

TR 220**Facts**

D is a company incorporated in Mauritius and is engaged in the ICT sector. It is wholly owned by K and its ultimate holding company is H, a publicly traded company on the New York Stock Exchange since April 2018.

H offers various options for employees and management to buy its shares for cash and/or on credit. For instance, H awards a facility plan whereby management (“managers”) in Mauritius are granted stock options on credit, that is, at the time of acquisition of these shares, no money is disbursed. However, upon disposal of the said shares, the cost price of these shares has to be paid back to H. When H grants the option, the managers must acknowledge acceptance online to the terms and conditions on the E-Trade Securities platform and then the shares belong to them.

It is further confirmed that the shares cannot be disposed/ transferred to another person and the managers have the option to accept or reject the shares within a period of one year. Further, the managers will only be able to dispose the shares after one year and will receive, in Mauritius, the difference between the selling price and the cost price of the shares after deduction of charges.

Points at issue

- (i) With regard to the management option, whether the gain realised on the sale of the shares is a taxable income?
- (ii) Whether a normal bank interest rate on the share value at purchase has to be accounted for?

Ruling

On the basis of facts mentioned above,

- (i) Any gain between the market value of the shares at the time the option is exercised and the cost price of the shares will be revenue in nature and therefore will be subject to income tax.

- (ii) Any gain between the market value of the shares at time the option is exercised and the market value at time of disposal will be capital in nature and therefore will not be subject to income tax.
- (iii) The credit provided by H is similar to an interest free loan provided by an employer to its employee. As such, the taxable fringe benefit will be in accordance with section 10(2)(d) of the Income Tax Act 1995 and regulations 3A of the Income Tax Regulations 1996. The monthly taxable benefit for interest free loan or loan at reduced rate is specified in the Second Schedule to the Income Tax Regulations which as at date, stands as follows:

'Difference between the amount of interest for the month, calculated at 2 per cent per annum above the repo rate, prevailing at the end of that month, and the amount of interest paid in that month.'