Nexia Baker & Arenson

Case Brief 2

Mauritius Revenue Authority v BD & Ors., 2013 SCJ 172, R No 100173

Calculation of profit on parcelling of land from sale proceeds to market value of 'apport' in land of associates of a societe

Background/Facts

In 1991, a group of individuals jointly acquired agricultural land for conversion to residential land with the intention to parcel the land in plots for sale. In 2000, the individuals still associated with the project constituted Soc. M which will carry the sale of the plots. For the tax years 2001/02 to 2004/05, the accounts of the societe showed an overall profit. The law requires that the profit of the societe will be allocated proportionately to the associates who will include their share of profit in their gross income on which tax is payable.

The issue is about the actual calculation of the taxable profits which the MRA contended should be the amount remaining after having deducted from the moneys obtained from the sales, the purchase price of the land plus the related costs of acquisition. BD & Ors. applied that the purchase price in 1991 plus related costs of acquisition should not be taken in the calculation of the profits of Soc. M but instead the market value of the land brought in as 'apport' into the societe in 2000.

Assessment/Objection

Based on their contention, the MRA raised income tax assessments to the associates of Soc. M for the tax years 2001/02 to 2004/05 to which the associates objected as to the calculation of taxable profits. The MRA maintained the assessments to determine the objection which led the associates to lodge representations to the Assessment Review Committee (ARC).

Representation to Assessment Review Committee

The ARC ruled that the market value of the 'apport' of the land should be taken into consideration when computing the taxable profits of Soc.M. The ARC had relied on a tax ruling of the MRA which states that land parcelling is an undertaking or scheme entered into or devised for the making of profits which form part of taxable business profits. The ARC considered that, in the circumstances, the cost of land to be taken into account for the computation of taxable profit of Soc. M will be the market value of the land just before it is made available for the development project, i.e. the market value of the 'apport'.

Appeal to Supreme Court

The Court found that the ARC had correctly ruled that the market value of the 'apport' should be taken into consideration for the calculation of the taxable profits of Soc. M. It was mentioned that by the time the societe was formed in 2000, some 32% of the individual rights had changed hands, i.e. the business project as it was in 1991 had changed by 2000 when the societe had taken over. In other words, the societe must be considered to be from 2000 the main driver of the business project.

It was mentioned that it was open to the MRA in 2000 to consider the incidence of 'any increase in value of trading stock on hand at the time of transfer' resulting in the increase to be accountable as gross income which the MRA did not consider.