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Facts

R is tax resident in UK. It is a UK registered not-for-profit body corporate and is registered as a Scottish Charity. It offers degree programmes.

T Ltd is a company incorporated in Mauritius and is engaged in the provision of educational services. It is registered with the Tertiary Education Commission (“TEC”) but not registered with the Mauritius Qualification Authority (“MQA”) in Mauritius. R is not registered either with the TEC or the MQA.

R and T Ltd are not related entities. They have entered into an Agreement whereby they will collaborate to provide higher education to students in Mauritius and, in particular, to facilitate learning to enable students to attain degrees which are conferred by R as the sole awarding body. The services provided by R to T Ltd and the corresponding fees under the terms of the Agreement are as follows:

Services by R to T	Corresponding fees
Preparation of teaching material, meetings with associate lecturers from T Ltd, hosting events, visits to Mauritius, approval of events, meetings with regulatory bodies in Mauritius, 2 weekly strategic meetings over Skype and weekly operational meetings over Skype.	Academic start up support fees.
The supply of undergraduate degree course material and services.	A per student per annum charge which will cover services like access to R’s student on-line systems, access to library systems, student registration and administration services, graduation and brand.
The provision of an online platform to students for e-learning (module delivery, library access,	A per student per annum charge which will cover services like access to R’s student on-

online students registration, assessment monitoring).	line systems, access to library systems, student registration and administration services, graduation and brand.
The provision of fly-in-fly-out staff (both teaching and non-teaching staffs), for a period of less than six months, to Mauritius for Academic Delivery and Quality Assurance purposes. The Quality Assurance services will be provided as an integral part of the educational services provided by R to T Ltd.	Academic delivery and quality assurance fees which will be invoiced on a cost plus basis.
Non-teaching staffs will be mainly carrying Quality Assurance activities but there are also staffs involved in skills transference (technical staff for lab setups). There may also be visits relating to the management of the contract.	Academic delivery and quality assurance fees which will be invoiced on a cost plus basis
Online support, some teaching, assessment boards, Quality Assurance oversight and assessment marking will be provided from the UK by R.	Academic delivery and quality assurance fees which will be invoiced on a cost plus basis

R will not receive any allocation of the Mauritius student tuition fees, either directly from students themselves or collected by T Ltd on behalf of R and repatriated to R.

The degree programmes will be delivered by T Ltd with the collaboration of R. The first year of the degree programmes will be delivered solely by R and the second, third and fourth year degree programmes will be provided by both R and T Ltd. However, in the case where T Ltd cannot deliver the correct level and skills of staff during the first year of the degree programme, R will take delivery and charge T Ltd a higher rate for same.

An academic year consists of 3 trimesters. Each trimester lasts an average of 15 weeks. The company estimates that the fly-in-fly-out staff (teaching and non-teaching staff) provided by R will stay in Mauritius for durations not exceeding 2 weeks in each trimester during academic years 2016/2017 and 2017/2018. As regards year 2018/19, the duration will be 2 weeks for the first and third trimester, and 3 weeks for the second trimester. Overall the fly-in-fly-out staff will spend not more than 3 weeks in Mauritius in any trimester.

The degree programmes will be accredited by R. In case T Ltd wishes to collaborate with a Third Party to extend its portfolio of Programmes, it should discuss same and obtain the decision/agreement of R within 30 days prior to engaging with the Third Party.

The delivery model of T Ltd will be a blended service with part of the degree being delivered online to students via e-learning and partly by face-to-face teaching. T Ltd will maintain at its own expenses appropriate offices, teaching facilities, equipment, administration facilities and systems as may be necessary for the effective performance of its duties under the Agreement. With regards to the use of brand, publicity and promotions, R will grant T Ltd the non-exclusive, revocable personal licence for the use of its trademarks. However, written consent should be obtained by T Ltd before using same.

T Ltd will allow R and its authorized representatives, at any reasonable time, to have access to the teaching premises for the purpose of ongoing assurance and confirmation of the academic environment to support the delivery of the Programmes. Delivery of teaching service will be at the premises of T Ltd.

Points at issue

1. Whether R will be subject to income tax in Mauritius?
2. Whether R will be subject to Tax Deduction at Source (“TDS”) in Mauritius?
3. Whether payments made to R with relation to the services like access to GCU’s student on-line systems, access to library systems, student registration and administration services, graduation and brand will be considered as a royalty payment made by T?
4. Whether employees of R coming to Mauritius for periods not exceeding six months to deliver courses with regards to the degree programmes will be subject to PAYE in Mauritius?
5. Whether R should be VAT registered in Mauritius?

6. Whether reverse charge should be applicable on the services provided by R to T Ltd?

Ruling

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

1. Having regard to the time spent by the fly-in-fly-out staff of R in Mauritius and the absence of a fixed place of business in Mauritius, R will not have a permanent establishment in Mauritius and will not be subject to tax in Mauritius.
2. Since R will not have a permanent establishment in Mauritius, TDS will not be applicable on the payments made by T Ltd to R.
3. Payments made to R with relation to the services like access to R's student on-line systems, access to library systems, student registration and administration services, graduation and brand will not be considered as a royalty payment made by T but will be treated as business profits. Moreover, since R will not have a PE in Mauritius, the payments will not be subject to tax in Mauritius.
4. In the event that the fly-in-fly-out staffs from R are tax resident in UK, they will be exempt from tax in Mauritius in accordance with Article 15(2) of the Double Taxation Avoidance Agreement between UK and Mauritius and will not be subject to PAYE in Mauritius.
5. R will not have any obligation to apply for VAT registration in Mauritius since educational services provided in Mauritius is an exempt supply by virtue of item 16(a) of the First Schedule to the VAT Act.
6. Since educational services is an exempt supply in Mauritius, reverse charge will not apply.