

TR 14

Facts

A foreign company will operate a worldwide satellite-based digital telecommunications system that will deliver wireless telephone and other telecommunications services to users worldwide. It proposes to form a Mauritian offshore company which will provide access to the system to Service Providers in other countries pursuant to a contract. One such Service Provider will promote and provide access to the system to its customers (i.e the end users). Payment by that Service Provider to the Mauritian offshore company will be in the form of a monthly usage fee mainly based on the actual usage of the system by the Service Provider. To enable it to fulfill its contractual obligations towards the Service Provider, the Mauritian offshore company will contractually obtain access to the system from the foreign company in return for payment of fees.

Point at issue

- a) Whether the payment by the Mauritian offshore company to the foreign company will be characterized as a "royalty" or a "service fee" and whether that payment will be subject to tax in Mauritius.
- b) Whether the Mauritian offshore company will be subject to tax in Mauritius at 15% against which it may claim credit/90% deemed credit for foreign taxes suffered on its foreign source income.
- c) Where the Mauritian offshore company receives foreign income from two different foreign sources, whether it may claim foreign tax credit on one source and the 90% deemed credit on the second source.
- d) Having regard to the nature of the activities of the Mauritian offshore company and the circumstances of the case, if the spread, that is the net income after Service Provider Fees and administrative costs, is not less than one per cent (1%) of the net amounts received from the Service Providers and not more than five per cent (5%) of such amount, whether this will be regarded by the Tax Authorities as reasonable.

Ruling

- a) The payment by the Mauritian offshore company to the foreign company will be considered as a service fee. Moreover, the foreign company will not be liable to tax in Mauritius on that service fee since it is a non-resident company and the services provided to the Mauritian offshore company are performed from overseas.
- b) The Mauritian offshore company will be taxable at the rate of 15% and the Income Tax (Foreign Tax Credit) Regulations 1996 will apply in respect of its foreign source income. However, fees derived from services provided from Mauritius by the Mauritian offshore company to Service Providers will be treated as Mauritian source income.
- c) Where the Mauritian offshore company receives foreign income from two different foreign sources, it may claim foreign tax credit on one source and the 90% deemed credit on the second source in accordance with Regulation 6(3) of the Income Tax (Foreign Tax Credit) Regulations 1996.
- d) The income of the Mauritian offshore company for income tax purposes will have to be determined in accordance with the arm's length principles.