

TR144

Facts

L is a commercial fishing company in Australia operating a fleet of deep sea fishing vessels.

L is proposing to enter into a joint-venture arrangement ('Joint Venture') with a Mauritius crew partnership ('MU Partnership') for the purposes of their deep sea fishing activities, whereby M would provide crewing services and L, the fishing vessels.

The MU Partnership would have a Managing Partner ('MP') based in Australia and the remaining partners would consist of crew members from Australia, Mauritius, New Zealand and South Africa. The crew members would consist of both physical and corporate bodies.

Under the terms of the Joint Venture, L and the MU Partnership would be entitled to a defined share of catch. Each partner of the MU Partnership would then earn a share of profit based on a percentage of the sales proceeds from the MU Partnership share of the catch less agreed expenses.

The MU Partnership would be responsible solely for the supply of adequately trained and qualified crew to operate and command the vessel, while L would be responsible for the supply and management of the vessel, logistics comprising of offloading of the catch, crew changes, re-fuelling, re-stocking of food and necessary repair work; marketing, administration and accounting. A local independent agent in Mauritius will be subcontracted to handle customs clearance, vessel unloading and loading of the catch onto ship for shipment to customers.

L would operate three fishing vessels, which are all on the Australia Register of Ships and their home port is in Australia. Two of the vessels will fish exclusively in the Australian Fishing Zone and the third vessel will fish predominately in the same Australian Fishing Zone but in addition will do some fishing in international waters.

Points at issue

1. Whether the Joint Venture would be deemed to be non-resident in Mauritius.
2. Whether the MU Partnership would be deemed to be non-resident in Mauritius.
3. Confirmation that L would be deemed to be non-resident in Mauritius.
4. Source of income of the Joint Venture and the MU Partnership.
5. The taxability of the Joint Venture and the MU Partnership in Mauritius.
6. Filing requirements of the Joint Venture, the MU Partnership and non-resident partners of the MU Partnership.

Ruling

1. According to Item 1(c)(ii) of section 73 of the Income Tax Act 1995, a resident société “*includes a société which has at least one associate or associé or gérant resident in Mauritius*”. Since the MU Partnership would have an associate resident in Mauritius, it would therefore qualify as a resident société.
2. Since the MU Partnership would qualify as a resident société, the Joint Venture would also be considered to be a resident società in accordance with Item 1(c)(ii) of section 73 of the Income Tax Act 1995.
3. In accordance with section 73(b) of the Income Tax Act 1995, since L is not incorporated in Mauritius and does not have its central management and control in Mauritius, the company would not be resident in Mauritius.
4. Since the vessel would be operating in Mauritian waters “*for the purposes of offloading the catch, crew changes, re-fuelling, re-stocking of food and undertaking necessary repair work*”, the income derived by the Joint Venture would be treated as Mauritian source in accordance with the relevant provisions of section 74 of the Income Tax Act.
5. The partners of the Joint Venture and the MU Partnership would therefore be liable to tax in Mauritius on their share of income in the Joint Venture and the MU Partnership.
L would be liable to tax on its share of income from the Joint Venture.
6. The Joint Venture and the MU Partnership being considered as resident sociétés, will have to file their returns. The resident and non-resident partners of the MU Partnership will have to file their returns to declare their share of income in the MU Partnership. L will also have to file its return to declare its share of income from the Joint Venture.