

VATR101

Facts

J, is a pan-African energy group in the African energy sector. For the past 2 years, the group has been undergoing major changes involving –

- (i) a simplification of its organisation and legal structure with merger towards its market;
- (ii) a new brand identity ; and
- (iii) a new orientation of its business activities through a transformation of its value chain.

K, is a company incorporated in Mauritius and it holds a Global Business Licence (GBL). It is J's parent company and it is registered for VAT in Mauritius.

Previously, K operated only as a holding and financing company. As from 1 January 2021, K assumes, in addition to the existing holding and financing function, a headquarter function in Mauritius acting as “strategic control entity” or entrepreneur that contracts with the African Operational Subsidiaries Companies (the “OpCos”), which are the entities in charge of the responsibilities of daily execution, under a franchise agreement. K is therefore now the prime contractor to enter into contracts with the OPCos for the right to use J's Group Intellectual Property for a franchise fee developed by K to enable the franchisees to develop their business. The IPR relates to the use of the brand it developed. K is the legal owner of the brand. The franchise fee is calculated as a percentage of the turnover of the franchisee(s).

M, a company incorporated in the United Arab Emirates, provides key strategic guidance and initiatives relating to the IPR to the OPCos.

To centralise the billing process, K charges the OPCos for the use of the brand and services provided by M to L and receives franchise income from the OPCos. M will subsequently issue an invoice to K to allocate part of the revenue for the services it provided to the OPCos.

K receives the following income in Mauritius:-

- Franchise fee income under the franchise arrangement; and
- Dividends and interest income.

As part of the restructuring exercise, K is considering the transfer of some of its IP to a company yet to be incorporated in Mauritius, Z which would hold a Global Business Licence and to a Foreign Company, Y. Both Z and Y will form part of J.

Points at issue

- (i) Whether the provision of the brand under the franchise agreement to the African OPCos will fall within the ambit of item 6(a) of the Fifth Schedule to the VAT Act?
- (ii) Whether the provision of loans by K to foreign related entities within J will be considered as outside the scope of Mauritius VAT?
- (iii) Whether K is entitled to claim a refund of its excess input tax?
- (iv) What are the VAT implications on the transfer of IP from K to other group entities ?
- (v) What is the VAT implication for K on the franchise fee allocation paid to M (being a retrocession of some of the franchise fees received from operational companies for functions performed in Dubai) ?

Ruling

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

- (i) The contract of franchise between K and the OPCos for the right to use J's Intellectual Property for a franchise fee is a supply of service and zero-rated in accordance with section 11 and item 6(a) of the Fifth Schedule to the VAT Act.
- (ii) The making of loans between entities within the same group is an exempt supply in accordance with item 50 (fa) of the First Schedule to the VAT Act.
- (iii) As K will be making both taxable and exempt supplies, credit for input tax shall be allowed in the proportion of taxable supplies to total turnover in accordance with section 21(3) (b) of the VAT Act. Any excess input tax which corresponds to the proportion of the value of zero-rated supplies to the total value of taxable supplies may be claimed as repayment under section 24(2) of the VAT Act.

- (iv) (a) The transfer of IP from K to Y which is a foreign company within J is a zero rated supply by virtue of item 6(a) of the Fifth Schedule to the VAT Act.
- (b) The transfer of IP from K to Z is a zero rated supply provided that Z is mainly engaged in providing services to foreign entities.
- (v) As M will be providing services to the OPCOs and all these entities are outside Mauritius at the time the services are supplied, the transaction is outside the scope of VAT in Mauritius.

VATR 102

Facts

The joint venture D is set up for photovoltaic projects contracted with the Central Electricity Board.

F is a private limited company, incorporated and domiciled in Mauritius. F is VAT registered. It is engaged in the engineering, procurement and construction of photovoltaic farms and energy efficiency projects in Mauritius.

F as the Engineering, Procurement and Construction (“EPC”) of projects, has been appointed by the joint venture D for the construction and installation of photovoltaic platforms. F is responsible for the procurements in relation to construction. F bears all the expenses for the procurement and then recharges same to D with a mark-up. At the level of F, a photovoltaic project would involve different elements namely:

- a) importation of parts/ equipment for construction of the photovoltaic farms;
- b) local purchases of photovoltaic-related supplies;
- c) services provided by foreign suppliers and local suppliers such as commissioning services, storage fee at Customs, labour, transport, etc. in relation to the photovoltaic construction.
- d) sale of the photovoltaic constructions to D with a mark-up being recharged on all expenses made including installation and commissioning.

The main components of the solar facilities project are as follows

- (i) 65% are for PV modules;
- (ii) 15% for transmission equipments;
- (iii) 10% for logistics; and
- (iv) The remaining 10% are split between civil works, contingencies and soft costs.

Points at issue

- 1) Whether the supply of the photovoltaic system made by F, including installation and commissioning to D will be zero-rated?
- 2) Whether F can claim a repayment of input tax on the local purchase of parts/equipment and services obtained locally (e.g. transport/ labour /warehousing, etc.) that are attributed to the construction of the photovoltaic plant?

Ruling

On the basis of the facts provided above, it is ruled that –

1. The supply, installation, commissioning and supply of a photovoltaic system by F is a zero-rated supply in accordance with item 7 (aa) of the Fifth Schedule to the VAT Act.
2. Other supplies made, such as site preparation and civil works are subject to VAT at standard rate.
3. VAT incurred on parts/equipment bought locally and, on any services received locally (e.g. transport/ labour /warehousing, etc.) are allowed as input tax as provided for under section 21(3) of the VAT Act. The repayment of any excess VAT may be claimed in accordance with section 24(2) or section 24(4) (a) of the VAT Act as the case may be.
4. For any supply of services received from a supplier who does not belong in Mauritius and is not VAT registered, the provisions of section 14 of the VAT Act will apply. However, if the foreign supplier will be physically present in Mauritius to provide the service and the taxable value of the supply made in Mauritius exceeds the threshold as per the Sixth Schedule, then the foreign supplier has to apply for VAT registration under section 15 of the VAT Act and charge VAT to F.

VATR 103

Facts

G is a company incorporated in Mauritius and is a VAT registered person.

It has been stated that G runs two tourist shops situated in Grand Baie and Moka under the trading name “G”. The principal business activity of G is the sale of products held on consignment from local artisans and producers (collectively “**Partners**”).

It has been further explained that as part of its modus operandi, G enters into a one-year contract (“**Agreement**”) with each Partner to have their brands featured in the store. The key clauses within the Agreement are summarised as follows:

- (i) Partners pay a monthly participation fee to G towards the running costs of the shops. The participation fees vary in accordance with the type of product showcased.
- (ii) G works on consignment and the goods sold remain the exclusive property of the partners until sold. Prices are determined by the Partners themselves.
- (iii) G provides to the Partners their summary report of sales made on their behalf every 6th of the previous period.
- (iv) G collects 25% commission upfront on the sales made on behalf of the Partners and remits the balance to them.

The process for the sale of products on consignment is spelt out below:

- (a) An invoice is raised in the name of G upon sale of the product;
- (b) G collects the retail amount from customers;
- (c) G subtracts 25% as commission; and
- (d) The remaining amount is remitted to the Partners.

G recognises the commission received and participation fees as gross revenue for income tax purposes in line with IFRS 15.

Point at issue

Whether G, acting as an agent for the Partners ought to charge VAT on the commission and participation fees received?

Ruling

On the basis of the facts provided above, it is ruled that the goods on consignment from the Partners is a supply of goods by virtue of item 6(a) of the Third Schedule to the VAT Act. Therefore as a VAT registered person, G will have to charge VAT at the rate of 15% on the sale of goods made to final customers and subsequently issue VAT invoices in its name as provided in section 20 of the VAT Act. G will also have to charge VAT on the commission and participation fee received from its Partners.