

TR 119

Facts

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

Background facts

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

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

- the CP will be the importer of the passport booklets, passport printing equipment, readers, customized holographic film and ink ribbon. S will have no responsibility whatsoever to deliver any of the components to the CP in Mauritius. In other words, the CP will be responsible for clearing all the items from Customs and pay all taxes and duties on importation;
- the System implemented under the 2004 Contract will continue to be run in Mauritius by the CP/ PIO, and not by S;
- S will have no office or staff in Mauritius to perform any part of the 2011 Contract;
- a three-way Contract (the 2011 Maintenance Contract) is proposed to be signed between S, R Ltd and the CP for the provision of certain spare parts and maintenance and technical support directly to the CP.

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

- R Ltd will be the first-tier supplier of technical support and spares, and S will be the second-tier service provider. Any secondary support by S will be provided online through phone, fax, teleconference and emails;
- if it should be determined by all three parties that a visit by S to R Ltd or CP's principal operating site is necessary, S will agree to make such visit, provided that S will not make more than two short trips per calendar year to Mauritius. Since the secondary support will be provided online, the visit of S's staff to Mauritius and the activities, if any, undertaken by them in Mauritius will be merely auxiliary in nature.
- S will invoice R Ltd directly for any spare parts, online secondary support and for any on-site trips exceeding two.
- R Ltd will be responsible to pay any duties and taxes on any import of spare parts;
- R Ltd will be responsible to account for VAT on any supplies made and pay any taxes on income arising under the (*Maintenance*) Contract.

Point of Issue

- a) Whether S will be subject to income tax in Mauritius on export of goods to the CP under the 2011 Contract?
- b) Whether S will be subject to income tax on income arising from the supply of spares and on online secondary support under the 2011 Maintenance Contract?

Ruling

On the basis of facts submitted, it is confirmed that -

- a) S will not be subject to income tax on the export of goods to the CP under the 2011 Contract, as the activity will not constitute *"income derived from any business carried on wholly or partly in Mauritius"* in accordance with the terms of section 74 (1) (c) of the Income Tax Act.

- b) S will not be subject to income tax on income arising from the supply of spares and on online secondary support under the 2011 Maintenance Contract, as this will not constitute *"income derived from any contract carried on wholly or partly performed in Mauritius"* in accordance with the terms of section 74 (1) (d) of the Income Tax Act.