

**TR 131** (Govt Gazette of 8 December 2012 No. 124)

## **Facts**

X Ltd belongs to a multinational software group and sells software products to the entire Europe, Middle East and Asia region (EMEA) which includes the territory of Mauritius. X Ltd maintains no permanent establishment, has no tax presence and does not carry on business in or within Mauritius. X Ltd software sales throughout EMEA are contracted, performed and billed from Ireland.

X Ltd sells its products to Mauritian Distributors who, in turn, sell them to resellers here and each Mauritian Distributor acts for its own account, is not a dependant agent of X Ltd, is not doing business solely for X Ltd and is totally independent from X Ltd.

There are three licensing options in which X Ltd's products are sold and exported to Mauritius, viz:

### **a) Retail**

Sale of software products as individual packaged products also referred to as 'boxed products' or 'full packed products'. Distributors do not have any right to use, reproduce, open the packaging or otherwise modify the retail product. The end-user licence agreement is entered into electronically, separately and directly between X Ltd and the end-user upon activation of the software.

### **b) Volume Licensing**

Sale of software products for use by multiple users in a single organization or enterprise. Distributors do not have any right to reproduce or otherwise modify the software products; they simply acquire the software product and on-sell to the customers. The software licence agreement is entered into separately and directly between X Ltd and the customer.

### **c) Original Equipment Manufacturing**

Sale of software products for the purpose of installation and integration into hardware items such as personal computers, which are manufactured by independent third parties. The manufacturer is given a version of the software and has the right to reproduce the software in its hardware or PC. The Original Equipment Manufacturing agreement calls for the Distributors to pay for a 'royalty' to X Ltd for each instance where they have loaded particular software into a machine.

## **Point at issue**

Under what category, either 'business profits' or 'royalty', does each of the above sales fall?

## **Ruling**

It is hereby confirmed that:

- a) proceeds from the sale of Retail products and Volume Licensing respectively are characterised as sale of copyrighted articles and treated as business income;
  
- b) proceeds from the sale of softwares to Original Equipment Manufacturers for the purposes of installation and integration in hardware items are characterised as a sale of copyright rights and treated as royalty income subject to Mauritius withholding tax.