

TR 263

Facts

A is a company incorporated and located in South Africa. It manufactures and sources:

- (i) A branded optical lenses wherein it owns the said Trademark; and
- (ii) other optical lenses brands including B brands, C brands and such other private label branded lenses with third parties' logo or Trade Mark (hereinafter the "Products")

D is a private company incorporated in Mauritius.

Upon signature of a Distribution Agreement and an In-Market Sales Commission Agreement, D will act as the exclusive distributor of A in the territory of Mauritius and will be responsible for the delivery of the Products to optometrists in Mauritius. As per their business model, D will act as the delivery agent of the Products to optometrists in Mauritius. D will act as the delivery agents of the Products to the customers of A in the Mauritian territory. D will not be raising any invoice to the customers of the Products nor will it be collecting any payments on behalf of A.

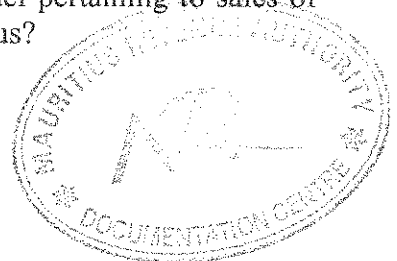
The customers of the Products will be any purchaser in the territory of Mauritius (hereinafter the "Customers") and will include mainly optometrists who will be purchasing the lenses from A for their respective clients. The Customers will effect their payments for the purchase of the Products directly to A via an online platform and the latter will raise invoice to the Customers in its name.

A operates a business model as follows:

- The Customers order lenses from A via D;
- D holds stock of lens consignment in Mauritius which belongs to A;
- D polishes the ordered lens from inventory of the stock consignment prior to delivery to the Customers;
- D dispatches processed lenses to the Customers on behalf of A;
- A raises invoice to Customers for the order;
- The Customers effect their payments to A through digital wallet;
- D will raise an invoice to A on a monthly basis for its services, in terms of its technical support and the distribution of the lenses to the Customers in Mauritius.

Point at issue

1. Whether A can raise invoice to the Customers in Mauritius in its own name for the sales of the Products in respect of the above business model pertaining to sales of products emanating from stock consignment held in Mauritius?



Ruling

On the basis of the facts mentioned above, it is ruled that A can raise invoice to the Customers in its own name for the sales of the products out of the stock consignment held in Mauritius. However, as the products will be stored, processed and then delivered to customers in Mauritius, A will have a permanent establishment in Mauritius. It will, therefore, have to be registered in Mauritius for income tax purposes and it will be liable to tax on its income sourced in Mauritius