

TR 284**Facts**

M is a domestic company incorporated in Mauritius. The principal activity of M consists of breeding and export of primates.

M made investments in different companies based in Mauritius, namely, N, O, and in US also. M and its Mauritius subsidiaries hold buildings and freehold land. M also leases land from a non-governmental third party in Mauritius.

Following a restructuring exercise within the Group, the below entities were incorporated / registered:

- (1) Societe P - registered in Mauritius; and
- (2) Company Q - incorporated as a domestic company.

Under the new Group structure, P is the sole shareholder of Q, which holds 100% interest in M.

As part of the restructuring exercise, M will distribute its freehold land and buildings to Q and ultimately to P from Q. This will be done through a declaration of dividend in specie.

This is because, as per the restructuring, P will be responsible to oversee the property business within the Group.

Point at issue

- (1) Whether the distribution of the immovable property from M to Q and Q to P by way of dividend in specie will qualify as dividend distribution under section 2 of the Income Tax Act 1995 ("ITA 1995")?
- (2) Whether the distribution of dividends will be exempt from tax in Mauritius, in accordance with Sub-Part B of Part II of the Second Schedule of the ITA 1995?

Ruling

On the basis of the facts provided, it is ruled that the distribution of immovable property from M to Q, and from Q to P, by way of dividend in specie does not qualify as a dividend under section 2 of the ITA 1995. Instead, this distribution falls under section 86A of the ITA 1995 as a benefit to the shareholder and is taxable as "any other income" under section 10(1)(g) of the ITA 1995.