

TR 256**Facts**

A is a charity incorporated in Canada. A has entered into a funding agreement with B, an international non-governmental organization and charity, incorporated in Canada, pursuant to which it will receive certain funds to be used for charitable purposes (the "Charitable Funds"). A will enter into a further funding agreement with its wholly owned subsidiary, C, also incorporated in Canada, which will receive the Charitable Funds to be used for the establishment and operation of a charitable investment fund. C is registered as a charity in Canada since November 2022.

C is the founder of D, a charitable foundation in Mauritius. D was incorporated as a charitable foundation on 19 May 2022. C or A will endow the Charitable Funds to D to run a program to provide accessible funding and loans to Small and Medium Enterprises in sub-Saharan Africa. D will do so by transferring the Charitable Funds to Investment Vehicles (the "IVs"), either incorporated locally or in Africa, which shall in turn provide funds to SMEs Investors (the "Portfolio Companies") in Africa. The IVs and the Portfolio Companies will be vetted, and due diligence shall be conducted by G, an independent advisor prior to disbursement of funds. The Portfolio Companies will be required to identify and invest in SMEs in need of loans and investment to grow the SMEs business so that the latter may provide employment opportunities to the most vulnerable, i.e women and youth, in sub-Saharan Africa, in a view to pursuing D's object of poverty alleviation through employment creation for the vulnerable.

D shall enter into agreements with E. These agreements will detail the charitable fund program requirements which will comply with the charitable objects of D and the IVs shall enter into agreements with the Portfolio Companies, on similar terms to the agreement between D and the IVs.

D's charitable objects are for relief of poverty, advancement of education and any other purpose beneficial to the public in general. D's charitable objects shall be pursued outside of Mauritius. D shall absorb any loss made by the SMEs and any positive returns shall be used by D to finance additional rounds of investments into IVs (the "Reinvestment")

D is considering applying for a GBL Licence.

Points at issue

- (1) Whether D shall be considered as tax resident given that specific rules regarding CMC apply to companies holding a GBL Licence? In the affirmative, would D benefit from Double Taxation Treaties, of which Mauritius is a party?
- (2) Since D is a non-tax resident, would its status as a charitable foundation prevail and as such be an exempted body even if it derives Mauritian source income?

Ruling

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

- (1) D is not a tax resident in Mauritius as it does not meet the conditions for having its central management and control in Mauritius, even if the foundation is the holder of a GBL licence issued by the Financial Services Commission;
- (2) Since D is not a tax resident in Mauritius, it will be subject to income tax only on its chargeable income attributable to its Mauritian source income. However, in accordance with section 7(1) and item 1 of Part 1 of the Second Schedule to the Income Tax Act, D, being registered in Mauritius as a charitable foundation, will be exempted from income tax.