IN THE COURT OF APPEAL OF SEYCHELLES

CIVIL APPEAL NO. 9 OF 1985

S & J REGISTRARS (Pty) LTD. . . . . APPELLANTS

VERSUS

THE CONTROLLER OF TAXES. . . . . RESPONDENT

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JUDGMENT OF MUSTAFA, P.

The appellant, a limited liability company incorporated in Seychelles, had its accounts audited by a firm of auditors resident in England, in 1981 and 1982. The auditor's fees were Rs. 4,000 per year, which fees were duly paid by the appellant. The respondent (the Controller of Taxes) was of the view that the auditors were liable to pay tax upon such fees as royalties in terms of Section 104 of the Income Tax Decree 1978, and assessed the appellant to tax at Rs. 600 for each year as the appellant was the person on whom section 105 of the Decree imposes the onus of withholding taxes. The appellant maintained that it was not liable to withhold any tax as the fees paid to its auditors were not royalties within the definition of that word in Section 2(1) of the Decree. The appellant's objections were disallowed by the respondent and the appellant unsuccessfully appealed to the Supreme Court (Seaton, C.J.). It is now appealing to this Court.

The appeal, in my view, turns on the meaning of the word royalties as defined in Section 2(1) of the Tax Decree which reads: royalties

> "includes payments of any kind to the extent to which they are paid as consideration for the use of, or the right to use any copyright, patent, design or model, plan, secret formula or process, trade mark, or other like property or right, or industrial commercial or [illegible] scientific equipment or for the supply of scientific technical industrial or commercial knowledge, information or assistance and includes royalties or other amounts paid in respect of the operation of mines or quarries or the extraction or removal of natural resources".

The Chief Justice held that the definition of royalties in the Decree may be broken down into three parts. Royalties (1) is payment for the right to such things as copyright patents etc. (loosely called intellectual property) (2) payment for such things as services supplied by commercial, technological, industrial or scientific expertise or assistance and (3) payment for or in consideration of the extraction of mines and minerals. He stated that the first and third categories in the definition are the usual and familiar ones found in dictionaries and in common usage, and the second category clearly gives

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a wider meaning to the word "royalties" as generally understood. He seemed to hold that the definition in Section 2(1) may be complex, but it was not ambiguous.

Mr. Georges for the appellant submitted that the word royalties should have the normal or ordinary meaning attached to it, and not the extended meaning given it by the Chief Justice. By that I think he meant that the first and third categories of the meaning referred to above would be applicable, but not the second category. And even if the second category did apply, Mr. Georges contended that there is a difference and distinction between scientific and industrial and commercial know-how and that of services rendered. He maintained that know-how which pre-supposes a pre-existing asset would be royalty while services, which would have no pre-existing assets, would not be. The supply of know-how would be royalty, not the supply of services. And legal fees, auditors fees and so on would be supplies of services, and would not be royalties. On this point Mr. Georges relied heavily on an article from the June, 1978 publication "Taxation in Australia". In the article the Commissioner of Income Tax in Australia in an administrative direction, interpreted "royalties" in the Australian tax legislation. It seems that the definition of royalties in the Tax Decree 1978 was practically a carbon copy of that enacted in the Australian Tax Law. In the practice direction the distinctions put forward by Mr. Georges between know-how and services rendered were first mooted. It was stated that the definition of royalty has not been subjected to any test by an appellate tribunal in Australia. The following passages occur:

> "The presence in the definition of "royalties" of the words "payment for.....the supply of scientific, technical, industrial or commercial.....assistance", considered in isolation, gave the expression a very wide meaning and many payments which by ordinary standards could not be classed as "royalties" would fall within them.
>
> It became necessary, therefore, to consider the extent to which payments of this kind should not be regarded as falling within the statutory meaning of "royalties"..... So far as payment for personal services are concerned it has not been the practice to treat payments for director's fees or professional fees to a non-resident lawyer or accountant as royalties within the definition. This practice will continue".

Mr. Georges had urged this Court to follow the Australian Tax Commissioner's interpretation of "royalties", especially as the Tax Decree 1978 was modelled on the Australian ~~model~~ legislation. Mr. Georges also submitted that the definition of royalty in Section 2(1) of the Tax Decree should not be literally interpreted. He argued that the intention of the Legislature should be considered, and he seemed to suggest that the Legislature had intended that royalty should be construed in the way it was done by the Australian Tax Commissioner.

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Mr. Amaranath for the respondent contended that the word royalties must be interpreted as it is defined in the Tax Decree and not according to its usual or common usage. He stated that the meaning given to the word in Section 2(1) is quite clear and not in any way ambiguous or uncertain. The appellant is liable to withholding tax for any royalty it paid to a non-resident person in terms of Section 102 (b) of the Tax Decree. That would be in the words of Section 2(1) "supply of.....technical or commercial knowledge.....or assistance...". Part IV of the Tax Decree deals with the liability to pay withholding tax and Section 106(1) provides that "income upon which withholding tax is payable shall not be included in the assessable income of a tax payer". The person liable to tax is the non-resident who receives a payment in the form of royalties from a resident, but the resident is responsible for the deduction and collection of the withholding tax before payment of such royalty sum to the non-resident., He fails to do so at his peril. This is simply a device to collect tax from a non-resident. The non-resident is out of the jurisdiction of the Tax authorities and it could be difficult if not impossible otherwise to collect such tax.

Mr. Amaranath submitted that the definition of royalties in Section 2(1) of the Tax Decree is so clear that in the Australian Practice Direction it was thought necessary that clear instructions had to be given to exempt fees paid for services from withholding tax, otherwise such fees would automatically be within the meaning of the term royalties as so defined.

In my view the definition of royalty in section 2(1) of the Tax Decree is clear and explicit. It has an extended meaning and connotes more than is usually and commonly associated with the word. But that is the meaning given to that word by the Legislature. I am satisfied that the audit fees paid by the appellant to the non-resident auditors would fall within the meaning of royalties as defined in Section 2(1). That is the clear intention of the Legislature.

When a piece of legislation is unclear or uncertain and can bear more than one meaning, or can give rise to conflicting interpretations, I agree it is the duty of a Court to try to ascertain what the intention of the legislature really is, and in order to do so, the Court may study the circumstances in which such legislation was passed, the mischief it was aimed at and so on and so forth.

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But where the meaning of the legislation is clear and unambiguous, as it is here, there is no need at all to enter into what is now perhaps called "purposive" interpretation. The Court must give effect to the legislation as passed and will construe the words in their plain and ordinary meaning. Here royalty is given an extended meaning deliberately which it would not otherwise bear and I can see no reason or ground for believing that the court can or ought to cut down or restrict its plain meaning.

I do not think that the Practice direction given by the Income Tax Commissioner of Australia is of help. That was purely an administrative direction and was probably designed to perpetuate the way that department had been dealing with the administration of withholding tax matters.

I agree with the decision of the Chief Justice. I would dismiss the appeal. As the parties have requested, I would make no order as to costs.

DATED at VICTORIA this _____ day of _____ 1986.

A. MUSTAFA
PRESIDENT.

Judgment delivered in open court on 5. 9. 1986

The majority decision of the court is that the appeal is dismissed without costs

GOODISH
AJS

(49)

IN THE SEYCHELLES COURT OF APPEAL.

Civil Appeal No.9 Of 1985.

BETWEEN - S.& J. Registrars (Prop) Ltd. ... Appellant

and

The Controller of Taxes ... ... Respondent

Mr. Georges for the appellant
Mr. Amarnath for the respondent.

JUDGMENT OF LAW J.A.

The appellant is a limited liability company incorporated in Seychelles. The respondent is the Controller of Taxes. In 1981 and 1982 the appellant's accounts were audited by a firm of accountants in England. The accountants were paid in each year a fee of R.4,000 as remuneration for their services by the appellant. The respondent considered those fees to be "royalties" within the meaning of that expression as defined in section 2 (1) of the Income Tax Assessment Decree, 1978 ("the Decree") and assessed the tax payable thereon by the auditors under section 104 of the Decree at R.600 for each year. Liability to withhold tax due on a royalty paid by a person resident in Seychelles to a non-resident ("the withholding tax") is, under section 104 of the Decree, placed on the tax-payer. The appellant was accordingly assessed in the above amounts, which he then had to pay to the respondent. He did not do so, but objected to the assessments on the ground that the payments to the auditors were not royalties as defined in section 2 (1) of the Decree. These objections were considered and disallowed by the respondent, whereupon the appellant appealed against the assessments to the Supreme Court. The appeal was heard and dismissed by Seaton C.J.

The question for decision in the Supreme Court and in this Court is whether fees paid by a resident taxpayer to a non-resident by way of audit fees are royalties within the meaning of section 2 (1) of the Decree, and therefore liable to withholding tax. The learned Chief Justice answered this question in the affirmative, confirmed the assessments, and dismissed the appeal. From that decision the appellants appeal to this Court.

The definition of "royalties" so far as is material to this appeal reads as follows -

' "royalties" includes payments of any kind to the extent to which they are paid as consideration ... for the supply of scientific, technical, industrial or commercial knowledge, information or assistance ...'

The Chief Justice held as follows, in the last paragraph of his judgment -

"It seems to me clear that an audit company carrying out an audit of a client's accounts, books, and records, uses its technical and commercial knowledge and when it supplies this knowledge to a client, it is of assistance to the latter. In exchange for this knowledge and assistance, the audit company is accordingly remunerated. I would therefore agree with the submission of Miss Tirant that the audit fee being a payment for technical services rendered to a company must necessarily fall within the second part of the definition of "royalties".

For these reasons the appeal is dismissed ..."

Mr. Georges for the appellant in this Court, urged three grounds of appeal, stated in his memorandum as follows -

" The learned Chief Justice erred in finding that payment for the auditing of a set of the Appellant's accounts by an English firm amounted to a royalty in terms of the Income Tax Assessment Decree, 1978, and was assessable to withholding tax in that :

(a) He failed to consider whether the definition of "royalty" was ambiguous and, if it was, to apply that construction which favoured the taxpayer.

(b) He failed to consider whether the auditing of accounts amounted to a supply of knowledge, information or assistance.

(c) He failed to consider the intention of the definition in its entirety and to give sufficient weight to the Australian definition of a similar section."

The Decree is based on the Income Tax Assessment Act, 1934, of Australia, as from time to time amended, and both in the Decree and in the Australian Act the expression "royalties" is defined as including payment for the supply of scientific, technical, industrial or commercial knowledge or information. The Decree adds the words "or assistance" which do not appear in the Australian section. The learned Chief Justice, construing those words in their ordinary sense and giving them their ordinary meaning, was satisfied that payment to an auditor of a fee for carrying out an audit of the taxpayer's books involved the use by the auditor of its technical and commercial knowledge, and in so doing was of assistance to the taxpayer. He held that this fell within the definition of "royalties" in section 2 (2) of the Decree, and that as the auditor was non-resident the taxpayer was properly assessed to withholding tax in respect of the payments made to the auditor in the years 1981 and 1982.

Mr. Georges did not press ground 1 of appeal, beyond submitting that the definition was complex and ambiguous. As regards ground 2, he submitted that the auditing of accounts did not amount to a supply of knowledge and information. As regards ground 3, he referred to an authoritative Australian publication ("Taxation in Australia") in which the following appears -

> " It has now been decided that payments made to non-residents for services rendered should not be regarded as "royalties". ... Much of course will depend on the facts of the particular case. So far as payments for personal services are concerned, it has not been the practice to treat payments for professional fees to a non-resident accountant as royalties within the definition. That practice will continue."

That is an administrative direction, but Mr. Georges submits that it represents a logical interpretation of the words of the definition, which should be adopted and followed in Seychelles, so that payments to non-resident auditors should be held to be not liable to withholding tax. Mr. Amarnath for the Republic submitted that the Australian practice cannot affect the literal interpretation of the definition adopted by the Chief Justice. As Mr. Amarnath submitted, we do not know the reasons which prompted the making of the Australian direction. One implication, he submitted, could be that if the direction had not been made, the liability to tax would not be open to question. The very fact that the direction was made at all indicates that if it had not been made the liability to tax clearly existed and was enforceable. Mr. Georges maintained that the practice direction reflected the intention of the legislature in Australia and should be followed here, and submitted that the strict interpretation of definition sections was now an outdated notion. He referred to Nothman -v- Barnet Council (1978) W.L.R.225 and in particular to passages from the judgment of Lord Denning M.R. who said -

> "Faced with glaring injustice, the judges are, it is said, impotent, incapable and sterile. Not so with us in this case. The literal method is now completely out of date. ... Whenever the strict interpretation of a statute gives rise to an absurd and unjust situation, the judges can and should use their good sense to remedy it - by reading words in, if necessary - so as to do what Parliament would have done, had they had the situation in mind."

It must be remembered that in the case with which we are now concerned, no question of injustice arises. Withholding tax retained by the payer of a royalty and remitted by him to the Commissioner is not considered part of that person's assessable income for income-tax purposes, by section 106(1) of the Decree. Furthermore Nothman's case (supra) was not a revenue case. The rule in revenue cases is as stated in Cape Brandy Syndicate -v- I.R.C. 91921) 1K.B.64 -

> "In a Taxing Act one has to look merely at what is clearly stated. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

Looking fairly at the language used in the definition in the Decree, I am of the opinion that the fees paid to the auditor in this case clearly fall within the definition of "royalties", as being remuneration for the use of technical and commercial knowledge and the provision of assistance. By section 102(b) of the Decree, such a payment made to a non-resident is liable to withholding tax. By section 106(1) such a payment is not included in the assessable income of the taxpayer. I see no ambiguity, and certainly no absurdity or injustice, in all this.

For these reasons I agree at the conclusion arrived at by the Chief Justice. I would dismiss this appeal.

Costs were not asked for . I would make no order as to costs.

Dated at Victoria this ..... day of ..... 1986

(E.J.E.Law)
JUSTICE OF APPEAL.

Judgment delivered in open court on 5.9.1986

KJ.

IN THE SEYCHELLES COURT OF APPEAL

S. & J. Registrars (Proprietary) Limited — Appellant

v/s

The Controller of Taxes — Respondent

Civil Appeal No. 9 of 1985

Mr. B. Georges for the appellant
Mr. A. Amaranath for the respondent

JUDGMENT

This is an appeal from a decision of the Supreme Court under section 141(2) of the Income Tax Decree, 1978, hereinafter referred to as "the Decree".

The appellant, a private company incorporated in Seychelles, paid the sum of R.4,000 to a firm of accountants, Messrs. Elsey Perera & Company, for auditing its accounts in the year 1981 and again in the year 1982. Messrs. Elsey Perera & Company, hereinafter referred to as "the auditors", are resident in the United Kingdom and the audit was carried out there.

The respondent raised an assessment against the appellant for withholding tax in respect of both payments as is permitted under section 105 of the Decree. The respondent based his assessment on the provisions of sections 102(b), 104 and 105(1) of the Decree.

The appellant objected to such assessment and its objection was disallowed. There was then an appeal to the Supreme Court which dismissed the appeal and upheld the decision of the respondent that withholding tax must be paid on the audit fees that were paid for the years 1981 and 1982.

Part IV of the Decree deals with withholding tax. Section 102(b) provides that Part IV applies to income that consists of "a royalty that is paid by any person to a non-resident".

It is the contention of the respondent that the payment of audit fees by the appellant to the auditors, a non-resident, amounts to the payment of a royalty under section 102(b) of the Decree. Such contention is based on the definition of royalty in section 2(1) of the Decree. The relevant part of that section runs as follows:-

"Interpretation 2(1) In this Decree, unless the context otherwise requires -

... ... ... ...

> "royalties" includes payments of any kind to the extent to which they are paid as consideration ..... for the supply of scientific , technical, industrial or commercial knowledge, information or assistance ... ... ... ...
> ... ... ... ... ... ..."

In other words the respondent contends that the audit fees were paid as consideration "for the supply of technical or commercial knowledge or assistance" amounting to the payment of a royalty within the meaning of section 2(1) above.

On his part the appellant contends that the audit fees were payments for services rendered which required the application of knowledge but were not payments for the supply of knowledge.

The real point at issue is whether in section 102(b) of the Decree the term "royalty" includes payments made to a non-resident for services rendered or work done which requires the application of scientific, technical, industrial or commercial knowledge or information or which implies the supply of scientific, technical, industrial or commercial assistance.

To simplify matters in this judgment I shall refer to a royalty as a payment for the supply of technical knowledge However what I shall say on that limited part of the definition applies equally to the full definition in section 2(1) of the Decree as set out above.

That definition cannot be considered in isolation. It has to be considered in the context of the Decree as a whole.

From the Decree the following material points emerge.

1. There are two distinct types of taxes levied under the Decree both of which are taxes on income. The first type is levied under Part III and may be referred to as "Income Tax" and the second type under Part IV and called "Withholding Tax".
2. Income tax is levied on the taxable income of any person, whether a resident or a non-resident (section 11).
3. Taxable income means the amount remaining after deducting from the assessable income all allowable deductions (section 2(1)).
4. The assessable income of a person includes the gross income derived or deemed to be derived from a source in Seychelles. (section 19(1)).

5. For the purposes of the Decree income is deemed to be derived by a taxpayer from a source in Seychelles where it is so derived in respect of -

(1) any service rendered or work done by the taxpayer in Seychelles, whether the payment therefor is made by a resident of Seychelles or a non-resident and wherever payment is made; (Section 19(2)(b))

(2) any service rendered or work done by the taxpayer outside Seychelles under a contract of employment with the Government. (Section 19(2)(c)).

6. The assessable income of a taxpayer includes any amount received as or by way of royalty (section 20(e)).

7. The assessable income of a taxpayer is distinct from the income of the taxpayer upon which withholding tax is payable. (Definition of "taxpayer" in section 2(1) and section 106(1)).

8. Withholding tax is payable on income that consists of a royalty that is paid by any person, including the Government of Seychelles, to a non-resident. (Definition of "person" in section 101(1), sections 102(b) and 104.)

9. Income tax is levied at a flat rate of 35% on the whole of the taxable income of a non-resident whereas withholding tax is levied at a flat rate of 15% on the gross royalty paid to a non-resident. (The Income Tax (Rates) Decree 1978).

Let us now consider the application of the Decree to concrete cases.

In this case it is contended by the respondent that section 102(b) applies because the payment of the audit fees to the auditors, a non-resident, was a payment of a royalty as it was a payment for the supply of technical knowledge. The fact that the audit work was carried out outside Seychelles did not influence the taxpayer's liability. If royalty is to be given the meaning contended for by the respondent, it must have the same meaning whether the audit work is done in Seychelles or outside Seychelles. The application of section 102(b) to this case depends only on two factors:-

(1) a payment to a non-resident; and

(2) the meaning of royalty.

Let us therefore assume for one moment that the audit work was carried out in Seychelles.

In such a situation it is clear that the taxpayer would be liable to income tax, as opposed to withholding tax, as the audit fees would fall within the application of section 19(2)(b). The audit fees would be assessable income. If the audit fees are held to be a payment for the supply of technical knowledge, then the auditors would also be liable to withholding tax as they are a non-resident. But this cannot be as by virtue of section 106(1) of the Decree, income upon which withholding tax is payable shall not be included in the assessable income of a taxpayer.

This inconsistency or conflict only arises if the definition of royalty is extended to include all payments for service rendered and work done where such service or work requires the application of technical knowledge.

The same inconsistency or conflict would arise if the auditors were bound by a contract of employment with the Government of Seychelles and did their work outside Seychelles, as was done in this case. (Section 19(2)(c)).

From a consideration of the Decree as a whole it is clear that the legislator intended tax on income derived in respect of service rendered or work done to be levied only in cases falling within the ambit of paragraphs (b), (c) and(f) of Section 19(2) of the Decree.

I am of the opinion that the term "royalty" in section 102(b) of the Decree as read in the context of the whole Decree does not extend to cases where a payment is made primarily for service rendered or work done and incidental to such service or work, scientific, technical, industrial or commercial knowledge is applied.

The same construction would apply to the term "royalty" in section 20(e) of the Decree although this is outside the purview of the decision in this case. I do not believe that the legislator intended that the taxpayer who applies technical knowledge to his service or work and receives payment therefor would be made liable to income tax under section 20(e). If this were the case, very few workers would be receiving salary or wages as distinct from royalty.

How does that interpretation of the term "royalty" in the Decree fit in with the canons of legal interpretation?

(a) The definition of "royalties" in the Decree is made subject to the context. That is clear from the opening words of section 2(1).

(b) "Royalties" is not strictly defined. The definition is very wide and yet it is not exhaustive. The word "includes" and not the word "means" has been used to introduce the definition.

(c) The following two pronouncements of Lord Reid in income tax cases, cited with approval by this Court in the case of Bernard Pool v/s The Controller of Taxes, judgment delivered on the 21st January 1978, lay down principles which are applicable in this case:-

Luke v/s I.R.C. (1963) A C 557, 577:-

> "The general principle is well settled. It is only where the words are absolutely incapable of a construction which will accord with the apparent intention of the provision and will avoid a wholly unreasonable result, that the words of the enactment must prevail."

I.R.C. v/s Henchy (1960) A C 748, 767:-

> "What we must look for is the intention of Parliament, and I also find it difficult to believe that Parliament ever really intended the consequences which flow from the appellants' contention. But we can only take the intention of Parliament from the words which they have used in the Act, and therefore the question is whether these words are capable of a more limited construction. If not, then we must apply them as they stand, however unreasonable or unjust the consequences, and however strongly we may suspect that this was not the real intention of Parliament."

In this case there is no question of interpolating words or doing violence to the words used. The intention of the legislator appears clearly from section 19(2)(b), (c) and (f) of the Decree as explained above. The words used are capable of a more limited construction to give effect to the apparent intention of the legislator. Indeed, as has been explained above, to give effect to the contention of the respondent would lead to unreasonable consequences and the only way to avoid the inconsistencies and conflicts pointed out above would be to give the word "royalty" a more limited construction. For the reasons stated in paragraphs (a) and (b) above the word "royalty" may be given such limited construction.

To sum up, I am of opinion that when service is rendered or work done by a taxpayer who applies technical knowledge in rendering such service or doing such work, the payment received in consideration for such service or work is not royalty within the meaning of section 2(1) of the Decree.

I would therefore allow the appeal and order the restitution to the appellant of all sums paid by him in respect of withholding tax levied on the audit fees for 1981 and 1982 including all surcharges.

The respondent shall pay the appellant's costs in this Court and in the Court below.

Judgment delivered in open court on 5.9.1985
GOSaddy
AJS.

A. Sauzier

A. Sauzier
Justice of Appeal

APPENDIX

The following sections of the Income Tax Decree 1978 are reproduced for ease of reference.

terpre- tion 2. (1) In this Decree, unless the context otherwise requires -

... ... ... ... ...

"assessable income" means all the amounts which under the provisions of this Decree are included in the assessable income;

... ... ... ... ...

"income tax" or "tax" means income tax payable under this Decree;

... ... ... ... ...

"royalties" includes payments of any kind to the extent to which they are paid as consideration for the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trade mark, or other like property or right, or industrial, commercial or scientific equipment or for the supply of scientific, technical, industrial or commercial knowledge, information or assistance and includes royalties or other amounts paid in respect of the operation of mines or quarries or the extraction or removal of natural resources;

... ... ... ... ...

"taxable income" means the amount remaining after deducting from the assessable income all allowable deductions;

... ... ... ... ...

"taxpayer" means a person deriving income which is assessable income or income upon which he is liable to pay tax under this Decree;

... ... ... ... ...

"withholding tax" means income tax payable in accordance with Part IV of this Decree.

PART III - Liability to Taxation

Division 1 - General

of income 11. Subject to this Decree, income tax at the rates declared by the Income Tax (Rates) Decree 1978 is levied, and shall be paid, for the tax year that commenced on the 1st January, 1978, and for each succeeding tax year, upon the taxable income derived during the tax year by any person, whether a resident or a non-resident.

DIVISION 2 - INCOME

SUBDIVISION A. - ASSESSABLE INCOME GENERALLY

Gross income from certain sources.

19. (1) The income of a taxpayer shall include the gross income derived or deemed to be derived, from a source in Seychelles by the taxpayer, whether directly or indirectly, which is not exempt income.

(2) For the purposes of this Decree, income shall be deemed to be derived by a taxpayer from a source in Seychelles where it is so derived in respect of -

(b) any service rendered or work done by the taxpayer in Seychelles, whether the payment therefor is made by a resident of Seychelles or a non-resident and wherever payment is made;

(c) any service rendered or work done by the taxpayer outside Seychelles under a contract of employment with the Government;

(f) any services rendered or work done outside Seychelles by the taxpayer (being a resident of Seychelles) as an officer or a member of the crew of any ship or aircraft referred to in paragraph (e), wherever payment is made.

Certain items of assessable income.

20. The assessable income of a taxpayer shall include -

(e) any amount received as or by way of royalty;

PART IV - WITHHOLDING TAX

Interpretation

101. (1) In this Part, unless the context otherwise requires -

... ... ... ...

"person" includes the Government or an authority of the Government constituted under an Act, or an agent or trustee.

Liability to withholding tax

102. Subject to this Part, this Part applies to income that consists of -

(a) a dividend that is paid by a company out of income that is derived from a source in Seychelles;

(b) a royalty that is paid by any person to a non-resident; or

(c) interest that is paid by any person.

Rate of Tax

104. A person who derives income to which this Part applies is liable to pay tax upon that income at the rate declared by the Income Tax (Rates) Decree 1978.

Deduction of tax (Amended in Act 12 of 1984)

105. (1) Subject to this section, the person who is liable to pay income to which this Part applies shall deduce before or at the time the income is paid an amount of withholding tax therefrom, determined in accordance with the Income Tax (Rates) Decree 1978.

... ... ... ...

(7) The ascertainment of the amount of any withholding tax shall be deemed to be an assessment within the meaning of any of the provisions of this Decree.

Certain income not included in assessable income, etc.

106. (1) Income upon which withholding tax is payable shall not be included in the assessable income of a taxpayer.