

## **TR 73**

### **Facts**

F company Limited has been registered in Mauritius as a foreign company. The company (Head Office) is incorporated in India. The company has been awarded a contract by the Mauritius Ports Authority to construct an oil jetty in Port Louis harbour. The contract is expected to last for a period of 18 months.

The project is managed by personnel delegated from the Head Office. The Head Office has financed the working capital and also made arrangements for the materials, equipment and the workforce for the project to be made available to the branch. The human resource employed on the project is constituted of the following:

- i. personnel from the Head Office to supervise the engineering works, monitor the project and carry out all administrative and accounting functions.
- ii. the workforce which is actually carrying out the project work.

The workforce is supplied by an Indian subcontractor who has to be present in Mauritius for the duration of the contract. The workforce is paid by the Indian subcontractor and receive their remuneration from India.

The Head Office has incurred expenditure on the acquisition of materials in India for exclusive use on the project. Second hand heavy duty equipment has also been brought in from India and Europe in respect of which Head Office has incurred transport and freight charges. These equipment will have to be rehailed and returned to their respective locations at the end of the project. In addition, Head office provides service of administrative nature and technical knowhow.

The branch has incurred air transport expenses for and in respect of the technical and administrative staff.

## **Points in issue**

### **1. Expatriate Staff**

Whether

- a. the Indian subcontractor should register with the MRA in respect of the supply of labour for the project.
- b. the members of the workforce are subject to PAYE.
- c. the branch should apply tax deduction at source in respect of the amounts made available to the Indian subcontractor for carrying out works.
- d. the members of the workforce are entitled to income exemption threshold.

### **2. Cost of Materials**

Whether the actual amount expended as the cost of materials which will be wholly and exclusively used on the project is deductible as input cost.

### **3. Equipment Wear and Tear**

Whether wear and tear in respect of second hand heavy duty equipment imported from overseas and used on the project can be claimed as annual allowance under Section 24 of the Act.

### **4. Jack Up**

Whether the amount paid to subcontractors in India by Head Office for dismantling the jack up used in the project can be claimed by the branch as an allowable expense.

### **5. Transport of Equipment and Freight Charges**

Whether maritime freight and transport charges incurred by Head Office are allowable expenses to the branch.

### **6. Air Transport Expenses**

Whether air transport expenses incurred by the branch for the technical and administrative personnel can be claimed as allowable deductions.

### **7. Head Office Administrative Expenses and Transfer of Technical Know-how**

Whether administrative expenses and services provided for the transfer of know-how by Head Office can be claimed by the branch as allowable expenses.

## **Ruling**

### **1. Expatriate Staff**

- a) The Indian subcontractor is making a supply of labour for carrying out works in respect of civil construction and will have a permanent establishment in Mauritius in accordance with Article 5 of the Mauritius-India Double Taxation Agreement (DTA). As it will be liable to tax on income derived from this project, it will have to register with the MRA.
- b) The members of the workforce will be subject to PAYE on their emoluments as it is income derived from their employment in Mauritius in accordance with the provisions of Section 74 (1) (a) of the Income Tax Act and liable to tax in Mauritius by virtue of the Mauritius-India DTA.
- c) The branch should apply tax deduction at source in respect of the amounts made available to the Indian subcontractor for carrying out works in respect of civil construction in accordance with Sections 111A (1) (k) (ii) and 111B (d) of Sub-Part BA of the Act.
- d) The members of the workforce will be entitled to IET in accordance with Section 27 (1) of the Act provided that they are resident in Mauritius during the period of the contract.

### **2. Business Expenses**

- a) Items 2, 3, 5, 6 and 7 will be business expenses wholly and exclusively incurred in the production of gross income and may be claimed by the branch as allowable expenses, but subject to the application of the arm's length principle with regard to such expenditure incurred on its behalf by the Head Office.
- b) Expenditure incurred on the Jack up(item 4)has been incurred and paid outside Mauritius and cannot be said to be an expenditure wholly and exclusively incurred in the production of gross income for the project in Mauritius and therefore cannot be claimed as an allowable expense.