

TR 234

Facts

P is a domestic company incorporated in Mauritius. It runs a medical college under the name of Q. P offers the MBBS programme (Bachelor of Medicine, Bachelor of Surgery) which spans over five academic years. P is affiliated with a university in Mauritius. There are currently 388 students who are studying for the MBBS course. Most of the students enrolled for the MBBS course are from foreign countries, mainly from India.

P employs both local and expatriate staffs. Since November 2019, for the purpose of marketing, P has employed Indian representatives in offices in various cities of India, namely Chennai, Bangalore, Hyderabad and New Delhi. P neither owns an office in India nor pays any rent from Mauritius.

All the employees who are working in India are tax resident of India and offer their services to P from India. At no point in time, these employees come to Mauritius for the performance of their duties. P has not made any formal employment contract with the employees but amounts paid to them from Mauritius are directly remitted to them in India each month.

Points at issue

1. Whether the salaries paid to the Indian employees performing works in India for P will be subject to income tax and PAYE in Mauritius?
2. Whether the salaries paid to the Indian employees performing works in India for P will be subject to TDS in Mauritius?
3. Whether P has to declare information and particulars of the Indian employees performing work in India for P for the purpose of the Return of Employees (ROE)?
4. Whether the Indian employees of P working from India will have to file an income tax return in Mauritius?
5. Whether the Indian employees referred to herein-above will be eligible to take credit of any income tax paid in Mauritius while filing their income tax returns in India?

Ruling

On the basis of the facts provided and on the understanding that the Indian representatives are not related to P,

1. The Indian representatives working for the college would not be liable to PAYE in Mauritius.
2. Payments made to the Indian representatives performing marketing services for P in various cities in India will not be subject to TDS in Mauritius. However, such payments will only be allowed as a deduction to P provided they represent reasonable expenses which satisfy fully the conditions laid down in Section 18 of the Income Tax Act.
3. P has no obligation to declare information and particulars of the Indian representatives in the Return of Employees (ROE).
4. The Indian representatives of P working from India will not be required to file an income tax return in Mauritius.
5. In view of the above, the issue of taking credit in India in respect of Mauritius tax does not arise.