

TR 211

Facts

E is a UK registered not for profit body corporate and is a Scottish charity. It is tax resident in the UK and it delivers 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”) and Mauritius Qualification Authority (“MQA”) in Mauritius.

E and P which are not related entities have entered into a Collaboration Agreement whereby they will collaborate to deliver a degree programme in International Hospitality Management (“the Programme”) to students in Mauritius.

The course will run over 2 years. Each year will comprise of 3 trimesters. E will supply the undergraduate degree course materials. The tutors will comprise of local tutors appointed by P as well as 3 members of E’s staff who will teach in Mauritius for a total of 30 days per year.

Overall fees for the Programme in Mauritius will be collected by P. E will invoice P 50% of the overall fees. E will not contract directly with the Mauritius students.

The Collaboration Agreement between E and P is for an initial term of 5 years and may be renewed before the expiry of the term. The Agreement provides inter alia, for the following:-

- The degree Programme will be dispensed on the premises of P, which will have to maintain at its own expense appropriate offices, teaching facilities equipment, administration facilities and systems.
- E will have the responsibility for ensuring academic standards and quality assurance of the Programme. In particular –
 - E will ensure that all procedures and decisions relating to the Programme provided under the Agreement are based on E’s Regulations which are systematic and open to scrutiny.
 - E will ensure that the academic standards of all awards provided under the Agreement are compatible with relevant benchmark information recognised within the United Kingdom.
 - The qualification conferred at the end of the Programme will be equal in academic standing to that conferred on successful completion of the same or comparable internal E programmes.

- Both E and P recognise that the final responsibility and accountability for the academic standards of the Programme, or any element of the Programme, rests with E.
- Both E and P recognise that final responsibility and accountability for quality assurance arrangements applicable to the Programme, or any element of the Programme, rests with E.
- Both E and P recognise that final accountability for the submission requirements and acceptable entry qualifications for students joining the Programme and the final decision as to whether a student is accepted rests with E.
- Both E and P recognise that final responsibility and accountability for the control and accuracy of all public information, publicity and promotional activity relating to all programmes and awards offered or made in its name, including the Programme or use of any E logo, name or indica rests with E and P shall not issue any such public information or undertake any such publicity or use any E logo, name or other indica, without prior written consent and approval of E.
- Both E and P recognise that final responsibility for the issue and control of award certificates, diploma supplements and transcripts associated with the Programme rests with E.
- Both E and P recognise that information provided to prospective students and to those registered on the Programme must be comparable with that given to internal E prospective or registered students.

Points at issue

1. Whether E will be treated as having a Permanent Establishment in Mauritius?
2. Whether E staff coming to Mauritius would be subject to PAYE?
3. Whether social security contributions are applicable for E staff sent to Mauritius?

Ruling

On the basis of facts mentioned above,

1. The Collaboration Agreement between E and P will span over several years and goes beyond the supply of course materials and three teaching staff for 30 days per academic year. Having regard to the many features or elements of a partnership business which is evident from the terms of the collaboration agreement, E will be considered to be conducting business in Mauritius on the premises of P. E will therefore be treated as having a Permanent Establishment in Mauritius.
2. As E 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 E. In accordance with sections 2 and 82(1)(c) of the Income Tax Act, E will be declared to be an absentee and P will be deemed to be an agent of the absentee respectively. The Partner will be required to operate the PAYE system in respect of lecturers sent by E. 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 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.
3. E staff in Mauritius will not be required to pay social security contributions.