

TR 209

Facts

G is a UK registered not-for-profit body corporate and is registered as a Scottish Charity. It offers degree programmes.

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

G and P are not related entities. They have entered into an Agreement whereby G and P 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 G as the sole awarding body.

Delivery of teaching service will be at the premises of P.

The Agreement will span over 12 years for the delivery of the following degree Programme(s):

- BA (Hons) Business Management
- BA (Hons) Social Sciences
- BSc (Hons) Computing
- BSc (Hons) Applied Psychology

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

An academic year consists of 3 trimesters. Each trimester lasts an average of 15 weeks. It is estimated that overall the fly-in-fly-out staff of G will spend not more than 3 weeks in Mauritius in any trimester

The delivery model 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. P 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.

P will allow G and its authorised 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.

The Agreement between G and P further provides for, inter alia the following -

- G will have ultimate responsibility and discretion in respect of the award of qualifications to students.
- All Programme Documents and teaching materials or content provided by P for the purpose of delivering the Programme(s) will be reviewed and approved by G prior to use of the same on the Programme(s).
- Both G and P recognise that the financial arrangements applicable to the Programme will be monitored and reviewed by both parties throughout the Term. Any changes required to the financial arrangements as a result of any monitoring or review activity will be discussed and agreed in writing by both Parties before implementation by the Parties without prejudice to the remainder of the Agreement.
- The Parties recognise and agree that all publicity and promotional activity relating to all programmes and awards offered or made in its name, including the Programmes or use of G's Trade Marks, service marks, trade names, logos or other references to G or other indicia is subject to final approval of G and P shall not issue any such public information or undertake any such publicity or use G's Trade Marks, service marks, trade names, logos or make other references to G or other indicia, without the prior written consent of G. P shall not publicise the Programmes in any way without the prior written consent of G.
- The Parties recognise and agree that all publicity and promotional activity relating to the Programmes (whether or not reference is made to the G) is subject to final approval of G.
- P will develop and operate an educational institution which will conform to the standards already in practice at G. The programme management structure specified in the programme documents will be developed (recognising the different organisational structures and personnel of P) to maintain the university's quality assurance standards.

- P shall recruit academic staff that, in the reasonable opinion of G, shall be appropriately qualified to support the delivery of the Programmes to the standard set out in G Quality Enhancement and Assurance Handbook.
- G will provide to P the current generic role profiles for academic staff and where applicable the specific role profiles for the Programmes which can be used by P when developing the role profiles of their academic staff.
- G will ensure that external examining procedures for the Programmes are comparable to those of internal programmes and that these are applied in accordance with the system set out in the University Assessment Regulations.
- The Parties recognise and agree that the admission requirements and acceptable entry qualifications for students joining the Programmes shall be set by and be at the sole discretion of G. The final decision as to whether a student is accepted onto each Programme rests solely with G.
- The Parties recognise and agree that the responsibility and control for the production of degree parchments and academic transcripts for students exiting the Programmes rests solely with G.

According to the Financial Arrangements between the Parties, G will invoice P for two types of costs each year, namely –

- (i) Separately billable amounts ; and
- (ii) Per student per annum charge.

The separately billable amounts are to be agreed annually ahead of the start of the academic year.

Points at issue

1. Whether G will be subject to income tax in Mauritius?
2. Whether G will be subject to Tax Deduction at Source (“TDS”) in Mauritius?
3. Whether payments made to G with relation to the services like access to G’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 P?

4. Whether employees of G coming to Mauritius for periods not exceeding six months to deliver courses with regards to the degree programmes will be subject to Pay As You Earn (“PAYE”) in Mauritius?
5. Whether G should be VAT registered in Mauritius?
6. Whether reverse charge should be applicable on the services provided by G to P?

Ruling

On the basis of the facts provided : -

1. G is conducting business in Mauritius on the premises of P for the delivery of degree programmes, the award parchment of which bears the signatures of the authorities of G only as the sole awarding body. G will therefore be considered to have a permanent establishment in Mauritius and will be subject to income tax in respect of the income it derives from the delivery of the degree programmes in Mauritius.
2. G will not be subject to TDS in Mauritius. It will have to submit an annual return of income declaring the income derived and the related allowable deductions.
3. In the light of the reply to question (1) and (2), the issue of royalty does not arise.
4. Since G will have a Permanent Establishment in Mauritius, Article 15 of the DTAA between UK and Mauritius will apply regarding the taxation of the teaching staff of G. In accordance with sections 2 and 82(1)(c) of the Income Tax Act, G will be declared to be an absentee and P will be deemed to be an agent of the absentee respectively. P will be required to operate the PAYE system in respect of the lecturers sent by G. Being given that Article 15 is subject to Article 21 which provides for an exemption period of 2 years, the lecturers who qualify for the exemption may submit an income tax return on the due date and claim refund of the tax deducted under the PAYE system.
5. G 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 Value Added Tax Act.
6. Being given that G will have a Permanent Establishment in Mauritius and educational services are exempted from VAT, the question of reverse charge does not apply.