Tax Services

Tax times

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PRICEWATERHOUSECOOPERS

Tax Times is a periodical publication designed to keep you abreast of tax developments in Mauritius and around the world.

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.

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

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Foreword

The CSR programme introduced under the Finance Budget 2009 is now fully operational and, given its reach, we provide in this edition further information on the topic, together with our comments and analysis.

The Advance Ruling on E*Trade Mauritius Limited was issued on 22 March 2010 by the Indian Authority for Advanced Rulings, and we cover the arguments set out therein together with our observation on the continuous challenge by the Indian Tax Authorities vis-à-vis the validity of Mauritian Tax Residence Certificate.

Non-resident partnerships are increasingly being used as a structuring vehicle and this edition covers the taxation of a non-resident partnership and of its partners. We also explain the concepts of juridical double taxation and how an understanding of fiscal residence may lead to good tax planning.

This edition of Tax Times represents the first of our two releases planned for 2010.

We are planning to have some other newsletters and NewsAlerts in the coming months which have as objective to provide our clients with practical information that will help them in their day-to-day business operations. Should you wish to receive these regular publications, please contact any member of our Tax Team.

We thank all our readers for their useful comments and as usual, we look forward to your suggestions for future issues at tax.times@mu.pwc.com.

Best regards

The Editorial Team

Tax Practice

Corporate social responsibility

By Bobby Yerkiah – Tax Manager

Corporate Social Responsibility ('CSR') regroups the collective actions taken by a business to shoulder its responsibility regarding the impact of its activities on the environment, consumers, employees, communities, etc. The aim of CSR is to promote the public interest by encouraging community growth and development, and voluntarily eliminating practices that harm the public.

In 2009, the Government of Mauritius established a CSR programme applicable as from 01 July 2009, whereby profitable companies are requested to contribute to the social and environmental development of the country. Qualifying contributions may be made to the following CSR activities:

- Socio economic development (including gender and human rights);
- Health;
- Education and training;
- Leisure and sports;
- Environment; and
- Catastrophic interventions and support.

How does the CSR contribution operate?

CSR contributions are regulated under sections 50K and 50L of the Income Tax Act 1995 ('the Act'), whereby each profitable company is required to set up a CSR fund to:

1. Implement an approved programme run by the company itself;
2. Implement an approved programme under the National Employment Fund; or
3. Finance an approved Non Governmental Organisation ('NGO').

The compulsory CSR contribution, as set out under the Act, does not apply to a company holding a Category I Global Business License, a non-resident société or a bank in respect of transactions with non-residents and global businesses.

Section 50L requires that a company makes a CSR contribution equivalent to 2% of its book profit derived during the preceding year. The Act defines book profit for CSR purposes as:

"the profit computed in accordance with International Financial Reporting Standards, after income tax; and

(a) as reduced by profit on disposal or revaluation of fixed assets, where any such profit or revaluation is credited to profit and loss account; and

(b) as increased by loss on disposal or revaluation of fixed assets, where any such loss or revaluation is debited to profit and loss account."

If the amount spent on CSR is less than the amount required under the Act, then the difference should be remitted to the Mauritius Revenue Authority ('MRA') upon submission of the company's current income tax return.

A Statement of Practice was issued by the MRA on 31 March 2010, requiring companies with a CSR fund in excess of Rs 500,000 for the Year of Assessment 2010 to support their claim by a certificate from the CSR Committee.

The CSR Committee operates under the aegis of the National Empowerment Foundation. It consists of a total of seven members representing the Government, the private sector and NGOs. Its overall objective is to oversee companies' CSR activities and facilitate the contribution of companies to support existing approved national programmes carried out by institutions, national agencies or NGOs.

Companies with a CSR contribution of below Rs 500,000 will be required to produce a certificate from the CSR Committee as and when requested by the MRA. Any amount claimed which is not supported by a certificate from the CSR committee will be disallowed and claimed as income tax by the MRA.

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Corporate social responsibility (cont'd)

Analysis and comments

For the purposes of the Alternative Minimum Tax ('AMT'), the Act specifically provides that the book profit of a company is adjusted for dividends receivable from a resident company. However, no such adjustment is required when calculating CSR Contributions and it therefore appears that the intention is to enforce the CSR Contribution in respect of dividend income. The table below shows the comparative basis to calculate AMT and CSR.

	AMT	CSR
Book profit under IFRS as adjusted by-		
(i) dividends receivable from resident companies;	✓	✗
(ii) profits on disposal or revaluation of fixed assets; and	✓	✓
(iii) profits or loss or gains from sale or revaluation of securities.	✓	✓*
(iv) tax	✗	✓

Example : (Using the methodology outlined under section 50K)

The CSR Contribution is calculated based on the book profit after tax for the preceding year. Therefore, Company A with an accounting year end of 31 March 2010 will use the book profit of 31 March 2009 to calculate the CSR required amount. Company A's profit and loss account for 31 March 2009 is as follows:

	Rs
Interest income	5,000
Dividend income	4,000
Expenses	(2,000)
Net profit	7,000
Corporate tax	(450)
Net profit after tax	6,550

As there are no adjustments required, the book profit in this case is equivalent to the net profit after tax.

*Assuming securities are treated as non-current assets.

Corporate social responsibility (cont'd)

Since the CSR provision is effective from 01 July 2009, Company A's CSR contribution is to be pro-rated for year ended 31 March 2010 and is calculated as follows:

$$2\% \times \text{book profit as at 31 December 2008} \times \frac{\text{period from July 2009 to December 2009}}{12} = \text{Rs } 78.50$$

Exempt Dividend Income

Part II of Sub Part B of the Act provides that dividend paid by a resident company in Mauritius is specifically exempt from income tax.

As indicated above, the CSR Contribution is regulated under Sections 50K and 50L. However, the introduction of the CSR provisions also brought along further changes to Act and specifically in relation to the definition of income tax.

The definition of income tax was amended to also include any CSR charge under sections 50K and 50L. On this basis, although the dividend income adjustment is not included in the book profit definition, any dividend should be removed from the CSR calculation by virtue of the exempt income clause.

Therefore, the compulsory CSR contribution amount, as per the above example, should be Rs 38.25 instead of Rs 98.25 [2% x (Rs 6,550 – Rs 4,000) x 9/12].

Concluding Remarks

The CSR Contribution is one of the creative tax measures that have been put in place to boost tax revenues and to reduce the social burden on the government. Although the CSR provisions may contribute less to the tax revenues than originally anticipated (through the exclusion of dividend income), we should view the compulsory CSR contributions as a deliberate inclusion of public interest into business decisions. ■

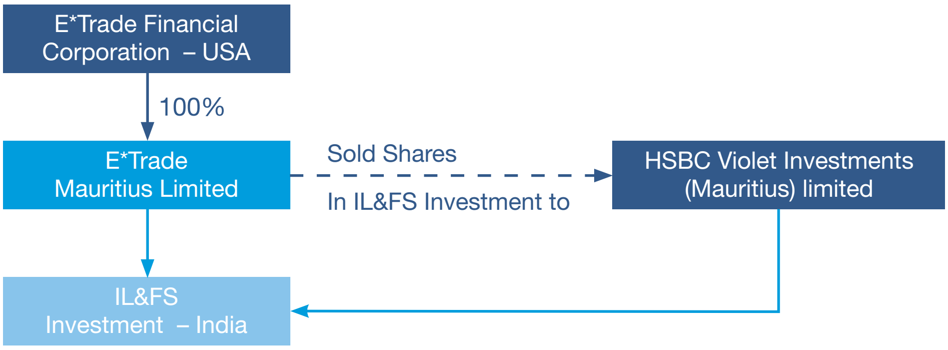
Tax Treaties

Tax residence under the Mauritius-India Treaty – Validity affirmed by Indian Court

By Cathie Hannelas – Tax Manager

The Indian Authority for Advance Rulings ("AAR") issued on 22 March 2010 a ruling in the case of E*Trade Mauritius Limited ("E*Trade Mauritius") which confirmed that a company resident in Mauritius cannot be denied treaty benefits under Article 13 – Capital Gains Tax of the Mauritius-India double taxation agreement ("DTA").

Facts



- E*Trade Mauritius, incorporated in Mauritius, held a valid tax residency certificate ("TRC") from the Mauritian tax authorities;
- E*Trade Mauritius sold its holdings in IL&FS Investment, an Indian Company, to another Mauritian company, HSBC Violet Investment ("Mauritius") Limited ("HSBC"), and realized long term capital gains;
- E*Trade Mauritius applied to the Indian tax authorities for an approval not to withhold tax on the sales consideration;
- The Additional Director of Taxes ("ADIT") refused the application on the ground that E*Trade Mauritius was solely a conduit company and the capital gains arose in the hands of E*Trade Financial Corporation ("E*Trade USA"). The sales consideration was therefore subject to a withholding tax of 21.11% (20%, and additional surcharge and cess);

Tax Treaties

Tax residence under the Mauritius-India Treaty – Validity affirmed by Indian Court (cont'd)

- The decision was challenged by E*Trade Mauritius at the Bombay High Court;
- The High Court with the consent of both parties directed E*Trade Mauritius to file a fresh application with the appropriate body, i.e., Director of Income Tax ("DIT");
- Pending the decision of the DIT, HSBC was requested to remit the tax to the Indian tax authorities;
- The DIT confirmed the decision of the ADIT and the gain was subject to the withholding tax;
- Following the decision of the DIT, E*Trade Mauritius applied for a ruling from the AAR stating that as a resident of Mauritius, holding a valid TRC, it was exempt from capital gains tax under the Mauritius-India DTA.

Arguments of the Indian Tax Authorities

E*Trade Mauritius made Capital gains on the sale of its shares in IL & FS investment. The Indian tax authorities argued that E*Trade USA was the beneficial owner of the gains. As a sale of an underlying asset in India occurred, the capital gains were subject to withholding tax in India, thus ignoring the existence of E*Trade Mauritius.

Arguments of E*Trade Mauritius

Under Article 13 – Capital Gains Tax of the Mauritius-India DTA, capital gains are only taxed in the country of residence of a company. Therefore, E*Trade Mauritius, as a tax resident of Mauritius, should only be subject to tax in Mauritius on such capital gains and since there is no capital gains tax in Mauritius, the gains are effectively not taxable.

Relying on the decision of the Supreme Court in the Azadi Bachao Andolan case, E*Trade Mauritius argued that if it holds a valid TRC issued by the Mauritian tax authorities, it should be deemed to be tax resident in Mauritius and it could not be deprived of its benefits under the DTA. Thus, the beneficial ownership motive alleged by the Indian tax authorities was not relevant when referring to Article 13 of the DTA.

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Tax Treaties

Tax residence under the Mauritius-India Treaty – Validity affirmed by Indian Court (cont'd)

Ruling of the AAR

The AAR ruled that E*Trade Mauritius was not subject to any withholding tax based on the following:

- Treaty shopping, i.e incorporation of conduit company in a third country, to take advantage of the double tax treaties, is not prohibited as long as this is done within the framework of the law. It is the essence of the Azadi Bachao Andolan case;
- All legal procedures for the purchase and transfer of shares have been undertaken by E*Trade Mauritius, which was also the recipient of the sales consideration. These added substance to the fact that E*Trade Mauritius was the legal owner of the shares;
- E*Trade Mauritius was a stand alone corporate and legal entity. Although E*Trade USA was actively involved in the sales transactions, this did not override E*Trade Mauritius shareholder's right in IL&FS Investment;
- The Indian tax authorities could not deny treaty benefits to a Mauritian resident company under the Mauritius-India DTA.

Comments

The main argument put forward by the Indian tax authorities to deny treaty benefits to E*Trade Mauritius was that the interposition of E*Trade Mauritius by E*Trade USA constituted an arrangement for the avoidance of capital gains tax and must be therefore disregarded. The Indian tax authorities not only ignored the principles laid down in the Azadi Bachao Andolan case but also ignored the fact that the DTA does not contain a Limitation of Benefits ("LoB") Clause which would specifically deny treaty benefits to residents of a third state.

This argument was not retained by the AAR which ruled in favour of E* Trade Mauritius based on the principle laid down in the Azadi Bachao Andolan case to the effect that a company resident in Mauritius should enjoy the benefits of the Mauritius-India DTA provided that it has been lawfully declared as a resident of Mauritius.

India has for many years tried to initiate the renegotiation process of the DTA with Mauritius, more specifically the article on capital gains. The perceived misuse of the DTA by many residents of third country states results in the loss of tax revenue to India and has resulted in the Indian tax authorities seeking to make assessments on Mauritian residents despite the Central Board of Direct Taxes ("CBT") circular and the judgement in the Azadi Bachao Andolan case.

Did you know?

Any person who, wilfully and with intent to evade income tax, misleads or attempts to mislead the Director-General, in relation to any matter which affects his own or any other person's liability to income tax, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 2 years.

Tax Treaties

Tax residence under the Mauritius-India Treaty – Validity affirmed by Indian Court (cont'd)

India is also now proposing a new Direct Tax Code ("DTC") which provides to the Commissioner of Income Tax the power to disregard arrangements entered into for tax avoidance.

A first draft of the DTC was released in August 2009 and an amended version was released on 15 June 2010 for public debate after taking into account the comments from the first draft. Some of the measures contained in the DTC are:

- Concept of residence for a company incorporated outside India

  The DTC provides that a company incorporated outside India will be treated as resident in India if, at any time in the financial year, the control and management of the company is located wholly or partly in India. The company will thus be taxed on its worldwide income.

- Double Taxation Avoidance Agreement vis-à-vis Domestic Law

  Neither a DTA nor the DTC shall have a preferential status (to note that in the initial draft, the DTC was to override the DTA) and, in case of conflict, the more beneficial provision to the taxpayer shall prevail, except in the following situations:

  - when a General Anti Avoidance Rule is invoked, or
  - when Controlled Foreign Corporation provisions are invoked, or
  - when Branch Profits Tax are levied.

- General Anti-Avoidance Rules ("GAAR")

  The GAAR provisions apply where a taxpayer has entered into an arrangement with the main view of obtaining a tax benefit.

  Under the initial draft of the DTC, the Commissioner of Income-Tax would have been empowered to declare if an arrangement fell under the anti-avoidance provisions and he could also alter such arrangements, for residents as well as non-residents companies.

  However, the following safeguards have been proposed, in the revised discussion paper, for invoking GAAR provisions:

  i) The CBT will issue guidelines to cover the circumstances under which the GAAR may be invoked.

  ii) GAAR provisions will be invoked only in respect of an arrangement where tax avoidance is beyond a specified threshold limit.

  iii) The forum of Dispute Resolution Panel would be available where GAAR provisions are invoked.

The final DTC will in all likelihood be voted at the end of this year and be implemented by 2011. Given its impact on the Mauritius-India DTA, we shall keep our readers updated on progress in our future editions of Tax Times. ■

Tax Briefs

Australia

New tax regime for MITs

A new tax regime for Management Investments Trusts (MIT) that aims to provide certainty and simplification and end the confusion between trust and tax law is to be introduced as from 01 July 2011.

The proposed changes are as follows:

- Unitholders in MITs will be taxed on the taxable income that the trustee allocates to them rather than on their present entitlement under the trust deed;
- Minor corrections to the calculation of net income of MITs will be allowed to be made in to the following year after taking into account in the calculation of the net income of the following year;
- Cost base of units in MITs will be increased by the amounts that have been taxed to the unit holder, but not yet received (this will eliminate the current potential for double taxation on the disposal of the units before the distribution is received);
- Corporate trust rules in Division 6B of the Income Tax Assessment Act 1936 will be repealed. Presently, these rules may require certain trusts to be taxed as companies, but the reasons for the existence of these rules have long been abolished.

Italy

VAT regime for triangulation scheme

Ruling no35/E was issued by the Italian Tax Authorities (ITA) on 13th May 2010 concerning the application of the exemption of VAT applicable to the intra-community sales of goods in a triangular scheme.

Issue of the case: It concerns the exact interpretation of Art. 58 of DL No 331/93 and Art. 8(1)(a) of D.L No 331/1993 which stipulate that taxable goods supplied within a Member State qualify for exemption if they are supplied under a triangulation scheme whereby the first supplier would sell to another seller of the same residence (Italian) who would in turn sell to a customer resident in a Member state, provided that the goods are delivered to the other Member State under the name of the first supplier.

Facts: An Italian company (A) supplied to another Italian taxable company (B) goods to be sold in turn to a taxable customer (C) established in another Member State.

Rulings: ITA clarified that where goods are transported to customer (C) in another Member State by an Italian purchaser (B) on behalf of the first supplier (A), each domestic transaction is exempt from VAT as in such a situation the Italian purchaser (B) acts as an intermediary for the first supplier (A) without acquiring the availability of the goods in any stage of the transaction.

Tax Briefs
(cont'd)

United States
Tax Guide for Aliens

Publication 519 (US Tax Guide for Aliens) has been updated by the US Internal Revenue Service (IRS) which will be of use for preparing tax returns for 2009. The publication provides details for residents and non – residents to determine their liability for US federal income tax. Rules determining US residence status, i.e. the US green card test and the US substantial presence test, and the general rules that apply to determine and compute US tax liability are also covered in the publication.

Publication 519 also highlights the requirements to file US income tax returns and the benefits available under US income tax treaties and social security agreements.

Russia
The "good faith taxpayer"

In its Letter N 03-02-07/1-110, the Ministry of Finance clarified the "good faith taxpayer" in reference to the Order of the High Arbitrary Court No 53 dated 12 October 2006 "on evaluation of grounds for obtaining tax benefits".

According to the Court, tax benefits may not be granted if the tax authorities can prove, among other things that the taxpayer has acted without necessary diligence and could have been aware about the violations made by contractual counterparties.

Thus the Ministry concluded that a taxpayer could be considered not to act in good faith if it has entered into transactions with entities that are not registered with the state authorities, or are registered in multiple places, or if it is liquidated under the order enforced by state authorities.

However, the Ministry confirms that a taxpayer cannot be found liable to tax until his misconducts have been proven in accordance to law.

Belgium-Mauritius
Customs Agreement between Belgium and Mauritius enters into force

Mauritius and Belgium signed an agreement on customs matters on 10 April 2007 and same will enter into force on 1 June 2010.

The purpose of the agreement is to control the correct application of customs legislation and prevent, investigate and combat customs offences.

Tax Fundamentals

Taxation of partnerships and their associates

By Ryan Allas – Tax Manager

Introduction

The taxation of partnerships, commonly known as ‘société’ in Mauritius varies from one jurisdiction to another. In some jurisdictions, partnerships are treated as a taxable entity whilst in others they are treated as a fiscally transparent entity.

When a tax regime treats a partnership as a separate entity, the partnership is liable to tax on its chargeable income and the partners are taxable on dividend received from the partnership.

On the other hand, a fiscally transparent partnership is not liable to tax. The partners are liable to tax on their share of taxable profits, irrespective of whether those profits are distributed.

Mauritius Income Tax Act 1995 (‘The Act’)

Definition of a resident partnership

A partnership is defined under the Act as any partnership formed under any enactment in Mauritius and includes, amongst others, a partnership formed under the law of a foreign country and a joint venture.

For the purposes of the Act, residence, when applied to a partnership, means *‘a partnership which has its seat or siege in Mauritius and includes a société which has at least one associate or associé or gérant resident in Mauritius’*

On this basis, it is sufficient that a foreign partnership has at least one Mauritian resident partner to be considered as a resident partnership for the purposes of the Act.

Taxation of resident partnerships and their associates

Section 47 of the Act indicates that a resident partnership is treated as a fiscally transparent entity, that is the partners are liable to tax on their share of profits irrespective whether the profits are distributed to them or not. One exception to this rule is that the partnership is liable to pay national resident property tax (NRPT) where applicable.

Tax Fundamentals

Taxation of partnerships and their associates (cont'd)

According to the OECD Report on partnerships, where a partnership is treated as fiscally transparent by a state, it is not 'liable to tax' for the purposes of Article 4 of the OECD Model Convention and on that basis, the partnership cannot get access to treaty benefits. In such cases, the partners may benefit, with respect to their share of income in the partnerships, from the tax treaties entered into by their resident state to the extent that they are liable to tax on that income in that state. Therefore, based on the OECD report on partnership, a Mauritian resident partnership is not eligible to tax conventions entered into by Mauritius and only the partners resident in Mauritius can take benefit of the treaties.

Taxation of non-resident partnerships and their associates

The definition of a 'company' under the Act includes a non-resident *société* and under Section 44 of the Act, a company is liable to tax on its chargeable income. Further, Section 47 (7) of the Act states that a non-resident partnership shall be liable to income tax as if the partnership were a company and pay income tax on its chargeable income at the rate of 15%. However although the non-resident partnership may be taxed in Mauritius, it will not be in a position to benefit from treaties entered into by Mauritius.

On the other hand, section 47 (5), of the Act provides that a partnership holding a Global Business Category 1 Licence can opt to be treated as a taxable entity. If the partnership opts to be taxed, then the partnership will be taxed as a company and shall also be eligible to tax treaties entered into by Mauritius.

Tax filing requirements in respect of a resident partnership

Every resident partnership must submit a return by 31 March of the following year specifying all income derived during the year, the full name of the associates and the share of income accruing to each of them. Any payment of NRPT must be submitted together with the return.

Strictly under the Act, a foreign partnership which has at least one Mauritian resident partner must file a return with the MRA on an annual basis. It is unclear as to how the MRA can enforce such a requirement on a foreign partnership. ▪

Flash news:

In our eighth edition of Tax Times, we commented on the judgement of the ARC in the case of Mega Design Limited v/s The Director General of the Mauritius Revenue Authority ('MRA') where we expressed our opinion that the ARC rightly ruled that the supply of services by Mega Design to SMEC, an Australian company were zero rated though it was performed in Mauritius and the ultimate beneficiary was in Mauritius. We also highlighted that the law should be applied as it is, not as it should have been.

On 19th February 2010, the Supreme Court has dismissed the appeal of the MRA against the judgement of the ARC. It also highlighted that to interpret the words 'outside Mauritius at the time the services were performed' we should not go outside the purview of the Act. ▪

Tax Fundamentals

How fiscal-residence can lead to juridical double taxation

By Shameemah Abdool Raman-Sahebally – Tax Manager

The rights of a country to tax a transaction is provided for under its domestic law. For a taxing right to apply, there must be a taxable event on which a state can exercise its right and a person who is liable to pay the tax.

The residence status of a person is an important factor in determining the taxing right of a state. Different states have different definitions for residence under their domestic laws and such difference may lead to juridical double taxation, that is, the same person suffer comparable taxes on the same income in two different jurisdictions.

For example in the United States, US citizenship is the criteria for tax residence of an individual. Therefore, the income of a US citizen is taxable in the US without regard to the citizen's place of residence, and more significantly, disregarding where the income is earned or produced.

Useful Links

PricewaterhouseCoopers website in Mauritius
www.pwc.com/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

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

Board of Investment
www.boimauritius.com

In Mauritius, over and above the permanent place of abode*[1] criterion, the residence status of an individual is determined by the number of days that the person spends in Mauritius, that is, 183 days in an income year or an aggregate of 270 days in the current income year and the two preceding income years.

For a company, the Income Tax Act 1995 ('the Act') of Mauritius determines the residence status by its place of incorporation or its place of central management and control while, in the United States, the residence of a company is principally determined by its place of incorporation if it is not an S corporation*[2].

Therefore, under certain circumstances, the same criterion may lead to dual residence depending on the interpretation of that criterion in the different states. For example, if 'management and control' is the determining factor, it is important to know what this consists of.

'Management and control' of a company depends on a combination of elements such as operational activity, running of the business, the place where shareholders reside or place where board meetings are held. Where part of these elements is present in a state, the fiscal residence of a corporation may trigger disputes between two states. For example, if management and control in country A depends on the place where the board meetings of an entity are held while, in country B, the place where the majority of the shareholders reside applies, then entity F may have dual residence status if it has its board meetings in country A and the majority of its shareholders reside in country B. Therefore, entity F can be liable to comparable tax on the same income in country A and in country B due to the difference in the interpretation of the same criterion.

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*1 Per OECD Commentary, permanent place of abode (or permanent home) is that place where the individual has arranged to have the dwelling available to him at all times continuously, and not occasionally for the purpose of a stay which, owing to the reasons for it, is necessarily of short duration (travel for pleasure, business travel, educational travel, etc.)

*2 An S corporation is a corporation formed in the U.S.A. An S corporation may elect not to be taxed, and its shareholders are taxed on the corporation's income as it arises (and not when it is distributed).

Tax Fundamentals

How fiscal-residence can lead to juridical double taxation (cont'd)

In cases where there is no tax treaty between countries, juridical double taxation may be eliminated through the specific domestic law provisions such as the relief of foreign tax credit suffered on foreign income earned by a resident person.

However, the problem of dual residence and juridical double taxation for both individual and corporate entities is also resolved when there is a tax treaty between two states. Under the OECD Model, the dual residence of an individual is resolved by the tie breaker rule which stipulates the following:

- An individual is resident in a contracting state if he has a permanent home in that state. If he has a permanent home in both contracting states, then his residence status is determined by the closeness of his personal and economic relations (i.e. centre of vital interest) with that state;
- If the state with which his centre of vital interest cannot be determined or if he does not have a permanent home available to him in either state, then his resident state will be the country where he has an habitual abode (i.e. where he stays more frequently);
- If the individual has an habitual abode in both states, then he will be resident in the state of which he is a national;
- If he is a national of both states or neither of them, the competent authorities of the contracting states shall settle the question by mutual agreement.

For a corporation, dual residence status is solved under the OECD Model by allocating the right to tax to the state where the place of effective management of the entity is situated.

It should be noted that, as per the OECD Model Commentaries, an entity can have more than one place of management, but it can have **only one place of effective management at any one time**. As per the same commentaries, effective management is the place where key management and commercial decisions that are necessary for the conduct of the entity's business are made.

As seen above, juridical double taxation is the result of a conflict between two tax systems which can be resolved either through unilateral relief under the domestic tax system of a country or through tax treaties. The rationale behind the domestic tax laws and the tax treaties should be that of ensuring a fair distribution of global tax revenues among nations while not restricting the economic choices of taxpayers on international transactions. ■

Reference: Basic International Taxation, Second Edition Volume 1 by Roy Rohatgi.

Tax Quote

"Government's view of the economy could be summed up in a few short phrases: If it moves, tax it. If it keeps moving, regulate it. And if it stops moving, subsidize it."
- Ronald Reagan

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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 200 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.

Value Added Tax services

- Advice on VAT compliance obligations and general issues
- 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 arising from Mergers and Acquisitions, Restructurings, and Disposals including:

- Property relating taxes
- International taxation
- Customs and excise duties

Expatriate Support and Residency

- Handling applications for occupation permits for professional expatriate personnel
- Handling applications for permanent residence under the Permanent Residence Scheme

E-Filing Centre

- Filing of annual and quarterly Corporate tax returns electonically on behalf of our clients
- Filing of PAYE return electronically on a monthly basis on behalf of our clients
- Filing of monthly or quarterly VAT return electronically on behalf of our clients

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