

TR 80

Facts

L Investments Ltd is a GBL 1 company incorporated in Mauritius. It holds 100% shares in P Holdings (Pty) Ltd, a company incorporated in South Africa, since November 2002. The only employee and director of the company is Mr T. P Holdings (Pty) Ltd holds 74% of the shares in a subsidiary in South Africa, viz. M (Pty) Ltd, an investment company. The difference, 26% shares are owned by Mr T. A resolution has been passed on December 2002 to transfer the effective management and control of both companies to Mauritius and all operations of the companies are done in Mauritius. By letter dated 20 March 2008, the South African tax authorities (SARS) have been informed of these operations and also requested to remove the companies from the South Africa tax register.

Both companies have 30 September as the date of annual balance of accounts. They do not have taxable income until September 2005, but M (Pty) Ltd is liable to tax since the year to 30 September 2006.

Point in issue

A guidance is sought as to what procedures should be followed to get the companies registered as taxpayers in Mauritius.

Ruling

Based on the facts provided, being given that P Holdings(Pty) Ltd and M (Pty) Ltd have their effective control and management transferred to Mauritius, they are resident in Mauritius for income tax purposes and therefore liable to tax on their worldwide income. As these companies are not incorporated in Mauritius, it is the obligation of the taxpayer companies to officially inform the Mauritius Revenue Authority that their control and management have been transferred to Mauritius. But this does not seem to have been done.

Under the provisions of Section 116 (1) of the Income Tax Act 1995, and subject to other provisions of the law, every company, whether or not it is a taxpayer, has the obligation to submit to the Director-General a return in such manner and in such form as may be approved by him and at the same time pay any tax payable in accordance with its return.

The Income Tax Act lays the obligation on all companies resident in Mauritius to submit their returns of income within the due date, whether or not they are registered with the MRA or have received a return form from the MRA.

Both companies should therefore comply with the requirements of the Income Tax Act with regard to submission of returns of income and payment of tax.