

TR 219

Facts

S is a French citizen residing in Mauritius. He is the holder of a residence permit for retired non-citizen issued on 07 December 2018 and which has been renewed until 03 December 2028. He is the owner of an apartment in Mauritius where he resides with his spouse, and which he considers to be his main residence. His two children are living in Mauritius; his son T is the managing director of N and his daughter is the owner of B since 2009. S has been present in Mauritius for more than 183 days during the year ended 30 June 2020.

During the income year ended 30 June 2020, S derived pensions under the French social security legislation and income from immovable property situated in France.

During the coming income year ending 30 June 2021, S will be present in Mauritius for more than 183 days with his spouse and he will continue to derive pensions under the French social security legislation and income from immovable property situated in France.

Points at issue:

1. Whether S would be qualified as a resident in Mauritius during the income year ended 30 June 2020?
2. Whether the pensions paid to S under the French social security legislation in France and income derived from immovable property in France during the income year 30 June 2020 are subject to income tax in Mauritius and whether he will have to file an income tax return in Mauritius for the income year ended 30 June 2020?
3. Whether the pensions under the social security legislation received in France and income derived from immovable property in France during the year ended 30 June 2020 will be subject to income tax in Mauritius when repatriated to Mauritius?
4. Whether S will be qualified as a resident in Mauritius during the income year ending 30 June 2021?
5. Whether the pensions paid to S under the French social security legislation and the income derived from immovable property in France during the income year ending 30 June 2021 will be subject to income tax in Mauritius?

Ruling

On the basis of facts mentioned above,

1. It is confirmed that S would be resident in Mauritius by virtue of section 73 of the Income Tax Act for the income year ended 30 June 2020 as he has been present in Mauritius for more than 183 days. He would also be resident in Mauritius by virtue of Article 4 of the DTAA between Mauritius and the Republic of France as his centre of vital interest is in Mauritius. As a resident he will be entitled to the treaty benefits under Article 1 of the DTAA.
2. In accordance with Article 18 of the DTAA, pensions paid to S under the French social security legislation are taxable only in France. Therefore, the pensions paid to S under the French social security legislation during the income year ended 30 June 2020 will not be subject to income tax in Mauritius.

In the event that S has paid income tax in France on his income derived from immovable property situated in France during the income year ended 30 June 2020, such income will be exempt from income tax in Mauritius under Article 24 of the DTAA between the Republic of France and Mauritius.

However, S will be required to file an annual return of income in Mauritius in accordance with section 113 of the Income Tax Act.

3. Pensions derived by S under the French social security legislation will not be taxable in Mauritius when remitted to Mauritius.

Income from immovable property situated in France will be exempted in Mauritius when remitted, provided that it has been subject to tax in France.

4. S will be considered to be resident in Mauritius for the year ending 30 June 2021 as well for the same reasons as per paragraph 1 above.
5. Paragraph 2 above will equally apply to the pensions paid to S under the social security legislation in France and the income derived from immovable property in France during the income year ending 30 June 2021.