

Facts

A foreign airline company is to appoint an agent to sell holiday packages on its behalf in Mauritius. The packages will include the airfare, hotel accommodation costs and ground handling arrangements in the country of destination.

Point at issue

What would be the tax implications if:

- a) the appointed agency will be remunerated with commission and all sales proceeds repatriated directly to the foreign airline company;
- b) the local branch office of the foreign airline is appointed as the agent of the foreign airline company and in that capacity is responsible for co-ordinating all activities of the foreign airline company in Mauritius.

Ruling (issued in March 2005)

- a) On the understanding that the agent in the first scenario is an independent agent (i.e. an agent not acting under instructions from the foreign airline company and not doing business solely for the foreign airline company) the foreign airline company would not have a permanent establishment in Mauritius and would therefore not be liable to tax in Mauritius. The agent would however be liable to tax in his own name on the commissions received.
- b) In the second scenario, as the local branch office of the foreign airline would be responsible for coordinating the activities of the foreign airline company in Mauritius, the latter would have a permanent establishment in Mauritius and would be liable to tax in Mauritius on the profits attributable to that permanent establishment.