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Facts

G is a private school in Mauritius which was founded and managed by H since September 2014 as the sole trader. H is a tax resident of Mauritius.

J is a company incorporated under the laws of Mauritius as a private company limited by shares and is engaged in providing pre-school and primary educational services.

On 16 July 2018, the owners of J approached H and sold 100% of the ordinary shares of J to H.

On 1 January 2019, J acquired G from H on a going concern basis for a consideration of MUR 244 million based on the terms and conditions of a Purchase Agreement. The consideration for the acquisition included all the assets of G based on the value of the business as at 1 January 2019, net of any cash of the business.

K, an Investment Adviser was appointed by J to perform a valuation of the business of G as at 1 January 2019 and as per the valuation report dated 25 March 2021, the components of value have been ascertained as follows:

Asset	**MUR(million)**
Student List (Customer List)	197
Others	128
Total	**325**

The other assets of MUR 128 million includes intangible assets such as the school curriculum and goodwill.

The financial statements of J for the year ended 31 December 2019 will be reinstated to reflect the value of MUR 325 million for the acquisition of G's business as per IAS 8.

Payment for the acquisition of G which amounted to MUR 244 million is still due and has been accounted as a loan payable to H in the books of J.

As per the Purchase Agreement, the loan from H to J bears interest at the annual rate of 5% as from 1 January 2021 payable semi-annually. The loan can be repaid at the Seller's or Buyer's call, in part or in full, prior to 1 January 2035.

The transitional period of 2 years from 1 January 2019 to 31 December 2020 is as per Clause 6.2 of the Purchase Agreement and represents a moratorium to allow time for J to absorb the business of G and secure a means to refinance the loan from H (the Seller), following which interest starts accruing.

Points at issue

1. Whether the repayment of the capital element of the loan payable to H is of capital nature and is therefore not taxable in the hands of H?
2. Whether J is eligible to claim annual allowance on the Student List at the rate of 5% on cost?
3. Whether J is eligible to be approved as a charitable institution as per the definition under section 2 of the Income Tax Act?

Ruling

On the basis of the facts provided, with regard to questions 1 & 2, it is ruled that the proposed transactions are designed solely to confer a tax benefit on both H and J. The transactions relating to the transfer of the business to J would therefore be caught under the anti-avoidance provisions of section 90 of the Income Tax Act and the tax liability of H and J shall be assessable as if the transaction or any part thereof had not been entered into or carried out.

With regard to question 3, it is noted that J is a company limited by shares and it is providing educational services to a selective section of the population against payment of school fees. As such the object of the company is not of a “public character”, and therefore J will not qualify to be approved as a charitable institution for the purpose of section 2 of the Income Tax Act.