

TR 106

Facts

An international company, Company A registered in South Africa employs a direct selling approach to bring its products to market. It wishes to enter into a "Depot partnership" arrangement in Mauritius. For that purpose, a Mauritian company (Company B) has been incorporated as a domestic company to act as an agent of Company A for selling and distributing the products in Mauritius on behalf of the latter. It has Mauritian resident directors and shareholders who are independent of and distinct from the directors and shareholders of Company A.

Company B will import Company A's products into Mauritius and sell these on a commission basis to network marketing agents who will have independent contractor status, i.e they will purchase the products for their own use or for on-selling, and will not be employees either of Company A or Company B.

The products will be manufactured by Company A in South Africa and delivered to Company B, which will monitor stock levels of the products before delivery to network marketing agents. Company B will issue invoices and also collect payment for the products it sells on behalf of Company A. It will then remit the proceeds of sales to Company A, thus deriving a commission based on the sales. Under the proposed model, at no time will ownership of the products pass to Company B.

Points of Issue

Whether, under the partnership arrangement between Company A and Company B it can be confirmed that Company A does not have a business presence, i.e a permanent establishment in Mauritius, and therefore not liable to tax in Mauritius?

Rulings

On the basis of facts provided, and since the activities of Company B will be performed wholly or almost wholly on behalf of the Company A, it cannot be said to be an agent of independent status acting in the ordinary course of its business. As the facts submitted also indicate that the Company B will issue invoices and collect payments for the products sold on behalf of Company A, Company A shall be deemed to have a permanent establishment in Mauritius in respect of any activities which the Company B will undertake on its behalf, by virtue of the provisions of paragraph 5 of Article 5 of the Mauritius–South Africa Double Taxation Agreement.

Accordingly, Company A will have a business presence in Mauritius and therefore liable to tax in Mauritius.