

VATR 19

Facts

T Ltd, headquartered in India, provides consulting and IT services to clients globally as partners to conceptualize and realize technology driven business transformation initiatives. It has a branch, registered in Mauritius since December 2002, and also registered for VAT purposes. T Ltd operations in Mauritius comprise of both IT services and Finacle® implementation.

T Ltd owns an IPR (Intellectual Property Right) of a banking software product Finacle®, which caters for the needs of the global banking industry. As with software products continuous research and development effort is required for updating/enhancing the product to increase its utility for customers, a typical Finacle® customer will have the following agreements entered into with T Ltd:

1. Licence Agreement

Under this agreement the customer is granted the rights to use the software for his internal use. The customer pays a one-time licence fee to T Ltd for the procurement of such rights.

2. Annual Technical Support (ATS) Agreement

Under this agreement T Ltd provides technical support on Finacle® to the customer, a significant portion of which is provided by common support staff operating from T Ltd offices in Bangalore, India, and also at the customer location in Mauritius. The customer pays an annual 'ATS fee' to T Ltd.

3. Customisation and Installation Agreement

Under this agreement T Ltd provides professional services for customizing the Finacle® product to the customer's needs and implementing it in the operating environment of the customer. The latter pays a one-time 'customization and installation fees' to T Ltd.

4. Training Agreement

Under this agreement T Ltd provides training to the end users of the customer in Finacle®, mainly at the customer location in Mauritius. The customer pays a one-time 'training fee' to T Ltd.

The branch is not a separate legal entity. All the contracts with the customers are signed by T Ltd and work authorizations for T Ltd personnel to work in Mauritius are sponsored by the end customers. The branch will be providing the necessary logistical support to these personnel while in Mauritius only.

Points in issue

- a. Confirmation as to whether the services described in each of the 4 agreements should be subject to VAT.
- b. Whether VAT applies in each of the following cases:
 - i. services provided by T Ltd to Mauritian customers;
 - ii. services provided by T Ltd to Mauritian customers where these services are performed from outside Mauritius;
 - iii. services provided by T Ltd to Mauritian customers where the services are provided partly from outside Mauritius and partly from Mauritius;
 - iv. services provided by T Ltd to overseas based customers while these services are performed in Mauritius.

Rulings

- a. It is confirmed that the services described in each of the 4 agreements concluded by T Ltd with the customers for the use of the banking software product Finacle® are subject to Value Added Tax pursuant to the provisions of Sections 4 (1) and 9 (1) of the VAT Act 1998, as they constitute a taxable supply of services made in Mauritius by the branch which is a taxable person registered for VAT in the course or furtherance of its business.
- b. As T Ltd is providing services in Mauritius through the branch, a permanent establishment located in Mauritius, the services provided to Mauritian customers in each of the scenarios referred to at 2(a) to 2(c) above are subject to VAT as these are taxable supplies of services.
- c. The services provided from Mauritius by T Ltd through its permanent establishment in Mauritius to overseas based customers are supplies which are zero-rated in accordance with item 6 (a) of the Fifth Schedule to the Act, "being supply of services made to a person who belongs to a country other than Mauritius and who is outside Mauritius at the time the services are performed in Mauritius."