

VATR 112**Facts**

M is a company incorporated and located in South Africa. It manufactures and sources:

- (i) M branded optical lenses wherein it owns the said Trademark; and
- (ii) other optical lenses brands including N brands, O brands and such other private label branded lenses with third parties' logo or Trade Mark (hereinafter the "Products")

P is a private company incorporated in Mauritius.

Upon signature of a Distribution Agreement and an In-Market Sales Commission Agreement, P will act as the exclusive distributor of M in the territory of Mauritius and will be responsible for the delivery of the Products to optometrists in Mauritius. As per their business model, P will act as the delivery agent of the Products to optometrists in Mauritius. P will act as the delivery agents of the Products to the customers of M in the Mauritian territory. P will not be raising any invoice to the customers of the Products nor will it be collecting any payments on behalf of M.

The customers of the Products will be any purchaser in the territory of Mauritius (hereinafter the "Customers") and will include mainly optometrists who will be purchasing the lenses from M for their respective clients. The Customers will effect their payments for the purchase of the Products directly to M via an online platform and the latter will raise invoice to the Customers in its name.

M operates a business model as follows:

- The Customers order lenses from M via P;
- P holds stock of lens consignment in Mauritius which belongs to M;
- P polishes the ordered lens from inventory of the stock consignment prior to delivery to the Customers;
- P dispatches processed lenses to the Customers on behalf of M;
- M raises invoice to Customers for the order;
- The Customers effect their payments to M through digital wallet;
- P will raise an invoice to M on a monthly basis for its services, in terms of its technical support and the distribution of the lenses to the Customers in Mauritius.

Points at issue

- (1) Whether compulsory registration under section 15(2)(a) of the VAT Act would be a requirement for M in respect of the sales of the Products?
- (2) Whether section 9(1) of the VAT Act in regard to VAT to be charged on any supply of goods made in Mauritius is applicable to M or P?
- (3) Whether section 20(1) of the VAT Act is applicable to P in respect of the issuing of a VAT invoice?
- (4) Whether section 9(10) of the VAT Act is applicable to P?

(5) Whether section 9(11) of the VAT Act is applicable to P ?

Ruling

On the basis of the facts mentioned above, it is ruled that -

- (1) As M is not engaged in any business or profession specified in Part I of the Tenth Schedule to the VAT Act in Mauritius, it will not be required to compulsorily register under section 15(2)(a) of the VAT Act.

However, M will have to compulsorily register for VAT in Mauritius under section 15(1) of the VAT Act if it is making taxable supplies in Mauritius and its turnover of taxable supplies exceeds or is likely to exceed the prescribed amount in the Sixth Schedule to the VAT Act.

- (2) On being registered for VAT, M will have to charge VAT on the supply of any taxable goods or services made in Mauritius in accordance with section 9(1) of the VAT Act.

P, already being a VAT registered person will have to charge VAT to M for its services in terms of its technical support and the distribution of the lenses in Mauritius.

- (3) Being a VAT registered person, P will have to issue a VAT invoice in respect of any taxable supply made to any person in Mauritius.

- (4) With reference to questions 4 and 5, sections 9(10) and 9(11) are not applicable to P as it will neither be effecting any sales in its own name nor will it effect the sales in the name of M.