

TR259**Facts**

V was incorporated in Mauritius on 29 June 1998 as a private company with liability limited by shares and holding a Global Business Licence ("GBL") issued by the Financial Services Commission ("FSC") in Mauritius. It forms part of W group of companies (the "Group"). V is the ultimate holding company of the Group and is listed on the Johannesburg Stock Exchange ("JSE").

The business activities of V comprise the following:

- (i) Provision of trade financing services to related entities in the Group as well as to third parties;
- (ii) Procurement of goods, essentially for third party clients;
- (iii) Freight and administrative services relating to trade financing, to both Group entities and third parties;
- (iv) Arrangement for financing for related parties as well as third parties; and
- (v) Administrative services to Group entities based in Mauritius.

V currently employs 11 full-time employees based in its physical office in Port Louis, which it shares with other Group entities in Mauritius.

Following the amendments brought to the Workers' Rights Act 2019 ("WRA") and the introduction of the Workers' Rights (Portable Retirement Gratuity Fund) Regulations 2020 ("WRA Regulations"), V is required to make contributions to the Portable Retirement Gratuity Fund ("PRGF") in respect of its employees, on a monthly basis, effective January 2022.

V is also required to pay the PRGF contribution in relation to 'past services' in respect of an employee for the period starting as from 1 January 2020 (or such subsequent date prior to 1 January 2022 on which the employee took employment with V) where the employee's employment is terminated, or the employee resigns, retires or passes away, not later than one month after the date the event occurs.

In addition, where one of the V's employees ceases to be in its employment e.g, the employee resigns, retires or dies, or alternatively the employee's employment with V is terminated, V is legally required to contribute to the PRGF Fund any shortfall in contribution depending on the value of accumulated contributions made by V as of such date and a lump sum amount calculated on the basis of the employee's length of employment with V, effective from the date PRGF became effective, i.e, 1 January 2020 .

Where the contributions are not yet paid, given the legal provisions under the WRA and WRA Regulations, V is required to account for the amounts, in every relevant income year in its financial statements prepared under International Financial Reporting Standards ("IFRS").

Point at issue

Whether the following contributions, either actually paid or required to be booked in its financial statements in any particular income year on the basis of the relevant provisions of the WRA and the WRA Regulations as well as the requirements of IFRS, constitute tax deductible expenses for V in that income year under the Income Tax Act -

- (i) Monthly contribution paid, as from January 2022, in respect of employees on its payroll in the relevant month;
- (ii) Contribution for 'past services' for the period starting 1 January 2020 in respect of employees who were in employment as of such date or any subsequent date prior to 1 January 2022; and
- (iii) Contribution in respect of payments required to be made upon an employee ceasing to be in the employment of V, whether due to termination of employment, resignation, retirement or death?

Ruling

On the basis of the facts provided, it is ruled that:

- (i) Monthly contribution paid as from January 2022 in respect of employees on its payroll is tax deductible expense for V in the income year it is paid.
- (ii) Contribution for 'past services' for the period starting 1 January 2020 in respect of employees who were in employment as of such date or any subsequent date prior to 1 January 2022 required to be booked in its financial statements in any particular income year will not be tax deductible. However, where payment of contribution for 'past services' is made an income year, such contribution may be deducted by V in that income year.
- (iii) Contribution in respect of payments required to be made upon an employee ceasing to be in the employment of V, whether due to termination of employment, resignation, retirement or death, to be booked in its financial statements in any particular income year will not be tax deductible. However on payment of the shortfall in an income year, same may be deducted by V in that income year.