

TR 169

Facts

T Ltd is a company engaged in the development and distribution of software solutions. It has a significant number of employees based in Mauritius and all of its clients are currently located abroad. T Ltd forms part of a larger group of companies which are also involved in software development, maintenance and marketing (together the “Group”). In view of the expansion of the Group’s activities (including the development of software by other Group companies which are not resident in Mauritius), T Ltd is looking to restructure the activities in Mauritius such that all the business conducted outside Mauritius are carried out through a company holder of a Category 1 Global Business Licence (hereinafter referred to as “T International”).

With the restructuring, T Ltd will continue to carry out all activities conducted in Mauritius, namely development of software programmes, licensing of software to clients, ongoing (offsite) maintenance of the software and BPO activities.

T Ltd’s revenues will consist of a monthly licence fee for the usage by the client of the software and a monthly maintenance fee for the ongoing servicing of the software in respect of non-BPO activities. As regards its BPO activities, it will receive a one-off implementation fee and a monthly operation fee.

On the other hand, T International will be marketing software abroad in return for an introducer’s fee, payable by the client. Furthermore, T International will be conducting the implementation phase, which consists mainly of the on-site training of the software at the client’s premises.

There will be a tripartite licensing, implementation and servicing agreement between the client, T Ltd and T International which will set out the different fees to be paid by the client to the two companies in respect of non-BPO activities.

All of T International’s revenues will be derived from abroad since all of its clients are resident outside Mauritius.

Point at issue

Whether T International should be able to claim the deemed foreign tax credit on its foreign source income pursuant to regulation 8(3) of the Income Tax (Foreign Tax Credit) Regulations 1996?

Ruling

Given that T International will hold a Category 1 Global Business Licence, it is confirmed that it will be entitled to claim the presumed foreign tax credit under regulation 8(3) of the Income Tax (Foreign Tax Credit) Regulations 1996 on its foreign source income.