

TR 130 (Govt. Gazette of 1st September 2012 No.87)

Facts

A Ltd is a company holding a Category 1 Global Business Licence and is a tax resident in Mauritius. Its main activity is investment holding. A Ltd subscribed in B Ltd, a company incorporated in the Cayman Islands in 2006.

At 31 December 2006, A Ltd held mandatory convertible preferred shares at par value US\$ 0.01 per share. In May 2008, the preferred shares were converted into common shares.

Subsequently, B Ltd became listed on the Hong Kong Stock Exchange in 2009. As part of the arrangement, the pre-listing investors, including A Ltd, were guaranteed a minimum return by B Ltd's chairman upon disposal of their shares if the company's shares fell below HK\$ 3.50 within a year of listing.

A Ltd thus received an amount of US\$ 39 million as guarantee payment during the financial year end 31 December 2010, given that B Ltd's share price fell to HK\$ 3.14 in 2010. Subsequently, in November 2010, the company had disposed of its shareholding held in B Ltd.

Point at issue

Whether the guarantee payment received by A Ltd will be treated as a non-taxable item?

Ruling

On the basis of the information given, it is confirmed that the guarantee payment of US\$ 39 million received by A Ltd is not subject to tax since it is of a capital nature.

Please note that any expenditure incurred in connection with the guarantee payment is not an allowable deduction in accordance with Sections 18 and 26 of the Income Tax Act.