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Facts

L India Holdings, which holds a GBC 1 Licence, is proposing to its investment advisers based overseas an option to acquire shares in the company at a price which will be below market value at the time the option to acquire the shares is exercised. This will constitute part of the consideration for services rendered as investment advisers, and will give rise to a benefit-in-kind to the overseas investment advisers, to whom also capital gains would accrue in case of disposal of these vested shares.

Points in issue

1. Whether the difference between the exercise price and the market value of the shares in question would be taxed on the overseas investment advisers as benefits- in- kind at the time the options are exercised.
2. Whether the profits made on the disposal of the exercised shares vested on the overseas nonresident investment advisers are subject to taxation in Mauritius under the scenarios below:
    (i) Investment advisers are based in Treaty Countries;
    (ii) Investment advisers are based in Non-Treaty, Third Party Countries

Rulings

1. It is confirmed that by virtue of Section 74 (1) of the Income Tax Act 1995 and paragraph 1 of Article 14 of a Double Taxation Treaty based on the OECD model, the overseas investment advisers would not be liable to tax in Mauritius on the difference between the exercise price and the market value of the shares at the time the option is exercised, as the benefit-in-kind accruing to them will constitute an income derived for proferring independent professional services from overseas and not from Mauritius.
2. It is confirmed that the profits made on the disposal of the exercised shares vested on the overseas non-resident investment advisers in both scenarios, i.e. being based either in Treaty Countries or in Non-Treaty, Third Party Countries, will not be subject to income tax in Mauritius, being given that the investment advisers will not have a permanent establishment for trading in shares in Mauritius.