VATR 51 (Govt Gazette No 73 of 21 July 2012)

Facts

A Ltd, hereinafter referred to as 'the entity', is incorporated in Mauritius and its main activities are to offer online booking for hotel I guesthouse accommodation and ancillary products such as transfers and excursions as well as drinks or gift packages. Bookings and payments are made by customers online on the entity's website and the amount net of its commissions is subsequently remitted to the hotel I guesthouse.

Point at Issue

a) Whether the above supplies are vatable and at what rate;

b) Should VAT be applied on the net amount or on the gross amount receivable by the entity; and

c) The VAT treatment to be applied to:

   i. hotels I guesthouses in Mauritius and those outside Mauritius; and

   ii. Mauritian and overseas customers.

Ruling

On the basis of facts given, the VAT treatment to be given to the supplies made by the entity is as follows:

1. Where the hotel / guesthouse accommodation is in Mauritius, the whole package constitutes taxable supplies in Mauritius and is chargeable at the rate of 15% irrespective of where the client is located.

2. Where the client is located in Mauritius and the accommodation is outside Mauritius, the service fee, being the difference between the amount charged by the entity and the amount invoiced to the entity for the accommodation and related services, is subject to VAT at 15 %.

3. Where the client is outside Mauritius and the accommodation is outside Mauritius, the service fee mentioned at (2) is zero-rated by virtue of Item 6(a) of the Fifth Schedule to the Value Added Tax Act.

VATR 52 (Govt Gazette No.83 of 18 August 2012)

Facts

XYZ Ltd is a trading company making sales either on cash basis or hire purchase terms. Its assets include hire purchase debts (HP debts).

XYZ Ltd proposes to dispose of its total HP debts to a bank (proposed transaction). Subsequent to the proposed transaction, the HP debtors will settle their dues to the bank. In return for the assignment of the debt to the Bank, XYZ Ltd will receive cash in two instalments, the last instalment to be settled on the satisfactory performance of the HP debt portfolio based on a set of predetermined criteria.

Point at Issue

Whether the assignment of the HP debts by XYZ Ltd to the bank falls within the ambit of 'factoring', which is an exempt supply under the VAT Act?

Ruling

It is confirmed that the assignment of HP debts to the bank fall within the ambit of 'factoring' and the consideration for the exempt supply by the bank would be the difference between the total debts assigned and the payment made by the bank to XYZ Ltd.

VATR53 (Govt Gazette No.83 of 18 August 2012)

Facts

A company which is not yet incorporated in Mauritius proposes to construct, install and operate a Solar Photovoltaic farm and supply electricity produced by it directly to the Central Electricity Board (CEB). The company's annual turnover of taxable supplies will be approximately Rs 30m. The entity will start operation two years after the tender has been allocated by the CEB.

Point at Issue

Whether the company will be:

a) eligible to apply for registration?

b) required to charge VAT on its supplies to the CEB?

c) eligible to make a claim for VAT repayment in respect of capital goods acquired for the construction of the Solar Photovoltaic farm?

Ruling

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

a) have to apply for compulsory registration under section 15 of the VAT Act;

b) have to charge VAT at 15% on the total value of its supplies to the CEB; and

c) be eligible to make a claim for VAT repayment in accordance with Section 24 of the VAT Act.

VATR 54 (Govt Gazette No.95 of 29 September 2012)

Facts

R Ltd, referred to as the company, operates a hypermarket and sells consumables which it purchases both locally and from foreign suppliers. All the trading agreements with the vendors / suppliers are embodied in a contract with the company and as part of this agreement the company negotiates certain terms of trade which is of an agreed percentage of the total supplies' value excluding VAT. The terms are as follows:

Incentive Discount

This discount is pre-agreed with the suppliers and is available on certain goods purchased and is based on the volume of goods purchased. It is commonly referred to as an incentive given to a purchaser to buy more. The suppliers do not show it on their invoice, but instead the company sends an invoice to claim the discount. It is a fixed percentage on total purchases exclusive of VAT for a particular period.

Settlement Discount

This is a cash discount on settlement of amounts due and is a term of payment.

Advertising

Some vendors' products are published in the company's brochures and as part of this arrangement, vendors have to pay for this service.

Category Management

Some vendors are allowed to occupy certain particular shelf space in the shop and they pay a fee for this.

Swell Allowance

This is a compensation that the company receives for lost sales due to expiry of goods or damaged products.

Points at issue

1. Whether Incentive Discount is subject to VAT, if any, under Section 9 (1) of the VAT Act depending on whether the product carries VAT at 15%, 0% or if it is exempt? If there is no VAT implication, should the invoice for the Incentive Discount be reported on the VAT return and how?

2. Whether Settlement Discount is vatable?

3. Whether Advertising is vatable?

4. Whether Category Management Fee is vatable?

5. Whether Swell Allowance is vatable?

Rulings

On the basis of the information provided, the VAT treatment for the items mentioned in the application is as follows:

1. **Incentive Discount**

   The Incentive Discount does not constitute a supply in accordance with Section 4 of the VAT Act and is therefore not subject to VAT. Hence, the company is not required to report the incentive discount invoiced in its VAT returns.

2. **Settlement Discount**

   Cash Discount received for early settlement of amounts due is not a consideration in return for a supply and is therefore not subject to VAT.

3. **Advertising**

   The publishing of suppliers' products in the company's brochures constitute a supply of service in accordance with Section 4(2) of the VAT Act and the payments received are therefore subject to VAT at the standard rate of 15%.

4. **Category Management Fee**

   The occupation of shelf space by suppliers for their products in shops is a taxable supply of services by owners of shops in accordance with Section 4(2) of the VAT Act. The supply is subject to VAT at the standard rate of 15% irrespective of whether the product is taxable or exempt.

5. **Swell Allowance**

   Swell allowance, which is an allowance received for lost sales due to expired or damaged goods, is a compensation rather than a supply of goods and is outside the scope of VAT. VAT is therefore not chargeable on swell allowance received in respect of taxable goods which are expired or damaged.

VATR 55 (Govt Gazette No.107 of 3 November 2012)

Facts

S Ltd, a company engaged in construction and engineering works is in receipt of retention monies. Retention relates to the amount of progress billing that is not paid until the satisfaction of conditions specified in the contract for payment of such amounts or until defects have been rectified and it is after the defect period is completed that an invoice will be issued for the settlement of the retention money.

Points at Issue

Whether VAT on retention is payable after the defect liability period is completed being given that neither invoice is issued nor money is received prior to that period?

Rulings

On the basis of facts provided, it is confirmed that VAT on retention is invoicable upon submission of a certificate by the Quantity Surveyor, which will enable the contractor to issue a VAT invoice.

VATR 56 (Govt Gazette No. 111 of 10 November 2012)

Facts

A Ltd acts as General Sales Agent (GSA) for airlines operating from / to Mauritius (Online airlines) and for airlines which do not operate from / to Mauritius (Offline airlines). In its capacity as GSA, A Ltd acts as agent for these airlines, sells tickets on their behalf and remits all revenue from ticket sales to the airlines. Once the passenger uses the ticket, A Ltd perceives commission from both Online and Offline airlines.

Points at Issue

Whether the commission receivable from Offline airlines is zero rated and fall within the purview of Item 6(a) of the Fifth Schedule to the Value Added Tax Act?

Rulings

It is confirmed that commission receivable from Offline airlines are zero rated and fall within Item 6(a) of the Fifth Schedule to the Value Added Tax Act, being given that the Offline airlines to whom services are being supplied by A Ltd belong in a country other than Mauritius and are outside Mauritius at the time the services are performed.

VATR 57 (Govt Gazette No. 12 of 12 January 2013)

Facts

A Ltd is a company incorporated in the British Virgin Islands and is not resident in Mauritius. It aims to provide internet related services in Mauritius and overseas. Its first project is a real estate portal which will offer services to real estate agencies and companies both local and overseas. Users will be able to post their advertisements on the web site. The server hosting the web site is located in the United States. There is no contract between the company and the server operator and fees to the latter are paid yearly through bank transfer.

The revenue of the company will be from advertising fees paid by the real estate agencies and companies, both local and overseas, which advertise on the web site. The company does not charge any commission on business transactions concluded via the web site. The site only provides information with regard to properties available for rent and sale. Users cannot place any orders or transact through the web site.

Marketing of the web site will be done both online and offline. Online marketing will be done mainly through e-mails and offline marketing made in local newspapers which will be VAT registered persons. The company will have no physical presence in Mauritius with respect to the operation of the business.

Points at Issue

a) Whether the company should be registered for VAT purposes; and

b) Whether the VAT registered persons in Mauritius should charge VAT in respect of services provided to the company.

Rulings

a) The supply of services provided through the website to persons in Mauritius will fall within the meaning of a taxable supply as defined in section 2 of the VAT Act. Consequently, if the annual turnover of taxable supplies of the company exceeds the threshold imposed by the Sixth Schedule to the VAT Act, the company should apply for compulsory registration as a registered person in accordance with the provisions of section 15 of the VAT Act. The supply of the internet related services to overseas clients of the company is outside the scope of VAT; and

b) The services provided by the local VAT registered persons are utilised by the company for marketing the web site in Mauritius. The end-users of the services offered by the web site being in Mauritius; therefore, the services of the local VAT registered persons would not qualify as zero-rated supply under the provisions of section 11 and item 6(a) of the Fifth Schedule to the VAT Act. Hence, the local VAT registered persons should charge VAT at the rate of 15% in respect of the supply of services to the company.

VATR 58 (Govt Gazette No. 12 of 12 January 2013)

Facts

X Ltd is a VAT registered company engaged in advertising, branding and communications and its range of activities includes events management.

A few of the main expenses incurred for events management are catering services, food and drinks and occasionally hotel accommodation for foreign artists/performers.

Points at Issue

Whether the company is allowed credit for input tax on catering services, food and drinks and hotel accommodation for foreign artists / performers.

Rulings

It is confirmed that by virtue of Section 21 of the VAT Act, no input tax can be allowed as a credit in respect of catering services, food and drinks or hotel accommodation for foreign artists/performers.

VATR 59 (Govt Gazette No. 16 of 23 February 2013)

Facts

ABC is a company incorporated in UK and it carries out banking business through a branch in Mauritius, hereinafter referred to as Company Z. The branch is duly registered in Mauritius as a foreign company and holds a banking licence under the Banking Act. D Ltd is a Mauritian incorporated company and is wholly owned by ABC.

Company Z and D Ltd have approved a scheme under which D Ltd would undertake the banking business currently being operated by Company Z from both a commercial and legal standpoint. The scheme has been presented to the Bankruptcy Division of the Supreme Court in the form of a petition in accordance with Sections 261 to 264 of The Companies Act. The implementation of the scheme would involve the transfer of the whole of the current business of Company Z to D Ltd and the latter shall issue shares to ABC in consideration for the transfer of the business.

Points at Issue

Whether the implementation of the scheme will imply the payment of any output tax by Company Z under the VAT Act.

Rulings

Company Z does not have to charge output tax as the business of banking has been transferred as a going concern and will continue to operate in the foreseeable future and the provisions of Section 63 of the VAT act will apply.

VATR 60 (Govt Gazette No. 25 of 16 March 2013)

Facts

C is a non-profit making organisation which provides recreational, sports, and catering facilities to its members and visitors. Upon admission, the member pays a one-off entrance fee and a monthly subscription fee.

Points at Issue

a. Whether the facilities enjoyed by members constitute taxable supplies by the club in the course or furtherance of its business pursuant to the VAT Act and therefore subject to VAT;

b. On the assumption that the club's activities fall within the definition of "business" in the VAT Act, whether entrance and subscription fees constitute consideration for taxable supplies made by the club.

Rulings

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

a. the activities carried on by the club fall within the definition of "business as provided under Section 3 of the Value Added Tax Act which -

   "Include any activity carried on by a person, whether or not for gains or profit, and which involves in part or in whole the supply of goods or services to other persons for a consideration."

   Furthermore, the word "person" is defined as including "club or association"

   The activities carried on by the club constitute taxable supplies within the meaning in Section 2 of the Value Added Tax Act and are therefore subject to VAT.

b. the payment for entrance and subscription fees constitute consideration for taxable supplies made by the club, in that the club grants members the right to have access to the club premises and to its facilities.

VATR 61 (Govt Gazette No.27 of 30 March 2013)

Facts

A Ltd is a property developer registered for VAT. Its principal activity will be to construct a business hub of three floors. The ground floor will be partly rented and partly used by the company for its operations. Floors 1 and 2 will be sold for office and commercial purposes.

Points at Issue

a. Will the company be entitled to claim the input tax on capital goods in full?

b. When will the company be able to make a claim for VAT repayment from the MRA?

Rulings:

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

a. in accordance with Item 48(b) of the First Schedule to the VAT Act, the sale or transfer of any building or part of a building, flat or tenement together with any interest in or right over land, made by a VAT registered property developer is subject to VAT when made to a VAT registered person and exempt from VAT when made to a person who is not VAT registered.

   The company will therefore be entitled to claim credit for input tax on capital goods in the proportion of its taxable supplies to its total supplies in accordance with the provisions of Section 21(3) (b) of the VAT Act.

b. in view of the above, the company may claim VAT repayment only when it will be in a position to provide MRA with satisfactory evidence in respect of the proposed sale to VAT registered persons.

VATR 62 (Govt Gazette No.44 of 18 May 2013)

Facts

XYZ Ltd is a company holding a GBL 1 licence and is engaged in the provision of wholesale international broadband capacity. XYZ Ltd intends to enter into a reciprocal deal with ABC Ltd which will involve the swap of an "indefeasible right of use" of services between ABC Ltd and XYZ Ltd.

In that respect, ABC Ltd will sell capacity on its cable from "Mauritius to Mombassa" to XYZ Ltd and XYZ Ltd will sell capacity on its cable from "Mombassa to Marseille" to ABC Ltd . These capacity services will be utilised within their own networks and are not for end-user business.

Points at Issue

a. Confirmation that the sale of capacity from "Mauritius to Mombassa" by ABC Ltd to XYZ Ltd will be subject to VAT at 15%;

b. Confirmation that the sale of capacity from "Mombassa to Marseille" by XYZ Ltd to ABC Ltd will be outside the scope of the Mauritius VAT.

Rulings

On the basis of facts provided, the transactions between XYZ Ltd and ABC Ltd will involve the sale of reciprocal capacity on their respective networks between two companies operating in Mauritius, in the course or furtherance of their business.

Both supplies are therefore subject to VAT at 15%.

VATR 63 (Govt Gazette No.44 of 18 May 2013)

Notice is hereby given that VAT Ruling **VATR 30** issued by the MRA and published in the Govenment Gazette No. 99 of 7 November 2009 is hereby revoked as from this date and replaced by a new ruling VATR 63 as shown hereunder:

Facts

The *"Syndicats de Co-propriétaires"* are associations of co-owners, governed by article 664 (and subsequent articles) of the *"code civil mauricien"* (the Mauritian Civil Code) which regulates the obligations of the co-owners in respect of the common areas and amenities in a building complex. The Syndicat de Co-propriétaires contributes to a Fund out of which expenses for the maintenance of common parts of the building are approved by an Annual General Meeting of the Syndicat de Co-propriétaires.

The Syndicats de Co-propriétaires is distinct from the Syndic which is a legal entity to which a Syndicat de Co-propriétaires may entrust the management and maintenance of the building in return for a fee.

All the expenses incurred by the Syndicats de Co-propriétaires are allocated to the different co-owners in the proportion of their thousandth or n-th share in the *"co-propriété"*(co-ownership) as may be defined in the rules of the *"co-propriété"*. The allocation of expenses may be made either by special provision at the commencement of each quarter or by *"debours des frais"*, i.e disbursement of actual expenses at the end of each quarter. The allocation of expenses is carried out by means of an *"appel à contribution"* or *"appel de fonds"*, i.e by raising the required funds, and not by means of the issue of invoices. Additionally, in accordance with the provisions of article 664-59 of the Mauritian Civil Code, the syndicat de co-propriétaires can make claim for payment in respect of these *"appel à contribution"* or *"appel de fonds"* as follows:

a. by advance payment from the available cash funds, as provided in the rules of the *"co-propriété"*;

b. at the commencement of each accounting period, by provision made thereafter, without prejudice to the conditions in the rules of the *"co-propriété"*; or, alternatively by decision of the general assembly;

c. during the course of the accounting period; or

d. by special provision made to implement the decisions of the general assembly.

No mention is made therefore of any margin or consideration whatsoever, in respect of expenses incurred or to be incurred, but only of the allocation of expenses or a provision for expenses, being given that a Syndicats de Co-propriétaires does not have to its credit any accumulated profit.

Points at Issue

Whether or not a *"Syndicat de Co-propriétaires"* has the obligation to apply for compulsory registration as a registered person under the VAT Act.

Rulings

Section 15 of the VAT Act provides as follows:

"(1) Subject to the other provisions of this section, 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

shall apply to the Director-General, in such form and in such manner as may be approved by him, for compulsory registration as a registered person under the Act."

Section 3(1)(b) of the Act defines ***"business"*** as to include *"any activity carried on by a person, whether or not for gains or profit, and which involves in part or in whole the supply of goods or services to other persons for a consideration"*.

On the basis of facts provided, the receipt of fund by the Syndicat de Co-propriétaires does not constitute receipt in respect of a supply.

On the other hand, the services provided by the Syndic constitute a taxable supply and the Syndic therefore has the obligation to apply for compulsory registration as a registered person under the VAT Act, pursuant to Section 15 of the Act.

VATR 64

Facts

The company sells processed fresh vegetables like lettuce, carrots, onions and tomatoes. The production processes of the various products are as follows:

a. the vegetables are bought and stored in a chilled room overnight prior to production;

b. in the case of lettuce, the base and withered leaves are removed. For carrots and onions, the tips are cut before being peeled;

c. the vegetables are pre-rinsed with tap water;

d. the vegetables are washed in chlorinated water for 1 to 3 minutes;

e. the vegetables are then drained;

f. in the case of lettuce whole leaves are selected or the lettuce is shredded. Tomatoes are sliced or diced. Onions are cut or sliced and carrots are cut in “julienne”; and

g. each product is packed in containers of 0.250 kg /0.5 kg/1 kg for sale.

Points at Issue

Whether the sale of the processed vegetables should be exempt from VAT by virtue of Item 7 (c) of the First Schedule to the VAT Act or subject to VAT at the rate of 15% in accordance with Section 9 (3) of the VAT Act.

Rulings

By virtue of Item 7 (c) of the First Schedule to the VAT Act:

"*primary agricultural and horticultural produce (including tomatoes, potatoes, onions and other vegetables, fruits, tea, coffee, cocoa beans and nuts) which have not been processed except for reaping, threshing, husking, crushing, winnowing, trimming, drying and packaging to put them into marketable condition"*, are exempt from VAT.

On the basis of information provided, the processed vegetables would fall within the ambit of Item 7(c) of the First Schedule to the Value Added Tax Act and the supply thereof would be exempt from VAT.

VAT 65

Notice is hereby given that VAT Ruling VATR 65 issued by the MRA and published in the Government Gazette No. 64 of 20 July 2013 is hereby revoked as from this date and replaced by a new ruling VATR 65 as shown hereunder:

Facts

B is a company incorporated in Mauritius and holding a Category 1 Global Business Licence. Its primary business activity is to sell premium fish products on the international market.

For the purpose of its activities in Mauritius, fish will be bought from C, a company incorporated in Reunion Island and D, a company incorporated in Mauritius and holding a Category 1 Global Business Licence.

The fish bought from C will be caught on the high seas by fishing vessels which bear French flags.

The fish bought from D will also be caught on the high seas. D will lease fishing vessels bearing Mauritian flags from Mauritian companies for its fishing activities. Fish supplied by D would be the produce of Mauritius.

The raw fish bought by B will be processed by freeport operators in the freeport zone. The freeport operators will charge B a fee for the processing services provided. B does not hold a freeport licence.

Fish processed into 'premium fish products' are meant for exports. However, a small proportion may be sold on the local market.

Raw fish not meeting the technical specifications for processing into 'premium fish products', representing about 20% to 40% of the total raw fish purchased, will be re-exported or sold to the local canning companies.

Fish wastes (heads, tails and other wastes), the fish by-products, unfit for human consumption, generated from the processing activities of the freeport operators, will be sold on the local market to companies producing fish meal and fish oil.

Prior to the coming into operation of the above activities, B will, for a temporary period, provide logistical and procedural assistance in Mauritius to C. The services provided will include offloading from fishing vessels, Customs and port formalities, transfer to freeport operators for processing and export of the 'premium fish products', on behalf of C. B will receive a commission for the services so provided. C will remain the owner of the fish.

Point of Issue

To confirm whether:

1. the raw fish to be bought by B from D will be a zero- rated supply by D.
2. the raw fish to be bought by B from C will be exempt from VAT.
3. the sale of raw fish by B to Mauritian canning companies will be a zero- rated supply.
4. the services provided by freeport operators to B will be zero- rated supplies.
5. the sale of the fish by-products by B to Mauritian companies will be zero-rated supply.
6. the sale of 'premium fish products' by B in Mauritius will be a zero- rated supply.
7. the raw fish sold to foreign companies and processed fish sold to international clients will be zero- rated supplies.
8. the supply of services during the transitional period by B to C will be zero-rated supplies.

Rulings

On the basis of information provided, we confirm the following:

1. the sale of raw fish by D will be a zero-rated supply.
2. the raw fish to be bought from C will be exempt from VAT.
3. the sale of raw fish, the produce of Mauritius, will be a zero-rated supply. Otherwise the sale of the raw fish will be an exempt supply.
4. the supply of services provided by freeport operators to the company will be subject to VAT at the rate of 15% in view of the provisions of section 50 (1) (b) of the VAT Act.
5. the sale on the local market of fish by-products, unfit for human consumption, will be subject to VAT at 15%.
6. the sale on the local market of 'premium fish products', the produce of Mauritius, will be a zero-rated supply. Otherwise the sale of the 'premium fish products' will be an exempt supply.
7. the export of raw fish and processed fish products will be zero-rated by virtue of Item 1 of the Fifth Schedule to the VAT Act.
8. the services to be supplied by B to C, during the transition period, will be zero-rated by virtue of Item 6(a) of the Fifth Schedule to the VAT Act.

VATR 66

Facts

S Ltd will be, upon the grant of a leasing licence by the Financial Services Commission, engaged in the provision of finance leasing services for the purchase of solar power / electric systems for use by the lessee (client) to generate electricity for its own consumption.

The client will contract with M Ltd for the installation, maintenance and operation of the solar asset. At the time of the agreement with M Ltd, the client will make an initial payment directly to M Ltd. M Ltd will thereafter transfer the right to receive monthly payments and ownership of the solar asset to S Ltd.

The client will be invoiced monthly by S Ltd for the payments for a period of 10 years and at the end of that period, ownership will be transferred to the client.

All transactions between the parties will be done on an arm's length basis and on purely commercial terms.

Points at issue

1. What are the VAT implications on signature of the agreement?
2. What are the VAT implications for S Ltd and M Ltd when M Ltd transfers the right to the monthly payments and solar system to S Ltd as security?
3. What are the VAT implications on the monthly payments made by the client?
4. Is S Ltd required to register for VAT, given it makes no taxable supplies?

Ruling

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

1. At the time the client makes the agreement and effects the down-payment, M Ltd will have to issue a VAT invoice for the full purchase price and charge VAT thereon. The VAT invoice will have to be drawn in the name of the lessor, indicating that the purchase is on behalf of the lessee and the VAT is claimable by the latter. The client will be entitled to take credit for the input tax suffered subject to the limitations of Section 21 of the VAT Act;
2. There will be no VAT implications on the transfer of the right to the monthly payments from M Ltd to S Ltd;
3. In accordance with Item 30 of the First Schedule to the VAT Act, the charges paid by the client under a finance lease agreement is exempt from VAT;
4. S Ltd will not have to register for VAT as it will be making only exempt supplies and no other supply.

   However, if the agreement is terminated before the 10 year period and the asset is sold to a third party, S Ltd will have to consider its liability for VAT registration.

(Rec. No. 2115365)

VATR 67

Facts

B is engaged in the unloading, bagging and distribution of cement. For the purposes of the cement unloading operation, it uses a cement unloading structure called the 'Kovako'. The 'Kovako' is equipped with 4 engines. Two of the engines are used to run the compressors, the third is used to run a rotary lobe vacuum blower and the fourth is used for the hydraulic movement of the vacuum arm and the vacuum nozzle. These engines are not used to propel the 'Kovako'. The 'Kovako' is stationary when it is in operation.

The 'Kovako' has to be positioned on the quay for the cement unloading process and after completion of the operation it is removed from the quay. To enable the 'Kovako' to be moved from/to the quay, it is fitted with wheels. However, it does not have its own means of propulsion and hence, requires the assistance of two machines, the 'Chargeuse' and the 'Manitou', for its movement from/to the quay. Also, the 'Kovako' has to be repositioned along the quay, with the assistance of the two machines, to have access to the various holds of the ship.

Point at issue:

Whether the company can be allowed to claim credit for input tax suffered in respect of gas oils used by the engines fitted on the 'Kovako'.

Ruling:

On the basis of facts submitted, the engines of the 'Kovako' are not stationary engines. Hence, no input tax can be allowed for gas oils used in respect of the engines by virtue of the provisions of section 21(2)(e)(iii) of the VAT Act.

VATR 68

Facts

B has been awarded a contract by C for the supply of duty free and VAT free goods on board of C planes. B does not have any licence authorising the company to:

a) import and supply goods on board of airlines;
b) operate a Customs Approved Store Room (CAS) for the supply of goods on board of airlines.

Goods imported by B are stored in the CAS of D and the export bills are drawn in the name of D.

Point at issue

Whether sales of duty free products on board of aircrafts are considered as zero rated supplies.

Ruling

Pursuant to Item 1 of the Fifth Schedule to the VAT Act, goods exported under Customs control are zero rated.

However, on the basis of the facts mentioned above, the supplies of those goods on board of airlines are considered to be made by the CAS owner, namely D and not B.

It therefore follows that goods supplied on board of airlines by D are zero rated whereas the supplies made by B are considered to be outside the scope of VAT.

VATR 69

Facts

F Ltd (the "Company") is a private limited company incorporated on 11 August 2014 and registered for VAT with effect from 01 October 2014. Its objective is to organise and promote a professional local football league at the elite level in Mauritius. In so doing, it will significantly improve quality of local football, organise professional league matches having full-time paid players committed and dedicated to football forming a professional league, attract talented young players who can aim for a career in professional football and produce a respected national team.

The Company's business plan provides for revenue generation from different sources including sponsors, advertising fees, and from the organisation of professional football leagues matches in Mauritius. The Company will then use these funds to provide financial resources to football clubs to meet the salaries of the full-time football players. In return, the clubs will perform a number of matches and football players will play as a full-time profession.

Points at issue

What will be the VAT treatment applicable in respect of each of the following items?

(i) Sponsorship fees

(ii) Advertising in stadium

(iii) Sale of football match tickets

(iv) Sale of specialised football magazine

(v) Sale of rights of television broadcasting of football matches

(vi) Receipts upon transfer of football players to a foreign football club

(vii) Payments to football clubs to meet the players' salaries.

Ruling

(1) By virtue of section 4 of the Value Added Tax Act, the following items will be subject to VAT at the standard rate of 15% -

- sponsorship fees;
- advertising in stadium; and
- sale of rights of television broadcasting of football matches.

(2) The sale of specialised football magazine and football match tickets will be exempt supplies in accordance with item 17 and 45 of the First Schedule to the VAT Act.

(3) Any receipt upon the transfer of football players to a foreign football club will be a zero-rated supply pursuant to item 6(a) of the Fifth Schedule to the VAT Act.

(4) The payment made by the Company to football clubs would constitute consideration for taxable supply of services by the clubs to the Company. Should the clubs' turnover of taxable supplies exceed the registration threshold, they will have to register for VAT. In such a case, the company would be entitled to input VAT on a proportionate basis in respect of VAT invoiced by the club to the Company.

VATR 70

Facts

X is a company which provides telecommunication services to its subscribers and to the subscribers of its foreign roaming partners when they are availing themselves of the services in Mauritius. In April 2000, X entered into a contract with a foreign roaming partner, Y whereby each party will provide roaming services to the other party's subscribers.

Following a drastic reduction in the number of Y subscribers roaming on X's network in November and December 2008, X entered into an Inter Operator Tariff Discount agreement (IOT Discount) with Y in January 2009 in order to continue benefitting from the traffic generated by Y customers. Through this discount agreement, each party agreed to provide each other with some discount (inclusive of all taxes) on the prevailing rates. The main elements of the agreement were as follows:

- Y will commit to send a minimum of Voice Traffic towards X network and X will provide a discount on the prevailing rates. Where Y is unable to meet the traffic commitment, Y shall pay to X the amount of charges which is based on the traffic commitment at the discounted rate.
- There was no traffic commitment imposed on X for its subscribers roaming in Y's network.
- The IOT discount agreement was for an initial period of 2 years (2009 and 2010) and was renewed for a further period of 2 years (2011 and 2012).

X issued VAT invoices to Y for the roaming services provided to Y subscribers while in Mauritius. The VAT amounts on the invoices have been remitted to MRA.

To enforce the discount agreement stipulated in the IOT agreement, the discount is afterwards calculated on the revenues invoiced under the agreement entered into between X and Y during the discount period and a credit note on the invoices issued to Y.

Point at issue

With respect to Section 21(4) of the VAT Act, whether X can adjust the output tax to take into account the VAT on the credit note.

Ruling

On the basis of the facts of the case, it is noted that the discount is computed with reference to the volume of traffic on the network between the parties over a specific period as ascertained after the invoicing of the supply to roaming customers has taken place. The discount is therefore more in the nature of an

incentive discount to Y and does not affect the taxable value of roaming services. In the circumstances, X cannot adjust the output tax to take into account the VAT on the credit note.

VATR 71

Facts

Mr X is the sole shareholder in the under-mentioned companies:

(i) Y Ltd (the "Company");

(ii) Z Park Ltd; and

(iii) C Project Management Ltd.

Y Ltd (the "Company") is a private company limited by shares and was incorporated on 15 May 2015.

Z Park Ltd is a private company limited by shares incorporated in 2010. It has a lease agreement with Business Parks of Mauritius Ltd for a plot of land of 3 acres for a fixed initial duration of 30 years with option for 2 additional periods of 30 years.

C Project Management Ltd was incorporated in 2011.

Y Ltd and Mr X propose to set up a Société Civile Immobilière d'Attribution called the Société for the development of a multi-storey building comprising of commercial spaces.

In the absence of the deed of the Société, the names of the initial associates of the Société shall be as many members (nominated partnership) as number of lots. The members of the nominated partnerships will be Y Ltd and Mr X, pending the subscription of potential buyers.

The initial share capital of the proposed Société will be approximately Rs 400 million. The proposed share capital of each of the initial associates will vary according to the number of groups of "*parts sociales*" they wish to acquire. For instance, if the building is divided into 10 groups of "*parts sociales*", the buyer will pay Rs 40 million for one group of "*parts sociales*".

The Société will sub-lease a third of the land from Z Park Ltd for its project.

The Société will appoint C Project Management Ltd for the management of its project and a management fee will be paid for these services.

The subscription amounts received by the Société from the buyers will contribute towards payment for invoices received from C Project Management Ltd.

Upon completion of the building, the Société will be dissolved.

Points at issue

1) Whether input tax suffered by the Société will be available as a credit against output tax in the course or furtherance of its business?
2) Whether any excess input tax attributable to the contract with contractors will be available for refund under Section 24 of the Act?
3) Whether a VAT registered person who buys part of the building will be able to claim input tax?

Ruling

1) Whether the Société is entitled to register for VAT and claim credit for input tax can only be ascertained after the VAT registration liability of the eventual buyers are established. If the Société is liable to register and does register for VAT it 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 VAT Act.

   Pursuant to Section 2 and item 48 of the First Schedule to the VAT Act, the sale or transfer of an immoveable property, a building or part of a building, apartment, flat or tenement for purposes other than residential purposes, by a VAT registered property developer to a VAT registered person is a taxable supply. On the other hand, if the supply is made to a non-VAT registered person, the supply is an exempt supply.

   In accordance with Section 15 of the VAT Act, a person is liable to register for VAT if in the course or furtherance of his business, he makes taxable supplies and his turnover of taxable supplies is likely to exceed the VAT registration threshold.

   In the light of the above provisions, the Société will be considered to be making taxable supplies to the eventual buyers who are VAT registered and the value of the taxable supplies will be the amount that the eventual VAT registered buyers will pay for part of the building they will be entitled to.

2) Any excess input tax attributable to the contract with contractors will not be available for refund under Section 24 of the Act for the following reasons:-

   (i) the Société is not making exclusively zero-rated supplies; and
   (ii) the excess input VAT is not in relation to capital goods.

   However, credit for allowable input tax will be available for future set off against subsequent output tax.

3) If the sale is made to a VAT registered person, that person will be able to claim credit for input tax to the extent that he uses it to make taxable supplies in accordance with section 21(3) of the VAT Act.

Please note that for income tax purposes, Mr X will be liable to tax on the project in accordance with Section 10(3) (a) of the Income Tax Act.

VATR 72

Facts

Mr. X is a VAT registered person and he makes both standard rated and zero-rated supplies.

He is civilly married to Mrs. Y (the "spouse") since 7 October 1962 under the "régime légal de communauté". The latter does not derive any income except interest on her savings account. During the course of their marriage, on 26 May 1977, Mrs. Y acquired an immovable property consisting of an old wooden structure.

Since some months, Mr. X has started the construction of a commercial building on the land acquired by his spouse. He intends to use the building partly for his own business and partly for rental of office space. Mr. X is financing the construction of the building out of his personal savings.

Mr. X has hired the services of a VAT registered building contractor who has issued VAT invoices in his name for that purpose. Mr. X has not taken any credit for input tax in his VAT returns in respect of the construction of the building.

Mr. X intends to declare all income received from the rental of office spaces in his VAT returns.

Point at issue

(1) Whether Mr. X will be entitled to make a claim for repayment of the VAT charged by the building contractor?

Ruling

(1) On the basis of the facts provided, it is confirmed that Mr. X may take credit for input tax and make a claim for a repayment in respect of the construction of the immovable property at the time he satisfies the Director-General that the building is used by him to make taxable supplies.

(2) In case Mr. X takes credit for input tax and he subsequently transfers his business or ceases to carry on business, or the building or part of the building is sold or transferred, the clawback provisions in section 21(7) of the VAT Act will apply.

VATR 73

Facts

A private limited company – (Z Ltd) which is in the process of being incorporated in Mauritius proposes to operate a property project comprising of commercial and residential premises, within the framework of the Real Estate Scheme (RES) under the Investment Promotion Act.

The RES project would be developed by a property developer (Y Ltd), and the residential units would be sold by that developer to buyers – mostly non-citizens, who may be either individuals or institutional investors. The owners of the RES units not wishing to personally reside in their property would then each rent their unit to Z Ltd under long-term letting (11 years) contracts. Z Ltd would thereafter rent the units to various clients, whether foreign-resident or Mauritian, under short-term letting contracts.

It is not expected that the owners of the RES units nor the foreign or Mauritian clients would be VAT registered. However, Z Ltd would be VAT registered.

Point at issue

1. Whether the rent from abroad charged by Z Ltd to each foreign client would be liable to VAT at zero rate?
2. Whether the rent from Mauritius charged by Z Ltd to each client (Mauritian or foreign) for residential letting would be liable to VAT at the standard rate?
3. Whether the rent charged by Z Ltd for commercial letting of commercial premises would be liable to VAT at the ordinary rate?
4. Whether the rent charged by the owner of the RES unit (as lessor) to Z Ltd (the lessee) would be liable to VAT, assuming that the said owner would derive annual turnover below the registration threshold in respect of this activity?
5. In the event that the Z Ltd's activities are subject to distinct VAT regimes (zero-rated, exempt, ordinary rate), can those various activities all be operated within a single company in a fiscally neutral manner? Whether those activities are operated within a single Operator company or within two separate Operator companies (for instance, one company focussing in the zero-rated activity, and the other on the activity liable to VAT at the ordinary rate), the VAT treatment of the relevant activities will not differ.

Ruling

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

1. the rent charged by Z Ltd to each foreign client will be for services which are utilised in Mauritius and the foreign client will be in Mauritius at the time the services are performed. The rent will therefore not qualify as zero-rated supply under section 11 of the VAT Act.
2. as the building will not be used predominantly as a place of residence, the rent charged by Z Ltd to each client whether Mauritian or foreign, will be subject to VAT at standard rate irrespective of the period of stay.
3. the rent charged for commercial letting of the commercial premises is a taxable supply and will therefore be subject to VAT at the standard rate.
4. where the rental charged by the owner of the RES unit (as lessor) exceeds the threshold for VAT registration, that is Rs 6 million per annum, he will be liable to compulsorily register for VAT.
5. for VAT purposes, registration of Z Ltd covers all its activities. The supplies would be accounted for in accordance with the provisions of the VAT Act with respect to the different supplies made (standard-rated, zero-rated and exempt).

VATR 74

FACTS

J Ltd is a VAT registered person. It acquired buildings between the years 2002 and 2013 and it took credit for input tax suffered on the acquisitions. In July 2016, that is before the end of the nineteenth year following the years in which the buildings were acquired, J Ltd amalgamated with and into K Ltd and all assets and liabilities of J Ltd were transferred to K Ltd. K Ltd is also a VAT registered person.

POINT AT ISSUE

Whether sections 63(3) and 21(7A) of the VAT Act apply on the transfer of buildings following the amalgamation of J Ltd with and into K Ltd?

RULING

Based on the aforesaid facts, it is confirmed that sections 63(3) and 21(7A) of the VAT Act apply on the transfer of the buildings following the amalgamation of J Ltd with and into K Ltd.

VATR 75

FACTS

T Ltd is a company incorporated in Mauritius. It has an agreement to provide marketing services to C Ltd, a company incorporated and domiciled in Switzerland and engaged in the pharmaceutical business.

The marketing activities to be performed by T Ltd comprise of the following -

(i) promoting the public awareness to diseases treated by the products;

(ii) promoting the awareness for the C Ltd products among members of the T Ltd medical community;

(iii) performing medical conferences and public relations activities for C Ltd and its products; and

(iv) replying to all medical and scientific queries relating to the products of C Ltd.

T Ltd does not order, stock, distribute or supply such products and does not take any orders for the products. Such products are imported directly by certain third party distributors. The distributors enter into separate distribution agreements with C Ltd and remain responsible for the pricing and the safety of the products as well as dealing with the issues regarding the products.

T Ltd receives from C Ltd payment for all expenses incurred together with an agreed mark-up.

POINT AT ISSUE

Whether the supply made by T Ltd is subject to VAT at 15 % or should it be treated as zero rated.

RULING

T Ltd is supplying marketing services to C Ltd, a company which belongs in a country other than Mauritius and which is outside Mauritius at the time the service are performed. The supply is considered as zero rated in accordance with item 6 (a) of the Fifth Schedule to the Value Added Tax Act.

VATR 76

FACTS

XYZ is a private limited company whose business is to produce and organise events and Cultural Strategy, including cultural festivals in Mauritius.

XYZ Ltd is also the producer and organiser of an annual festival. This non-for-profit festival promotes culture and the *patrimoine*.

There is no monetary benefit towards the creation of the event, as this annual festival is sponsored by the private sector and the public sector. It is expected that some more individuals will contribute to the holding of the other editions.

The festival will be sponsored by –

(i) donations from private firms and companies whose logos are displayed by XYZ Ltd on leaflets, flyers and bill-boards. VAT is being charged to the private sponsors;

(ii) donations (hereinafter referred to as "gifts") from individuals and companies whose logos are not displayed;

(iii) crowdfunding.

The gifts to XYZ Ltd will be spent towards the expenses of the festival or other festivals. The gifts are given for free and no consideration or services will be provided in return by XYZ Ltd to the donors, save for the obligation imposed on XYZ Ltd to use the monies towards the expenses of the event which promotes culture. The monies given to XYZ Ltd will become part of XYZ's Ltd revenue on the festival and will be mixed with the remaining revenues received from sponsors.

Crowdfunding is the process by which the public is called upon by an entity or individual to give money to that entity or individual for a special purpose. The monies are not investment; they are given as gift but for a specific purpose and the entity is obliged to use the monies for this purpose. The scenario is therefore similar to the scenario described in respect of gifts, but the process is slightly different in that there is an appeal to the public and a specific process to follow.

Thus, the financial activity is reported and disclosed under the name XYZ Ltd. However, the audit of the festival is done separately and the financial figures are recorded and reported separately.

POINTS AT ISSUE

Value Added Tax

Whether the gifts received by XYZ Ltd from individuals and companies, and the monies received through crowdfunding for the sponsoring of the festival will be subject to VAT?

Income tax

1. Whether the gifts received by XYZ Ltd from individuals and companies, and the monies received through crowdfunding for the sponsoring of the festival will be subject to income tax?
2. Whether the companies and individuals contributing as gifts will be allowed to deduct the amount donated against their gross income?

RULING

On the basis of the above-mentioned facts, it is confirmed that:

Value Added Tax

1. The gifts received by XYZ Ltd from companies and individuals, and the monies received through crowdfunding for the sponsoring of the festival do not constitute supply for consideration by virtue of Section 4 of the VAT Act. They will therefore not be subject to VAT.

Income Tax

1. The gifts received by XYZ Ltd from companies and individuals, and the monies received through crowdfunding for the sponsoring of the festival should be accounted as gross income and therefore will be subject to income tax.
2. The contribution of companies and individuals by way of gifts for the sponsoring of the festival are not expenses exclusively incurred in the production of gross income and therefore will not be deductible under section 18(1) of the Income Tax Act.

VATR 77

Facts

J Ltd is a limited liability company domiciled in France. It has been awarded three contracts in Mauritius as follows:

(1) Contract with K Ltd- RDP Project.

J Ltd (as a subcontractor) was awarded a contract in association with L Ltd- the main contractor) for the provision of consultancy services to K Ltd for the feasibility study, design and preparation of bid document for the upgrading of the Intake structure and review of treatment process at the plant.

A sub-consultancy agreement was made between L and J Ltd to provide part of the services relating to the main contract.

J Ltd will also enter into contracts with other local sub-contractors in connection with the above project.

The duration of the main contract is estimated to be between 9 to 12 months.

J Ltd's personnel will effect on-site visit in Mauritius to meet J Ltd's clients and collect information at the plant for the provision of services in France.

J Ltd estimates the number of days to be spent by its personnel in Mauritius as follows:

The project manager	28 days
Engineer No 1	28 days
Engineer No 2	5 days

(2) Contract with M Ltd- SC Project

J Ltd was awarded a contract for the provision of technical assistance services to M Ltd in connection with a Smart City project at Cap Tamarin.

J Ltd will also enter into contracts with other local sub-contractors including L in connection with the above project.

The duration of the contract is estimated to be between 9 and 10 months.

J Ltd estimates the number of days to be spent by its personnel in Mauritius as follows:

The project manager	28 days
Engineer No 1	28 days
Engineer No 2	15 days
Engineer No 3	15 days
Engineer No 4	15 days

(3) Contract with K Ltd - La Nicolière Project.

J Ltd (as a main contractor) was awarded a contract in association with L (the sub-contractor) for the provision of consultancy services to K Ltd for the feasibility study on the rehabilitation and extension of La Nicolière treatment plant and associated works inclusive of the concept design for rehabilitation works.

J Ltd will also enter into contracts with other local sub-contractors in connection with the above project.

The duration of the contract is estimated to be between 9 to 12 months.

J Ltd estimates the number of days to be spent by its personnel in Mauritius as follows:

The project manager	28 days
Engineer No 1	28 days
Engineer No 2	5 days
Engineer No 3	5 days

Points at issue

(i) Whether J Ltd ought to charge VAT to :
   a) L in connection with RDP Project;
   b) M Ltd in connection with the SC Project; and
   c) K in connection with La Nicolière Project?

(ii) Whether TDS ought to be withheld by :
   a) L from payments made to J Ltd in connection with RDP Project;
   b) M Ltd from payments made to J Ltd; and
   c) K from payments made to J Ltd in connection with La Nicolière Project?

(iii) Whether the local sub-contractors should charge VAT to J Ltd?

(iv) Whether TDS ought to be withheld by J Ltd from payments made to local sub-contractors?

Ruling

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

(i) J Ltd needs not charge VAT to its clients namely L, M Ltd and K Ltd which are all VAT registered. On the other hand, in accordance with Section 14 of the VAT Act, the latter ought to apply reverse charge on the supply of services received from J Ltd abroad.

(ii) No TDS ought to be withheld by L, M Ltd and K Ltd as J Ltd does not have a permanent establishment in Mauritius.

(iii) By virtue of item 6(a) of the Fifth Schedule to the VAT Act, the supply of services by the local sub-contractors to J Ltd are zero-rated supplies.

(iv) Since J Ltd is a foreign company which does not have a permanent establishment in Mauritius, it needs not withhold TDS from payments made to local sub-contractors.

VATR 78

Facts

A is a company engaged in the business of hotels operation. It presently operates 8 hotels.

Three of the hotel buildings are owned by B, a subsidiary of A, incorporated in April 2016. B is VAT registered with effect from December 2016.

A has entered into contracts for the renovation of 3 hotels owned by B. A restructuring exercise has been undertaken whereby the cost of the structural part of the renovation to the immovable property will be borne by B and any capital expenditure on movable property will be borne by A.

The contractors and service providers will continue to invoice A and A will withhold TDS at the appropriate tax rates on payments to the contractors and service providers. A quantity surveyor will determine the structural and non-structural aspects of the expenditure, so that A will invoice B for the structural aspect in accordance with the report of the quantity surveyor.

An Agreement would be executed between the parties so that all the terms and conditions between A and the relevant suppliers equally apply to B and A.

Points at issue

(1) Whether B should apply TDS on payments made to A?

(2) Whether A will be able to claim credit for input tax on VAT charged by the contractors and service providers on the structural aspect of the capital expenditure and whether the corresponding amount charged to B by A will be subject to VAT at the standard rate?

Ruling

On the basis of the facts mentioned above, it is confirmed that -

(1) A not being a contractor or a provider of services as specified in the Fifth Schedule to the Income Tax Act, B is not required to apply TDS on the payment made to A.

(2) A will be entitled to claim credit for input tax on VAT charged by the contractors and service providers on the structural aspect of the capital expenditure and the corresponding amount A will charge to B will be subject to VAT at the standard rate of 15%.

VATR 79

Facts

G is a domestic company engaged in providing marketing consultancy services for a number of suppliers incorporated and domiciled in France, Italy and Germany. The activities are carried out in regions such as Guadeloupe, Guyana, Martinique, Reunion, Mayotte, New Caledonia, French Polynesia, Seychelles, Madagascar and Mauritius.

The services provided by G consist of the following:

i. contact prospective clients in the regions mentioned above;

ii. negotiate certain terms and conditions relating to proposed sales of products to the clients based on commercial guidelines and policies set by the suppliers;

iii. assist in the organisation of the promotion of these products by clients; and

iv. provide training to the clients on the products.

G has only 1 employee who also acts as representative of the brands in all the different countries.

The suppliers provide samples of their products to G to assist the latter in marketing these products. The suppliers remain the owner of their sample products at all time.

G does not order, stock, distribute or supply any product. Orders are made directly by the clients from the suppliers and all payments for any products are made directly between the clients and the suppliers. The suppliers are responsible for the pricing of the products as well as dealing with any issues regarding the products.

Where the prospective clients of suppliers are in countries other than Mauritius, the representative of G travels to those countries and performs the marketing activities (e.g. contacting prospective clients, negotiating terms and conditions, training, etc.) while he is there.

G cannot conclude any agreement with the clients on behalf of the suppliers and does not have any contractual obligations whatsoever with the clients. G is remunerated in the form of a commission which is based on the sales made by the suppliers to the clients contacted by G.

Point at issue

Whether the marketing consultancy services provided by G should be treated as zero-rated supplies?

Ruling

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

The marketing consultancy services by G performed outside Mauritius and supplied to a person who belongs in a country other than Mauritius and who is outside Mauritius at the time the services are performed are outside the scope of VAT.

The marketing services by G performed in Mauritius and supplied to a person who belongs in a country other than Mauritius and who is outside Mauritius at the time the services are performed are considered as zero-rated supplies in accordance with item 6(a) of the Fifth Schedule to the Value Added Tax Act.

VATR 80

Facts

P was incorporated in September 2017 and its sole shareholder is Mr Q.

The company contemplates to acquire a vessel that will be used to:

(a) transport commodities such as raw sugar for refining or coal, from foreign countries to Mauritius ("activity A");

(b) transport commodities such as refined sugar, from Mauritius to foreign countries ("activity B"); and/or

(c) transport certain commodities between foreign countries only ("activity C").

The vessel will be registered in Mauritius and the company will not be engaged in any fishing activities.

Whilst its core business activities will initially be the transport of coal and related products for sugar milling companies in the Indian Ocean region, it will ensure that it is able to adapt itself so that it can transport any other commodity. This may require modification to the vessel and the company may have to incur capital expenditure at a later date.

The company may also have to undergo repairs outside Mauritius, whilst it would prefer to have such repairs being done in Mauritius.

Points at issue

Whether reverse charge will apply to -

(i) any repairs done in Mauritius by a foreigner without a permanent establishment ("PE") in Mauritius?

(ii) any repairs done in Mauritius by a foreigner with a PE in Mauritius?

(iii) any repairs done outside Mauritius?

Ruling

On the basis of facts provided, the company is entitled to be registered for VAT as it will be making zero-rated supplies in accordance with item 3 of the Fifth Schedule to the VAT Act. In the circumstances, it is confirmed that:

(i) where repairs are done in Mauritius by a foreigner without a PE in Mauritius, the reverse charge will apply and to the extent that the supplies relate to shipping activities, it would be revenue neutral.

(ii) where repairs are done in Mauritius by a foreigner with a PE in Mauritius, the reverse charge will not apply; the company will be entitled to claim credit for input tax on any VAT charged by the supplier of services and may make a claim for repayment thereof in accordance with Section 24 of the Value Added Tax Act.

(iii) where the repairs are done outside Mauritius and to the extent that they are not utilized in Mauritius, the repairs will be outside the scope of VAT.

VATR 81

Facts

B – ("the Company") is a private company incorporated in Mauritius and is involved in the construction industry, hiring of plant and machinery and civil engineering projects. The Company holds a Grade A Category of construction license issued by the Construction Industry Development Board.

The Company has entered into a contract with C for the construction of an office for a final agreed amount of Rs 257M. However, in the execution of the project, the Company has not been able to meet the deadline set for its completion. Accordingly, in line with the clause set out in the conditions of contract, damages termed as "Liquidated and Ascertained Damages" - (LAD) is applicable. The Company was therefore liable to pay Rs 10M as LAD.

Point at issue

Whether in case the final agreed amount of the contract duly certified by the Project Consultants amounts to Rs 257M, VAT should be applied on the amount of Rs 257M or on the amount of the contract after deducting the LAD of Rs 10M, i.e Rs 247M?

Ruling

The value of the taxable supply of the Company in respect of the above contract is, in accordance with Section 12 of the Value Added Tax Act, the agreed contract value of Rs 257M. VAT should therefore be charged on the amount of Rs 257M, before deduction of the LAD.

VATR 82

Facts

S is incorporated in Mauritius as a domestic company. It will import goods from a supplier in Brazil and will consign these goods directly to its client in China without going through the circuit of the Mauritian Customs control.

S will pay its supplier in Brazil by bank transfer from its Mauritian bank account and in turn, it will issue invoices to the client in China. The latter will pay S by bank transfer into its Mauritian bank account.

Points at Issue

1. Whether the supply of goods by S to its client in China will be a zero-rated supply or outside the scope of VAT?
2. In case the supply of the goods will be zero-rated, whether the S will be entitled to take credit for any amount of VAT suffered and claim repayment thereof?

Ruling

On the basis of information provided, it is confirmed that:

1. as the goods will be exported directly from Brazil to the client in China, the supply will be outside the scope of VAT in Mauritius ; and
2. S will therefore not be entitled to any credit for input tax attributable to the above supply.

VATR 83

Facts

R holds a Category1 Global Business Licence and it conducts re-insurance business by virtue of the Professional Reinsurer Licence granted by the Financial Services Commission pursuant to Section 11 of the Insurance Act 2005. R provides re-insurance services exclusively to companies outside Mauritius in accordance with the conditions of its Global Business Licence.

Point at Issue

Whether the supply of the re-insurance services made by R is a zero-rated supply falling under item 6(a) of the Fifth Schedule to the VAT Act?

Ruling

On the basis of information provided and on the understanding that the services are being provided from Mauritius, it is confirmed that the supply of the re-insurance services is zero-rated in accordance with the provisions in item 6(a) of the Fifth Schedule to the VAT Act as it is being made by R to persons who belong in a country other than Mauritius and who are outside Mauritius at the time the services are performed.

VATR 84

Facts

N will be the promoter of an external pension scheme ("EPS") under the Private Pension Schemes Act 2012 ("PSSA 2012"). In that respect, an EPS application shall be made in accordance with Section 12 of the PPSA 2012. Pursuant to Section 9 of the aforesaid Act, the EPS shall hold a Category 1 Global Business Licence ("GBL") under the Financial Services Act 2007 ("FSA 2007").

The EPS will be established as a trust under the Trusts Act 2001 ("TA 2001") with Mauritian trustees. A Pension Scheme Administrator licensed by the FSC under Part IV of the FSA 2007 will be established in Mauritius employing Mauritian based individuals, and the membership of the EPS will be confined to non-residents whose economic activities are wholly outside Mauritius. Individuals who would advance funds to the EPS will be individuals who will not be tax resident in Mauritius. The EPS will also provide pension benefits (comprising pensions/annuities/lump sum benefits) to non-residents and/or their beneficiaries on retirement, disability or death, as the case may be.

The EPS will be a defined contribution scheme within the provisions of the PPSA 2012 offering membership to non-resident members who may be either employed or self-employed, and whose membership will not be sponsored by their employers. The EPS will not be comparable to a conventional occupational pension scheme. It will also not be a superannuation fund set up for the benefits of employees of a Mauritian employer.

The EPS will accept contributions from non-resident members and pay pension benefits to non-resident members and /or their beneficiaries on retirement, disability or death, as the case may be. To this extent, the EPS will accept capital contributions from non-resident employees and contributions for the benefit of non-resident members from their employers and the latter may or may not be resident in Mauritius. It will also accept transfers from existing non-resident pension plans for the benefit of its non-resident members.

The EPS will invest member's contribution in global investments comprising deposits, shares, bonds, debentures, collective investment schemes and similar global securities. The investments will accordingly be invested internationally.

The effective place of management of the EPS and the Mauritian pension administrator will be in Mauritius.

Point at issue

Whether the EPS will be liable to register and account for Value Added Tax under the Value Added Tax Act 1998?

Ruling

On the basis of the facts mentioned above, it is confirmed that as the management of investment funds and of pension funds is an exempt supply by virtue of item 50(e) of First Schedule to the Value Added Tax, the EPS will not be liable to apply for VAT registration.

VATR 85

Facts

H holds a Global Business Licence and a Global Treasury Activities Licence issued by the Financial Services Commission of Mauritius.

H forms part of the P group of companies which is an integrated financial services group providing a comprehensive range of products and services to the South African market and niche products in certain international markets.

H is a platform for holding hard currency loans to sub-Saharan Africa clients, sourced by the P Group entities, as well as selling down portions of these loans into secondary market as and when required. It also undertakes global treasury activities.

H has sufficient resources in Mauritius to enable it to provide services to entities outside Mauritius since its executive management team is supported by 3 full-time employees.

Points at issue

1. Whether income of H for the services rendered to entities outside of Mauritius will be zero rated in terms of Section 11 and Item 6 of the Fifth Schedule of the VAT Act?
2. Whether H may register for VAT in terms of Section 15 of the VAT Act?
3. Whether upon VAT registration, H may make a claim of repayment for allowable input tax in terms of Section 24 of the VAT Act?

Ruling

On the basis of information provided, it is confirmed that -

1. The supplies made by H to entities outside of Mauritius are zero rated by virtue of Section 11 and Item 6(a) of the Fifth Schedule to the VAT Act.
2. Since the turnover is made up of exclusively of zero rated supplies, H may opt to apply for registration under Section 15 of the VAT Act.
3. Upon registration, H may make a claim for repayment for allowable input tax under Section 24 (2) of the VAT Act.

(Rec. No. 18/144821)

VATR 86

Facts

B, a company incorporated in Mauritius has received an order from D, a company based in Zimbabwe. Owing to foreign exchange controls in Zimbabwe, D has suggested that the order be channelled through M.

M currently holds a Category 1 Global Business Licence under the Financial Services Act and forms part of the same group of companies as D. M will report each transaction as a purchase of goods from B and a corresponding sale to D but the goods will not be subject to any process by M.

For purposes of the Bill of Lading, the shipper and the consignee will be B and D respectively. The terms of the shipment will be Free on Board. The goods will leave the warehouse of B and will be loaded directly to a ship such that M will not take any physical possession of the goods. However, on the Customs declaration, M will appear as the exporter and D will be the importer.

B will receive cash from M and the trade debt of M will be settled by its holding company. D and M have certain financial arrangements whereby the trade debt of D from M will be settled over a period of time.

Point at issue

Whether the sales made by the company to M will be subject to VAT at zero-rate?

Ruling

Based on the above facts, B will be selling goods to M, a company incorporated in Mauritius. The supply of goods by B to M will not fall within the ambit of Item 1 of the Fifth Schedule to the VAT Act as the supply will not constitute goods exported from Mauritius under Customs control. Therefore, the supply will be subject to VAT at standard rate.

VATR 87

Facts

C, a private domestic company is a subsidiary of B, a French entity.

The current business activity of C is the provision of IT support services, administrative support and project management services to related entities within D only, including Mauritian related entities of C. No service is rendered to any unrelated parties. The IT support service is provided by C to D on behalf of B. C invoices B directly for the IT services rendered to the entities in D and B reallocates the fees to the entities as appropriate. However, the invoices for the other services are issued directly by C to the related entities. Service fees charged to the related entities are determined at cost plus 5% mark up on operational cost. Services rendered to Mauritian entities represent less than 5% of the total services rendered to the D and can be tracked from available records/software used. The annual turnover of taxable supplies is likely to exceed.rupees 6 million.

C carries out its activities from Mauritius and it locally employs the appropriate personnel with the relevant qualification and experience to be able to provide such services.

It also rents an office, incurs operating expenses such as audit fees, accounting and tax fees, parking fees, etc. on which VAT is charged by VAT registered service providers.

Points at issue

1. Whether the supply of services by C to the foreign entities is a zero-rated supply?
2. Whether the supply of services by C to Mauritian entities is a standard rated supply (i.e. liable to VAT at 15%)?
3. Whether C can register for VAT purposes and claim repayment for any input VAT incurred?
4. Whether VAT at the rate of 15% is applicable on 5% mark-up only or total fees charged to the local entities.

Ruling

On the basis of facts mentioned above,

1. The supply of services by C to the foreign entities is zero-rated by virtue of section 11 and Item 6(a) of the Fifth Schedule to the Value Added Tax Act.
2. The supply of services made by C to Mauritian entities including services rendered to Mauritian entities and invoiced directly to B, is a supply of services performed and utilised in Mauritius and is therefore subject to VAT at 15%.
3. Since the turnover of taxable supplies is likely to exceed rupees 6 million, C is liable to register for VAT under section 15 of the VAT Act. As C is mainly engaged in zero-rated supplies, it may make a claim for repayment of any excess input tax in accordance with section 24(4) of the VAT Act.
4. VAT at the rate of 15% is applicable on the total fee charged in respect of the local entities.

VATR 88

Facts

L was incorporated in Mauritius and it holds a Global Business Licence ("GBL"). L is wholly owned by G, a French entity.

The business activity of L is to provide payroll management services to the subsidiaries of H operating in Africa, including C, holder of a Global Business Licence. Services rendered to foreign entities represents around 90% of the business activity of L. L manages the payroll of the Group subsidiaries and recharges the salaries/social contributions paid on their behalf with a mark-up of 5% of its operational expenses to those companies. The main source of income of L is in the form of service fees received from the provision of payroll management services. The annual turnover is likely to exceed rupees 6 million.

L carries out its core income generating activities from Mauritius and it employs local staff to carry out these payroll management activities.

It also rents an office, incurs operating expenses such as audit fees, accounting and tax fees, parking fees, etc. on which VAT is charged by VAT registered service providers.

Points at issue

1. Whether the supply of services by L to the foreign entities in Africa is a zero-rated supply?
2. Whether the supply of services by L to C is also a zero-rated supply?
3. Whether L can register for VAT purposes?
4. Whether L can claim repayment for any input VAT incurred?
5. Whether VAT of 15% is applicable on the 5% mark-up only or total fees charged in respect of the local entities?

Ruling

On the basis of facts mentioned above,

1. The supply of services by L to the foreign entities in Africa is zero-rated by virtue of Section 11 and Item 6(a) of the Fifth Schedule to the VAT Act.
2. The supply of services by L to C is zero rated provided that the latter is engaged in providing services to foreign entities.
3. Since the turnover of taxable supplies is likely to exceed rupees 6 million, L is liable to register for VAT under section 15 of the VAT Act.
4. As L is mainly engaged in zero-rated supplies, it may make a claim for repayment of any excess input tax in accordance with section 24(4) of the VAT Act.
5. VAT at the rate of 15% is applicable on the total fee charged to the local entities.

VATR 89

Facts

Z was incorporated in Mauritius under the Companies Act 2001 as a private company limited by shares and it holds a Category 1 Global Business Licence issued by the Financial Services Commission. The principal business activity of Z is investment holding.

Z is currently contemplating an extension of its business activities to carry out trading in physical gold. The physical gold products can be in casted bar format, minted bar format or gold grains with a purity level of at least 99.5%.

Z will purchase the gold products from its related parties, T or N. The gold purchased will be sold, either in whole or in fractions, to third-party entities and/or financial services groups which have presence in several countries across the world, including Mauritius (collectively "**M Co**").

M Co will in turn, sell the gold products, either in whole or in fractions, to the end-clients who may be located anywhere in the world.

In general there will not be any inventory maintained by Z, either in Mauritius or elsewhere, since every gold sale transaction will be hedged instantaneously (apart from certain instances where a small inventory is held until the hedge occurs).

The sales of the gold products (or any fraction thereof) will normally not entail any physical delivery and, in practice, the gold products will never leave T or N's custody in Switzerland. The end-clients are expected to hold their respective gold portfolios in electronic form, with T or N acting as the underlying custodian. In particular, the gold products will normally not be imported into or enter Mauritius at any point in time. However, in certain remote instances, at the specific client's request, such gold products may be required to be physically delivered to the client.

The current potential customer of Z is G and the name of the Mauritius entity within the G is H, incorporated in Mauritius.

Points at issue

(1) Whether the gold trading transactions between Z and M Co (be it M Co Mauritius company or foreign companies), to the extent that there is no physical delivery of

gold into Mauritius or from Mauritius (i.e. the gold will not be transacted through Mauritius Customs) will be outside the scope of VAT in Mauritius?

(2) Whether the gold trading transactions between Z and M Co (in this case M Co Mauritius company) involving physical importation of gold into Mauritius by Z and sale within Mauritius will constitute exempt supplies?

(3) Whether Z will be required to register for VAT in Mauritius as a result of the contemplated gold trading transactions?

(4) Whether Z can voluntarily register for VAT in Mauritius as a result of its gold trading activities and be entitled to claim credit for input VAT suffered?

Ruling

On the basis of the facts mentioned above, it is confirmed that –

(1) gold trading transactions, where there is no physical delivery of gold into Mauritius or from Mauritius, is outside the scope of VAT in Mauritius by virtue of section 9 of the VAT Act.

(2) gold trading transactions involving physical importation of gold into Mauritius will constitute exempt supply in acccordance with item 52 of the First Schedule to the VAT Act.

(3) Z will not be liable to register for VAT as its supplies will either be exempt or outside the scope of VAT.

(4) Z will not be entitled to apply for voluntary registration and claim credit for input tax as its supplies will either be exempt or outside the scope of VAT.

VATR 90

Facts

X provides discounts to its subscribers in order not to lose business opportunities. These discounts are given after taking into consideration the following:

- the loyalty of the subscribers and the total value of purchases;
- the contract period (higher discount for longer term contracts); and
- segment of the market.

Currently X is charging VAT on the gross amount of sales (amount before discount).

Point at issue

Whether in accordance with section 12(2) of the Value Added Tax Act, X is allowed to charge VAT on the amount net of discount instead of the gross sales value?

Ruling

On the basis of facts mentioned above, it is confirmed that VAT is chargeable on discounted price provided that such discount is granted to all subscribers meeting the criteria laid down for the said discount.

VATR 91

Facts

C prepaid subscribers can recharge their account through Epin, C Scratch Cards, ATM Recharge, SMS Top-up and Online Recharge. Epin is an exclusive and paperless recharging facility for C prepaid subscribers. It allows instant recharge of prepaid accounts.

C has entered into a "Freelance Distribution Agreement" with freelancers for the sales/distribution of its products and services to its retailer network. The distribution of Epin is done through the freelancers.

Epin is sold in units of Rs 500 excluding VAT. VAT invoice is raised at the time of the sales to freelancers and the VAT amount is remitted to MRA. The sales value is treated as deferred revenue. The amount of Epin purchased is duly transferred in the freelancer's Epin wallet inclusive of VAT.

On sales of Epin to the retailer, the freelancer transfers the equivalent amount inclusive of VAT to the retailer's Epin wallet. The Epin is then sold to C's prepaid subscribers in different denominations. The amount sold is deducted from the retailer's wallet, the equivalent amount (exclusive of VAT) is credited in the prepaid subscriber's wallet and the deferred revenue recognised as revenue by C.

Currently, C postpaid subscribers can pay their postpaid bills at C's showrooms, through direct debit, internet and online payments and at post offices.

C's showrooms are located at 22 strategic points across Mauritius and Rodrigues. During month end period, postpaid subscribers have to queue up at showrooms to pay their bills which is very time consuming and inconvenient for them.

C currently has more than 4,000 Epin selling outlets and they are within the proximity of the subscribers. In order to facilitate the payment of postpaid bills, C proposes to use its Epin retailer network to enable subscribers to pay their bills at their convenience without having to travel long distances.

For the purpose of paying the amount on his postpaid bill, the subscriber will give his mobile number and tender the amount payable to the retailer. The retailer will use the specific menu available on his epin device to input the mobile number and the amount paid. He will then submit the transaction to C. Upon successful completion of the transaction, both the retailer

and the subscriber will receive automatic sms notifications from C's system. The subscriber will also receive instantaneously an e-receipt on his mobile via sms once the payment is processed. Processing of the payment is done in real time. C's billing system will be updated automatically with the payment received from the subscriber and the balance of the retailer's wallet will be reduced by the corresponding amount of the payment.

Point at issue

Whether C can adjust its taxable supplies and the corresponding VAT amount with respect to Epin being used for payment of bills?

Ruling

On the basis of facts mentioned above, it is confirmed that C can adjust its taxable supplies and the corresponding VAT amount on settlement of the postpaid bill through Epin by the subscriber provided that appropriate records are kept in support of the transactions.

(Rec. No. 18/464466)

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VATR 92

Facts

S was incorporated on 22 February 2013 in Mauritius as a domestic company with its central management and control in Mauritius. S is tax resident and VAT-registered in Mauritius.

S is held by T, a company incorporated in the British Virgin Islands, and ultimately held by G, a company based in Jersey having tax residency in the UK. G is engaged in the provision of online payment solutions.

S is engaged in the information technology sector and mainly performs research and development (**"R&D"**) activities related to online payment solutions for G. S currently has 83 employees who have been involved in the development of the Third Party Processing (**"TPP"**) software in the prior years and now assist with ongoing maintenance, updates and integrations in respect of the platform to be able to comply with regulations but also meet the demands of merchants.

In 2018, G implemented a group wide change to their accounting policies under the IFRS accounting standards. These accounting standards allow for the costs incurred to develop internal-use software to be capitalised to the extent the benefit will be delivered over a number of years. The software platform is the result of the joint R&D activities of S and R. Accordingly, the identified software platform development costs incurred in Mauritius have been capitalised in the books of S. S has claimed annual capital allowance on the capitalised intangible asset at the rate of 5% on cost.

The market value of the Mauritius IP is in the range of USD 35m – USD 50m, and the intangible assets will be transferred at book value.

S has not made any disposal of the Mauritius IP as of date

G is undertaking a restructuring project seeking to simplify its international IP strategy in order to own all IP in one territory and has therefore decided that it will transfer all IP that is currently owned outside the United Kingdom to the United Kingdom.

As part of the restructuring, a new entity of the Group, R will be set up in the UK and intends to acquire the business of S including a software platform ("Mauritius IP/intangible asset") partly developed in Mauritius.

The proposed transfer of the Mauritius IP is mainly driven by the fact that most of the technological development is now being led out of the UK from where the future ongoing development and exploitation of the IP will be led from. Also, the most senior resources of G are based in the UK and the workforce based in the UK is several times that of S. G has slowly built a strong presence in Europe during the past years and found that they have access to both a greater pool of potential customers and skilled workforce in Europe to further drive their growth as a technology company.

At the time of acquisition of the Mauritius IP from S, R will neither have a taxable presence nor a permanent establishment in Mauritius. The transfer of the IP will legally take place at net book value.

R will register a branch in Mauritius, in the future to further support its R&D activities after employees are transferred from S to R. In other words, the Mauritius Branch will act as an R&D centre and shall provide R&D service to its head office in the UK. Depending on future needs and success of Mauritian operation, the Mauritius Branch may also provide R&D services to other non-resident sister companies in the future.

The Mauritius Branch of the UK-headquartered entity will be remunerated at arm's length and its remuneration is likely to exceed MUR 6m annually.

Points at issue

1. Whether the transfer of the IP will be considered as a supply of services to its UK headquarter in accordance with the Third Schedule of the VAT Act and a zero-rated supply in accordance with item 6(a) of the Fifth Schedule of the VAT Act?
2. Whether R&D services within the same legal entity from a branch to its head office (i.e. from the Mauritius Branch to R) is considered a taxable supply or should be considered as outside of scope of VAT Act?
3. Whether the Mauritius Branch will be bound to register for VAT at the time future R&D services will be provided to non-resident sister companies?

Ruling

On the basis of the facts mentioned above -

1. the transfer of the IP is:-

    a. a transfer of service in accordance with item 12 of the Third Schedule to the VAT Act; and

    b. zero-rated in accordance with item 6 (a) of the Fifth Schedule to the VAT Act.

2. services from a branch to its head office is outside the scope of the VAT Act;

3. the supply of R&D services by U to its non-resident sister companies is a zero rated supply and U shall not be bound to apply for registration by virtue of section 15 (3) of the VAT Act.

VATR 93

Facts

D operates as a hotel and it has been granted five contract car licences by the National Land Transport Authority on 20 March 2020 to operate five cars from Pereybere.

Points at issue

Whether upon purchase of motor cars to be used for renting purposes, in line with the provisions in section 24 of the Value Added Tax Act, D can make a claim for repayment of the VAT charged to D by the car dealer?

Ruling

On the basis of the facts mentioned above, it is noted that D will be also engaged in car rental business. As such, it will be entitled to take credit for input tax suffered on the purchase of the motor cars used exclusively in the car rental business in accordance with sub-sections (1), (2) and (12) of section 21 of the Value Added Tax Act. It is confirmed that D may make a claim for repayment of the excess input tax by virtue of section 24(1) of the above Act. The claim will be processed in accordance with section 24(1A) of the said Act.

VATR 94

Facts

G is a company resident in Singapore. It has entered into a contract with the owner of of a ship for salvage following its grounding in the South East of Mauritius. The owner is a company resident in Japan. For the purpose of the salvage, G has entered into a verbal leasing agreement for the hire of manned helicopters from X in Mauritius. The helicopters are used for the transport of persons from the mainland to the place where the ship is grounded. The rental is based on the number of hours of flight and the maintenance cost of the helicopters.

Points at issue

1. Whether the leasing of helicopters by X is an exempt supply as per item 38 of the First Schedule to the VAT Act?
2. Whether the leasing of helicopters by X to G is a zero-rated supply?
3. In the event the supply is both exempt and zero-rated, whether it can be confirmed that zero-rated supply takes precedence over exempt supply?

Ruling

Based on the facts mentioned above:-

(1) The supply of helicopter services by X to G does not fall within the ambit of item 38 of the First Schedule to the VAT Act and is therefore a taxable supply.

(2) X is providing a service to G which in turn is providing a service in Mauritius to a company resident in Japan. G is therefore a taxable person in Mauritius and the supply made by X to G is taxable at standard rate.

VATR 95

Facts

P, a domestic company incorporated on 26 May 2016, is currently the sole shareholder of Q, holder of a GBL-CIS Manager licence. As the Financial Services Commission requires a company to have an unimpaired equity base, P could not apply for GBL licence due the significant losses it incurred from the years 2016 to 2018.

Q acts as the manager and offers investment management services to R which is a GBC1 closed end fund, sub-categorised as a professional collective investment scheme. R is structured as a limited partnership and its general partner is Q. R will make growth equity and related investments in the industrial ecosystem across Africa.

Prior to the incorporation of R in 2018, P incurred substantial expenses to the tune of USD 3.7M in the years 2016 and 2017 to promote R structure, secure foreign investors and find investment opportunities outside Mauritius. All expenses of P were made for the purpose of launching R and allow Q to secure a regular stream of revenue.

P is in the process of applying for a GBL licence and is contemplating to recharge part or all expenses incurred to set up R to Q.

Points at issue

1) Whether the recharge of expenses incurred to set up R from P to Q upon being granted a GBL licence will be subject to VAT?

2) In the event P does not apply for a GBL licence, whether the recharge to Q of the expenses incurred by P to set up R will be subject to VAT?

Ruling

On the basis of the facts mentioned above, it is noted that P is not making any supply of services to Q. Therefore, the recharging to Q of expenses incurred by P is outside the scope of VAT.

VATR 96

Facts

M is a VAT-registered domestic company, incorporated and domiciled in Mauritius. It is engaged in water engineering consulting services and project management including works supervision and technical assistance. M is a wholly owned subsidiary of N, a company incorporated and domiciled in France. Both the holding and subsidiary company are in the same line of business.

M has been awarded a contract as the sub-consultant from D, a domestic company with regard to the Cap Marina project in providing consulting engineering services. Besides, its own local employees on its payroll does, for the purpose of executing the contract, hire the local services of consultants (mainly engineers) who are resident in Mauritius and also the services of its foreign holding company, N.

The scope of the work does entail both the physical presence of the employees of N in Mauritius for the proper execution of the work and also off-site work, that is work handled in the Office in France. The employees will be present in Mauritius for over 183 days.

Accordingly, N does send its own engineers and technicians to Mauritius for the relevant tasks involved. These employees are remunerated in France by N. There is no formal arrangement or contract between M and N; the latter owns 100% shares of the former. M has been set up mainly to tap the local market and that of the Indian ocean region.

N is to charge a fee for services rendered to M. The former is to also charge a management fee to the latter. Being the holding company, N is to provide financial assistance to M as and when required by way of inter-company loan with a reasonable rate of interest.

Points at issue

1. Whether N is to charge VAT to M for services rendered?
2. Does the place where the services are provided to M have any relevance to the obligation to charge VAT, that is, services in the office in France (online

services/design and the like) and physical presence in Mauritius (supervisory activities, for example) ?

Ruling

On the basis of information provided, it is ruled that –

1. As N sends its engineers and technicians to provide services to M, N is a taxable person making taxable supply in Mauritius in the course or furtherance of its business. It will have to apply for VAT registration and upon its registration, it will have to charge VAT on the services rendered to M.

2. To the extent, the services rendered by N to M are from outside Mauritius, that is, its office in France, the reverse charge mechanism shall be applied by M pursuant to section 14 of the VAT Act. Under this provision, it will be deemed as if M had itself supplied the services in Mauritius and that supply were a taxable supply. Consequently, M may claim the VAT on the supply of the services as input tax in accordance with section 21 of the VAT Act.

   As regard the services that will be provided by the engineers and technicians of N who will be physically present in Mauritius, N will have to register as a VAT-registered person in Mauritius by virtue of section 15(2)(i) of the VAT Act and charge VAT on those services rendered to M.

VATR 97

Facts

R is a company incorporated in Mauritius. It was initially engaged in the construction and sale of villas for residential purposes in the Integrated Resort Scheme (**"IRS"**) project. On the basis of a letter of intent obtained by R from the Board of Investment and other explanations provided, on 8 March 2007 the Mauritius Revenue Authority informed R that R was deemed to have obtained the letter of intent prior to 1 October 2006 and therefore the construction of the villas would qualify for the exemption provided under item 65 of the First Schedule to the VAT Act.

Currently R is not registered for VAT.

As some plots under the IRS project are yet to be sold, R will continue with its initial business activity, that is the sale of the available plots under the IRS project.

R is now also considering to extend its business activities as property agent. As an agent, R will deal -

(a) directly with local clients (individuals) for the sale of villas owned by the clients;

(b) with foreign agents who will refer foreign clients (individuals) to R for the sale of their villas; and

(c) with local agents who will refer local or foreign clients to R for the sale of their villas.

Points at issue

(1) Whether the letter of intent will still stand despite R is extending its business activity?

(2) Whether the supply of sales agency service by R to the foreign agents is a zero-rated supply?

(3) Whether the supply of sales service by R to the local clients or to local agents is a standard-rated supply and whether where it exceeds or is likely to exceed Rs 6m, R will have to apply for VAT registration ?

(4) Whether upon VAT registration, R will have to apply reverse charge mechanism on invoices received from foreign agents for clients referral?

(5) Whether R can apply for an alternative basis of apportionment of input VAT given the current basis leads to unfair input VAT credit entitlement?

Ruling

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

(1) As R is deemed to have received a letter of intent prior to 1st October 2006, it is exempted from payment of VAT on the construction of IRS villas under item 65 of the First Schedule to the VAT Act. Moreover, the sale of plots under the said scheme will be an exempt supply under item 48 of the First Schedule to the VAT Act.

(2) The supply of sales agency service by R to foreign agents is zero- rated supply by virtue of item 6(a) of the Fifth Schedule to the VAT Act.

(3) The supply of sales service by R to local clients or to local agents is a standard-rated supply and R has to apply for compulsory registration by virtue of section 15 (2)(i) and item 12 of the Part I of the Tenth Schedule to the VAT Act.

(4) The reverse charge mechanism shall be applied on services received from foreign agents by R upon its registration as a VAT registered person.

(5) For the purposes of section 21(3)(d) of the VAT Act, R can apply for an alternative basis of apportionment of input tax under Regulation 8A of the VAT Regulations 1998, where having regard to the nature of business, the apportionment of input tax in accordance with section 21(3(b) is not fair and reasonable.

VATR 98

Facts

D is a domestic company engaged in international trading which involves buying and selling of goods overseas without the goods coming into Mauritius or passing through Customs control in Mauritius.

F is another domestic company in Mauritius. It holds a scrap metal exporter licence obtained from the Ministry of Commerce and Industry. As a holder of this special licence, F is authorised to export scrap metal from Mauritius.

D is not holder of a scrap metal licence.

D and F are related companies as some shareholders are common. Both companies are registered for VAT.

D has received an order from a client in India for the supply of scrap metal. D will buy these scrap metal from F to be export to its client in India.

As D is not authorised to export scrap metal, F will export the scrap metal on behalf of D to D's client in India. For the purpose of the export and Customs declaration, F will be the exporter.

F will invoice D for the goods once the Customs export declaration procedures have been completed.

In its books, D will account as purchases the goods purchased locally from F, and the goods sold overseas in India as export sales.

Point at issue

(1) Whether F should charge VAT to D on the goods exported to India on behalf of D? In the affirmative, whether D may make a claim for repayment of the input VAT on ground that the goods are exports by D?

Ruling

On the basis of the facts mentioned above and provided that D is duly authorised to deal in scrap metal, it is ruled that -

As F and D are VAT registered persons, F must charge VAT at standard rate on the sales made to D. D will be entitled to take credit for input tax against output tax in respect of the VAT invoice raised by F. All goods exported from Mauritius under Customs control are zero-rated by virtue of item 1 of the Fifth Schedule to the VAT Act. However, as D will not be the exporter, it will not qualify to make a claim for repayment of the whole or part of any excess amount in accordance with section 24(4)(a) of the Value Added Tax Act.

VATR 99

Facts

Q is engaged in the construction and operation of a world- class oceanarium.

Q has been granted a Registration Certificate by the Board of Investment under the Investment Promotion Act for the purpose of carrying out and operating a world class aquarium. The project value of the oceanarium exceeds Rs 400 million. Q is VAT registered.

The mission of Q is, through continuous sharing of knowledge and stimulation of public awareness, to nurture a caring, loving and respectful culture towards the aquatic environment so as to develop in every citizen a natural inclination and readiness for safeguarding and protecting it from degradation. In other words, making people learn to better love and protect the aquatic environment.

Once in operation, Q shall derive its revenue from the following specific streams:

Entrance fees

Entrance fees shall be charged to the public at the ticketing counter of the oceanarium or online on Q's website. Each visitor shall be issued an entrance ticket against payment of an entrance fee. The value of the entrance fee charged will depend on following factors:

Age group of visitors e.g. kids, adults, senior citizens etc;

Special group visits e.g. students, NGOs, senior citizens, clubs etc; and

Special discount on online purchases.

The 8 different types of entrance fees which will be offered by Q are hereunder labelled as A to H:

Entrance Fee offer A	**It is just the normal visit.**
Entrance Fee offer B	**It is the normal visit, but with a free guide to accompany the visitor across the visit from start to finish. No additional charge during visit.**

Entrance Fee offer C	**It is the normal visit during which the visitor will be accompanied through the "back of the house" e.g machine room etc, with a free guide for relevant explanations. No additional charge during visit.**
Entrance Fee offer D	**It is the normal visit during which the visitor will be allowed to step inside one of the outdoor pools in presence of a biologist for interactions with the sharks and explanations. No additional charge during visit.**
Entrance Fee offer E	**It is a special evening visit following which a group of visitors are allowed to spend a night at the oceanarium under supervision. No additional charge during activity.**
Entrance Fee offer F	**It is a nornal visit during which the visitor will be accompanied through the back of the house and will also be allowed to step inside one of the outdoor pools in the presence of a biologist for interaction with sharks and explanations.** **No additional charge during activity.**
Entrance Fee offer G	**It is a full package including a free guided tour, the back of the house visit and the encounter with the sharks. No additional charge during visit.**
Entrance Fee offer H	**It is a special offer which provides the visitor with an Annual Pass giving him/her the possibility of undertaking a "normal visit" to the aquarium as often as he/she wishes during a period of 12 months. No additional charge.**

Food and Beverages service

The oceanarium has a permanent outdoor food counter which will sell refreshments, food and beverages, to its visitors. Q has subcontracted this operation to an independent professional caterer. The latter shall pay to Q a monthly fee calculated on the basis of a fixed amount plus a percentage of food and beverages turnover.

Souvenir photos

Q will operate a photo booth and will sell souvenir photos to the oceanarium's visitors at a determined price. The revenue derived by Q will be from the sale of photos.

Events on site

Q will host different events at the oceanarium, including conferences, workshops, team building sessions, receptions and banquets. Q will derive revenue from such events through rental of the oceanarium's facilities and /or a percentage of the food and beverages turnover of the food and beverages service provider whenever applicable.

Membership programs

Q will offer to the public the possibility of subscribing to membership programs. Such membership programs shall consist of standing privileges including unlimited personal access to the oceanarium's facilities, participation to special events, discounts at the souvenir shop etc. Q will derive its revenue from the sale of such membership programs.

Souvenir / Gift shop

Q will operate a souvenir shop selling articles to visitors of the oceanarium and to the public at large on a retail basis. The articles will include mainly garments, plush toys, educational books, DVDs and other small articles like mugs, key holders and magnets to name but a few. Q will derive revenue from the sale of such articles.

Points at issue

(1) Whether the entrance fees charged by Q to vistors will be a zero-rated supply?

(2) Whether the monthly fee calculated as a fixed amount plus a percentage of food and beverages turnover paid by the caterer to Q will be subject to VAT at standard rate?

(3) Whether supplies made by Q in respect of the photo booth, events and subscription to membership programs will be subject to VAT at standard rate?

(4) Whether supplies made by Q in the souvenir and gift shop will be subject to VAT at standard rate?

Ruling

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

1) The entrance fee charged by Q to vistors under offer A will be a zero-rated supply for a period of 8 years as from the start of operation of the oceanarium by virtue of item 30 of the Fifth Schedule to the Value Added Tax Act and Regulations 18A of the Value Added Tax Regulations 1998. Any additional amount charged under offers B to H will be subject to VAT at standard rate.

2) The monthly fee calculated as a fixed amount plus a percentage of food and beverages turnover paid by the caterer to Q will be subject to VAT at standard rate.

3) The supplies made by Q in respect of the photo booth, events and subscription to membership programs will be subject to VAT at standard rate.

4) The supplies made by Q in the souvenir and gift shop will be subject to VAT at standard except for printed books and similar printed matter of heading No. 49.01 which are zero-rated in accordance with item 2(i) of the Fifth Schedule to the VAT Act.

VATR 100

Facts

C holds a Global Business Licence issued by the Financial Services Commission. C is registered for VAT. The business activities of C are those of purchase of audio-visual rights from producers/licence holders (**"Licensors"**) and the distribution of same to foreign buyers and also to D.

In accordance with the Licence Agreement between C and the Licensors, C grants the rights to broadcast television programs in return of a licence fee.

In accordance with the Licence Agreement between C and the D, C grants the rights to broadcast programs to D upon payment of a licence fee and material fee. The material fee relates to external hard drive on which the films to be broadcasted are recorded, cost of recording and handed over to the broadcaster by the license holder/producer. It also includes the padded envelope and courier charges for dispatch.

The licence fee payable by C to the Licensors is a proportion of the licence fee received from D.

Point at issue

Whether the supply made by C, namely sale of broadcasting rights to D is subject to VAT?

Ruling

On the basis of the facts provided, it is ruled that the sale of broadcasting rights to D and the supply of the external hard drive on which the films to be broadcasted are recorded are exempt supply by virtue of item 73 of the First Schedule to the VAT Act.