VATR 1

Facts

A VAT registered company is engaged in the construction industry.

With respect to building and civil engineering contract works entered into with its clients, provision is made in the contracts for an advance payment to be effected by the client. This payment is usually secured by a bank guarantee given to the client.

The advance payment is subsequently recouped, in installments, by direct deduction from the progress payments made to the company according to the degree of the work completed as certified by the Quantity Surveyor.

Point at issue

Whether advance payment in the construction industry amounts to a supply and is subject to VAT where the supply is taxable.

Ruling

A supply is deemed to take place at the time an advance payment is made. Where the supply made by a VAT-Registered person is taxable, the advance payment in respect of that supply is subject to VAT.

A VAT invoice or invoice, depending upon the status of the recipient of the supply may therefore be issued in connection with a claim for advance payment.

VATR 2

Facts

A company incorporated in Mauritius holds an offshore license issued by the then MOBAA. Its principal activity is to provide software and information technology services offshore. It proposes to import intellectual property in the form of software, which will thereafter be licensed to users worldwide.

The company proposes to register for VAT in accordance with section 15(1) of the Value Added Tax Act 1998 in order to claim repayment of the VAT payable at Customs and to apply for deregistration once its repayment claim has been entertained.

Points at issue

Whether the company will be allowed to deregister

Whether on deregistration, VAT will be payable on the goods forming part of the assets of the company.

Ruling

As a company making exclusively zero-rated supplies, it is not bound to register by virtue of section 15(2) of the Act.

However, if it does not avail itself of the provisions of Section 15(2), the company whose turnover exceeds the prescribed limits will have to be registered under section 15(1) of the Act.

As a VAT-Registered company, it will have to comply with all the provisions of the Act, including the submission of returns. On deregistration the company will have to pay tax on the goods forming part of the assets of the company under section 18(2) of the Act.

VATR 3

Facts

a) A company is incorporated in December 2002 to take over retrospectively as from January 2002 the entire business of five companies as a going concern. It has applied for VAT Registration as from 1 January 2003.

b) All the business assets less liabilities excluding borrowings of the five companies are to be transferred to the newly incorporated company and the five companies are to apply for cancellation of registration. However, for the period 1 January 2002 to 31 December 2002 a claim is to be made by the newly incorporated company to each of the five companies for all the revenues received by them on its behalf. Similarly, a claim is to be made by each of the five companies to the newly incorporated company for the expenses incurred by them for the same period.

c) The five companies are engaged mainly in making zero-rated supplies and make claims for repayment regularly.

Points at issue

a) Whether the transaction described above falls under section 63(3) of Value Added Tax Act.

b) Whether VAT is chargeable on the claims for refunds of revenues/expenses.

c) Whether VAT credits due to the five companies as at the date of their deregistration will be refunded by the VAT Office.

Ruling

a) The transfer as a going concern of the whole business of each of the five companies to the newly incorporated company falls under section 63(3) of the Value Added Tax Act.

b) The transfer of the five companies as a going concern to the newly incorporated company takes place on 1 January 2003, the date on which the latter has been registered for VAT. No VAT is chargeable on the claims for the refund of revenue accrued and expenses incurred during the period 1 January 2002 to 31 December 2002 as they form part of the arrangement for the transfer.

c) Any amount standing to the credit of each of the five companies as at the date of cancellation of registration is to be repaid after a thorough audit has been carried out on submission of the claims for repayment.

VATR 4

Facts

Following amendments brought to the Value Added Tax Act by the Finance Act 2003, services provided by an insurance broker are subject to VAT with effect from 1 October 2003 and insurance brokers are compulsorily required to be registered for VAT irrespective of the turnover of their taxable supplies.

Point at issue

Whether insurance brokers should charge VAT to policyholders or to insurers.

Ruling

To the extent that an insurance broker arranges insurance business with insurers, the broker therefore makes a taxable supply to the insurers.

VAT should accordingly be charged by the broker to the insurer on the amount of the commission/fees receivable from the insurers.

VATR 5

Facts

A proposed leasing company is to be incorporated as a category 1 Global Business Licence Company (GBL 1) to carry out offshore leasing activities. The activities fall under the definition of financial services or financial business activities as specified in Part II of the First Schedule to the Financial Services Development Act 2001.

Point at issue

Whether VAT is chargeable on the international leasing activities carried out by a GBL 1 company and which are provided outside Mauritius.

Ruling

Item 50 of the First Schedule to the Value Added Tax Act provides for the exemption of certain financial services including such other financial services as may be prescribed.

The prescribed financial services are as laid down in the Sixth Schedule to the regulations of the Value Added Tax Act (GN 87 of 1998).

With regards to leasing, items 30(a) and 38 of the First Schedule to the Value Added Tax Act provides for the exemption of charges under a finance lease agreement and aircraft leasing respectively.

However, item 6(a) of Fifth schedule to the Value Added Tax Act provides for the zero-rating of-

"The supply of services to a person who belongs in a country other than Mauritius and who is outside Mauritius at the time the services are performed."

In the circumstances, no VAT is to be charged on international leasing activities of the GBL 1 company supplied to persons not resident in Mauritius and who are outside Mauritius at the time the services are performed.

VATR 6

Ruling given under section 69 A of the Value Added Tax Act.

Facts

A VAT registered tour operator proposes to sell tours and packages with Reunion Island as destination. The Reunion tours are to be organised by tour operators based in Reunion and the tours and packages are expected to be purchased by -

a) local residents of Mauritius and or
b) overseas tour operators in overseas market for overseas clients.

The packages to be obtained from the Reunion tour operators will be of two types -

a) Upon the sale of the package, the VAT registered person will remit the whole amount to the Reunion tour operator and will receive a fixed percentage commission of the amount remitted.
b) The package will be purchased and subsequently sold with a margin

Point as Issue

Whether the supplies by the VAT Registered tour operator in the above cases fall outside the scope of VAT, such that no VAT is to be charged on the income derived by the VAT Registered tour operator.

Ruling

The supply to be made by the VAT registered tour operator is that of arranging for tours in Reunion.

Where the supply is made to residents in Mauritius, the consideration received by the V A T registered tour operator, whether in terms of commission or profit, (that is the amount received less amount remitted to Reunion tour operator) is subject to VAT at the rate of 15 per cent.

Where the supplies by the VAT registered tour operator are made to overseas clients through overseas tour operators, the consideration received is subject to VAT at zero-rate in accordance with item 6 (a) of the Fifth Schedule to the Value Added Tax Act.

VATR 7

Ruling given under section 69 A of the Value Added Tax Act.

Facts

A VAT registered entity, wholly owned by an overseas entity provides marketing and technical support to the local network of distributors of the parent company's products. It recharges all its local expenses plus a margin to the overseas entity.

It now proposes to import computer equipment which will be used by a hotel group. It will capitalise and depreciate the equipment in its books and recharges the annual depreciation plus a margin to the parent company, as is the case with the other expenses.

On the other hand, the hotel group will pay a monthly fee to the overseas parent company of the locally VAT registered company for rental, maintenance and technical support.

Point at issue

Whether the VAT paid on importation of the computer equipment will qualify for repayment on the basis that the depreciation charge plus the margin is a zero-rated supply to the overseas parent company.

Ruling

The billing to the overseas entity of depreciation charge plus a margin is not a taxable supply for VAT purposes. The effective supply is the rental of the equipment which can only be done by the importer of the equipment itself, i.e the VAT registered entity.

Hence the question of repayment on the basis of zero-rated supplies does not arise.

VATR 8

Ruling given under section 69A of the Value Added Tax Act.

Facts

Company (A) is engaged in the rental of immoveable properties, other than for residential purposes. It registered for VAT on 5 October 2005 whereas it ought to have been registered as from 1 July 2002.

Goods and services used prior to registration to make the taxable supplies are supported by –

a) Invoices, showing VAT separately, raised in the name of a related company (B) and in that of another company (C).
b) Receipts and other evidence in name of company A and in that of company B.

In both cases, the auditor of company A has confirmed that the transactions have been paid incurred and accounted for by company A.

Company B is not entitled to and has not taken credit for input tax in respect of the transactions.

Point at Issue

Whether company A is entitled to take credit for input tax in respect of taxable supplies supported by evidence as per (a) and (b) above.

Ruling

Subject to the limitations specified in section 21 of the Value Added Tax Act, credit for input tax would be allowed to company A in respect of taxable supplies invoiced to company A or torelated company B, and certified by the auditor of company A as having been incurred, paid and accounted for by company A, provided that –

a) the taxable supplies are supported by –
    i. invoices showing VAT separately; or
    ii. statements from the VAT registered suppliers showing:
        - invoice No. and date;
        - name of company in which invoice issued;
        - value of taxable supply;
        - amount of VAT claimed; and
        - VAT return in which accounted for.

b) The auditor of related company B certifies that the invoices issued in its name have not been accounted for by company B.

VATR 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 progress 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.

VATR 10

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 therefore qualify as exempted services by virtue of item (d) of the Sixth Schedule to the Value Added Tax Regulations.

VATR 11

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.

VATR 12

Facts

A company is in the business of processing visa applications 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

a. whether the services at (a) & (b) above are subject to VAT If the answer to (i) is in the affirmative,
b. whether turnover for VAT purposes is the value of the total invoice, or only the service charge component.
c. whether VAT is chargeable on the value of the total invoice, or only on the service charge component after excluding the disbursement component.

Ruling

a. 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.
b. The turnover for VAT purposes does not include the amount charged to the client and payable to the foreign authorities for granting visa.
c. 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.

VATR 13

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.

VATR 14

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

a. the construction of the building by Company B for Company A, otherwise the supply by Company B is zero-rated?

b. 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?

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

d. 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 ?

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

Ruling

a. 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.

b. 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.

c. 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 21of the Act are satisfied.

d. 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.

e. 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.

VATR 15

Facts

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

a. Fresh water and hay supply

b. Fresh bedding

c. Tailor made feeding programme

d. Veterinary Services, and

e. 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.

VATR 16

Facts

A Limited, a property developer intends to construct villas for sale to foreigners who will then entrust the villas to a well-known hotel operator for commercial letting to holiday-makers for periods not exceeding 90 days. Each foreign owner would be entitled to use the villa for personal purposes for not more than 6 weeks each year. The hotel operator will pay to each foreign owner a rental fee based on his share of pooled income from the letting of the villas.

A Limited, as well as each foreign owner, intends to apply for VAT registration given that:

a) A Limited will be making taxable supplies as provided under item 48(b) of the First Schedule to the VAT Act;
b) each foreign owner will be making taxable supplies in excess of the annual registration threshold of Rs2 Million and will therefore need to be compulsorily registered for VAT.

Points in issue

Whether it can be confirmed that

a) the property developer can be VAT registered as it would be making taxable supplies under item 48(b) of the First Schedule to the VAT Act, given that the villas sold will not be for residential purposes;
b) each foreign owner will need to be compulsorily registered for VAT, given that each of them would be making taxable supplies from commercial letting above the registration threshold.

Ruling

On the basis of facts provided, it is confirmed that

a) A Ltd, the property developer, is required to be VAT registered in accordance with Section 15 (1) of the VAT Act 1998 as it will be making taxable supplies in respect of sale of villas not for residential purposes, as provided under item 48 (b) of the First Schedule to the VAT Act.
b) each foreign owner is required to be compulsorily registered for VAT in accordance with Section 15 (1) of the VAT Act 1998 as it will be making taxable supplies from commercial letting.

VATR 17

Facts

An airline company does not presently claim any input VAT on its crew accommodation invoices when these are charged by hotels, nor on passenger accommodation whenever there are flight delays. Providing crew accommodation is, however, part of the normal operating activity of the company as is also that of providing accommodation to its passengers in the event of delays due to technical or other problems. 15% VAT on hotel invoices thus represent a major cost to the company which thus inflates local costs.

Point in issue

Whether 15% VAT on accommodation invoices charged by hotels in respect of crew accommodation and accommodation for passengers during delayed flights can be claimed as input tax by the company.

Ruling

Section 21 (2) (c) of the VAT Act states in clear terms that no input tax is allowable as a credit against output tax in respect of "accommodation or lodging". As the law stands, VAT charged on accommodation invoices cannot therefore be claimed as input tax.

VATR 18

Facts

E Ltd provides outbound roaming facilities to its subscribers. Whenever a subscriber wants to avail himself of the roaming facilities he applies for such a service against a deposit fee. This enables the subscriber to use the mobile network of E Ltd's foreign roaming partners (i.e. foreign service providers-FSPs) in the foreign country. On a daily basis, E Ltd receives details of the usage of the subscriber and the corresponding amount charged by the FSP (inclusive of the foreign country's VAT, if applicable). E Ltd raises an invoice on the subscriber to claim the amount charged by the FSP. In addition E Ltd charges the subscriber a roaming charge, representing 15% of the amount charged by the FSP, for services provided to the latter in Mauritius. Depending on the settling arrangements that exist between E Ltd and the FSP the amount collected from the subscriber, excluding the roaming charges of 15 %, is paid to the FSP.

Point in issue

Whether E Ltd should charge the subscriber VAT-

a) on the total amount invoiced to the subscriber, including the amount charged by the FSP; or
b) only on the roaming charges charged by E Ltd.

Ruling

a) The outbound roaming services fall outside the scope of VAT since these are provided outside Mauritius and by the FSP.
b) The roaming charges of 15% of the amount invoiced by the FSP are for services provided in Mauritius by E Ltd and are therefore subject to VAT.

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."

VATR 20

Facts

M Ltd is a private company incorporated in Mauritius and engaged in the marketing of petroleum goods (i.e. Mogas, Gas oil, fuel oil, Jet A1 & lubricants)in the country. The company has 13 retail outlets which are basically run on two models:

a. Dealers-operated retail outlets, where land is owned by the dealer.
b. Company owned Company operated (COCO) retail outlets, where a contractor is appointed by the company to manage the station.

In the first model, the retail margins on Mogas and Gas oil are fully enjoyed by the dealers as the land on which retail outlet has been developed is contributed by him. In the second model (COCO), the retail margins on Mogas and Gas oil are shared between M Ltd and the contractor on an agreed formula, in accordance with the terms of the contract.

Points in issue

Whether it can be confirmed that

a. No Vat charge should apply on 'retail margin sharing' as the retail margin has already suffered VAT;
b. M Ltd is correct in charging VAT on 'equipment fee' and that the depiction thereof on the invoice is correct;
c. Arithmetical calculations of both VAT elements (in specimen invoices) as shown in Annexure E are correct.

Rulings

a. It is confirmed that since the retail margin has already suffered VAT no charge to VAT should apply on the 'retail margin sharing' as sharing of retail margin between the lessor and the lessee does not amount to a supply of services.
b. It is confirmed that M Ltd is correct in charging VAT on 'equipment fee.' However, the VAT element on the invoice should be shown in such a way that it clearly indicates that it is in respect of both oil and equipment fee.
c. As the VAT is chargeable on the value including the retail margin of liquefied petroleum gas we suggest that the invoice be amended to show : -

    - The value inclusive of the retail margin but exclusive of VAT ;
    - The amount of VAT charged and the rate applied.

VATR 21

Facts

P Ltd was issued with a letter of intent for an IRS project on 16 June 2006, that is prior to 1 October 2006. The IRS project will include the construction of 20 Standard 4 bedroom villas and amenities. A detailed list of the building works and services which are part of the IRS project was submitted in annexes to the application.

Point in issue

Whether the exemption under item 65 of the First schedule to the VAT Act is applicable to all costs associated with each of the building works and services listed in annexes to the application.

Ruling

Item 65 of the First Schedule to the Act provides for the exemption of the "construction of a building or part of a building, flat or tenement (excluding repairs and renovations) to be used for residential purposes .....Construction works on the 20 Standard 4 bedroom villas and works and services directly connected to the construction of those villas supplied to P Ltd by the main contractor and subcontractors nominated by the main contractor in advance and the services supplied by architects, engineers and quantity surveyors for the design and management of the works directly connected with the construction of the villas are exempted from VAT.

However, works and services related to the provision of amenities forming part of the IRS project such as landscaping, golf amenities, beach restaurant, boat house and swimming pool, the furnishing of the buildings and the marketing and financial management of the project would not fall under Item 65 of the First Schedule to the Act.

VATR 22

Facts

Société C is a 'Société Civile d'Attribution' registered in Mauritius with a share capital of Rs

4,000,000 owned in equal proportion by two associates, viz A and B.

The Société is the owner of three contiguous plots of land of a total acreage of 321.5 toises situated at St Jean Road Quatre Bornes which it has resolved to develop by the construction of a 9-storey building comprising parking lots, office and commercial spaces as well as residential accomodation.

Under the project it is proposed to increase the share capital (parts sociales) of the Société into 106 'Group de Parts Sociales' with a corresponding attribution of 106 lots. The shares will initially be issued to the two co-owners. Potential buyers will be required to subscribe to the share capital of the Société and the value attributable to the respective shares will depend upon

a) the date on which the shares are transferred
b) the value of the construction work in progress as certified by the Quantity Surveyor

Subsequently, the buyer will contribute towards the construction works through a Current Account with the Société until the construction is completed. At the completion of the project the Société will be dissolved and the various lots attributed by a 'partage' to each owner.

Point in Issue

a) Whether Société C is a property developer under item 48 of the First Schedule to the Act?
b) In case the Société is considered a property developer under item 48 of the First Schedule, whether the transfer of right to the property through the transfer of shares will be a taxable supply?
c) In case the Société is considered a property developer under item 48 of the First Schedule is the time of supply determined to take plac
    - at the time when the shares are transferred? or
    - at the time when the Société is dissolved and the different lots effectively attributed

Ruling

Société C is a property developer under Item 48 of the First Schedule as it is the initiator of the property development project and directly involved in the carrying out of the project, whereas the other investors or potential buyers will be only joining in at different stages to become owners of their proportionate lots.

On the basis of the above ruling, in accordance with Item 48(a) of the First Schedule of the Act, the transfer of right to the property to be used for residential purposes or parking lots to be used by eventual owners of the residential property will be an exempt supply.

As Société C is a property developer and should be registered for VAT, the time of supply, in accordance with Section 5 of the Act, is the time a VAT invoice is issued or the time payment for the property is made either through purchase of shares or contribution towards the Current Account, whichever is the earlier.

VAT R23

Facts

E Ltd is a company registered for VAT and is engaged in the preservation of the environment. It provides services such as the collection of used oil, sludge and hydrocarbon waste from such waste-producers throughout the island as well as from ships berthed in Port Louis, owned by non-resident companies and not registered in Mauritius.

E Ltd invoices the non-resident companies operating the foreign vessels in respect of the charges for the collection of the used oil and wastes from their vessels.

Point in issue

Whether it can be confirmed that the supply of services to the non-resident companies operating the foreign vessels is a zero-rated supply.

Ruling

It is confirmed that the supply of services made to the non-resident companies operating the foreign vessels is a zero-rated supply pursuant to Section 11 of the VAT Act 1998 and in accordance with item 6(a) of the Fifth Schedule to the Act.

VATR 24

Facts

A Developer intends to carry out a development project under the IRS scheme which will comprise of a number of luxury apartments and villas together with conference, commercial and wellness centres etc, annexed thereto.

The properties to be sold fall in three major categories:

a. apartments and villas forming part of a rental pool which shall be managed by a hotel operator, herein referred to as " Hotel Residences;
b. villas which shall be managed by a rental management operator, herein referred to as "Non-Hotel Residences;
c. conference, commercial and wellness centres which shall be managed by specialist operators.

The properties will be marketed to both foreigners and Mauritians. The main purpose of the acquisition of these properties by the investors is to earn a yield on the investment, either by generating an income stream through commercial letting or through an appreciation in value.

The owners of the "Hotel Residences will be obliged to participate in a rental pool programme operated by a hotel operator for the purpose of conducting a hotel business, in accordance with the terms of the rental pool agreement which will be signed at the conclusion of the sale with each owner of a Hotel Residence. The rental agreement provides for the deduction of all operating expenses, control and management expenses, as well as the payment of all taxes.

The owners of residences not forming part of the rental pool programme will be entitled, on a voluntary basis, to rent their properties, i.e. "Non-Hotel Residences through a separate rental programme which will be managed by a rental management operator. In accordance with this agreement, the latter will be remunerated with a monthly management fee representing a percentage of the gross rental income.

The owners of both the Hotel Residences and the Non-Hotel Residences intend to let their properties for a period not exceeding 90 days, but on a renewal basis. These owners also intend to apply for VAT registration as they expect to make an annual turnover of taxable supplies of more than Rs 2 Million. The Developer as well intends to apply for VAT registration as he expects to make an annual turnover of taxable supplies of more than Rs 2 million.

Points in issue

a. whether the owners of Hotel Residences and Non-Hotel Residences will be making taxable supplies;
b. whether the owners referred to in (i) above who anticipate to have an annual turnover exceeding Rs 2 million will need to be compulsorily registered for VAT;
c. whether as a result of (i) and (ii), the Developer needs to be compulsorily registered for VAT, given that he will be making taxable supplies of more than Rs 2 million.

Ruling

On the basis of the facts given, it is confirmed that :

a. the owners of Hotel Residences and Non-Hotel Residences will be making taxable supplies;
b. the owners referred to in (i) who anticipate to have an annual turnover exceeding Rs 2 million will be required to be compulsorily registered for VAT in accordance with Section 15(1) of the VAT Act 1998 as they will be making taxable supplies from commercial letting;
c. the Developer will be required to be compulsorily registered for VAT under Section 15(1) of the VAT Act, given that he will be making taxable supplies of more than Rs 2 million in respect of the sale of villas not falling within the First Schedule.

Please note that being given the owners of Non-Hotel Residences will be entitled to "rent their properties on a voluntary basis, no claim for repayment of tax will be entertained under Section 24 of the Act in their respect unless and until satisfactory evidence is provided that they have actually started letting their property.

VATR 25

Facts

S (Mauritius) Ltd carries on the activity of refuse disposal in Mauritius. As a pioneer of the cleaning industry, it has been constantly renovating its plant and machinery and kept pace with the changes in technology. It operates four stations around the island where all garbage and waste are disposed. The present trend is to collect garbage and waste around the island in compactors and trailer compactors and send these to the station units for final disposal.

The compactors and trailer compactors are machinery mounted on trucks or lorries, and even if these trucks are not moving, the compactors keep compacting the waste. The compactor engine can only run if the engine of the truck is continuously running, thus consuming fuel. The trailer compactors also keep compacting all the way to the stations. The concept in this project is to avoid trucks and lorries taking several trips to the disposal units, thus also avoiding polluting the island and traffic congestion. At the stations there are machineries consuming diesel which are fixed and remain on site.

Points in issue

Whether the Company can be allowed to claim a credit of 50% of the input tax paid on diesel against output tax in respect of the compactors and trailer compactors mounted on trucks and lorries?

Ruling

Section 21 (2) (e) states as follows:

"No input tax shall be allowed as a credit under this section in respect of -

petroleum oils and other oils or preparations of heading No 27.10 of Part I of the First Schedule to the Customs Tariff Act, except-

a. fuel oils;
b. oils or preparation used for resale; and
c. gas oils for use in stationary engines, boilers and burners"

In view of the above provisions, no input tax can be allowed for diesel used in respect of compactors and trailer compactors which are machinery consuming diesel mounted on trucks and lorries, being given that these are not 'stationary engines'.

However, diesel used on machinery which are fixed and remain on site can be claimed by the Company as credit for input tax against output tax.

VATR 26

Facts

P Ltd is a company which acts as a reservation platform between customers and taxi operators/contract bus operators for the provision of taxi services in the island. Bookings for the service can be done online, using the Company's website, or via its hotline after office hours. Upon a booking, a taxi is sought to meet the expectations of the client. Clients are invoiced by the Company and the proceeds are treated as sales. The taxi operators are subsequently paid by the Company and the transaction is treated as cost of sales.

The Company provides taxi services both to companies and individuals, including VIP services, transport of employees and for general use. It does not itself hold any taxi permit but sub-contracts with individuals holding proper taxi permits. The business relations between the Company and taxi operators are backed by service agreements which include tariffs, and also provide for full responsibility to be taken by the taxi operators/contract bus operators for any loss or damage occasioned to any person in case of an accident.

Points in issue

a. Whether the income derived by P Ltd is subject to VAT?

b. In the event the answer to 1 above is in the affirmative, whether the clients of the Company can claim the relevant input VAT as a deduction?

Ruling

a. P Ltd does not hold licences for transport of passengers by public service vehicles. It outsources the transportation service to contractors who hold appropriate public service vehicle licences, viz. taxi operators and contract bus operators. In essence, the Company derives its income for acting as a reservation platform between customers and contractors. Such service provided by the Company is a taxable supply and therefore subject to VAT in accordance with the provisions of Section 9 (1) of the VAT Act.

b. The provisions of item 27 of the First Schedule to the VAT Act are as follows: *"The transport of passengers by public service vehicles excluding contract buses for the transport of tourists and contract cars."*

Since public service vehicles include taxis, no VAT will be charged by taxi operators as the supply is an exempt supply. The Company will therefore charge VAT only on the fee receivable for acting as a reservation platform. On the other hand, operators of contract buses for the transport of tourists and operators of contract cars will charge VAT on their supplies to the Company. For administrative convenience therefore, P Ltd may charge VAT on the full amount of such supply, which will also allow the VAT registered operators to claim input VAT as a deduction in respect of their taxable supplies to the Company, in accordance with Section 21 (1) of the Act.

VATR 27

Facts

A Ltd voluntarily applied for and was registered for VAT. It holds a management licence and its main activity is to set up trusts and act as trustees for these trusts. Most of these trusts have the following characteristics:

a) both the settlor and beneficiaries are non-residents;
b) they are discretionary trusts;
c) they have elected to be non-resident for tax purposes.

Services are also provided to trusts that elect to be resident in Mauritius.

Points in issue

Confirmation that a supply of services made to a non-resident trust is not subject to VAT at the rate of 15%.

Ruling

On the facts provided, A Ltd makes a supply of services both to resident trusts and non-resident trusts. While the supply of services to resident trusts is subject to tax at 15%, it is confirmed that the supply of services made to non-resident trusts is treated to fall under item 6 (a) of the Fifth Schedule to the VAT Act and is therefore zero-rated.

VATR 28

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 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: A Limited needs to register for VAT

Ruling

Section 15 (1) of the VAT Act 1998 states as follows:

"…..every person-

a. who, in the course or furtherance of his business, makes taxable supplies; and
b. whose turnover of taxable supplies exceeds or is likely to exceed the amount, specified in the Sixth Schedule (i.e Rs 2 million per annum)

shall apply to the Director General ..... for compulsory registration as a registered person under the Act.

On the other hand Section 15 (3) provides that "where the turnover of a person is made up exclusively of-

a. zero-rated supplies; or
b. zero-rated supplies and exempt supplies,

that person shall not be bound to apply for registration under this section.

On the basis of information submitted, it appears that A Limited will be providing services exclusively to the UK Company, and as such services will constitute zero-rated supplies, A Limited will have no obligation to register itself for VAT purposes.

However, A Limited may opt for VAT registration in order to be able to claim repayment of input tax suffered, if any.

VATR 29

Facts

X is a private limited company incorporated and domiciled in Mauritius, and is engaged in property development for the benefit of companies within a Group. It holds an appropriate licence as land promoter and property developer from the relevant authority. Y is another private limited company incorporated and domiciled in Mauritius and operates a chain of supermarkets throughout the island. X and Y are wholly owned subsidiaries of Z and are both VAT registered.

All land and buildings belonging to X are presently rented to Y under an operating lease. The Management of X is considering the sale of all X's properties to Y. The capital expenditure incurred by Y will be exclusively incurred in the production of gross income.

Points in issue

1. Whether, under the VAT Act 1998, the disposal of the land and buildings by X should be treated in accordance with :
    (i) Section 21 (7) (a) of the Act; or
    (ii) item 48 (b) of the First Schedule to the Act ?

2. In case the issue at 1 above is treated in accordance with item 48 (b) of the First Schedule to the Act, whether-
    a. VAT will be charged on the portion of the property related to land?
    b. Y will be allowed to deduct from its output tax the input tax charged on the invoice to be issued by X?
    c. input tax suffered by X and Y in respect of such expenses as notary, property valuer and other professional fees directly related to this transaction will be deductible against their output tax ?

Ruling

a. It is confirmed that the sale of land and buildings is subject to VAT in view of item 48 (b) of the First Schedule to the VAT Act which reads as follows: "for any other purposes except land with any building, building or part of a building, apartment, flat or tenement together with any interest in or right over land, sold or transferred by a VAT registered property developer to a VAT registered person.

b.

- It is confirmed that VAT will be charged on the portion of the property related to land, since the exemption provided under item 47 of the First Schedule, i.e. " the grant, assignment or surrender of any interest in or right over land does not apply in this case as land with any building sold or transferred by a VAT registered property developer to a VAT registered person falls under the 'exception' provision under item 48 (b) of the above Schedule.

- It is confirmed that since Y makes both taxable supplies and exempt supplies, it will be allowed to deduct from its output tax the input tax charged on the invoice that will be issued by X, on the purchase of immovable properties which will form part of its fixed assets, in accordance with the provisions of Section 21 (3) (b) of the Act, i.e. in the proportion of the value of taxable supplies to total turnover.

- It is confirmed that both X and Y will be allowed to claim the input tax suffered in respect of expenses such as notary, property valuer and other professional fees directly related to this transaction in accordance with the provisions of Section 21 of the Act; and, where applicable, the credit for input tax will be restricted as provided in Section 21 (3) (b) of the Act.

VATR 30

- Replaced by VAT Ruling 63

VATR 31

Facts

P Ltd is a VAT registered company. It proposes to offer online booking services, i.e in respect of hotel rooms and villas to foreigners, against a service fee. For the service rendered, the related fee is charged and is settled before the time the foreigner actually comes to Mauritius for his stay. The service fee is distinct from the actual rental charged to the client for the accommodation and is used in part to settle costs of foreign business partners.

Points in issue

Confirmation that the service fee meets the definition of zero-rated supply in terms of Section 11 and item 6 (a) of the Fifth Schedule to the VAT Act.

Ruling

The supply of services referred to at Item 6(a) of the Fifth Schedule to the VAT Act means a supply of services which is not utilised in Mauritius. In the present case it cannot be said that the online booking services in respect of hotels and villas in Mauritius are services not utilised in Mauritius. The above services therefore do not qualify as zero-rated supply in terms of Section 11 and item 6 (a) of the Fifth Schedule to the VAT Act.

VATR 32 (Govt Gazette No. 54 of 05 June 2010)

Facts

A Ltd is engaged in the provision of management services, including financial and human resource services to related companies. B Ltd which operates a Hotel is a related company in which A Ltd holds shares, representing 23% of the total shares. A Ltd derives management fee from B Ltd as a consideration for the service it provides to this company under a management agreement. There is, however, no formal written management agreement between the two companies.

Pursuant to a restructuring exercise, the management agreement between the two companies has terminated and consequently B Ltd has to compensate A Ltd. The compensation has been computed at some Rs 203 million and is based on an independent valuation. The consideration for the compensation will be by way of shares, so that B Ltd will issue new shares to A Ltd.

Points in issue

Confirmation that-

a) the compensation receivable by A Ltd is outside the scope of the VAT Act, as it is not a consideration for a supply of services but instead a receipt of capital nature, being compensation for the loss it will suffer subsequent to the termination of the management contract.
b) A Ltd would not be required to disclose the transaction in its VAT return as it is not a supply and is neither a zero-rated supply nor an exempt supply.
c) Since A Ltd would not charge VAT on the compensation payment, the question of input tax does not arise.

Ruling

On the basis of the fact that the compensation is not provided in any written contract between A Ltd and B Ltd, the amount receivable by A Ltd is a consideration for the surrender of a right and therefore constitutes a supply in accordance with the provisions of Section 4 (2) (b) of the VAT Act.

The issues raised in the circumstance do not arise and A Ltd will therefore be required to disclose the transaction in its VAT return and also charge VAT at the appropriate rate in that respect.

VATR 33 (Govt Gazette No. 54 of 05 June 2010)

Facts

A is a non-resident French company. It has obtained a contract to provide services to B Ltd, a company incorporated in Mauritius and which is VAT registered. A proposes to sub-contract part of the services to C Ltd, which is incorporated in Mauritius and registered for VAT. C Ltd is a wholly-owned subsidiary of A.

There is no contractual relationship between B Ltd and C Ltd. The subsidiary only acts as a sub-contractor of A for part of the services the latter provides to B Ltd. There will not be any direct invoicing between B Ltd and C Ltd. A has no permanent establishment in Mauritius. C Ltd is legally and commercially independent of A. It also acts in the ordinary course of business and is at arm's length in its business dealings with A.

Points in issue

Whether, with regard to the contractual arrangements, it can be confirmed that the supplies by C Ltd to A are taxable supplies; and, if in the affirmative, whether they are zero-rated supplies in accordance with Section 11(2) and item 6(a) of the Fifth Schedule to the VAT Act?

Ruling

On the basis of facts provided, it is confirmed that with regard to the contractual arrangements between C Ltd and A, the supply of services performed by C Ltd is a taxable supply. However, examination of the contract between A and B Ltd shows that the services provided by A to B Ltd are supplied in Mauritius. A is therefore liable to be registered for VAT in Mauritius. In the circumstances the services provided under the sub-contract by C Ltd to A do not fall under item 6(a) of the Fifth Schedule to the Act and are therefore not zero-rated.

VATR 34 (Govt Gazette No. 54 of 05 June 2010)

Facts

A Ltd is a company involved in the development of commercial outlets for sale. It is VAT registered as it will be making taxable supplies. It will sell commercial outlets both to persons who are VAT registered and to persons not registered for VAT.

While A Ltd will charge VAT on all sales made to VAT registered persons, input VAT on such sales will be claimed against the output VAT, subject to Section 21 of the Act. However, sales of commercial outlets to persons who are not registered for VAT will not be subject to VAT as the supply is an exempt supply under item 48 of the First Schedule to the Act. Input VAT on such supply will therefore be borne by A Ltd.

Points in issue

Whether it can be confirmed that the above understanding of item 48 of the First Schedule is correct.

Ruling

On the basis of facts stated, it is confirmed that the sale of commercial outlets made by A Ltd to persons who are not registered for VAT is not subject to VAT, as it is an exempt supply as provided by item 48 (b) of the First Schedule to the VAT Act. Any input VAT on such supplies will therefore have to be borne by A Ltd.

VATR 35 (Govt Gazette No. 54 of 05 June 2010)

Facts

A Limited (the Company) is a domestic company which is considering to enter into a sixty-year commercial lease agreement for a number of apartments with B Limited, another company incorporated in Mauritius, for approximately USD 4m plus VAT, payable upfront. A Limited will thereafter be engaged in subleasing business. Both companies will be registered for VAT. As of date, however, there is no transaction yet between the two companies.

Points in issue

Whether it can be confirmed that -

a. the Company will be entitled to claim a refund of the VAT payable on the USD 4m in respect of the commercial lease ;

b. once the Company registers for VAT, then VAT is chargeable on all subleases, irrespective of whether these subleases are short-term or long-term(exceeding 90 days).

Ruling

a) Section 24 (1) of the VAT Act reads as follows: "*Where a registered person submits a return under section 22 and the excess amount includes input tax amounting to more than 100,000 rupees or such other amount as may be prescribed, on capital goods being building or structure (including extension and renovation), plant machinery or equipment, of a capital nature, the registered person may, in that return make a claim to the Director-General for a repayment of the amount of input tax allowable in respect of those capital goods.*

Also, item 11 of the Third Schedule to the Act states that the "l*easing of, or other grant of the right to use, goods is a supply of services*.

It is clear that the "supply that would be made by the Company would in fact be a supply of services and not a supply of "*capital goods*. It cannot therefore be confirmed in the circumstance that the Company would be entitled to claim "*repayment of the input tax* payable on the lease.

b) Being given that A Ltd cannot use the building predominately as a place of residence, the subleases will constitute taxable supplies irrespective of their duration.

VATR 36 (Govt Gazette No.105 of 13 November 2010)

Facts

B Ltd (the Company), proposes to be engaged in the rental of short-term immovable properties in Mauritius. It will contract with bungalow and small villa owners for the rental of their bungalows/villas, mainly to international clients. The contract will be on a request basis only, i.e. it will not have any exclusivity to the properties, and the owners will also be free to contract with other operators or clients.

Upon requests from clients, the Company will look for bungalows and villas available for accommodation from a predetermined list of owners, who may or may not be VAT registered. The Company will charge the client an amount which will comprise the cost of accommodation and a service fee. Under the payment conditions, 10 percent of the amount charged will have to be paid by the client as deposit upon booking confirmation, and the balance within 30 days prior to arrival. The amount payable to the bungalow owners will be paid by the Company after settlement by the client of the total amount charged.

Currently the Company is not VAT registered, but as it expects its turnover to exceed Rs 2 million in the foreseeable future it may have to register for VAT.

Point in issue

Whether it can be confirmed that once the Company is registered for VAT, it should charge VAT on its service fee only and not on the cost of accommodation?

Ruling

On the basis of facts given, the Company will be making a taxable supply of the rental of villas/bungalows for short term periods (not exceeding 90 days). The Company will therefore be required to charge VAT on the total amount charged to clients which will include the cost of accommodation and the service fee.

Please note that should the Company have to pay VAT to a VAT registered owner of the bungalows/villas, it will be entitled to claim as input tax the VAT payable to the owner.

VATR 37 (Govt Gazette No.105 of 13 November 2010)

Facts

P Ltd is licensed under the Financial Services Act to carry out the distribution of financial products, viz. the shares of F Ltd, which is an authorized mutual fund, listed (but not traded) on the Stock Exchange of Mauritius. P Ltd is the exclusive distributor of F Ltd.

In accordance with the terms and conditions of the distribution agreement with F Ltd, P Ltd markets, offers and sells shares to existing and new clients. It may also subcontract with intermediaries acting as introducers of clients to P Ltd. For its services, P Ltd charges F Ltd a commission in the form of a distribution fee (also referred to as an upfront fee or entry fee) amounting to 2% (net of VAT) on clients' gross subscription monies, i.e gross amount to be invested. The commission is incorporated in the offer price at the time of purchase of the shares, in much the same way as an investor would pay a brokerage fee to an investment dealer. Out of the distribution fee, P Ltd may in turn pay commissions to intermediaries in accordance with the terms of their respective agreements.

P Ltd is also licensed under the Securities Act 2005 to act as investment adviser (unrestricted category). In accordance with the discretionary investment management mandate, the company manages investment portfolios of securities for its clients. For its services, P Ltd charges an entry fee of up to 3% on the total value of the portfolio placed under its management, and a monthly management fee of the market value of the portfolio at the end of each month.

Currently, VAT is being levied by P Ltd on the distribution fee, the entry fee and the management fee.

Points in issue

Whether VAT must be levied by

a) a licensed distributor of financial products on commission earned from the distribution of shares of an authorized mutual fund ?
b) a licensed investment adviser on entry fees and management fees charged to clients for the provision of discretionary investment management services of investment portfolio?

Rulings

a) The distribution of shares of an authorized mutual fund by a licensed distributor of financial products falls within the purview of item 50(c) of the First Schedule to the VAT Act 1998 which provides for "the issue, transfer or receipt of, or dealing with any stocks, bonds, shares, debentures and other securities, including the underwriting and the settlement and clearing of such securities. It is therefore an exempt supply;

b) The entry fees and management fees earned by a licensed investment adviser falls within the purview of item 50 (e) of the above Schedule and is therefore also an exempt supply.

VATR 38 (Govt Gazette No.105 of 13 November 2010)

Facts

T Limited is a company engaged in construction works. It entered into a contract with a contracting authority which provided that if the contractor suffers delays, and or incurs costs from failure to be in possession of the site, the amount of such costs shall be added to the contract price.

Pursuant to arbitration relating to a dispute in respect of costs incurred due to delays and extension to the time of completion of the contract, an award was made for the payment by the contracting authority of an amount of Rs 31,000,000 which includes interest to the tune of Rs 6,000,000. In addition, the contracting authority was ordered to pay the costs of arbitration amounting to Rs 9,516,843.20, out of which Rs 8,091,843.20 were inclusive of VAT.

Point in issue

Whether VAT is chargeable on the amount of the award?

Ruling

Part of the award (Rs 25,000,000) is in relation to the additional costs incurred by the contractor. By virtue of the conditions of the contract, it is part of the contract price and therefore subject to VAT.

As regards the items of arbitration costs which are inclusive of VAT, being given that the contractor has already taken credit for input tax in respect thereof, it has to make an adjustment for the VAT element in its VAT return for the period in which payment is received.

VATR 39 (Govt Gazette No.55 of 26 May 2012)

Facts

Company A (the Company) has as its principal activity the supply, installation, repair and maintenance of electronic equipment on board ships under a freeport licence. The Company also holds the following licences:

1. Port licence issued by the Mauritius Ports Authority;
2. Dealer's licence - E licence issued by ICTA.

The Company wishes to extend its activities on the local market, and will thus have three types of income:

1. income derived exclusively on the Freeport zone (goods and services);
2. income derived on the local market through Customs control (goods only);
3. income derived on the local market without Customs control (services only).

Point at Issue

1. Whether the Company should register for VAT, and whether the threshold under the Sixth Schedule applies to the Company?
2. In the event the answer to 1 above is yes, how should output tax be treated and declared on VAT return?

Ruling

1. For the purpose of registration, the company has to consider its value of taxable supplies, including the zero-rated taxable supplies made by virtue of its freeport activities. Where the annual turnover of total taxable supplies exceeds the registration threshold as per the Sixth Schedule to the VAT Act, the company is liable to register for VAT.
2. Once registered, the company will have to account on its VAT return the supplies other than those dealt with in accordance with Section 50 of the VAT Act.

VATR 40 (Govt Gazette No.55 of 26 May 2012)

Facts

C Ltd is licensed to carry banking business in Mauritius which includes both Segment A and Segment B business, pursuant to the Banking Act. C Ltd is intending to sell the whole of its sub-custody business on a going concern basis to another bank, viz. S ("the purchaser bank) which is also registered for VAT. Most of the sub-custodian business of C Ltd forms part of Segment B banking business. The proposed transaction would involve the transfer of the following to the purchaser bank:

1. Client custody contracts;
2. Assets under custody held on behalf of clients;
3. Permanent and recurrent records of the business;
4. Current and non-current assets of the business;
5. Third party contracts;
6. Contract of employment for the relevant employees; and
7. Sub-custody relationships

Point at Issue

Whether it can be confirmed that the proposed transaction is within the ambit of Section 63 (3) of the VAT Act.

Ruling

On the facts provided, C Ltd is proposing to sell only part of its business, i.e its sub-custodian business mostly constituting of its Segment B business to another bank, and will not as such cease to carry on business. It cannot therefore be confirmed that the proposed sale of the sub-custodian business falls within the ambit of Section 63 (3) of the VAT Act.

VATR 41 (Govt Gazette No.55 of 26 May 2012)

Facts

X intends to acquire commercial and/or office buildings on a going concern basis and wishes to have clarifications on the VAT treatment of electricity in the real estate sector.

Electricity is normally supplied by the Central Electricity Board (CEB) to existing commercial and office buildings with one single owner, or syndicate of owners and billed according to readings from a central meter. Tenants of the commercial or building complex are thereafter separately invoiced every month in respect of their electricity consumption, by the owner or syndicate of owners, in either of the following ways:

Option 1: tenants are billed on a pro-rata basis according to their monthly electricity consumption obtained from readings of their respective secondary meters.

Option 2: tenants are billed according to their monthly electricity consumption obtained from readings of their respective secondary meters, but at the commercial rate applicable, i.e a mark-up is added on the bulk rate borne by the owner or syndicate of owners. (The bulk rate is a preferential rate which is below the commercial rate charged by the CEB).

Option 3: electricity is supplied by the CEB through a central meter but processed through a transformer and routed to the personal secondary meters of each tenant with re-invoicing made at a mark up by the owner or syndicate of owners.

Point at Issue

Whether invoices for electricity by owners or syndicate of owners to tenants under each of the above options should be charged at zero-rated amounts, or whether 15% VAT should be charged on such amounts of electricity consumption?

Ruling

Item 7 (a) of the Fifth schedule to the VAT Act provides that electricity "supplied by the Central Electricity Board and the renting out of a meter, the reconnecting of electricity supply and the carrying out of infrastructure works, by the Board is a zero-rated supply in accordance with Section 11 of the Act.

In cases where CEB supplies electricity to the landlord who subsequently routes same through his own meters to his tenants, VAT should be charged on the total amount invoiced to the tenant.

Where the tenants' meters are placed by CEB and the CEB bills are in the names of tenants but the payment is done by the landlord and claimed back from the tenants with a mark up, the landlord is authorized to charge VAT only on the mark up provided the service charge and the disbursement are clearly mentioned on the VAT invoice.

VATR 42(Govt Gazette No.55 of 26 May 2012)

Facts

T Ltd (the Company) is a property developer and registered for VAT since 31 October 2008. Its principal activity is to develop a 3-storey office building of saleable retail and commercial space comprising 40 units. The project has been approved by the Board of Investment and construction has already started.

The Company will offer these units for sale both to Mauritian citizens and foreigners. It intends to sell 80% of the units, and retain the remaining 20% for its own use and for leasing to third parties.

Point at Issue

Confirmation that-

1. VAT will be levied to purchasers of units who are VAT registered, and no VAT will be levied to purchasers who are not VAT registered;
2. the Company can claim credit for input tax on all construction costs and other expenses in the proportion of its taxable supplies to its total supplies.

Ruling

It is confirmed that -

1. Since the Company is a registered property developer, it will be required to charge VAT only to VAT registered purchasers of units. No VAT will have to be charged to purchasers (of units) who are not VAT registered, in accordance with the exemption provision of item 48 (b) of the First Schedule to the VAT Act.
2. The Company will be entitled to claim credit for input tax on all construction costs and such other expenses incurred in the proportion of its taxable supplies to its total supplies in accordance with the provisions of Section 21 (3) (b) of the Act.

Please note, however, that any claim for VAT repayment will be considered by this Office only when the Company will be in a position to provide MRA satisfactory evidence in respect of the proposed sale to VAT registered persons.

VATR 43 (Govt Gazette No.55 of 26 May 2012)

Facts

P Limited (the Company) is a property developer registered for VAT, and is the owner of land of some *xx* square metres intended for the development of "*Project A* which will comprise of the following:

1. an IRS project of some K units to be developed by the Company and implemented in two phases, a first phase of Y units and a second phase of Z units;

2. construction of a 100-room hotel together with some n *"forced rental pool*apartments under an RES scheme to be developed by G Limited;

3. a commercial centre to be built and operated by G Limited.

The breakdown of the surface area and percentage is as follows:

Surface Area

	(m^2)	***Percentage (%)***
▪ Under a Real Estate Scheme (RES)	x	11
▪ For the operation of a Hotel	x	10
▪ Commercial Centre	x	9
▪ Under an Integrated Resort Scheme	x	70
Total	**XX**	**100**

The company will carry out all required infrastructural works on the land prior to its sale. The infrastructural works will include construction of roads, bridges and canals as well as water, electricity and sewer services in respect of the project.

Out of the Y units to be built and sold by the Company under the first phase of the IRS scheme, 13 units will be sold under a *"forced rental pool* agreement with G Limited. The buyers of these units will apply for VAT registration on the grounds that they will be making taxable supplies. Under the

agreement, the owners of the units will be entitled to occupy the unit for their personal use and to revenue from the rental pool, in addition to having access to hotel facilities. The units will be maintained by a hotel operator during the owners' absence.

There exists a possibility that the second phase of the project would not materialize.

Point at Issue

1. Whether the Company can recover all VAT suffered on the building cost of the 13 units referred to above?

2. Whether VAT suffered on the infrastructure provided by the Company for its own benefit and that of G Limited can be recovered, bearing in mind that both the Company and G Limited will have taxable supplies as follows:
    a. the Company, in respect of the construction and sale of the 13 units;
    b. G Limited, in respect of hotel operation and the commercial centre.

3. If the answer to 2 above is in the affirmative, the formula that will be used to calculate the VAT that can be recovered.

4. In the event phase 2 of the project does not materialize, how will it impact upon the formula referred to above?

Ruling

On the basis of the facts given, it is noted that the company will be making the following supplies:

1. Supply of 13 IRS villas to potential VAT registered persons.

2. Supply of a number of IRS villas, not yet quantified, to other persons.

3. Supply of developed land to G Ltd for the construction of a hotel and apartments, and a commercial centre.

Our rulings in respect of the issues raised are as follows:-

1. The construction and sale of an immovable property by a VAT registered property developer to a VAT registered person constitutes a taxable supply in accordance with the exception provision of item 48(b) of the First Schedule to the VAT Act. On the basis of facts provided, it is therefore confirmed that the Company can recover the input VAT suffered on the building cost of the 13 units it intends to construct and sell to potential buyers who will be registered for VAT, subject to the limitations of Section 21(2).

2. VAT on the infrastructure relating to the 13 units as per supply (1) above will be allowed as input tax credit. On the other hand, since the sale of the IRS villas as per supply (2) above and the sale of land to G Ltd as per supply (3) above are exempt supplies by virtue of item 48(b) and item 47 respectively, VAT suffered on the infrastructure in relation thereto will not be allowed as input tax credit.

3. Since the Company will make both taxable supplies and exempt supplies, it will be allowed to take credit for input tax in respect of the VAT suffered on infrastructure costs in the proportion of the value of the taxable supplies to the total turnover, in accordance with the provisions of Section 21 (3) (b) of the Act.

   However, Section 21 (3)(d) of the Act also allows a registered person to make an application to the Director-General for consideration of an alternative basis of apportionment of input tax, in case the apportionment under Section 21 (3) (b) is not fair and reasonable.

4. Being given that the turnover of the exempt supplies will be known only at a later stage, the input tax credit that will be initially calculated will have to be reviewed when the project becomes certain in case the turnover basis is used.

Similarly, an application for an alternative basis will have to cater for review of the figures when the supplies become known.

Please note that claims for repayment will be entertained only when the supplies can be reasonably ascertained.

VATR 44 (Govt Gazette No.55 of 26 May 2012)

Facts

A Ltd is a private limited company incorporated and domiciled in Mauritius. It is engaged in the processing of by-products from fishing and canning industries for the production of animal feed. B Ltd, another private limited company incorporated and domiciled in Mauritius, is engaged in the processing of tuna loins and its by-products. B Ltd is the principal supplier of raw materials of A Ltd. Both A Ltd and B Ltd are wholly owned by C Ltd.

Management is considering the transfer on a going concern basis of all activities actually carried out by A Ltd to B Ltd, the objective being to benefit from synergies which will:

- enhance production efficiency and effectiveness
- mitigate production, administrative and financial costs
- improve the use of financial resources amongst others

The above scheme will not give rise to loss of employment but will rather facilitate the mobility of human resources within the operations. Following the transfer, A will cease all its activities and will eventually be wound up.

Point at Issue

Whether the transfer on a going concern basis of the land and building from A Ltd to B Ltd shall be treated under Section21 (7) (a) or Section 63(3) of the VAT Act?

Ruling

On the basis of facts provided, since the transfer of all the activities of A Ltd to B Ltd will be made on a going concern basis, it is confirmed that the said transfer should be treated under Section 63 (3) of the VAT Act.

VATR 45 (Govt Gazette No.55 of 26 May 2012)

Facts

A is a company holding a Category 1 Global Business Licence ('GBC 1') and is tax resident in Mauritius. Its main activity is investment holding. Its main objective is to hold investment for long term appreciation which is eventually sold at a gain. The sale of the investment will be made to non-residents who do not have a permanent establishment in Mauritius. It may happen that A receives dividend income on its investment. Such income would only be incidental to the main activity of A. A is presently not registered for VAT and any VAT suffered by the company on expenses is not recoverable. The company is considering the possibility of registering for VAT and claiming repayment of the VAT it pays on its expenses. Examples of such expenses would be audit fees and other sundry expenses.

Point at Issue

Whether A as a GBC 1 company can register for VAT and claim repayment of input VAT suffered on the expenses?

Ruling

Section 9 of the VAT Act states that VAT shall be charged on any supply of goods or services made in Mauritius where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by him.

The company is not involved in the business of purchase and sale of shares. Rather, it is an investment holding company.

In the circumstances, the question of the company making zero-rated supplies does not arise and the company is not liable to register for VAT.

VATR 46 (Govt Gazette No.55 of 26 May 2012)

Facts

B Ltd is licensed and regulated by the Financial Services Commission (FSC), and holds an *"investment adviser (unrestricted)* licence under the Securities Act 2005 under which it is authorised to provide the following services:

- Investment advisory; and
- Portfolio management, whether on a discretionary or non-discretionary basis.

As such, B Ltd manages investment portfolios of securities for pension funds, corporate and institutional clients, including Collective Investment Schemes (CIS), in accordance with investment management mandates.

A CIS Manager has outsourced its investment management function and appointed B Ltd as an Investment Adviser under a non-discretionary investment management mandate, i.e. the investment portfolio of the CIS is managed by B Ltd but the CIS Manager is always informed and consulted on all investment decisions.

B Ltd is remunerated on the basis of a percentage of the net asset value of the investment portfolio of the CIS at the end of each month.

Point at Issue

Whether the remuneration B Ltd receives from the non-discretionary management of the CIS investment portfolio is to be treated as a taxable supply or an exempt supply for VAT purposes?

Ruling

Under the provisions of item 50 (e) of the First Schedule to the VAT Act, only *"the management of investment funds and of pension funds* is an exempt supply, irrespective of whether the supply is made under a discretionary or a non-discretionary investment management mandate. Investment advisory services are, however, subject to VAT.

VATR 47 (Govt Gazette No.55 of 26 May 2012)

Facts

C Ltd currently undertakes a number of activities and owns a significant land bank. The activities of the Company include agriculture, rental of buildings and investment holding, so that its principal recurrent income streams consist of sugar, molasses, agricultural and diversification revenue, rental income, interest and dividend.

The Company wishes to restructure its activities through the establishment of one or more wholly-owned subsidiaries as follows:

- the Company will retain ownership of the land asset as well as the investments;
- all agricultural and ancillary activities will be transferred to a wholly-owned subsidiary (WOS);
- the WOS will rent the land it needs for the conduct of its agricultural activities.

To implement the proposed restructuring exercise, the following scenarios are currently considered:

- ***Scenario 1***

  Transfer of the agriculture and ancillary activities, including all the employees, to the WOS on a going concern basis.

  Under this scenario the income of the Company will consist of dividend and rental income from land used by WOS.

- ***Scenario 2***

  Transfer of the agriculture and ancillary activities to the WOS on a going concern basis. The legal employer of the employees will still be the Company, subsequent to the transfer. Under this scenario all the inventories of the Company will be transferred to the WOS.

- ***Scenario 3***

  Transfer of the agriculture and ancillary activities to the WOS on a going concern basis. Subsequent to the transfer some of the employees will be employed by the WOS, whereas in respect of the other employees who will still be employed by the Company a relevant corresponding charge will be made to the WOS.

- ***Scenario 4***

Transfer of the agriculture activities in one WOS and transfer of the agricultural and ancillary activities to another wholly-owned subsidiary (WOS 2). The employees will be transferred to WOS and WOS 2 at the same time.

Based on its audited accounts as at 30 June 2010, the assets of the Company, amongst other assets, comprise of:

- ***property, plant and equipment*** which include land, buildings and motor vehicles
- ***consumable biological assets*** which include fertilisers and consumables.

Point at Issue

1. Whether it can be confirmed that each of the scenarios 1 to 4 above would qualify as a transfer as a going concern in accordance with section 63 (3) of the VAT Act?
2. In the event any of the above scenarios would not qualify as a transfer as a going concern, whether the VAT treatment of the assets transferred would be as follows:
    a. the value of the land would be exempt from VAT.
    b. the value of the building would be exempt from VAT, with the understanding that any input tax claimed should be clawed back in accordance with section 21 (7) of the Act.
    c. the value attributable to fertilisers would be zero-rated.
    d. no output tax should be accounted on motor vehicles in respect of which credit for input tax was not allowed at the time of acquisition.

Ruling

1. On the basis of information provided in the appendix to your ruling application, none of the scenarios provided would qualify as a transfer as a going concern in accordance with section 63 (3) of the VAT Act.

2. The VAT treatment of the assets mentioned in your application is as follows:
   (i) The transfer of the land would be exempt from VAT in accordance with the provisions of item 47 of the First Schedule to the VAT Act.

   (ii) The transfer of the building would be exempt from VAT in accordance with the provisions of item 48 of the First Schedule to the VAT Act. However, any input tax allowed on the building would be clawed back under the provisions of section 21 (7) of the Act.

   (iii) The value attributable to fertilizers to be transferred would be zero-rated as provided under item 2 (g) of the Fifth Schedule to the Act.

   (iv) Output tax should be accounted on the transfer of all motor vehicles, irrespective of whether input tax was disallowed at the time of acquisition, as section 63 (2) would not apply in the case of a restructure of business.

3. Furthermore, all other taxable assets to be transferred as a result of the restructure would be subject to VAT at their corresponding rates.

VATR 48 (Govt Gazette No.55 of 26 May 2012)

Facts

An auditing firm, duly licensed to provide auditing services in Mauritius, has among its clients portfolio companies incorporated outside Mauritius which are represented by offshore management companies in an *"agent* capacity. The foreign companies do not have a place of management or an office in Mauritius. The management companies are only contact points and do not have power of any action including investment decisions, nor do they have any authority to conclude contracts in the name of the foreign companies.

The auditing firm has been commissioned to provide auditing services to these foreign incorporated companies and to report on the financial statements to the shareholders in accordance with International Financial Reporting Standards. In line with international auditing practice, the auditing firm agrees on the terms of the audit assignments in '*letters of engagement'* addressed to the directors of the foreign companies through the offshore management companies at their local registered address.

The auditing firm engages its local staff and carries out the audit work in Mauritius. It charges its professional fees for the auditing services to the foreign companies through the offshore management companies which collect the fees from the foreign companies to pay them over to the auditing firm.

The auditing firm is duly registered for VAT in accordance with section 15 (2) of the Value Added Tax Act.

Point at Issue

Whether in respect of the auditing services it performs for the foreign companies, the auditing firm can issue its invoices zero-rated to the care of the offshore management companies which act as contact points for the foreign incorporated companies?

Ruling

On the basis of facts submitted, the offshore management companies are only contact points for the foreign incorporated companies which do not have a permanent establishment in Mauritius. The audit services provided to the foreign incorporated companies is therefore a zero-rated supply in accordance with the provisions of item 6 (a) of the Fifth Schedule to the VAT Act.

The auditing firm can therefore issue its invoices zero-rated.

VATR 49 (Govt Gazette No.55 of 26 May 2012)

Facts

S is a corporation organized under the laws of country A and is a global leader in the design and supply of passport personalisation systems (the System) in country A and worldwide. The System constitutes the equipment and the software.

Background facts

1. In 2004, S and the Government of Mauritius, duly represented by the Commissioner of Police (CP), entered into a contract (the 2004 Contract) for the supply of passport booklets and the design and supply of a new passport System for the Government of Mauritius. The 2004 Contract included the supply of passport printing equipment, readers, customized holographic film and ink ribbon, training of Passport & Immigration Office (PIO) personnel in the operation of the System, and maintenance services.
2. Under the 2004 Contract, S was responsible for importing the System and the different components as the Government of Mauritius did not wish to be involved in the importation and clearance of these items. Under the Contract, S was also authorized to subcontract or delegate the supply of services and tangible components to third parties, with the prior approval of the CP. In accordance with the terms of the Contract therefore, S hired the services of R Ltd, a Mauritius-based independent agent, to provide customs clearance services for the goods on consignment *in favour of* S and to deliver such goods to the CP as well as providing maintenance services (the Subcontract).
3. Both the 2004 Contract and the Subcontract expired on 29 June 2009, but have been extended by the parties, as they negotiated follow-on contracts at the CP's request.
4. S had not submitted any income tax and VAT returns to MRA on the grounds that it had not carried out any business in Mauritius, and has not made any taxable supplies in Mauritius. The MRA, however, reached the conclusion that income accruing to S from the whole 2004 Contract was subject to income tax and the supplies were taxable supplies. Subsequently, the income tax and VAT assessments made on S were settled by the Government of Mauritius by virtue of a clause to that effect in the Contract.

5. Prior to the 2004 Contract expiring, the CP expressed the wish for its renewal in order to obtain the necessary support for the issue of passports and the operation of the System by the PIO. The 2004 Contract is proposed to be renewed by the parties with terms and conditions substantially different from the original Contract, as stated in the proposed new contracts.

6. Under the proposed new contract between S and the CP (the 2011 Contract):

   - the CP will be the importer of the passport booklets, passport printing equipment, readers, customized holographic film and ink ribbon. S will have no responsibility whatsoever to deliver any of the components to the CP in Mauritius. In other words, the CP will be responsible for clearing all the items from Customs and pay all taxes and duties on importation;

   - the System implemented under the 2004 Contract will continue to be run in Mauritius by the CP/ PIO, and not by S;

   - S will have no office or staff in Mauritius to perform any part of the 2011 Contract;

   - a three-way Contract (the 2011 Maintenance Contract) is proposed to be signed between S, R Ltd and the CP for the provision of certain spare parts and maintenance and technical support directly to the CP.

7. Under the proposed 2011 Maintenance Contract between G, R Ltd and the CP:

   - R Ltd will be the first-tier supplier of technical support and spares, and S will be the second-tier service provider. Any secondary support by S will be provided online through phone, fax, teleconference and emails;

   - if it should be determined by all three parties that a visit by S to R Ltd or CP's principal operating site is necessary, S will agree to make such visit, provided that S will not make more than two short trips per calendar year to Mauritius. Since the secondary support will be provided online, the visit of S's staff to Mauritius and the activities, if any, undertaken by them in Mauritius will be merely auxiliary in nature.

   - S will invoice R Ltd directly for any spare parts, online secondary support and for any on-site trips exceeding two.

   - R Ltd will be responsible to pay any duties and taxes on any import of spare parts;

- R Ltd will be responsible to account for VAT on any supplies made and pay any taxes on income arising under the *(Maintenance)* Contract.

Point at Issue

Whether S will have to register and account for VAT in Mauritius?

Ruling

In the event S would perform maintenance services on-site in Mauritius, it will be liable to tax on the amount of income attributable for the performance of those services, which is understood to be included in the contract price. S will also have to register and account for VAT if the annual turnover of its supply of services in Mauritius exceeds or is likely to exceed 2 million rupees, in accordance with the provisions of section 15 of the VAT Act.

VATR 50 (Govt Gazette No.55 of 26 May 2012)

Facts

A business entails the purchase of fabrics in roll from which are then cut and stitched according to the requirements of the clients and installed at their place, viz. Hotels; in short roll fabrics are the main raw materials which are converted into finished products in terms of curtains and other similar types. This process involves mainly human labour.

Point at Issue

1. As most of the clients' order involves the whole components i.e., fabrics and their making up, fixing and installation, should VAT to be charged be limited to the labour / installation services only as fabrics constitute exempt supplies?

2. Should the VAT invoice consist of both exempt supplies (fabrics) and taxable supplies (fixing and installation)?

Ruling

The whole process constitutes a single vatable supply and cannot be split into fabrics and labour / installation costs and VAT should be charged on the total invoice price.