



TR 266

Facts

A is a domestic company incorporated in Mauritius on 8 April 2013.

Currently A holds contractual agreements with a number of foreign companies for the provision of marketing consultancy services. It is looking to transfer the current agreements to another agent in exchange for a consideration.

1. A provides marketing consultancy services on behalf of a number of foreign entities listed below:
  - B, a company incorporated and domiciled in France;
  - C, a company incorporated and domiciled in France;
  - D, a company incorporated and domiciled in Italy; and
  - E, a company incorporated and domiciled in Germany.

*Altogether the ("Suppliers")*

2. The activity of A is to market the products of the Suppliers in different geographical areas such as Guadeloupe, Guyane, Martinique, Reunion, Mayotte, New Caledonia, French Polynesia, Seychelles, Madagascar and Mauritius.
3. A entered a written marketing consultancy agreement with the respective Suppliers (the "**Agreement**") whereby A acquired the right to provide the services listed below to targeted retailers ("**Retailers**"):
  - Contact prospective Retailers in the specified geographical areas;
  - Negotiate certain terms and conditions relating to the proposed sales of the products to the Retailers, based on the commercial guidelines and policies set by the Suppliers;
  - Assist in the organisation of the promotions of these products by the Retailers; and
  - Provide training to the Retailers on the products.
4. The products currently distributed by the Suppliers comprise barbeque equipment and accessories, garden tools and DIY tools. The target Retailers of A are DIY stores specialising in the sale of home, gardening and agricultural products. In Mauritius, A works primarily with DIY stores and gardening tools outlets.
5. A does not order, stock, distribute or supply the products. Orders for the products are placed directly by the Retailers from the Suppliers and all payments for the products are made between the Retailers and the Suppliers. The Suppliers are also responsible for the pricing of the products as well as dealing with any issues regarding the products. Moreover, A cannot conclude any agreement with the Retailers on behalf of the Suppliers and A does not have any whatsoever contractual obligations towards the Retailers.
6. A is remunerated by the Suppliers in the form of commissions which are based on the sales made by the Suppliers to the Retailers.

7. Considering that the respective Agreements give rights to future economic benefits, the Agreements are capitalised as intangible assets in the accounts of A.
8. A intends to transfer the Agreements with the Suppliers to another agent to continue with the same business activity being marketing consultancy services, in exchange for a consideration. The new agent is non-resident in Mauritius.

**Point at issue**

Whether the proceeds to be received by A from the transfer of the Agreements are of capital nature and fall outside the scope of tax in Mauritius?

**Ruling**

On the basis of the facts provided, it is ruled that the proceeds receivable by A from the transfer of the Agreements constitute compensation in respect of future income and therefore would not be of capital nature.