

TR 230

Facts

P is a company incorporated in Mauritius and it holds a Global Business Category 1 Licence issued by the Financial Services Commission. P also holds a valid Tax Residence Certificate issued by the Director-General, Mauritius Revenue Authority, under section 73 of the Income Tax Act.

P is engaged in investment holding activities, licensing and franchising of media rights and trade in infotainment products and services.

P enters into licencing agreements to acquire the rights to broadcast contents and channels from different content providers worldwide and provides content aggregation services in the broadcasting and TV cable industry including Over The Top and Video On Demand services. P enters into content or channel contracts with the content providers in its own name and capacity. The content providers are independent third parties and hence, are not related, whether directly or indirectly, to P. Under the licensing agreements entered into with the content providers, P has the right to sub-license the Licensed Rights to its affiliated company in the territory of Singapore.

P has sub-licensed the Licensed Rights to Q, a related company incorporated in Singapore, in consideration for a royalty fee equivalent to the actual license costs plus 10% mark-up. P also derives revenue from third party customers. P and Q are both 100% owned by R, a public listed company in Singapore. The Sub-licensing Agreement between P and Q is renewable on an annual basis, effective as from March 2009.

P does not have a permanent establishment in Singapore and does not perform independent personal services from a fixed base in Singapore.

Under the sub-licensing agreements, the royalties income should be transferred to P's bank account. P fully controls the royalty income stream from Q and has full discretion on the usage of the funds of royalty income. The Licensing and the Sub-Licensing arrangements are not pure back-to-back and P is not a pass through of the royalty income. If P's contract with Q is terminated, the license agreements with the content providers still stay in place.

In case of bankruptcy of P or defaulting payments, the content providers will only be able to recover funds from P. The content providers cannot recover funds from Q directly even if the latter owes P. P has control over the Licensed Rights that the content providers have granted

to it and P also bears any market risks, quality risks, foreign exchange risks and credit risks associated with the Licensed Rights. P is acting in its own capacity when procuring Licence Rights from content providers and sub-licensing the Licensed Rights to Q and is not acting in the capacity of an agent, a nominee or as a conduit company.

Points at issue

1. Whether P is tax resident in Mauritius for the purposes of Article 4 of the Double Taxation Agreement between Mauritius and Singapore; and
2. Whether P is the beneficial owner of royalties received from Q for the purposes of Article 12 of the Double Taxation Agreement between Mauritius and Singapore?

Ruling

On the basis of the facts provided, it is ruled that -

1. P is resident in Mauritius by virtue of the provisions of section 73 of the Income Tax Act and therefore, P is also tax resident in Mauritius for the purposes of Article 4 of the Double Taxation Agreement between Mauritius and Singapore and hence, P is liable to tax in Mauritius.
2. P's right to use and enjoy the royalties income is not constrained by any contractual or legal obligation to pass on the payment received to another person. Furthermore, P assumes the risks and control of the royalties received from Q. Hence, P is the beneficial owner of royalties received from Q for the purposes of Article 12 of the Double Taxation Agreement between Mauritius and Singapore.