taxable in Mauritius.

(iv) The remittance of capital into Mauritius as a result of the re-domiciling of C and D would not give rise to any tax liability. The sale of shares held by C and D in E would be considered as capital gains and would thus not be amenable to income tax in Mauritius.

(v) The sale of the E shares by C and D would give rise to either capital gains which are not amenable to tax or capital losses which do not qualify as deduction under the Income Tax Act.