



Tax times*

Mauritius

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Tax Times has been designed to keep you abreast of tax developments in Mauritius and around the world on a regular basis.

It features a variety of practical guidelines, tax law updates, news briefs and tax definitions covering all areas of local and international taxation.

As a word of caution, detailed advice should be sought on your own specific situation and the applicability of rules reported on.

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You may browse through copies of previous issues on the PricewaterhouseCoopers Mauritius website www.pwc.com/mu. We also welcome your comments and suggestions for future issues.

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Foreword

The Mauritius economy continues to develop and strengthen. Likewise, the domestic tax system introduces a new advance payment system for companies, which becomes effective on 1 July 2008. In this edition of Tax Times we explore the basics of the new compliance requirements and provide a worked example.

The last Tax Times commented on the Mauritius – India tax treaty and in this edition we take a look at the Mauritius – Pakistan tax treaty. Mauritius has a very good treaty network and this, coupled with no capital gains tax, means that Mauritius resident companies are being used more and more as investment platforms not only for investments in India and Pakistan, but also for holdings in Europe, Asia and Africa.

In this edition we also provide a brief history of Transfer Pricing and comment on how it can be very expensive for an international group when one sided adjustments are made, and we provide a worked example to underline this point.

We also touch on the different pricing methods that can be used and then consider some possible defences against transfer pricing adjustments.

Mauritius can, very comfortably, be used in any wealth protection strategy in parking investments under a Mauritius resident company. PricewaterhouseCoopers – Mauritius can provide assistance with the establishment of a Mauritius resident company for this purpose and also provide Mauritius tax advice on the foreign source income streams that may flow through the Mauritius entity.

Our international tax team, André Bonieux, Ramesh Doma, Philip Bond, Didier Lenette and Bobby Yeremiah, are always happy to assist with any tax, or tax related, matter.

Best regards

The Editorial Team

Tax Practice

The introduction of the Advance Payment System (APS) for companies

With effect from 1 July 2008, a quarterly Advance Payment System ('APS') will be effective for resident Mauritius companies with a turnover exceeding Rs.100 million (approximately USD 3.5 million).

For companies with a turnover of less than Rs.100 million, the effective operation date of the APS is deferred for one year, to 1 July 2009, to ease the possible impact on their cash flow.

Companies will be expected to estimate their annual income tax liability. The first quarter commences on the first day of an accounting period and ends three months later. The APS Statement of that quarter must be filed, and any corporate income tax paid, within three months of that quarter's month end date.

The second quarter ends three months following the end of the first quarter. An APS Statement must be filed, and any corporate income tax paid, within three months from the end of the second quarter, and so on for the third quarter. The quarterly payment system is, however, only in respect of the first three quarters.

The annual tax return is filed after the third quarter's APS Statement. This is based on the actual results for the year and the balancing income tax payment is made at the time it is filed, in settlement of that year's income tax liability. Whilst it is possible to file the annual tax return without accompanying audited financial statements, if requested by the tax authorities, they must be produced.

The Mauritius Revenue Authority ('MRA') has issued guidance in respect of the application of the APS and provides examples of due dates for filing and payment based on different accounting period end dates.

The MRA's Statement of Practice (SP 1/07) also mentions a further measure to ease the cash flow of companies adopting the APS. Any corporate income tax liability in respect of the accounting period immediately before a company's first APS accounting period, will be able to be paid in three equal and consecutive annual instalments. In other words, only one third of the income tax liability will be due on the normal due date, with one third due a year later and the final third due a year from that.

Tax Practice

The introduction of the Advance Payment System (APS) for companies (cont'd)

With reference to MRA's SP 1/07, we provide below an example of the payment and return due dates for corporate income tax. Our example below considers a 'large' company (one with a turnover in excess of Rs.100 million), with a 30 June year end.

- Year end 30.6.2008 (year of assessment 2008/09).

Payment of final corporate income tax: 1/3 payable 31.12.2008 (The remaining 2/3 is payable in equal instalments on 31.12.2009 and 31.12.2010)

Please note: From the year of assessment 2008/09 tax returns have to be submitted within 6 months from the end of the month in which the accounting period ends. For example, companies with a 30 June accounting date must file returns by 31 December instead of 31 January, as it was before.

- Year end 30.6.2009 (year of assessment 2009/10).

First year for APS.

1st quarter 1.7.08 to 30.9.08 - APS Statement to be filed / payment made by 31.12.08

2nd quarter 1.10.08 to 31.12.08 - APS Statement to be filed / payment made by 31.3.09

3rd quarter 1.1.09 to 31.3.09 - APS Statement to be filed / payment made by 30.6.09

The annual income tax return to be filed / payment made by 31.12.09 (together with the payment of the second 1/3 in respect of year end 30.6.2008).

Tax Profile



Philip Austin Bond is a senior manager in the Tax Department in the Mauritius Office of PricewaterhouseCoopers.

He has been working in international and corporate taxation for the past 20 years.

He joined PricewaterhouseCoopers in 1998 and has worked at several locations, notably, in the UK, Tanzania, Zambia and Thailand, and, is now based in Mauritius.

He provides tax advice on structuring, international transactions, mergers and acquisitions, tax planning and the application of tax treaties (Double Tax Agreements).

Philip supervises Mauritius tax compliance work for corporate clients including multinationals and offshore corporations. His clients cover a wide range of industries from telecommunications to mining companies.

Philip is an Associate member of the Chartered Institute of Taxation (UK) and a Fellow member of the Chartered Association of Certified Accountants (UK).

He also holds an MBA in strategic corporate management.

Tax Briefs

Australia

New tax treaty with Japan

On 1 February 2008, it was announced that Australia and Japan have signed a new tax treaty to replace the existing treaty which was signed in 1969. The new treaty was signed by the Minister for Foreign Affairs of each country.

In modernising the tax treaty arrangements in line with Australia's current tax law and treaty policies and practice, the new treaty contains:

- an expanded list of taxes covered
- a refined definition of "permanent establishment"
- comprehensive sale of property provisions which broadly align the capital gains tax treatment with the Organisation for Economic Co-operation and Development's practice, while preserving Australia's taxing rights over Australian assets with a physical connection with Australia
- improved integrity measures to provide for more effective exchange of information on a broader range of taxes, including goods and services tax

- provision for income and gains derived by a sleeping partner in a Japanese Tokumei Kumiai arrangement to be taxed in the country where the income arises
- a time limit of seven years for the commencement of transfer pricing audits, with no limit in the case of fraud or evasion
- new rules to prevent tax discrimination against nationals and Australian businesses operating in Japan and vice versa, and
- a comprehensive Limitation on Benefits article to prevent abuse of the treaty.

The new treaty will enter into force 30 days after the Australian and Japanese Governments exchange diplomatic notes advising that the constitutional processes required for entry into force have been completed.

Did you know?

Mauritius, as a low tax jurisdiction, has 33 Double Tax Agreements in force, is awaiting ratification of a further eight and six are in the process of being negotiated.

Tax Briefs (cont'd)

China

A new tax filing system

A new corporate income tax filing system for headquarters and branches across provinces in China has been introduced

The Ministry of Finance ("MoF"), the State Administration of Taxation ("SAT") and the People's Bank of China issued the following circulars regarding the new tax filing system under the Corporate Income Tax ("CIT") regime:

- Circular Guo Shui Han [2008] No.44 ("Circular 44") dated 9 January 2008 which attaches the CIT returns to be used for monthly (quarterly) provisional tax filings; and,
- Circular Cai Yu [2008] No.10 ("Circular 10") dated 15 January 2008 which provides the policy on how the CIT liabilities shall be calculated and settled by the headquarters and branches across different provinces in China, and how the CIT revenue shall be allocated between central and local governments for taxpayers with headquarters and branches.

The new filing system has attracted much attention from foreign enterprises with headquarters and branches across different provinces. Discussions are still being held however to provide clarity on some operational aspects of the new system.

India

The India Budget 2008 – direct tax

The proposals in the Finance Bill 2008 have major elements relating to lowering the burden on individual tax, streamlining tax administration processes, enhancing research and development, lowering cascading effect of double dividend tax and encouraging growth of corporate debt market.

The India Budget 2008 – indirect tax

There has been considerable progress in preparing a roadmap for the introduction of the Goods and Services Tax (GST) with effect from April 1, 2010. As a step forward, the rate of Central Sales Tax (CST) is proposed in the Budget to be reduced to 2% from April 1, 2008.

The general rate of excise duty (CENVAT) has been reduced from 16% to 14% for all goods. The other ad-valorem rates of 24%, 12% and 8% have been retained.

Did you know?

Mauritius tax resident companies will have to file their annual final corporate income tax return, with respect to each accounting year ending after 31 December 2007, within six months of the respective year end date (Mauritius Revenue Authority's Statement of Practice - SP 1/07).

Tax Briefs (cont'd)

United Kingdom UK Budget 2008

The Chancellor confirmed that the main corporation tax rate will reduce to 28% with effect from 1 April 2008. A rate of 30% will continue to be charged on ring-fenced profits.

Capital allowances

From 1 April 2008 changes will apply to the capital allowances regime for companies. These include a phasing out of industrial buildings allowances, a reduction of allowances for plant and machinery to 20% and a new classification of features integral to a building with a writing down rate of 10%.

Measures have been announced to widen the availability of enhanced capital allowances for businesses investing in technology to reduce energy consumption, save water or improve water quality. Existing relief for expenditure on natural gas, biogas and hydrogen refueling equipment will also be extended.

Research and development

Legislation will be introduced in Finance Bill 2008 to increase the rate of relief for large companies from 125% to 130% and for small and medium companies from 150% to 175%. The proposals are subject to approval from the EC.

Controlled foreign companies

A variety of detailed new rules are introduced which are intended to close down structures which allow overseas profits built up in low tax jurisdictions to fall outside of the current controlled foreign companies regime. This includes structures which ceded control to non-UK persons while leaving UK residents with almost all of the economic rights.

Capital allowance buying

Legislation will be included in Finance Bill 2008 to prevent profitable UK companies from obtaining a tax advantage from acquiring a trading company with the intention of selling that trade on to crystallise a balancing allowance for capital allowance purposes.

Useful Links

PricewaterhouseCoopers web site in Mauritius
www.pwc.com/mu

Mauritius Revenue Authority
<http://mra.gov.mu>

Access to worldwide VAT news and technical material on GlobalVATonline
www.globalvatonline.pwc.com

International Bureau of Fiscal Documentation (IBFD)
www.ibfd.org

Chartered Institute of Taxation (CIOT)
www.tax.org.uk

Tax Treaties

Mauritius – Pakistan Treaty

Resident

The treaty applies to any person who is resident in one or both states. Resident of a state means a person who is liable to tax under the laws of that state by reason of his domicile, residence, place of management or any other criterion of a similar nature. A person includes an individual, a company, a trust and any other entity which is treated as a taxable unit under the laws of the respective states.

Permanent establishment

A person resident in a state and carrying on business in the other state will be taxed in the other state only if he has a permanent establishment there. Permanent establishment essentially means substantial presence, e.g. a place of management, a branch, an office, etc. It also includes a building site, construction or assembly project lasting more than 6 months in any 12-month period.

Did you know?

If shares in a company resident in India or Pakistan are owned by a Mauritius resident company, no Mauritius tax is levied on any gain when those shares are sold.

The gain should not be taxed in neither India nor Pakistan, can tax any such gain as the right to tax it is only provided to Mauritius under the respective Double Tax Agreements, the gain is taxable in Mauritius – and Mauritius does not tax the gain have any capital gains tax.

Dividends

Dividends may be taxed in the source country at a rate not exceeding 10%. However, Mauritius does not levy tax on dividends paid by resident companies.

Interest

Interest may be taxed in the source country at a rate not exceeding 10%. No tax is payable on interest paid to the Government of the other state or its agencies. Under Mauritius tax law, interest paid by a company holding a Global Business Licence Category 1 or a bank holding a Banking Licence to a non-resident not carrying on any business in Mauritius is exempt from tax.

Royalties

Royalties may be taxed in the source country at a rate not exceeding 12.5%. Under Mauritius tax law, royalties paid by a company holding a Global Business Licence Category 1 to a non-resident are tax exempt.

Capital gains

Gains from the sale of shares are taxable only in the country where the shareholder is resident. While Mauritius does not levy capital gains tax, any gain or profit from the sale of securities or units is specifically exempt from income tax.

Relief from double taxation

Double taxation is avoided by means of a tax credit allowed for tax paid in the other state. Both the treaty and Mauritius tax law provide for credit in respect of underlying tax relating to dividends received by a company resident in Mauritius as well as tax sparing relief for tax exemption or reduction granted by a state.

Unlike other treaties, no minimum shareholding is required to be able to claim underlying tax credit.

Tax Basics

Transfer pricing A brief discussion

Increasingly, many tax authorities are focussing more and more on transfer pricing as a source for increased tax revenues and making appropriate adjustments to certain transactions to reflect an objective commercial price, where, certain pricing and cross border charging between associated enterprises is not reflective of this.

The background

For tax purposes, prices between associated enterprises, such as group companies operating in different countries, should be charged as if the entities were not associated. In other words, the price should reflect a commercially objective, market price which would be charged on the open market to an unconnected entity. This is known as the 'third party, arm's length' principal which is accepted as an international standard when considering the level of pricing for transactions between associated enterprises.

Most countries have domestic tax provisions, either general or specific, that allow the respective tax authorities to adjust transfer prices which deviate from that principle.

- The 'third party, arm's length' principal was adopted by several European countries as the underlying basis for adjusting income received by the shareholders who had received additional benefits from a company which were not declared as dividends. Majority shareholders could obtain benefits as a result of their position of control. Such benefits, once determined, are treated the same as dividends for tax purposes and consequently not deductible for the company. They are referred to as constructive dividends or hidden profit distributions.

- During World War 1 (1914 – 1918), specific transfer pricing provisions were first introduced by the United Kingdom and the United States. These were tax anti-avoidance provisions aimed at deterring companies from moving profits overseas, usually to associated companies located in low tax jurisdictions, by manipulating the prices charged on certain cross border transactions.

The adjustments above, to a third party, arm's length basis, are based on the concept of the 'equal treatment' or the 'neutrality' principle.

In other words, the shareholders with a controlling interest in a company are placed in the same position as other shareholders, and associated entities are placed on parity with non-associated entities, through the application of the third party, arm's length principle, which effectively seeks to neutralise any advantage gained through any special relationship or connection between the entities.

By way of example, Mauritius, whilst having no specific transfer pricing legislation, does have 'third party, arm's length' provisions contained within its domestic tax legislation.

Section 75 of the Mauritius Income Tax Act provides that where a non-arms length relationship may exist:

'... the net income of any person carrying on a business or other income earning activity in Mauritius shall be the amount which the Director-General determines would have been derived from that business or activity, had all its commercial and financial transactions and relations been wholly at arm's length.'

Tax Basics

Transfer pricing

A brief discussion (cont'd)

The tax cost to an international group of companies

A transfer pricing adjustment by one tax authority is often not reciprocated by another, and, under these circumstances, a high overall tax cost can arise for a group.

This can be demonstrated by an example.

- Company A (located in country A which taxes profits at 20%) charges management expenses of USD 10,000 to Company B (located in country B which taxes profits at 30%). Both companies have significant taxable profits each year.
- If no transfer pricing adjustment is made, Company A will have a tax liability from the receipt of management expense income of $\text{USD } 10,000 \times 20\% = \text{USD } 2,000$, and, Company B will reduce its taxable profits by the management expenses of $\text{USD } 10,000 \times 30\% = \text{USD } 3,000$.
- On this transaction, the group overall, will have a tax liability (in country A) of USD 2,000 and a tax saving (in country B) of USD 3,000, thereby saving net tax of USD 1,000 by this associated company transaction.

In country B however, the tax authorities, through applying transfer pricing objective pricing methods, reduce the management expense of Company B to USD 6,000. The income is not reciprocally reduced by Country A's tax authorities.

- Company B will reduce its taxable profits by the management expenses, now, of USD 6,000 and this will produce a tax saving of $\text{USD } 6,000 \times 30\% = \text{USD } 1,800$. Company A's position will remain unchanged and it will still have taxable income of USD 10,000 taxed at 20% giving rise to a tax liability of USD 2,000.
- Following the transfer pricing adjustment, the group overall, will have a tax liability (in country A) of USD 2,000 (unchanged) and a tax saving (in country B) of USD 1,800, arriving at a net tax liability, now, of USD 200 overall.

Although the above is a very basic example, it does show the effect of a single transfer pricing adjustment made in one jurisdiction only, to the tax position of a group overall.

Arm's length pricing methods

There are three well established methods of pricing and traditionally these have been adopted by the United States and are now recognised internationally, namely, the comparable uncontrolled price (CUP), the cost plus a margin, and the resale price minus a margin method.

The United States also applies other pricing methods where intangible assets are involved, such as the profit-split method and the transactional net margin method, but these are not very widely adopted.

Tax Basics

Transfer pricing

A brief discussion (cont'd)

Defence against transfer pricing adjustments

As shown above, transfer pricing adjustments can produce high additional tax costs for international groups and companies that have cross border transactions with associated enterprises.

A measure toward reducing or eliminating a transfer pricing adjustment is the ability to demonstrate that the cross border price charged is reflective of third party, arms length price, by providing documentary evidence in support of this to the tax authority. This can greatly assist in having a tax authority accept that the prices charged are similar to those that would apply on an arm's length basis, making allowances for the risks and rewards of a particular transaction.

A company could, for instance, construct a 'defence file' for its related entity, cross border transactions, demonstrating that the prices charged for relevant overseas transactions, were similar, to those which would have been charged to an unconnected party, and therefore, reflective of a commercial, arm's length basis.

In developed countries, a pricing methodology can be agreed between a company and the tax authority by way of an Advance Pricing Agreement ('APA'). If suitable, one APA can be followed and applied as a global standard for a group's pricing of a particular service or product worldwide, and, this would then lend itself in support of agreeing the prices in another jurisdiction.

Transfer pricing adjustments can give rise to significant additional tax costs. Should you wish a 'transfer pricing' health check undertaken to identify any possible tax exposures and provide a defence file, or any assistance with any transfer pricing matter, please do contact PricewaterhouseCoopers.

Did you know?

If all the documentation and information is available, it only takes three weeks to incorporate a Mauritius limited liability company, obtain a Global Business Licence (category one) and obtain the annual tax residence certificate.

For companies trading in Mauritius, annual net profits (adjusted for tax purposes) are taxed at 15%.

About Us

PricewaterhouseCoopers Mauritius (www.pwc.com/mu) is recognised as a thought leader and a change initiator, offering the resources of a global organisation combined with detailed knowledge of local issues.

With over 150 professional staff, we serve a large number of multinational companies doing business in Mauritius, a cross section of the local business community as well as public institutions.

Tax Services

Assessment and appeals

- Attending to assessments and processing objections
- Preparation of appeal documents
- Representation at tax appeal tribunals

Corporate (Income) Tax services

- Preparation, review and filing of tax returns
- Monitoring compliance with filing and payment deadlines
- Correspondence or meetings with authorities to finalise tax assessments

International Assignee Solutions

We provide expatriates with tailor made tax planning and tax compliance services.

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- Advice on VAT compliance obligations
- Preparation, review and filing of tax returns
- Monitoring compliance with filing and payment deadlines
- Correspondence or meetings with authorities to finalise tax assessments

Tax Health Checks

We carry out tax health checks to provide assurance on compliance with Income tax, PAYE, social security and VAT.

Tax Advisory and Planning services

This includes general tax issues including:

- Mergers and Acquisitions
- Restructuring
- Disposals
- Value Added Tax
- International taxation
- Customs and excise duties
- Stamp duty

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