

TR 238

Facts

X is a company registered in Canada and is engaged in gold and base metals mining. X has operations in Canada, United States of America, Australia, several countries in Latin America and Africa.

X incorporated a Mauritius holding company, namely Y to hold certain of its Africa based interests and to remunerate some of its senior executive on a month to month basis. X is considering the contract of employment of Dr Z, its Chief Operating Officer (“**COO**”) to be under Y which will pay his salary into his offshore account, currently in Jersey. Costs incurred by Y to accommodate for Dr Z’s salary costs will be recharged to X.

Dr Z, who is a South African citizen, currently owns a villa in Mauritius under the Integrated Resort Scheme (“**IRS**”). As a holder of an IRS villa, Dr Z was issued a residence permit.

Given the extensive responsibilities Dr Z has across Africa and the Middle East and his extensive travel to fulfil his duties, Dr Z is not tax resident in South Africa but his family has been residing in South Africa for the past 38 years.

As COO, Dr Z has ultimate responsibility for the group’s operations in the aforementioned region and for interfacing with major investors in the key investor markets of Canada, United States and Europe. Consequently, his duties will often be carried out via electronic media across international borders and airports depending on his schedule and travel requirements or whilst visiting Mauritius.

Due to the international nature of his employment, Dr Z travels extensively and he is expected to spend approximately 8 to 10 weeks in Mauritius over the course of any tax year. Some of his time will be on annual leave whilst other time will be spent working on various aspects of X’s operations.

Points at issue

1. Whether only the portion of Dr Z’s emoluments from Mauritius-based performance will be taxed in Mauritius?

2. Whether emoluments derived by Dr Z (and paid in his Jersey account) from performance of employment duties abroad will be taxable in Mauritius only on remittance ?

Ruling

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

1. in accordance with sections 73 and 74 of the Income Tax Act, Dr Z will be subject to tax on emoluments derived from performance of duties whilst physically present in Mauritius. For that purpose, the length of stay includes the date of arrival, date of departure, non-business days and annual leave spent in Mauritius.
2. in accordance with section 5 of the Income Tax Act, emoluments derived by Dr Z in respect of duties performed abroad will not be taxable in Mauritius.