

TR 288**Facts**

M is a Clearing House and a wholly owned subsidiary of N, an Exchange. The Exchange and the Clearing House are regulated by Financial Services Commission, Mauritius.

M has hired a non-resident consultant, Mr O for consultancy/advisory services. The latter is an individual who is a citizen, a resident and a taxpayer of India. M is planning to enter into a "Retainership Agreement" with him.

The services will be remotely received by M from India, and the remuneration will be in the form of fixed monthly fees. Further, the individual might come to Mauritius for few days however not exceeding 90 days in a calendar year to attend meetings in Mauritius. The retaineer has sufficient experience and acumen to provide the desired services to M.

The Consultant will provide his services to M through presentations, virtual meetings and reports. Services provided by the Consultant will be received electronically i.e. through e-mails or meetings.

Payment of fixed monthly fees will be paid via bank transfer to the Consultant by M.

Points at issue

1. Whether Tax Deducted at Source (TDS) is applicable to the individual providing services remotely from a place outside of Mauritius in terms of the "Retainership Agreement"?
2. Whether Withholding Tax (WHT) will be applicable to the individual providing services remotely from a place outside of Mauritius in terms of the "Retainership Agreement" read with Article 14 or Article 15 of the Double Taxation Avoidance Agreement (DTAA) between Mauritius and India for the services provided to ACHL?
3. If the responses to the queries 1 and 2 mentioned above are in the affirmative, to specify the relevant tax provision where applicable and the rate at which the TDS/WHT is to be deducted?
4. Whether this non-resident individual is required to file tax returns in Mauritius for his income arising in Mauritius in terms of the Income Tax Act 1995 and if so required, then the relevant provisions should be highlighted for guidance?

Ruling

Based on the facts provided, it is ruled that:

1. Tax Deducted at Source (TDS) is not applicable on the payment made to the individual for providing services remotely from a place outside Mauritius under the Retainership Agreement.
2. Withholding Tax will not be applicable on the payment made to the individual for providing services to M remotely from a place outside Mauritius since the latter does

not derive emoluments under Article 15 (Dependent Personal Services) nor fees for Independent Personal Services under Article 14 of the Mauritius–India DTAA.

3. The payment made to the individual constitutes fees, which fall within the scope of Article 12A (Fees for Technical Services) of the Mauritius–India DTAA, as amended by the 2016 Protocol. In accordance with Article 12A (2), such fees are taxable in Mauritius at a rate not exceeding 10% of the gross amount of the fees. Therefore, the individual is liable to income tax in Mauritius on the gross fees received from M at the rate of 10%.
4. In accordance with Section 112 of the Income Tax Act 1995, the individual is required to file a tax return in Mauritius declaring the gross fees derived from M, which are subject to tax under Article 12A of the DTAA.

