TR 38

Facts

A company incorporated in Mauritius and holding a Category 1 Global Business Licence (GBL 1), will acquire a limited partnership interest (Partnership A) in a jurisdiction where partnerships are fully transparent for tax purposes. This partnership will in turn acquire interest in another partnership (Partnership B) in the same jurisdiction. Partnership B will directly acquire and hold shares of a publicly listed company (PLC).

Points at issue

a) Whether gains realized on the disposal of the shares held in PLC by partnership B and allocated to GBL 1 company in Mauritius will be treated as capital gains realized by the GBL 1 company.
b) Whether the GBL 1 company will be subject to income tax in Mauritius on the gains.
c) Whether in respect of dividends paid by PLC and allocated to the GBL 1 company, the latter company will be entitled to underlying tax credit for the tax paid by PLC on its profits.

Ruling (issued in December 2004)

a) Share of profits, gains and losses allocated to the GBL 1 company by the partnerships A and B will retain their characteristics and each source of income will be taxed in Mauritius according to the taxation rules applicable to that source of income in Mauritius. Capital gains realized on the disposal of shares held by partnership B will therefore be treated as capital gains realized by the GBL 1 company.
b) Capital gains realized on the disposal of shares are not subject to income tax in Mauritius.
c) On the understanding that the GBL 1 company will indirectly own not less than 5% of the share capital of PLC, the GBL 1 company will be entitled to underlying tax credit in respect of the dividends paid by PLC and allocated to the GBL 1 company by partnerships A and B.