

TR 87

Facts:

G an Indian company is incorporated in Mauritius and holds a GBL 1 licence. Appointed as Investment Manager, it provides investment advisory services to an Indian closed-ended fund incorporated in Mauritius holding a GBL 1 licence. In addition to a fixed advisory or management fees ranging between 1.5% to 2% it earns from the Fund, it may get a variable element alongside the investors in the economic benefits of the Fund, in accordance with the distribution waterfall which sets out how the proceeds from the sale of investments should be distributed between the investors and the Advisor. The Fund has two classes of shares, viz. Preference Shares and Management Shares. The Preference Shares are issued to investors who commit capital in the Fund and take the risks. G holds Management Shares which are of a nominal amount of USD 10 in the Fund, and is not entitled to receive any dividend. In case of winding up, it will receive the nominal paid up value of the Management Shares, after holders of Preference shares will have received the nominal paid up value of the Preference Shares.

The Fund has subscribed for units in an Indian Trust, a contributory trust incorporated in India. The Indian Trust has, in turn, made direct equity investments in Indian companies. The Indian Trust has remitted proceeds from divestments to the Fund by way of redemption of the units subscribed. In accordance with the constitutive documents of the Fund, the allocation of the redemption proceeds representing the cost of the units and any capital gains from the transaction is as follows:

- i. return of the cost of capital contributed by the shareholders in the Fund;
- ii. an additional amount (a preferred return) to the Fund's shareholders to be calculated at an annual rate of 9% compounded semi-annually on all capital contributions from the time of drawdowns; and
- iii. the balance of divestment proceeds in the ratio of 80% to the Fund's shareholders and 20% to G.

G may be entitled to a share of 25% of the preferred return at (ii) above varying between 6% and 9%; and in addition to this preferred return, a 20% share in the allocation of the balance of divestment proceeds.

Points in issue

Whether the allocation of the redemption proceeds of the units to G will qualify either as exempt income or capital gains, and hence not be taxable in Mauritius.

Ruling

Unlike other investors who commit capital in the Fund, G holds Management Shares which are of a nominal amount of USD 10, which do not entitle it to dividends. It cannot therefore, in the circumstance, be said that the allocation of the redemption proceeds represents a capital gain in the hands of G. The amount receivable by G is in fact remuneration for the advisory and management services it provides to the Fund, and is therefore subject to tax in Mauritius, in accordance with Section 10 of the Income Tax Act 1995.