

Tax times*

Mauritius

March 2007 - Issue No 4



In this Issue:

Tax Practice	- Government introduces penalty waiver in VAT law	1
Tax Briefs	- Global tax news in brief	3
Tax Profile	- Ramesh Doma, Senior Manager	3
Tax Treaties	- Mauritius - India tax treaty	4
Tax Basics	- Key concepts, definitions and regulations	5
About Us	- Tax services and key contacts	8

Page

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:
didier.lenette@mu.pwc.com

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.

For any tax questions, please contact:

PricewaterhouseCoopers
Training Centre, Champ de Mars,
Port Louis,
Republic of Mauritius
Tel: +230 207 5100
Fax: +230 212 9405
www.pwc.com



Tax Practice

Government introduces penalty waiver in VAT law

Government has finally come up with a penalty waiver under VAT in the Finance Act 2006!

VAT is levied in Mauritius since September 1998, the enabling law being the Value Added Tax Act (1998). The system, which is based on self-assessment and voluntary compliance, requires taxpayers to –

- Assess their own tax liability
- File VAT returns within the prescribed time limits, and
- Pay the VAT due along with the returns.

By allowing taxpayers to compute and pay the tax themselves, self-assessment and voluntary compliance systems inevitably open up the way to abuse by dishonest and unscrupulous taxpayers. Penalty provisions are therefore necessary in such systems to act as a deterrent.

The VAT Act thus requires the payment of a penalty for the late submission of return and both penalty and interest for late payment of tax. For late submission of return, the amount is Rs 2,000 for every month or part of the month

up to a maximum of Rs 20,000. Late payment of tax, on the other hand, carries a fixed initial penalty of 5% and unlimited interest at the rate of 1% for every month or part of a month on the unpaid tax.

Along with the power to impose penalties and interest, the Act also confers various other powers on Revenue, the most common of which no doubt is the calling of books and records or entering business premises to inspect books and records for the purpose of making assessments.

Though bestowed with such wide powers, Revenue has, until recently, remained powerless in so far as reviewing and waiving penalties, even partially, is concerned. Before the coming in force of the Finance Act 2006, a taxpayer who was charged with a penalty did not have any choice than to quietly pay the amount claimed. This state of things has existed for almost eight years and has been extremely unfair in certain cases. For example, for the very first day of lateness in filing his return, for whatever reason, a

taxpayer was liable to a penalty of Rs 2,000 and, if applicable, an additional 10% on the tax payable. It is not denied that penalty provisions in the law are necessary to deter taxpayers who shun their responsibilities. However, not all instances of non-compliance may be attributed to a deliberate act by the taxpayer to understate the amount of tax payable or delay the payment of the tax. There may be various reasons for his failing to comply with the law. Some of these may be valid and others may not.

Government has therefore rightly provided Revenue, a long time though after the coming in operation of the VAT Act, with powers to reconsider penalty claims which may have been issued at a time when all the facts were not available.

However, the law limits the exercise of such powers only to cases where non-compliance is due to a “just or reasonable cause”. A taxpayer wishing to take advantage of this new provision should therefore be able to demonstrate that his failure was in fact due to such just and reasonable cause.

Tax Practice

Government introduces penalty waiver in VAT law (cont.)

Though each case will depend on its own facts, in practice the following have always been considered to constitute a just or reasonable cause:

1 Death or serious illness of the taxpayer or immediate family member

This would apply in case of death of individual taxpayers or their immediate family members. For companies and other taxpayers who are late in filing tax returns, the person would be the one having sole authority to sign such returns.

Particulars that would be taken into consideration may, amongst others, be the date of death, nature of illness, length of time between death and prescribed date of filing of return and explanation of how compliance was prevented.

2 Death or serious illness of taxpayer's tax return preparer

The same factors under (1) would be considered by the authorities.

3 Destruction or unavailability of taxpayer records by catastrophic event

Factors that would be considered in ascertaining whether non-compliance was due to a just or reasonable cause are:

- date and description of catastrophic event
- supporting documentation such as copy of police, fire or insurance report
- explanation of how such event prevented compliance
- explanation of all other means explored to secure needed information for the purpose of computing the tax payable.

4 Inability to obtain records in custody of third party

Lateness in complying with the

law may be caused by the inability to obtain taxpayer's records in the custody of a third party.

Taxpayers in the above situation would need to provide satisfactory explanation and documentary evidence as to why the records were needed to comply, why the records were unavailable and steps that were taken to secure the records, and when and how the taxpayer became aware that the necessary records were unavailable.

5 Undue hardship

The main reasons for waiving penalties on ground of undue hardship are to prevent a forced bankruptcy or liquidation and also to optimize the recovery of outstanding tax.

The tax authorities would examine the factors leading to undue hardship and would also try to ascertain how the waiver of penalties would facilitate collection of tax.

6 Human error

Penalties would also be waived in cases where the delay or failure to file a return and pay the tax was caused by human error and such default occurred after a relatively long period of time. This may happen in the case of a taxpayer who regularly makes his return and pays the tax but misses one by error. He may however have taken all appropriate steps to fulfill his obligation soon after discovery of the non-compliance.

7 Erroneous advice by tax adviser

A taxpayer who would have reasonably relied on advice from his adviser and adopted a particular tax treatment in respect of an item and failed to

file a return or pay a tax will turn out to be a defaulter if such advice is erroneous. To be able to benefit from a waiver of the applicable penalties, the defaulting taxpayer should be able to:

- (a) establish that he was unfamiliar with the tax laws and actually relied on the advice of his adviser
- (b) produce relevant documentary evidence including a copy of the advice, and
- (c) establish that he exercised reasonable care and prudence in fulfilling his obligations under the law.

The above are common cases that may be considered for the purpose of waiving penalties. However, as each case is dealt with on its own, there may be other cases worthy of consideration. The decision to waive penalties will normally depend upon how careful and prudent the taxpayer was and how successful he was in producing proof that non-compliance was due to circumstances beyond his control.

The introduction of the penalty waiver undoubtedly renders the VAT system fairer and provides some comfort to the taxpayer that his case will no longer go unheard, especially where he may not be personally responsible for not having complied with the law. This measure also puts an end to a discriminatory treatment which has existed for long in respect of offences under the VAT and the income tax systems.

Now that the law is passed, we are sure that penalty cases will be treated in a fair and reasonable manner.

Tax Briefs

China

Unification of Enterprise Income Tax

A new Income Tax bill unifying income tax rate for domestic and foreign funded enterprises is expected to come into effect by 1st January 2008. The law provides a grandfather policy for FIEs set up before the law is passed, that is by March 2007.

U.K.

Taxation of Dividends

The ECJ court has ruled that the UK system for providing double taxation relief through the exemption method on dividend from UK companies while providing credit relief on foreign dividends are contrary to the European Law on freedom of establishment. The foreign dividends should not be taxed at a rate higher than the rate it would have been subject to corporate tax on profits if it was UK source. Moreover, relief for underlying tax should be provided whatever the percentage of holding in order to encourage free movement of capital.

India

Characterisation of Computer Software

An Income Tax Appeal Tribunal examined whether income from the sale of computer software to end users in India through an Indian agent was to be characterised as royalty income or business profits. The court ruled that the sale of author of the work has not transferred the rights to the buyers as the latter do not have the right to reproduce, distribute, rent or lend the software. Therefore this should be treated as business profits and is taxable in India only if the overseas vendors have a PE in India.

Netherlands

Employees Seconded for duty

The Dutch Supreme Court has ruled that Dutch resident employees temporarily sent for duties to foreign affiliated employees are exempt from tax in the Netherlands if they are directly accountable to and are paid by the foreign enterprise.

French-Swiss Tax Treaty

Exchange of Notes

The authorities of the two countries have reached an agreement so that the anti-abuse provision on dividend withholding taxes does not apply if the participation in a French subsidiary is at least 25% and if the Swiss company receiving the dividend can justify that their presence in Switzerland is not mainly to avoid the dividend withholding taxes.

European Union

The ECJ has ruled that the decision of the Danish tax authorities to deny tax deductions on payments into foreign life and insurance schemes by taxpayers in Denmark is illegal as it is incompatible with the EC Law as it is contrary to the article on freedom of establishment.

Tax Profile



Ramesh Doma is a senior manager in the Tax Department in the Mauritius Office of PricewaterhouseCoopers.

Ramesh has a 25-year experience at the Income Tax Department where he was Assistant Commissioner of Income Tax. He was the head of the Companies and International Taxation Section from 1993 to 2000.

In 1992 he acted as the secretary of the Steering Committee for the reform of the Personal Income Tax system. He was thereafter actively involved in the implementation of the PAYE (Pay As You Earn) system for wage earners and CPS (Current Payment System) for businessmen.

He also participated in negotiations for the signing of double taxation treaties with Luxembourg, Pakistan and Croatia.

Ramesh joined PricewaterhouseCoopers in 2000 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 Income Tax and VAT authorities.

Ramesh holds a "Diplôme d'Etudes Supérieures Spécialisées: Administration Fiscale" from the University of Paris IX – Dauphine.

Tax Treaties

Mauritius – India 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, and any other entity, corporate or non-corporate which is treated as a taxable unit under the taxation 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 or construction or assembly project lasting more than 9 months.

Dividends

Dividends may be taxed in the source country at rates not exceeding: 5% if shareholding is at least 10%; 15% otherwise. However, Mauritius does not levy tax on dividends paid by resident companies.

Interest

Interest may be taxed in the source country at the rate applicable under its domestic law but is tax free under certain conditions, e.g. if paid to the Government of the other state or its agencies or to a bank resident in the other state or if the debt-claim is approved. Under Mauritius tax law, interest paid by a company holding a Global Business Licence Category 1 or a bank holding a Category 2 Banking Licence to a non-resident not carrying on any business in Mauritius is tax exempt.

Royalties

Royalties may be taxed in the source country at a rate not exceeding 15%. However, under Mauritius tax law royalties paid by a company

holding a Global Business Licence Category 1 to a non-resident are exempt from tax.

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. The treaty as well as Mauritius tax law provide for credit in respect of underlying tax relating to dividends and tax sparing relief for tax exemption or reduction granted by a state.

General

Although Mauritius has taxing rights over directors' fees payable to company directors resident in India, such fees are exempt from tax under Mauritius tax law.

Editor's Note:

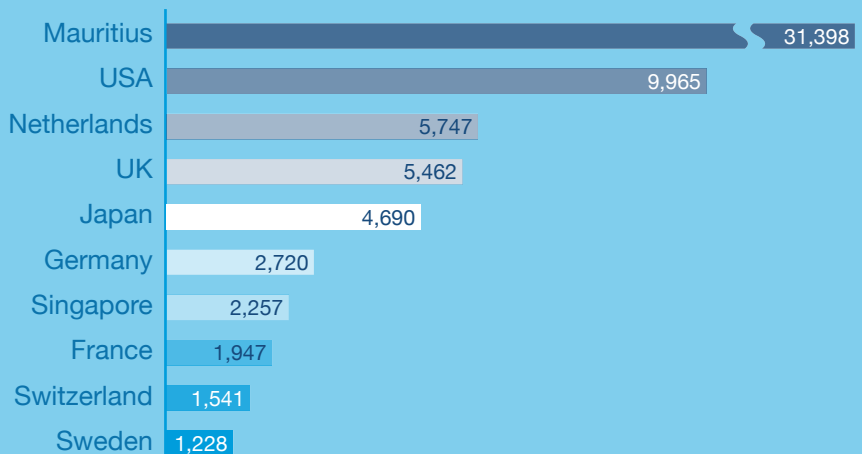
There has been a number of press articles, in the recent past, which have suggested that India may seek to renegotiate the Double Taxation Agreement with Mauritius, in particular regarding the Capital Gains Clause.

However, following a recent visit to India, the Prime Minister of Mauritius, The Hon. Dr. Navinchandra Ramgoolam stated that India had been a major partner of Mauritius in the development of our offshore sector and that he looked forward to a consolidation of this partnership to develop Mauritius as an International Financial Centre.

He also stated that the Indian Prime Minister had assured him that a mutually satisfactory solution relating to the Double Taxation Agreement would be found promptly and that India would not take a unilateral decision on the issue.

FDI inflows in India (Jan 2001 - Dec 2005)

(Rs. crore)



Source: Lok Sabha Unstarred Question # 1817 (Ministry of Commerce & Industry, India)

Tax Basics

Key Concepts, definitions and regulations

Personal Taxation

Exemption Thresholds

Following the enactment of the Finance Act 2006, all personal reliefs and deductions are replaced by exemption thresholds as follows:

Category A

Rs 215,000 for an individual who has no dependent

Category B

Rs 325,000 for an individual who has one dependent

Category C

Rs 385,000 for an individual who has 2 dependents

Category D

Rs 425,000 for an individual who has 3 dependents

If one spouse has claimed the exemption threshold in respect of Category B, Category C or Category D, the other spouse will be entitled to claim the exemption threshold of Rs 215,000 only.

New Income Tax Rates

Chargeable income for the income year ended 30 June 2007 will be taxed as follows:-

- the first Rs 500,000, other than chargeable income relating to interest @15%;
- the remainder @ 22.5%

The rate of 22.5% will be reduced to 20%, 17.5%, and 15% for the income years ended 30 June 2008, 30 June 2009 and 30 June 2010, respectively.

Chargeable income relating to interest @ 15% for all the above years and thereafter.

Current Payment System (CPS)

CPS Statements will now have to be submitted on a quarterly basis for quarters ended 30 September, 31 December and 31 March.

The income/loss for the quarter to 30 June should be included in the annual return.

The due dates for submission are 31 December, 31 March and 30 June respectively.

The CPS thresholds for a quarter have been amended and are as follows -

Turnover	Rs 300,000 for the CPS quarter
Gross income from profession	Rs 75,000 for the CPS quarter
Rent	Rs 20,000 per month

Please note that:

- Every individual who's turnover exceeds the CPS threshold, whether or not he has a chargeable income for a CPS Quarter or derives gross income that does not exceed the CPS threshold, but has a chargeable income for that quarter, should submit a statement.
- If the gross income of an individual exceeds the CPS threshold in any one quarter in an income year, a statement should be submitted for every remaining quarter in that income year irrespective of gross income.

Did you know?

Interest on unpaid tax, has been reduced from 2% to 1% per month but without limit. The ceiling limit has so far been 100% of the tax payable.



Tax Basics

Key Concepts, definitions and regulations (cont.)

Corporate Taxation

New Corporate Tax Rates

The tax rate of companies taxed at 25% until the year of assessment 2006/07 will reduce to 22.5%, 20%, 17.5% and to 15% for the years of assessment 2007/08, 2008/09, 2009/10 and 2010/11 respectively.

Alternative Minimum Tax

The rate of Alternative Minimum Tax has increased from 5% to 7.5%.

Carry Forward of Tax Losses

Losses can no longer be carried forward indefinitely to be set off against future profits. They will be available only over 5 years.

Losses attributable to annual allowance under the new regime can however be carried forward indefinitely.

Companies operating in certain sectors who were able to transfer their losses to other companies will no longer be allowed to do so.

Investment and Annual Allowances

Investment allowance and additional investment allowance have been abolished.

However:

- Investment allowance will continue to be allowed to manufacturing companies on state-of-the-art technological equipment. The allowance will also be available to ICT companies on expenditure incurred up to 30 June 2008 in respect of new plant and machinery and computer software.
- Companies whose applications have been approved under the Investment Promotion Act or whose proposed activities have been approved under any other enactment may opt to claim annual allowance and investment allowance at rates prevailing on 30 June 2006.

However, losses arising from such annual and investment allowances may be carried forward and set off during the 5 succeeding years only.

Annual allowances can now be claimed in respect of clinics, shops and shopping malls, restaurants and entertainment premises at rates fixed by regulations.

International Taxation

Tax Residence Certificate (TRC) Requirements

In October 2006, the Financial Services Commission (FSC) issued a Circular Letter (CL011006) which included the pre-requisites for the obtention and annual renewal of a TRC.

The Pre-requisite, to be given in the form of undertakings, are as follows:

- The Company shall at all times have at least two Directors resident in Mauritius. The resident directors shall be of appropriate calibre who can exercise independence of mind and judgement.
- All meetings of the Board of Directors shall be held, chaired and minuted in Mauritius.
- The company shall at all times keep all its accounting records at its registered office in Mauritius.
- The company shall ensure that all its banking transactions are channelled through a bank account in Mauritius.

This Circular Letter merely reiterated and formalized the existing requirements which have been in place for a number of years.

Please note that a TRC is required in respect of each double tax treaty that a company wishes to benefit from. The TRC is now renewed annually.

Useful Links

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

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

2006/07 Mauritian budget analysis by PwC including tax tables and rates
www.pwc.com/mu

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

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

Did you know?

A tax residence certificate is now obtainable within 7 days from the date of application.

Tax Basics

Key Concepts, definitions and regulations (cont.)

Deduction of Tax at Source

The Finance Act 2006 has introduced a system of deduction of tax at source from interest, royalties, rent, payments to contractors and sub-contractors engaged in civil construction and payments to architects, engineers, land surveyors, project managers in the construction industry, property valuers and quantity surveyors. The system has come into force on 1 October 2006.

Individuals are not required to deduct tax from payments made by them.

Both individuals and corporations are subject to tax at source on income from above sources.

The system however does not apply to royalty payments by companies holding a Category 1 Global Business License and to interest receivable by non-resident individuals, non-resident societies, exempt bodies and companies holding a Category 1 Global Business License.

For interest income, deduction of tax applies to payments under deposits held with a financial institution/bank and its branches aggregating Rs 2,000,000 at any time in a year.

The rates of tax are 15% for interest, 10% for royalties, 5% for rent, 0.75% for payment to contractors and sub-contractors and 3% for services.

Persons responsible for deduction of tax are required to remit the tax to the Mauritius Revenue Authority as follows:

- In respect of tax on interest, not later than 22nd if the tax relates to interest payable during the first 15 days of the month and within 7 days after the end of the month if it relates to interest payable from the 16th day of the month.

- In respect of other income, within 20 days from the end of the month.

All persons responsible for deduction of tax at source should:

- provide a statement of tax deduction in duplicate to the person whose income has been subject to tax at source
- submit to the Mauritius Revenue Authority, particulars of the person whose income was subject to tax at source, the amount of income and tax deducted
- in respect of interest income, provide the above particulars even if no tax was deducted, provided the aggregate amount of interest exceeded Rs 5,000 in the preceding income year.

Event

Business Partners in Africa - 2007 Conference

Mauritius has been chosen to host the annual PricewaterhouseCoopers Business Partners in Africa Conference in 2007. The Conference (PIA2007) will be held on 2nd, 3rd and 4th September at Le Victoria Hotel.

This will be the first time that the conference will be held outside South Africa!

PricewaterhouseCoopers' PIA is Africa's most important conference relating to taxation. The theme of the conference shall be "2010 - An African Odyssey - Business in Africa before and after the final whistle". It is expected that the conference will be attended by over 150 delegates (Financial Directors and CEOs of our clients), as well as PwC partner directors.

PricewaterhouseCoopers' Global Indirect Taxes Leader, Ms Ine Lejeune, recently voted as the fifth most recognised tax personality in the world, will also be present in Mauritius.

The three-day event will consist of a Gala dinner on Sunday 2nd September, the official opening in the morning of Monday 3rd September, and plenary sessions followed by workshop sessions and theme dinners on both Monday 3rd and Tuesday 4th September.

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.

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 including:

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

Contact Us



André Bonieux
Partner
andre.bonieux@mu.pwc.com



Ramesh Doma
Senior Manager
ramesh.doma@mu.pwc.com



Ram Luchmun Roy
Director
ram.luchmun.roy@mu.pwc.com



Didier Lenette
Senior Manager
didier.lenette@mu.pwc.com

PricewaterhouseCoopers
Training Centre, Champ de Mars, Port Louis, Republic of Mauritius
Tel: +230 207 5100 Fax: +230 212 9405
www.pwc.com

*Tax Advice Disclaimer: **Tax Times** is designed to keep you abreast of developments and is not intended to be a comprehensive statement of the law. The information contained herein is of general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. Any advice contained in Tax Times does not reflect the level of factual or fiscal inquiry or analysis which would be applied in the case of a formal fiscal opinion or tax advice. A formal opinion could reach a different result.*

No liability is accepted for errors or opinions contained therein.

No part of this publication may be reproduced, transmitted, in any form or by any means, electronic, mechanical photocopying, recording or otherwise or stored in any retrieval system of any nature without the prior written permission of the copyright holder.

The firms of the PricewaterhouseCoopers global network (www.pwc.com) provide industry-focused assurance, tax and advisory services to build public trust and enhance value for clients and their stakeholders. More than 140,000 people in 149 countries across our network share their thinking, experience and solutions to develop fresh perspectives and practical advice.

© 2007 PricewaterhouseCoopers. All rights reserved. "PricewaterhouseCoopers" refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity.

