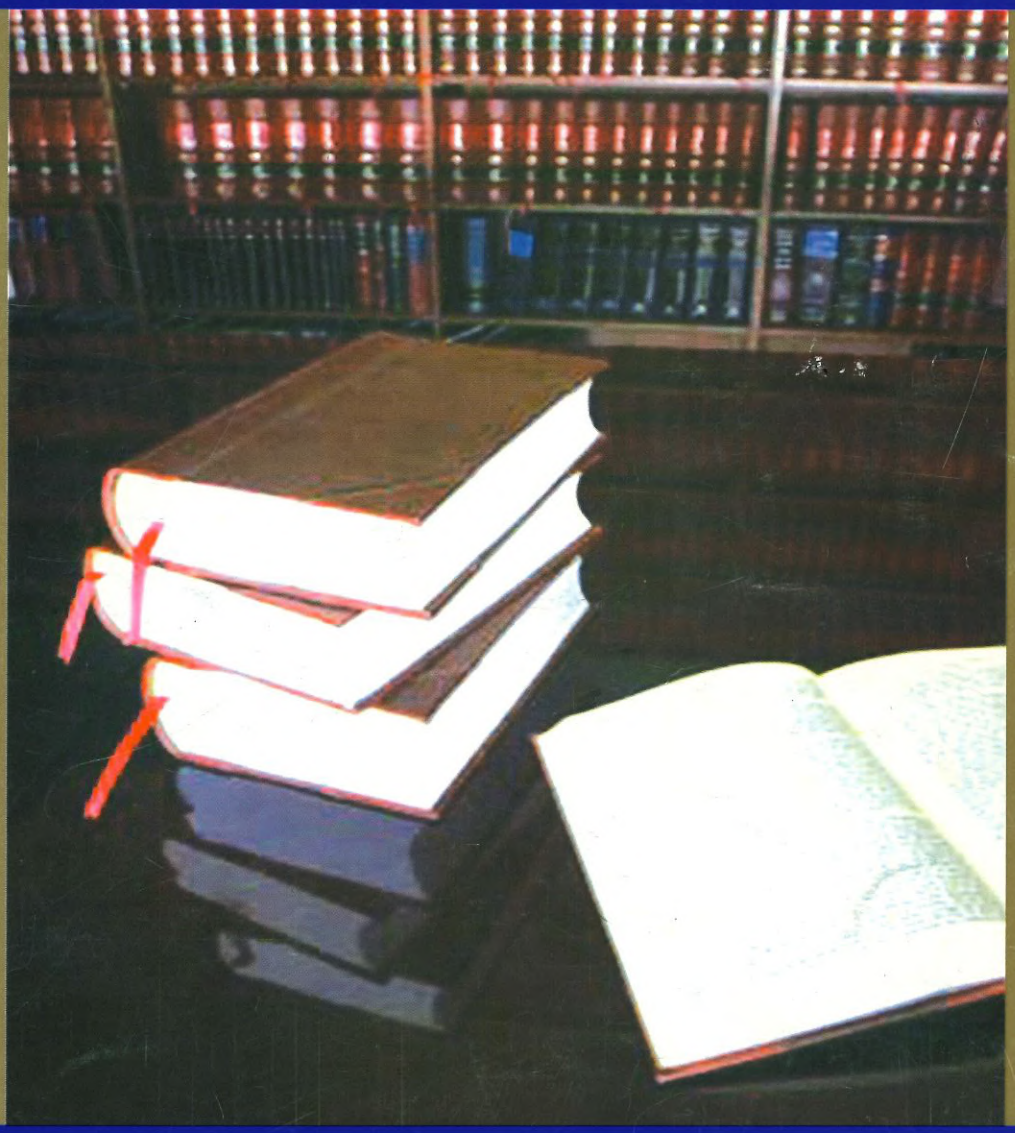
MAURITIUS REVENUE AUTHORITY

Rulings
Income Tax & VAT



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Contents

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INTRODUCTION

According to the provisions of Section 159 of the Income Tax Act and Section 69A of the Value Added Tax Act, any person who derives or may derive any income and/or who in the course or furtherance of his business, makes taxable supplies, may apply to the Director-General for a ruling as to the application of these Acts to that income and/or to any of the supplies made to him or made by him.

2. The application which must be in writing, shall-

(a) include full details of the transaction relating to the income and/or to the supply together with all documents relevant to the transaction;
(b) specify precisely the question as to which the ruling is required;
(c) give a full statement setting out the opinion of that person as to the application of these Acts to that income and/or to that supply; and
(d) be accompanied by:

(i) in relation to an individual, an amount of 1,000 rupees; or
(ii) in relation to any other person, an amount of 5,000 rupees.

3. For this purpose, a Tax Ruling Committee comprising of the following persons has been constituted:

Chairman:	Mr S Lal	Director-General
Members:	Mr M Mosafeer	Director, large Taxpayer Dept
	Mr M Hannelas	Director, Medium and Small Taxpayer Dept
	Mrs C Gunnoo	Director, Fiscal Investigations Dept
	Mr D Ramdin	Director, Operational Services Dept

Mrs C. Fijac and Mr. D. Gooriah act as Committee Secretary.

4. The legal framework provides that:

(a) the Director-General shall, within 30 days of the receipt of an application, give a ruling on the question to the applicant.

(b) a ruling given under these sections shall be binding upon the Director-General and shall be published by the Director-General in such manner as he thinks fit except that the identity of the person to whom the ruling relates shall not be indicated in the publication.

(c) any person may rely upon a ruling published as a statement binding on the Director-General with respect to the application of these Acts to the facts set out in that ruling.

(d) the Director-General may publish a notice in the *Gazette* to the effect that a ruling which he has previously published shall cease to be binding with effect from a date which shall not be earlier than the date of the notice.

5. **Rulings issued during the year:**

During the year ended 30 June 2007, 17 rulings were issued, of which 7 are in respect of VAT issues. These are provided at Appendix I and II

Appendix I

TR 52

Facts

A foreign parent company, issued zero coupon bonds to its subsidiary, which is incorporated in Mauritius. The bonds were issued for a subscription amount of GBP 243.7 million and the amount payable on maturity would be GBP 297 million.

On the early redemption of the zero coupon bonds, the bonds had appreciated to GBP 265.9 million. In addition a late payment fee of GBP 0.76 million was paid since the redemption date as per the agreement was set on 5 April or 5 October whereas the redemption took place on 28 April 2006.

Point in issue

A ruling is being sought as to whether

(i) the appreciation of the bonds, of GBP 22.2 million; and

(ii) the late payment fee of GBP 0.76 million

will be subjected to income tax in the hands of the subsidiary.

Ruling

The subsidiary, being resident in Mauritius is liable to tax on its worldwide income. Pursuant to section 51 of the Income Tax Act, the gross income of a company includes the income referred to in section 10(1) (b), (c), (d) and (e).

In the present case the sum of GBP 22.2 million is the return on the bonds subscribed by the subsidiary. It is an income which is in the nature of interest and will fall under section 10(1)(d) of the Income Tax Act.

As regards the GBP 0.76 million, although described as a penalty fee, it is a return for holding the investment for a further 23 days and again falls under the purview of section 10(1)(d) of the Income Tax Act.

TR 53

Facts

An employee was paid severance allowance on termination of his employment as from 1 July 2005. The severance allowance was computed on the basis of current monthly remuneration receivable by him at the time of termination of employment and included the following benefits:

(i) overseas passage
(ii) car expenses
(iii) telephone rental
(iv) medical benefits contribution

Tax was withheld from the severance allowance after taking into consideration the first Rs 1,400,000, which is exempt from income tax under Part II of the Second Schedule of the Income Tax Act 1995.

Point in issue

Whether the benefits included in the monthly remuneration used as basis for the computation of the severance allowance should not be excluded in the calculation of the tax liability of the employee on the grounds that *overseas passage* is not taxable by virtue of section 10 (1) (a) (i) of the Act, and benefits under items (ii) to (iv) are expenditure wholly, exclusively and necessarily incurred in performing the duties of employment.

Ruling

Only the first 1,400,000 rupess of the sum received by way of severance allowance determined in accordance with the Labour Act is exempt from tax as provided under item 4 of Part II of the Second Schedule to the Income Tax Act.

The fact that non-assessable benefits have been included in the monthly remuneration used as the basis for the computation of severance allowance payable has no incidence on the amount of severance allowance provided as exempt under the Income Tax Act.

Tr 54

FACTS

A company terminated the contract of employment of all its seven employees upon the decision of the shareholder to close the company and, in consideration of the termination of the employment contracts, effected the following payments:
1. Severance allowance in accordance with the Labour Act.
2. Three months' remuneration in lieu of notice.
3. A payment made purportedly to restrain the employees from competing in Mauritius with another operator, a related company, owned by the same shareholder as that of the former company.

Point in issue

whether item 3, that is the payment which according to the company was made to restrain the employees from competing in Mauritius with the related company, is taxable in the hands of the recipients.

Ruling

On the facts and information provided, the amount paid under item 3 to the former employees of the company falls within the ambit of section 10 (1) (a) of the Income Tax Act which includes as taxable item any compensation for loss of office or other reward in respect of or in relation to loss or reduction of future income.

TR 55

Facts

An individual born in Mauritius is married to a citizen of France, and is a citizen of both countries, Although he has retained a family home in Mauritius, which he visits from time to time, his personal and economic relations where he maintains permanent places of abode are principally in the UK, the United States and in the Bahamas.

Point in issue

Whether under Section 73(a) of the Income Tax Act, for the purpose of considering a person resident in Mauritius, days of arrival and of departure are included for the calculation of 183 days 270 days, as the case may be.

Ruling

For the purpose of considering a person resident in Mauritius under Section 73(a) of the Act, days of arrival and days of departure are included in the calculation of 183 days or 270 days, as the case may be.

TR 56

Facts

Company A is incorporated in Mauritius. It is in the process of applying for a GBL 1 under the Financial Services Development Act 2001. Company A will acquire a proportion of the share capital of Company B, a company registered in China. The acquisition will be financed by an interest bearing loan from company C, the holding company of company A. Company C is registered outside Mauritius and does not have any permanent establishment in Mauritius. The interest rate on the loan will be computed on an arm's length basis.

Points in issue

Whether it can be confirmed that:

i. Company A would be taxable on any dividend received from Company B;
ii. Company A would be taxable at the rate of 15%;
iii. Underlying Foreign Tax Credit would not be available to Company A;
iv. company A would be entitled to claim presumed tax credit and that no grossing up would be required for the purposes of computing the presumed tax credit;
v. Capital gains arising on disposal of shares would not be taxable and any trading profits from sale of securities would be exempt;
vi. Any tax loss incurred by Company A can be relieved in a maximum of five succeeding years of assessment;
vii. Company C would be exempt from tax in respect of any interest expense it would receive from Company A and no TDS would apply;
viii. Any interest payable by Company A to Company C in respect of loan to finance the purchase of shares would be deductible:
ix. For the purposes of Alternative Minimum Tax "book profit" excludes any profits on sale of securities and that the tax payable is before deduction of foreign tax credit; and
x. Any distribution made by Company A to its holding company which does not satisfy the definition of "dividends" in Section 2 of the Income Tax Act would be taxable in the hands of Company C.

Rulings

(i) Dividend received by Company A from Company B
It is confirmed that Company A would be taxable on any dividend received from Company B

(ii) Corporate tax rate
Company A as a GBL 1 company would be taxable at 15%.

(iii) Underlying Foreign Tax Credit
It is confirmed that Company A would not be eligible to underlying tax credit.

(iv) Presumed Foreign Tax Credit
Company A would be entitled to claim presumed tax credit. No grossing up would be required for the purposes of computing the presumed tax credit.

(v) Capital gains
It is confirmed that capital gains arising from disposal of shares are not taxable. Any trading profits that Company A would derive from sale of securities would be exempt from income tax.

(vi) Tax losses
Any unrelieved tax loss incurred by Company A may be carried forward for a maximum of five income years, subject to the conditions provided in the income tax law.

(vii) Interest expense
It is confirmed that Company C would be exempt from tax in respect of any interest it would receive from Company A. Such interest would also not be subject to tax deduction at source.

(viii) Deductibility of interest payable by Company A
Any interest payable by company A in respect of loan used to finance purchase of shares of company B would be deductible.

(ix) Alternative Minimum Tax (AMT)
It is confirmed that for AMT purposes book profit excludes any profits derived from sale of securities and the tax payable is the amount before deduction of any foreign tax credit.

(x) Dividends payable by Company A to company C

It is confirmed that any distribution made by Company A to its holding company and which does not satisfy the definition of "dividends" in section 2 of the Income Tax Act would be taxable in the hands of the recipient.

TR 57

Facts

A Company is tax resident in Mauritius and operates a gaming house. It has entered into a lease contract with a company registered and tax resident in South-Africa, in respect of the lease of certain Wheel of Gold Machines. The latter company does not have a PE in Mauritius. The consideration of the lease is based on the number of machines used per day and per machine, and lease payments are made accordingly. The Mauritius - South Africa DTA does not make specific mention of income in respect of operating lease.

Point in issue

Can it be confirmed that the lease payments made by the company to the South African company are not Mauritian sourced income and therefore outside the scope of the Mauritian tax system?

Ruling

Lease income derived by the South African Company, from lease of equipment made to the company, constitutes income which falls under Article 22(1) of the Mauritius-South Africa Double Taxation Agreement and therefore taxable only in the country of residence of the recipient of the income, i.e. South Africa.

TR 58

Facts

An investment company was incorporated in Mauritius. It holds a Category 1 Global Business Licence (GBC 1) and earns interest income on inter-group loans. Its central management and control is in Mauritius, but its effective management is in South Africa, so that it is tax resident in both countries as per the Mauritius-South Africa Double Taxation Agreement.

Point in issue

Whether it can be confirmed that the company

(i) is a tax resident of South Africa and therefore has to comply with South African tax filing and tax payment requirements; and

(ii) is not a tax resident of Mauritius, which therefore means that it does not have to file a tax return or pay any tax in Mauritius.

Ruling

(i) On the basis of facts given, the company is deemed to be resident in South Africa by virtue of the tie-breaker clause in Article 4(3) of the Mauritius-South Africa Double Taxation Agreement (DTA). The taxation of income derived by the company from Mauritius and South Africa will be governed by the DTA. Thus, where the DTA confers the taxing right to the source country in respect of an item of income derived by the company from Mauritius, the company will have to file a tax return with the MRA with regard to that income and pay any tax accruing thereon.

(ii) In the event the company derives income from abroad from a country other than South Africa, the company will have to declare such income in Mauritius as a resident of Mauritius taxable on its worldwide income. The company will however be entitled to claim foreign tax credit or presumed tax credit in respect fo such foreign source income. Where a DTA is in force, the taxation of the foreign source income will be governed by the provisions of the DTA.

TR 59

Facts

A company incorporated in the Netherlands forms part of an international group. Its core activities consist of the construction and maintenance of ports and waterways, land reclamation, coastal defence and riverbank protection. It was awarded a contract by the Mauritius Ports Authority for the execution of certain dredging works in view of the construction of an oil jetty and the extension of the berthing facilities at the Mauritius Container Terminal in the English Channel.

Points in issue

(i) whether it can be confirmed that the company which is a foreign company will be taxable only on its Mauritian sourced income?

(ii) whether in accordance with Section 117A (2) of the Act it is correct to state that the return and accounts which the company will submit for the three months ended 31 December 2006 shall be deemed to be in relation to the income year ended 30 June 2007 ?

(iii) Whether it can be confirmed that the company is involved in construction activities and its corporate tax rate would be 15% and not 22.5% ?

(iv) Whether the expenses incurred by the Head Office in respect of the contrac executed by the branch are deductible under Section 57 of the Income Tax Act ?

Ruling

(i) It is confirmed that the company which is a foreign company will be taxable only on its Mauritian sourced income.

(ii) The statutory date for the submission of its return in respect of the accounts for the period ended 31 December 2006 will be 30 September 2007, which shall be deemed to be in relation to the income year ending 30 June 2007.

(iii) The tax rate applicable to the company for the income year ending 30 June 2007 will be 22.5% as the company will be engaged in dredging activities and not construction works.

(iv) Expenses incurred by the Head Office in respect of the contract executed by the branch in Mauritius is deductible under section 57 of the Income Tax Act.

TR 60

Facts

A non-resident societe acquired the entire share capital of five resident companies forming part of two different groups carrying business in the same business activity. For administrative reasons the boards of the said companies, referred to as the amalgamating companies, have proceeded to an amalgamation into one single company, viz Company A (Mauritius) Ltd, the amalgamated company.

Point in Issue

Whether consequent to the effect of amalgamation, the *"property, rights, powers and privileges"* of the amalgamating companies under the Companies Act are also the property, rights, powers and privileges of the amalgamated company, and as such whether the tax losses accumulated by the amalgamating companies can be used for carry forward and set off against the net income of the amalgamated company.

Ruling

Notwithstanding the fact that the "property, rights powers and privileges" of the amalgamating companies continue to be the property, rights, powers and privileges of the amalgamated company under the companies Act 2001, for income tax purposes the tax losses accumulated by the amalgamating companies cannot be said to have been incurred and accumulated by the amalgamated company. The amalgamated company can, under Section 59 of the Income Tax Act, carry forward only losses that it has itself incurred.

TR 61

Facts

Company A and Company B are two companies registered in Mauritius forming part of a group. Company A is a company registered with the BOI under the Investment Promotion Act and will be engaged in the provision of health services. Company B is engaged in construciton activities and has been awarded a contract for the construction of a clinic for Company A.

Point in Issue

Whether "additions, extensions and substantial renovations to building", subsequent to the initial construction, are "works" as defined in Section 111A of the Income Tax Act and the "supply of labour" for the execution of works incidental to civil construction by Company B will, as such, fall under the TDS mechanism, i.e. under the provisions of Sub-Part BA of the Act.

Ruling

It is confirmed that the "additions, extensions and substantial renovations to building" made to the initial construction and the "supply of labour" will be subject to tax deduction at source under Sub-Part BA of the Income Tax Act.

Appendix II

VAT R 9

Facts

A construction company was awarded a contract for the construction of waterfront private residences by a developer and promoter. Upon request by the promoter, an invoice equal to the value of the works to be carried out by the company was issued on 29 September 2006. However, payments relative to the invoice shall be effected according to the progress of work as and when this would be certified by the principal agent.

Point in issue

As the VAT Act has been amended with effect from 1 October 2006 whereby the supply of construction works in respect of private residences is a taxable supply as from above date, whether Section 5 of the VAT Act should apply in the present case, that is, the supply of goods and services shall be deemed to take place at the time an invoice is issued by the supplier.

Ruling

On the basis of facts submitted, Section 5 of the VAT Act does not apply since in construction business invoices are only issued in the light of the progres of work as certified by the Architect/Quantity Surveyor. The invoice issued on 29 September 2006 was based on the value of works **to be certified** and not on the value of works **already carried out and certified.**

VAT R10

Facts

A company has as object the provision of factoring services which include the following:

(a) Providing upfront finance against book debts of up to 80% of the invoice value, also Known as *"recourse factoring";*

(b) Sales ledger maintenance of accounts related to the "account receivables", Known as *"ledger keeping"*

(c) Collection of "accounts receivable" *(debt management);* and

(d) Credit protection against default in payment by the buyer, also Known as *"non-recourse factoring"*

Point in issue

Whether all the services provided by the company as stated at (a) to (d), and which relate directly to the provision of debt factoring, fall within the meaning of "factoring" under item (d) of the Sixth Schedule to the VAT Regulations, and therefore exempt from VAT.

Ruling

Although the term 'factoring' has no legal definition, the services provided by the company as detailed above are debt factoring services within the meaning given in Finance & Accounting literature on the subject. Those services therfore qualify as exempted services by virtue of item (d) of the Sixth Schedule to the Value Added Tax Regulations.

VAT R11

Facts

A company incorporated in the Netherlands forms part of an international group. It was awarded a contract by the Mauritius Port Authority for the execution of certain dredging work in view of the construction of an oil jetty and the extension of the berthing facilities at the Mauritius Container Terminal in the English Channel. The dredger is equipped with four stationary engines. Two of the engines are used for propulsion. The propulsion engines enable the plant to move from one location to another, either on the same site or from one country to another. The remaining two engines are used for dredging purposes.

Point in issue

Whether it can be confirmed that the engines used for dredging purposes are stationary engines and therefore fall within the ambit of Section 21(2)(e) of the VAT Act.

Ruling

As the propulsion engines enable the plant to move from one location to another and the other engines are used for dredging purposes they are not stationary engines, and therefore do not fall within the ambit of section 21 (2) (e) of the VAT Act.

VAT R12

Facts

A company is in the business of processing visa application for tourists. The invoice which it will be issuing to its customers for the services rendered will be made up of two components:

(a) Service charge - for processing the application
(b) Disbursement - payable to the foreign authorities for granting the visa

Point in issue

(i) whether the services at (a) & (b) above are subject to VAT

If the answer to (i) is in the affirmative,

(ii) whether **turnover** for VAT purposes is the value of the total invoice, or only the service charge component,

(iii) whether **VAT is chargeable** on the value of the total invoice, or only on the service charge component after excluding the disbursement component.

Ruling

(i) The services provided by the company constitute a "supply" in accordance with Section 4 (1) (b) of the Value Added Tax Act. As the supply is a taxable supply, it is subject to VAT.

(ii) The turnover for VAT purposes does not include the amount charged to the client and payable to the foreign authorities for granting visa.

(iii) VAT is chargeable on the amount invoiced to the client, excluding the amount charged on behalf of the foreign authorities for granting visa, provided the different components of the amount charged are shown separately on the invoice.

VAT R13

Facts

A company operates a hotel. Certain of its guests use limousines to travel on the island. The limousines are not owned by the company but are leased from a private operator, the lessor. The latter charges a monthly rental to the company, which in turn makes a separate charge for the limousines used by the guests on the invoice it issues to them.

Point in issue

Whether the Vat charged by the lessor can be claimed by the company.

Ruling

VAT charged on the lease rentals incurred in respect of the limousines can be claimed as a credit by the company by virtue of Section 21 (2)(c) of the VAT Act as this relates to services used to make a taxable supply and not for the company's own use or consumption.

VAT R14

Facts

Company A and Company B are two companies registered in Mauritius forming part of a group. Company A is a company registered with the BOI under the Investment Promotion Act and will be engaged in the provision of health services. Company B is engaged in construction activities and has been awarded a contract for the construction of a clinic for Company A.

Point in Issue

Whether under the VAT Act

(i) the construction of the building by Company B for Company A, otherwise the supply by Company B is zero-rated?

(ii) the additions, extensions and substantial renovations made to the clinic (by Company A) should be construed as **"construction"** in accordance with the term *"construction of a purpose-built building"* in column 2 at item 13 of the Ninth Schedule and therefore exempt from VAT?

(iii) input tax suffered by Company B will be available as a credit against output tax in the course or furtherance of its business?

(iv) input tax incurred by Company B attributable to both taxable and exempt contracts can be apportioned on the basis of the taxable period in which the input tax has been incurred ?

(v) any excess input tax attributable to the contract with Company A will be available for refund under Section 24?

Ruling

(i) The construction of the building by Company B for Company A, otherwise the supply by Company B, is not zero rated under the VAT Act as it is not of a description that appears in the Fifth Schedule.

(ii) It is confirmed that for the purpose of item 13 of the Ninth Schedule to the VAT Act, the term construction includes additions, extensions and substantial renovations made to a clinic and consequently the recipient of the supply is exempted from payment of VAT on that supply.

(iii) It is confirmed that input tax suffered by Company B will be allowed as a credit against output tax of the company in the course or furtherance of its business, provided all conditions laid down in Section 21 of the Act are satisfied.

(iv) Input tax incurred by Company B attributable to both taxable and exempt contracts can be apportioned only on the basis of the turnover of the previous accounting period in accordance with the provisions of sub-section 3(b) of Section 21 of the Act.

(v) Company B will be entitled to repayment on any amount of excess input tax, provided the conditions laid down in sub-section 2 of Section 24 are satisfied.

VAT R15

Facts

A private limited company registered in Mauritius, owns a 3-acre centre offering premier horse quarantine facilities including the following:

(iv) Fresh water and hay supply
(v) Fresh bedding
(vi) Tailor made feeding programme
(vii) Veterinary Services, and
(viii) Blacksmith services

The company's clients are exclusively overseas clients who are based overseas, and the horses are flown to Mauritius unaccompanied by the client. The horses transit in the local quarantine centre where they receive the above services before being flown back to other destinations after a short interval of time. The company's clients have no permanent establishment in Mauritius.

Point in Issue

Whether the services offered by the company are zero-rated supplies in accordance with Section 11(2) and Items 6(a) in the Fifth Schedule of the Act.

Ruling

The services cannot be said to be zero-rated supplies on the grounds that the clients of the company are outside Mauritius at the time that the supplies are made or the services are performed, and that the company's clients have no permanent establishment in Mauritius.

The supply of services referred to at Item 6(a) of the Fifth Schedule means a supply of services which are not utilised in Mauritius. In this case the company has contracted with a person outside Mauritius to provide services to be utilised by the horses in Mauritius.