

TR 88

Facts

A Limited is incorporated in Mauritius as a domestic company and has its registered office in Port Louis. Its sole shareholder and director is a UK national resident in Mauritius. The company will be engaged in arranging for the purchase of commodities from suppliers worldwide and its resale to clients overseas. For that purpose, under an agreement, A Limited will act as an agent for a UK company (the Principal) by offering procurement services from Mauritius. The agreement will not constitute any association, partnership, joint venture or other relationship.

For the purpose of this operation, 'procurement services' has been defined in the Memorandum of Agreement entered into between the UK company and A Limited to mean as acting for the Principal, opening and operating a bank account, co-ordinating the purchase and shipment of commodities, clearance of commodities from Customs & Excise in the respective countries of the suppliers and customers, arranging for payments to suppliers and receiving payments from customers, placing orders, entering into correspondences, invoicing and the preparation of all documentation relative to conducting the supply of commodities.

A Limited has made arrangements with a local clearing and forwarding agent to oversee trans-shipment of goods both by air or sea routes from suppliers to clients. All transactions and settlements on supplies and sales will be undertaken on the Agent's name (A Limited). The latter will manage funds on behalf of the Principal and maintain accounting records in Mauritius to disclose all such transactions in its books. Billing to customers will be initiated from here. Also, Board meetings will be conducted in Mauritius.

As consideration for acting as Agent on behalf of the Principal, A Limited will receive an amount equal to 8% of the gross profit on the transactions, and this will be used as the tax base to calculate its tax liability, if any. Any profit remaining shall belong to the Principal and will be repatriated to the United Kingdom where it will be subject to UK tax laws. The income of 8% pertaining to A Limited will be calculated at the end of the financial year and will be based on the accounting profit made out of the above transactions. The accounting profit will be determined by using the generally acceptable accounting principles and standards.

Points in issue

Whether:

- 1) the way of determining the tax base for computing the tax liability of A Limited is acceptable;
- 2) A Limited will receive deduction for all the business expenses and disbursements.

Ruling

1 & 2. For the purpose of determining the chargeable income and tax liability of A Limited, the MRA will apply the arm's length test and allow such business expenses to which it will be entitled, in accordance with section 57 of the Income Tax Act 1995.

However, being given that A Limited will be acting as a dependent agent for and on behalf of the UK company, it will constitute a permanent establishment in respect of the latter. The UK company will therefore be taxed on the profit attributable to the permanent establishment.