Tax Services

Tax times*

Mauritius

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PRICEWATERHOUSECOOPERS

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.

For any subscription matters, please contact:
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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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Contents

Foreword

For more than a decade, Mauritius has been striving to keep its position as a conduit country for investment into Asia by offering the best tax incentives to its offshore sector. In this edition, we analyse how best to use the Mauritius route to channel investments from the US to Singapore. We also discuss the concept of permanent establishment in light of the ruling delivered by the Indian Authority for Advance Ruling in the case of Cal Dive Marine Construction (Mtius) Ltd.

On the domestic front, you can read an analysis of the case of Mega Design Limited v/s Mauritius Revenue Authority, as well as comments on some weaknesses of the Mauritian tax system. Our comments reflect the difficulties that many of our readers are facing, and hopefully will help bring about much needed reforms to certain aspects of the Mauritian tax system.

This 8th edition of Tax times is also the third issue of Year 2009 and reflects our continued effort and commitment to bring to our readers the latest developments in tax matters. We continue to encourage our readers to submit their feedback as this would help improve future editions.

Enjoy your reading!

The Editorial Team

Special thanks to our reviewers André, Ramesh, Tony and Dheerend, for their valuable time and expert knowledge of the subjects treated in this edition of Tax Times.

Tax Practice

An analysis of the case of Mega Design Limited v/s Mauritius Revenue Authority

By Ryan Allas – Tax Manager

Introduction

Section 2 of the Value Added Tax Act 1998 ("the VAT Act") defines a taxable supply as 'a supply of goods in Mauritius, or a supply of services performed or utilised in Mauritius'. It includes a supply which is zero-rated but does not include an exempt supply.

Section 11 of the VAT Act provides that a supply of goods or services is zero-rated if the goods or services are specified in the Fifth Schedule.

According to item 6 of the Fifth Schedule, the supply of services to a person who belongs to a country other than Mauritius and who is outside Mauritius at the time the services are performed, is zero-rated. A person belongs to a country other than Mauritius if that person has no permanent establishment in Mauritius for the carrying on of his business or has his place of abode outside Mauritius.

Hereunder is an analysis of the case Mega Design Limited v/s The Director General, of the Mauritius Revenue Authority ('MRA') which deals with whether the supply made by Mega Design is zero-rated or is taxable at the standard rate.

Facts of the Case

Snowy Mountain Engineering Contractor ('SMEC') is a non-resident company with its centre of economic interest located in Australia. The services of the SMEC were retained by the Waste Water Authority (Ministry of Public Authorities) ('WWA') in Mauritius. SMEC had a contract with WWA to provide global consultancy services to the latter. As SMEC needed local input, it subcontracted part of the work under its contract with WWA to Mega Design Limited ('Mega Design'). Mega Design is a Mauritian resident company and is VAT registered in Mauritius. The project was in respect of the 'Evaluation of the assets of the Waste Water Sector'. Mega Design provided SMEC with information for the preparation of the reports. Invoices were raised by Mega Design to SMEC for the work and Mega Design did not charge VAT on its invoices.

Tax Practice

An analysis of the case of Mega Design Limited v/s Mauritius Revenue Authority (cont'd)

Point in issue

Whether according the work performed by Mega Design is a taxable supply at standard rate or zero rate. The MRA was of the view that VAT should have been charged at the standard rate by Mega Design to SMEC. An assessment was raised by the Commissioner in this respect.

The case was heard by the Assessment Review Committee ('ARC') and the ARC ruled that the supply made by Mega Design was zero-rated.

It should also be highlighted that the MRA has appealed to the Supreme Court against the decision of the ARC but unless the Supreme Court or the Privy Council later overturn the decision, the judgement of the ARC prevails.

Case for Mega Design

The supply of services by Mega Design to SMEC is a taxable supply per Section 2 of the VAT Act.

According to Section 11 of the VAT Act, a supply of goods or services is zero rated if it is of a description listed in the Fifth Schedule to the VAT Act. The Fifth Schedule includes 'the supply of services to a person who is not resident in Mauritius and who is outside Mauritius at the time the services are supplied'. In this context, SMEC is not resident in Mauritius as it does not have a permanent establishment in Mauritius and accordingly the services supplied by Mega Design is zero rated.

Mega Design also highlighted that they were instructed by SMEC to act as subcontractor and were contractually bound to SMEC for the provision of services. The subcontracting agreement would not exist without the agreement between SMEC and WWA.

Mega Design also pointed out that the concept of ultimate beneficiary does not exist in the VAT Act and the test to see whether a supply of services is zero rated is not whether the ultimate beneficiary of the services is not a resident in Mauritius but whether the services are supplied to a person not resident in Mauritius.

Case for the Director General, MRA

According to the MRA, the subcontracting agreement between Mega Design and SMEC includes the production of data, valuation of assets belonging to the WWA and reporting to SMEC. The MRA argued that the performance of the services was in Mauritius as the collection of data and site visit was done in Mauritius. Moreover, the ultimate beneficiary of the services performed by Mega Design is WWA.

Did you know?

As from 1 July 2009, a corporation holding a Category 1 Global Business Licence under the Financial Services Act preparing its financial statements in either USD, Euros, or GB Pound shall submit its APS statement and its return of income and pay any tax specified therein in that currency.

Tax Practice

An analysis of the case of Mega Design Limited v/s Mauritius Revenue Authority (cont'd)

Although there is a contract between Mega Design and the WWA, the MRA assessed the situation as a whole. Services were done under a contract and the collection of data was entirely done in Mauritius by a Mauritian company which is VAT registered. Therefore, the supply of services was made in Mauritius. According to the MRA, the key question is who the beneficiary of the service is and, according to them, it is the WWA ultimately. SMEC being overseas could not provide all the services and that is why part of the consultancy work was subcontracted to a Mauritian company. Even though there is an agreement between Mega Design and SMEC, services were rendered to WWA.

Decision of the Assessment Review Committee ('ARC')

According to the ARC, the supplies which were made by Mega Design to SMEC are zero-rated. The ARC relied on the fact that the VAT Act does not make any reference to the concept of 'beneficiary' or 'ultimate beneficiary' and it is clear under the VAT Act that, once services are made to a person outside Mauritius, they are treated as zero-rated.

Our Comments

In the above case, services were supplied by Mega Design to SMEC in the first place, and subsequently SMEC provided services to WWA. It is clear that SMEC subcontracted part of its work to Mega Design for business reasons without any tax avoidance motive. Therefore, the ARC rightly ruled that the concept of ultimate beneficiary does not exist in the Mauritian law and we should not go outside the law. Item 6 of the Fifth Schedule specifies that any work done for a non-resident is zero-rated, irrespective of where the work is actually performed. This judgement should however not be used as a planning tool to avoid paying VAT as they may be caught by the anti-avoidance provisions in the VAT Act.

Tax Profile

Ryan Allas

Ryan joined PricewaterhouseCoopers in 2006, where he currently manages a portfolio of around 150 tax clients. He has technical expertise in both domestic and international tax, including interpretation of double taxation treaties and the use of trusts in international tax planning. He has particular experience in the taxation of banks and insurance companies.

Before joining PricewaterhouseCoopers, Ryan had 7 years working experience at Financial Services Commission and Financial Services Promotion Agency. Ryan has technical expertise in the regulatory framework of the financial services sector.

Qualifications and memberships

- BSc (Hons) in Accounting and Finance
- Post Graduate Diploma in International Tax Planning
- ACCA

Ryan is married and has 2 children. He is actively involved in social work and chaired the Conseil Municipal des Jeunes. He is a big fan of Manchester United.

Tax Practice

The concept of construction 'PE'

By Bobby Yerkiah – Tax Manager

Introduction

The Authority for Advance Rulings (AAR) in India delivered a ruling on 26 June 2009 regarding construction PE (permanent establishment)[1] in terms of the India/Mauritius tax treaty. The ruling provides further guidance on construction PE and makes an important distinction between Article 5(1) and Article 5(2)(i) of the said treaty. A summary of the ruling is reproduced for the purpose of our analysis and comments.

Ruling

Facts: Cal Dive Marine Construction (Mauritius) Ltd ('The Taxpayer') is an infrastructure company and entered into an agreement on 4 December 2007 with Hindustan Oil Exploration Company Ltd (HOEC) for laying pipelines and constructing associated structures. The preparatory activity started in October 2008 and the project itself ended in March 2009.

Issue: The AAR was requested to consider the following:

- Whether the Taxpayer had a PE in India under Art. 5 of the tax treaty.
- Whether the Taxpayer had a construction and installation PE under Article 5(2)(i) of the tax treaty, and whether the existence of the PE is to be determined in accordance with the general definition of PE under Article 5(1) of the tax treaty using the concept of a fixed place of business in India; and
- If the existence of a PE is to be determined under Article 5(2)(i) of the tax treaty, the method of computing the project duration in India for the purpose of ascertaining the threshold limit of 9 months.

Decision: The AAR ruled that the existence of a PE should be examined under Article 5(2)(i) of the tax treaty in terms of a "construction and installation PE" and not under the general definition of PE under Article 5(1) (fixed base) of the tax treaty.

The AAR observed that:

- The work undertaken by the Taxpayer, which involved laying pipelines and constructing associated structures, was nothing but a "construction project" and an "assembly project".
- A PE cannot exist as the Taxpayer did not establish a project office in India. The Clause (i) of Article 5(2) (Construction) specifically provides for the issue of construction and assembly projects which prevails over other provisions of Article 5(2) and the general definition of PE under Article 5(1) (Fixed place) of the tax treaty.
- The threshold limit of 9 months under Article 5(2)(i) of the tax treaty would commence from the day when the preparatory activities for the execution of the project started in India. Accordingly, the period of the project was from October 2008 to March 2009 i.e. only 6 months. Hence, it did not exceed the threshold limit of 9 months in order to constitute a construction or an installation PE.

[1] Definition of PE under Articles 5(1) and 5(2) (i):

Article 5(1) – For the purposes of the convention between Mauritius and India, the term 'permanent establishment' means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

Article 5(2) (i) – a building site or construction or assembly project or supervisory activities in connection therewith, where such site, project or supervisory activity continues for a period of more than nine months.

Tax Practice

The concept of construction 'PE' (cont'd)

Analysis and comments

The concept of PE is typically covered in Double Taxation Conventions (DTCs).

The OECD Model tax treaty and all DTCs based on the OECD Model define the term PE as a fixed place of business through which the business of an enterprise is wholly or partly carried on. Examples of such PEs are a place of management, a branch, an office, etc.

A PE is also created if a building site or construction or installation project exceeds a specific duration. The duration varies from treaty to treaty but, in most treaties, it ranges from 6 months to 12 months. For example, the threshold for a construction PE in the India/Mauritius treaty is 9 months. The term building site or construction or installation project includes not only the construction of buildings but also the construction of roads, bridges, canals, the laying of pipelines, excavating or dredging.

The commentaries to the OECD Model tax treaty also provide that a site exists from the date on which the construction work starts, including any preparatory work. The determining criterion for a construction PE is the duration of the construction project irrespective of whether the enterprise carrying on the construction, has a fixed base or not. If a construction is carried out even through a fixed base and the duration of the project is less than the treaty threshold, there will not be any PE in respect of the construction project.

Concluding remarks

The AAR has nothing but confirmed that the duration test is one of the main determining factors in deciding what constitutes a construction PE. It also clarified the method to calculate the threshold limit, especially if there are preparatory works connected with the construction project.

Source: IBFD July 2009, OECD Model Convention on Income and Capital and Tax treaty (Mauritius – India)

Tax Profile

Bobby Yerkiah

Bobby joined PricewaterhouseCoopers in 2008 and provides taxation advice on domestic tax issues, international tax planning and the application of tax treaties to clients in a range of industries. He supervises compliance work for corporate clients including multinationals and offshore corporations, and deals with queries from and investigations by the MRA.

Bobby had over 10-year experience at the Income Tax Department where he was an Investigating Officer before joining PricewaterhouseCoopers. After the creation of the MRA in July 2006, he was appointed as Technical Officer.

Qualifications

- FCCA
- MSc Finance
- LLB ongoing

Bobby is married with two children, and enjoys reading and travelling.

Tax Treaties

Investing in Singapore through Mauritius – Treaty and Non-treaty based planning

By Cathie Hannelas – Tax Manager

Introduction

Tax cost can be a determining factor in the design of a business model. Investors normally assess and choose the tax jurisdictions that provide the greatest scope for tax planning opportunities and an overall reduction in the tax liability of the different income streams.

Apart from the tax cost on the investment income, another factor to consider is how to repatriate the income with the minimum tax leakage. This will depend largely on the tax system of the countries and the nature of the investment income, e.g. dividends, interests, royalties, etc.

Several jurisdictions are conducive for foreign direct investment. Mauritius has one of the most interesting tax regimes in the world with no withholding tax on the outbound payment of dividend and has no capital gains tax. Mauritius can also be used as an effective conduit between two non-treaty countries.

To illustrate the above, we analyse below two cases of US investors investing in Singapore. There is no income tax treaty between the US and Singapore. For the purpose of this article, we have considered the tax impact on dividend and interest income when Mauritius is used as intermediary.

The domestic withholding tax rates on the payment of dividends and interests from Singapore entities to non-residents are 0% and 15% respectively. Further, any income received by a US company from Singapore will be taxed in Singapore and the US according to their respective domestic laws.

Tax Treaties

Investing in Singapore through Mauritius – Treaty and Non-treaty based planning (cont'd)

1. Investment by US companies in equity in Singapore through a base company

A US company may invest in Singapore via a base company in Mauritius, such as a company holding a Category 2 Global Business Licence ('GBC 2'). GBC 2 companies are exempt from tax in Mauritius and any amount paid by a GBC 2 is exempt in the hands of a non-resident.

Since there is no withholding tax on dividends in Singapore, dividends are repatriated tax free to the base company. The profits can be accumulated tax free in the GBC 2 company for re-investment and this will defer any US tax until the profits are repatriated to the US. However, due care must be taken in respect of the US Controlled Foreign Corporation legislation.

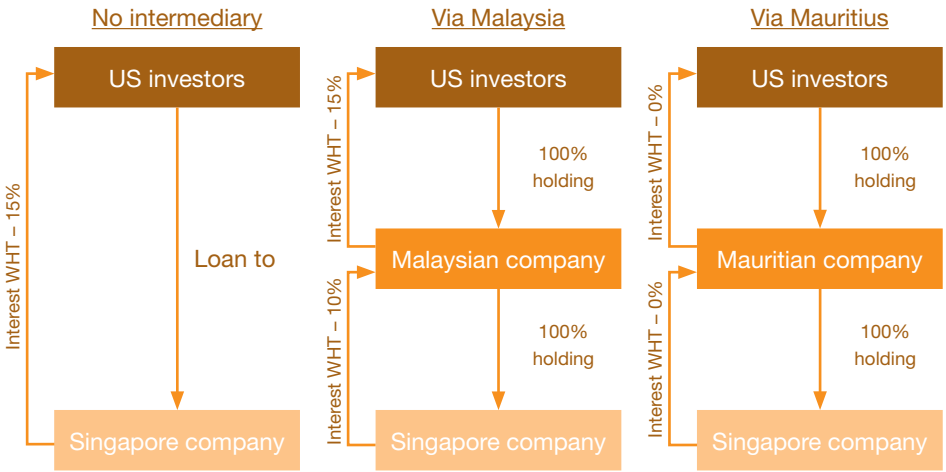
2. Loans from US investors

The interest income on a loan granted directly by the US company to the Singapore company will suffer withholding tax ('WHT') at the maximum rate of 15% in Singapore.

One way to minimise the tax cost is to use countries with which Singapore has favorable double taxation agreements, such as Mauritius.

The three scenarios below analyse the tax effect on interest if the loan is given directly from the US or through a company in an intermediary jurisdiction.

Diagram 1: Loans from US investors



Tax Treaties

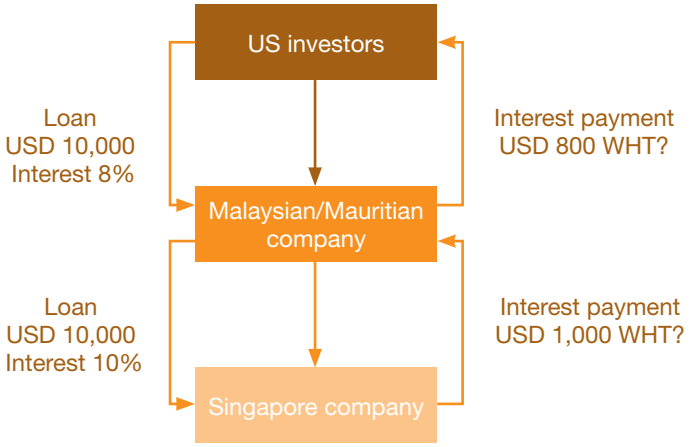
Investing in Singapore through Mauritius – Treaty and Non-treaty based planning (cont'd)

The advantages of using Mauritius as compared to Malaysia for financing is further illustrated through a numerical example:

- The US parent gives an interest bearing loan, amounting to USD $ 10,000, to the intermediary company (through Mauritius or Malaysia).
- The interest rate on the loan is 8%.
- The intermediary company in turn gives an interest bearing loan, amounting to USD $ 10,000, to the Singapore company.
- The interest rate on the loan is 10%.

The above is depicted below.

Diagram 2: Use of intermediate company



Did you know?

Any income derived by a private freeport developer or a freeport operator from paper trading activities shall be exempt from income tax payable for all income years commencing on 1 July 2003 and ending on 30 June 2011.

Tax Treaties

Investing in Singapore through Mauritius – Treaty and Non-treaty based planning (cont'd)

The table below illustrates the tax cost in the source and intermediary countries.

	No intermediary	Malaysia	Mauritius
	USD $	USD $	USD $
Interest income from Singapore	1,000	1,000	1,000
Interest paid to US		(800)	(800)
Profit before tax*		200	200
Tax payable in intermediary company		0**	6***
WHT suffered in Singapore (WHT rate – 15%, 10%, 0%)	150	100	-
WHT suffered in intermediary company (WHT rate – N/A, 15%, 0%)	-	120	-
Total tax cost	**150**	**220**	**6**

* The expenses of the intermediary companies are assumed to be NIL.

** The hypothetical tax rate of 0% (lowest possible rate) has been assumed for Malaysia.

*** The domestic tax rate in Mauritius is 15%. Companies holding a Category 1 Global Business Licence benefit from deemed foreign tax credit of 80%. The effective tax rate is thus 3%.

It is explicit from the above that the tax cost varies depending on the chosen financing route. Thus, the use of an appropriate conduit country is essential to minimise tax cost.

Key points are:

- No income tax treaty between Malaysia and the US. The only tax treaty between Malaysia and the US is the transport tax treaty.
- If the domestic tax rate in Malaysia is more than 0%, the benefits of a Mauritian intermediary company are higher.
- There is no repatriation cost to the US on interest paid from Mauritius.
- Transactions costs are relatively low in Mauritius.
- The most beneficial route, among those identified, to invest in Singapore is via Mauritius as it minimises the tax exposure.

We will analyse a third scenario, relating to payment of royalties, in our next edition.

Tax Briefs

India*

Advance Ruling on the rate of tax applicable to capital gains received by a non-resident

Facts: Fujitsu Services Limited ('the Taxpayer'), a UK based company, was a shareholder in an Indian company listed on the stock exchange in India, the Zensar Technologies Limited ('Zensar'). The Taxpayer realized capital gains in India from the sale of shares in Zensar. The shares were held for more that 12 months.

Issue: The Taxpayer sought a ruling from the Authority for Advance Rulings ('AAR') in respect of whether the capital gains were taxable in India at a concessionary rate of 10% compared to the normal capital gains tax rate of 20%.

Decision: On 23 July 2009, the AAR ruled that the capital gains were taxable in India at a concessional rate of 10% and observed that:

- The section dealing with concessional tax rate of 10%, i.e., Section 112(1) of the Income Tax Act 1961 ('ITA'), does not make any distinction between "Indian residents" and "non-residents";
- Though the benefit of indexation provided in the second proviso of Section 48 of ITA is not available to non-residents buying shares in foreign currency, it is not a "condition precedent" for them to benefit from the concessional tax rate of 10%. The proviso is only a mode of computation of capital gains; and
- Capital gains arising from the transfer of shares held for more than 12 months were eligible to be taxed at a concessional rate irrespective of whether the second proviso of Section 48 of ITA is applicable or not.

Italy*

CFC Rules extended beyond tax haven jurisdiction

The scope of the Italian CFC rules is extended beyond tax haven jurisdictions. On 1 July 2009, the Italian Tax Administration ('ITA') enacted the Anti-Crisis Law Decree no. 78 ('the Decree'). According to Article 13 of the Decree, the Italian CFC rules are applicable to any jurisdiction where:

- The effective taxation of the CFC is 50% lower than the Italian taxation on the same income in the same taxable year; and
- The foreign company derives more than 50% of its proceeds from passive income or intra-group activities.

The rules apply if both conditions are met unless the Italian holding company seek a ruling from the ITA, in which it proves that the CFC has a business purpose and is not "artificial". The target activities to which the rules may apply are:

- Management, holding or investments in bonds or other financial activities;
- Transfer or right to use intangible properties; and
- Provision of services, including financial services, rendered within the group.

Did you know?

Income derived by an individual in the period 1 July to 31 December 2009 shall be deemed to be derived in the income year ending on 31 December 2009 and shall be taxable in the year of assessment ending on 31 December 2010

Tax Briefs

(cont'd)

Pakistan*

Planning to replace current sales tax with VAT

Following commitment made by Pakistan to the International Monetary Fund, the Federal Board of Revenue ('the Board') announced the introduction of VAT as from 1 July 2010 replacing the current sales tax system

The Board also announced that the future international conference of tax experts is to be held in Pakistan by September 2009 to devise a plan to introduce VAT.

Maldives*

The introduction of corporate tax

Currently, corporate tax and tax on individual's income are nil in the Maldives. The only taxes in force are stamp duty, custom duty, tourism tax, and tax on the net profit of banks.

It is reported that, in early July 2009, the Maldives Parliament began debating a Bill for the introduction of corporate tax of 15% on businesses having a taxable profit exceeding MVR 500,000.

Netherlands*

Penalty on tax evasion increased to 300%

In a press release dated 6 April 2009, the State Secretary of Finance indicated that individuals, who do not declare their income pursuant to the tax amnesty programme, will have to pay a penalty of 300% of the additional tax due or tax evaded upon discovery of unreported foreign bank accounts.

The tax amnesty programme allows taxpayers to come forward and pay any unpaid taxes, avoiding criminal prosecution and high fines. The Tax and Customs Administration believes that there are still several thousand accounts which remain undeclared.

* Source of Reference: IBFD Report, 2009.

** Tax-News.Com

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

Tax Fundamentals

Mauritius tax system: a few issues and suggestions

By Shameemah Abdool Raman-Sahebally – Tax Manager

Mauritius, like most countries, has a Taxpayer's Charter which outlines the taxpayer's rights and obligations in relation to his tax affairs.

We hereunder reproduce the taxpayer's rights as incorporated in the Taxpayer's Charter of the Mauritius Revenue Authority (MRA).

Right to seek clarification on any rule or legislation and its implementation.	Right to expect fair and just treatment regardless of whether you have agreed with our decisions, complained, committed an offence or criticized the MRA.
Right to seek and receive information on all issues pertaining to our operation.	Right to only pay taxes that you should truly pay accordingly.
Right to expect us to promptly accept if we have made a mistake in our decisions or dealings and courteously apologise for the same.	Right to receive your refunds promptly and within deadlines set.
Right to be treated with respect and common courtesy by all officials of the MRA.	Right to expect full confidentiality within the legal provisions in respect to your personal rights to privacy.
Right to challenge and question our decisions and level of taxes you are paying.	Right to question and constructively criticize our service levels and the manner in which the MRA have communicated to you.

For the purposes of the Taxpayer's Charter: 'We' & 'our' refer to the MRA and 'you' & 'your' refer to the taxpayer.

While it is appreciated that the MRA is doing its utmost to fulfill its obligations towards the taxpayer, we are of the view that, in some cases, due consideration is not given to the rights of the taxpayer as outlined in the Taxpayer's Charter.

(a) Electronic submission of corporate tax return

Electronic submission of corporate tax return was introduced in 2002 and was an innovation in terms of the submission of returns in Mauritius.

The objective of electronic submission of returns is to reduce the administrative burden of the MRA and the latter should therefore encourage companies to voluntarily embark on electronic filing. The reduction in the threshold limit for the purposes of electronic filing from MUR 30 million to MUR 10 million will bring further corporate taxpayers within the electronic filing net.

A company which adopts electronic submission of return, has some privileges compared to its counterparts who use the traditional way of filing, i.e. manually. One of these relates to the filing requirements of VAT returns. Whilst the due date for filing a manual VAT return is the 20th of the month following the taxable period, companies which do electronic filing have up to the end of the month following the taxable period to file their return, irrespective of whether there is a VAT liability or not. This is a measure of positive discrimination to promote the electronic filing system for corporate taxpayers.

In terms of corporate tax returns, the due date for submission is six months after the end of the accounting period of a company. Companies submitting their returns manually have typically up to 8 p.m. on the due date to submit their tax returns. However, companies submitting electronic returns and having a tax liability, have a shorter deadline for filing their returns, i.e. by 3 p.m. on the due date. Therefore, instead of promoting the adoption of electronic filing, the shorter deadline tends to deter companies from voluntarily joining the electronic filing.

Discrimination may be a useful tool to incentivise taxpayers to adopt the electronic filing system. However, a consistent approach should be adopted to ensure that all taxpayers receive a fair and just treatment. Currently, for VAT purposes, discrimination incentivises electronic filing whilst, for corporate tax purposes, discrimination disincentivises electronic filing.

Tax Fundamentals

Mauritius tax system: a few issues and suggestions (cont'd)

(b) Refund of Tax

Under Section 24 of the VAT Act, any person who is entitled to a repayment of VAT is expected to obtain his refund within 45 days of the date of receipt of the claim by the MRA. Further, under the PAYE system, any excess tax paid by a taxpayer is refunded by the MRA within a period of three months. Under both cases, any delay by the MRA to make the refund, within the specified time limits, is subject to an interest payment on the amount to be refunded.

Tax Deduction at Source ('TDS') was introduced by the Finance Act 2006 and it is a method of advance payment of tax by the taxpayer. It may happen that, on the submission of the annual return, the taxpayer finds himself paying excess tax through the TDS system. However, contrary to VAT and PAYE, no time limit is provided in the law to make such refunds. Moreover, no interest is paid by the MRA for failure to make prompt refunds.

It is worth noting that same applies to corporate tax refunds, i.e. no specific deadline is set for tax refunds and no interest payment is made on late refunds.

The Income Tax Act imposes significant penalties on a "non-compliant" taxpayer including, among others, interest at the rate of 1% per month or part of the month during which the tax remains unpaid. It is therefore unfair on the corporate taxpayer that he suffers interest for the late payment of tax and receives no interest for the late refunds of overpaid tax.

The MRA should also treat corporate tax cases with the same priority as VAT and PAYE cases by setting appropriate time limits for such refunds. Otherwise, it is difficult to justify that a taxpayer receiving his refund a year or two after the filing of its tax return has indeed received his refund promptly, as stipulated in the Taxpayer's Charter. This is also against the principle that a taxpayer should "only pay taxes that he should truly pay" as the longer the MRA takes to make a refund, the more the cost to the taxpayer will be.

A refund of overpaid corporate tax is usually made subject to the MRA being satisfied with the request for the refund. In this respect, the law is silent on the course of action available to the taxpayer who is dissatisfied with the decision of the Director-General not to proceed with the refund. In other words, if the request for a refund is rejected by the MRA, there is no provision in the Income Tax Act to appeal against the decision. Can we therefore say that the taxpayer is receiving a just and fair treatment? Is it not the duty of the MRA to ensure that necessary amendments are made to the law so that all taxpayers are treated alike?

Conclusion

In view of above, one wonders whether a corporate taxpayer is paying his fair share of taxes, whether his right for being refunded promptly is respected or whether he is being treated equally as any other taxpayers.

Unless the weaknesses identified are addressed to, the essence of a Taxpayer's Charter is defeated and this is something no revenue authority would be proud of.

Tax joke

Tax loopholes are like parking meters. As soon as you see one it's gone.

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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
- 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
- Value Added Tax
- 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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