

TR 134 (Govt Gazette of 16 March 2013 No 25)

Facts

X Ltd is a company incorporated on 14 August 2008 in Jersey. It has a holding of 49.5% of the shares in Y Company, a Mauritius domestic company. Y is engaged in property development and also holds land and properties in Mauritius.

X is held by a fund (an English limited partnership) which is managed by Z. The latter wishes to transfer the incorporation and tax residence of X from Jersey to Mauritius (i.e to re-domicile X from Jersey to Mauritius, or continue the company in Mauritius).

Points at Issue

1. Whether any tax liability would arise in Mauritius, with regard to its 49.5% shareholding in the domestic company, on the transfer of incorporation and tax residence of the company from Jersey to Mauritius;
2. Whether any tax liability would arise in Mauritius, following the registration of the company in Mauritius, on the disposal of its 49.5% shareholding in the domestic company in one lot or in several lots; and
3. Whether the decision at points (1) and (2) would be different should the company obtain a Category 1 Global Business Licence from the FSC.

Ruling

On the basis of facts given, it is confirmed that:

1. There would be no income tax implication on the registration and continuation of the company incorporated in Jersey as a company in Mauritius. The provisions of Section 56 of the Income Tax Act will apply.
2. In line with the Practice Note dated 30 October 2006 issued by the Mauritius Revenue Authority on "Taxation of gains from sale of shares or other securities", any gains or profits derived from the disposal of investment held in the domestic company for a period of at least 6 months would be treated as capital gains and hence would not be subject to income tax.
3. Should the company obtain a Category 1 Global Business License from the FSC, the decision given at point (1) above would not be affected. However, regarding the decision at point (2), the timing for the disposal of the shares would not be relevant, given that any gains or profits derived from the sale of the shares would be exempt from income tax in accordance with the provisions of item 7 of Sub-Part C of Part II of the Second Schedule of the Income Tax Act.