

VATR 106**Facts**

A was incorporated in Mauritius as a private company limited by shares on 14 May 2014 and holds a Category Global Business Licence ("GBL") issued by the Financial Services Commission ("FSC").

A is involved in the international trading of coal and other minerals. It acquires X mine from mining companies and other South African suppliers, including from the C mine in South Africa. X coal is processed through washing facilities and finished products are sold by A locally within South Africa, as well as internationally, but excluding Mauritius. In particular, in no circumstances, the coal sold by A is traded through Mauritius Customs.

A is registered for VAT purposes in South Africa for the purposes of its business activities.

A had erroneously registered for VAT in Mauritius and had been filing monthly VAT returns. Nonetheless, based on the nature of its supplies, A has rectified the situation and now de-registered for VAT in Mauritius.

A has a sister entity, namely B, which is also incorporated in Mauritius and holds a GBL from the FSC. A is currently contemplating a business restructure which will involve the transfer of its business relating to the C mine, which includes the C off-take mining contract, receivables, payables and the stock of X coal, to B.

In this regard, it is highlighted that:

- (i) the stock of X coal is currently held in South Africa and the transfer of such stock to B will not entail the stock being imported into Mauritius or crossing Mauritius Customs under any circumstance;
- (ii) the C mine is situated in South Africa and exploited under the mining contract within South Africa. The clients of A are also all non-residents of Mauritius. In no circumstances, the mining contract leads to supplies being made in Mauritius; and
- (iii) the receivables relate to funds due from customers following sale of coal under C Business. The coal so sold were neither imported in Mauritius nor exported from Mauritius through Mauritius Customs. In addition, the customers all are non-residents of Mauritius.

The consideration for the proposed transaction is likely to exceed MUR 6 million.

Points at issue

- (1) Whether the contemplated business re-structure, which will involve the transfer of the C Business to B, will not be subject to VAT in Mauritius?
- (2) Whether A will not be required to re-register for VAT solely for the purposes of carrying out this transaction?

Ruling

As all the underlying assets and liabilities of C Business to be transferred by A to B are outside Mauritius, the said transfer does not constitute a supply made in Mauritius. It is therefore confirmed that –

1. The contemplated business re-structure which will involve the transfer of the C Business to B, will not be subject to VAT in Mauritius.
2. A will not be required to re-register for VAT solely for the purposes of carrying out this transaction.