

TR 201**Facts**

S is a company registered in Canada and is engaged in gold and base metal minings. Following the merger of S with P, a Jersey based company operating in the same industry, with effect from 1 January 2019, Y was appointed President and Chief Executive Officer ('CEO') of S for the new merged operations.

S currently has operations in Canada, United States of America, Argentina, Chile, Peru, Dominican Republic, Mali, Senegal, Côte d'Ivoire, Democratic Republic of Congo, Zambia, Mozambique, Saudi Arabia and Australia.

S recently incorporated a Mauritius holding company, RRM, to hold certain of its Africa based interests and to remunerate, Y on a month to month basis. It is intended that Y's employment contract, for his role as CEO of S, is to be with RRM which will pay his salary into his offshore account, currently in Jersey. Costs incurred by RRM to accommodate for Y's salary costs will be recharged to S.

Y, who is a South African citizen, currently owns and resides in a house in Mauritius under the Integrated Resort Scheme ('IRS'). The IRS house is Y's permanent place of residence where he and his wife have been residing for the past ten years.

Due to the international nature of his employment, Y travels extensively and returns to Mauritius throughout the year from various countries.

As CEO, Y has ultimate responsibility for the group's operations in all the aforementioned countries and for interfacing with major investors in the key investor markets of Canada, United States and Europe. Consequently, his duties will often be carried out via electronic media across international borders and airports depending on his schedule and travel requirements or whilst returning home to Mauritius.

It is expected that Y will spend approximately one to two months at his home in Mauritius over the course of any tax year. Some of this time will be on annual leave whilst other time will be spent working on various aspects of S's global operations.

Points at issue

1. (a) Whether only the portion of Y's emoluments from Mauritius-based performance will be taxed in Mauritius?
 - (b) Whether emoluments derived by Y (and paid in his Jersey account) from performance of employment duties abroad will be taxable in Mauritius only on remittance.
2. Whether the recharge of Y's salary costs can be made to S at cost?

Ruling

On the basis of facts provided :-

1. It is confirmed that -
 - (a) in accordance with Sections 73 and 74 of the Income Tax Act, Y will be subject to tax on emoluments derived from performance of duties whilst physically in Mauritius. For that purpose, the length of stay includes the date of arrival, date of departure, non-business days and annual leave spent in Mauritius.
 - (b) in accordance with Section 5 of the Income Tax Act, emoluments derived by Y in respect of duties performed abroad and paid in his Jersey account will be taxable in Mauritius only on a remittance basis.
2. The recharge of Y's salary cost made to S must satisfy the arm's length principles in accordance with Section 75 of the Income Tax Act.