**TR 267**

**Facts**

1. A, a South African citizen, has been a tax resident in Mauritius as from the tax year 2021/2022.
2. A is a member and beneficiary of B, a multi-member pension and savings trust (subsequently referred to as the "**Trust**") based in Guernsey. Under the trust deed, members, who are also beneficiaries, make contributions to the Trust, which are maintained by trustees in sub-funds. In the Taxpayer's case, the contributions made consist of his past savings derived from South Africa.
3. Those contributions are then invested by the trustee, namely B, on behalf of the members/beneficiaries to generate a capital return. For clarity's sake, the Trust is not a personal trust and the Trust is not a pension fund. Any member may hold a range of diverse investments in a sub-fund. Therefore, a member's sub-fund is made up of their initial contributions and any capital gain return on those contributions.
4. In the case of A, the trustee has invested in a contract granted by D (the "Contribution Contract").
5. The value of the contract is based on certain underlying units (article 6.3.1 of the Contribution Contract). In essence, the value of the Contribution Contract fluctuates according to the notional value of a range of diverse investments including "unit trusts, deposits, equities, fixed interest securities and D's Unit Funds" (article 6.4.2 of the Contribution Contract. Therefore, the Contribution Contract does not directly hold the underlying assets, but rather a contract whose value is linked to the performance of a basket of underlying securities.
6. The Contribution Contract has a maturity period of 99 years, whereby the value of the referenced units shall be estimated and paid to the Taxpayer on redemption of the Contribution Contract by the trustee of the Trust.
7. However, prior to its maturity, the Contribution Contract can be surrendered partly or wholly, and the value of the underlying units shall be paid (article 21.5 of the Contribution Contract. Therefore, any distribution made (i.e. surrender in part) to the Taxpayer reflects the increase (or decrease) in the Contribution Contract's value (article 21.6 of the Contribution Contract.
8. The trustee is the one responsible for the choice, administration, distribution and surrender of the investment made through the Contribution Contract . The trustee may make ad hoc distributions to the Taxpayer, and as explained above, the distributions shall represent the increase (or decrease) in value of the original investment.
9. The Agreement between D and the Contract Holder(s) further provides for , inter alia the following:-
    - In accordance with Clause 6.4.1 of the Contract Terms and Conditions, the Personal Fund will consist of monies and assets linked to the Personal Fund, together with the reinvested interest, dividends, capital, profits or other distribution (less any tax) relating to the existing assets linked to the Personal Fund.
    - In accordance with Clause 6.4.2 of the Contract Terms and Conditions, subject to D's prevailing asset acceptability criteria, which is available on request, a wide

range of asset categories can be linked to this Contract, including unit trusts, deposits, equities, fixed interest securities and D's Unit Funds. Acceptable assets must be marketable and liquid.

**Point at issue**

Whether the distribution to be received by A from the Trust and in particular to confirm that such distributions would be capital in nature and therefore not subject to tax in Mauritius?

**Ruling**

On the basis of the facts mentioned above, it is ruled that the distribution made by the Trust to A :

(i) which forms part of the initial contribution in the Trust is of capital nature and therefore not taxable in Mauritius;

(ii) exceeding the initial contribution is of revenue nature and therefore taxable in Mauritius.