

Facts

X is a domestic company incorporated and domiciled in Mauritius. It is engaged in water engineering consulting services and project management including works supervision and technical assistance. X is a wholly owned subsidiary of Y, a company incorporated and domiciled in France. Both the holding and subsidiary company are in the same line of business.

X has been awarded a contract as the sub-consultant from Z, a domestic company with regard to the M project in providing consulting engineering services. Besides, its own local employees on its payroll X does, for the purpose of executing the contract, hire the local services of consultants (mainly engineers) who are resident in Mauritius and also the services of its foreign holding company, Y.

The scope of the work does entail both the physical presence of the employees of Y in Mauritius for the proper execution of the work and also off-site work, that is work handled in the Office in France. The employees will be present in Mauritius for over 183 days.

Accordingly, Y does send its own engineers and technicians to Mauritius for the relevant tasks involved. These employees are remunerated in France by Y. There is no formal arrangement or contract between X and Y; the latter owns 100% shares of the former. X has been set up mainly to tap the local market and that of the Indian Ocean region.

Y is to charge a fee for services rendered to X. The former is to also charge a management fee to the latter. Being the holding company, Y is to provide financial assistance to X as and when required by way of inter-company loan with a reasonable rate of interest.

Points at issue

1. Whether X is to withhold TDS from the payments to Y in connection with:-
 - (i) services as invoiced to X;
 - (ii) loan interest payable on loan from Y and ;
 - (iii) management fees ?
2. Are the employees of Y liable to income tax (i.e. PAYE) in Mauritius given that they will be here for over 183 days?

Ruling

On the basis of information provided, it is ruled that –

1. As the employees of Y will be present in Mauritius for more than 183 days to carry out construction works supervision in Mauritius, Y shall be deemed to have a permanent establishment in Mauritius in accordance with Article 5 (4) of the Avoidance of Double Taxation Agreement between Mauritius and the Republic of France. The profits of Y attributable to its permanent establishment in Mauritius will, in accordance with Article 7 (1) of the Avoidance of Double Taxation Agreement between Mauritius and the Republic of France be subject to income tax in Mauritius.

X is to withhold TDS from any payment of interest and services to Y at the rate 15% and 10% pursuant to section 111B (a)(i) and section 111B(h) respectively of the Income Tax Act.

No TDS is to be withheld on management fees by virtue of section 111B (i) of the Income Tax Act.

2. As the employees of Y will be present in Mauritius for more than 183 days, they will be resident in Mauritius for tax purposes. Those employees would be liable to tax on their emoluments even though paid in France. Y will have to register as an employer and deduct tax under the PAYE system.