

Tax times*

Mauritius

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

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

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

For any subscription matters, please contact:
taxtimes@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.

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Foreword

As a growing business and financial hub, Mauritius is continuously improving its laws to establish firmly its global connectivity. With the recent tax reforms brought in the 2008/09 budget, which was a continuation of the 2006/07 and 2007/08 budgets, Mauritius has widened its tax net. This has in turn enabled Mauritius to reduce its tax rate from 25% to 15% over a span of three years. Our tax rate is now amongst the lowest in the world. Presently, both corporate tax and personal tax are at the flat rate of 15%.

The last edition of Tax Times covered transfer pricing issues and the Advance Payment System (APS) introduced in the 2007/08 budget. In this edition, we focus on how Mauritius uses its source and residence rules to raise taxes. We also provide world tax briefings ranging from recently decided material cases to recent important amendments to tax laws in different countries.

A highlight of the tax treaty between United Kingdom and Mauritius is further provided in this edition, which also focuses on the permanent establishment rules and business profit issues. The article also analyses the treatment of dividend, interest, royalties and capital gains.

Mauritius is, and will continue to be, fiscally competitive on the global market. It has up to now 34 tax treaties in force, 7 awaiting ratification and another 8 still in negotiation. Mauritius remains an ideal investment location with no capital gains tax exposure, no withholding tax on dividend, interest and royalties paid by Global Business Companies to non residents. Companies holding a Category 1 Global Business Licence are subject to a maximum effective tax rate of 3%.

For any international tax issues, our tax team, Ramesh Doma, Dheerend Puholoo, Bobby Yerkiah, Ryan Allas and Shameemah Raman, led by André Bonieux, will be most happy to assist you with any tax matter.

Best regards

The Editorial Team



Tax Practice

Taxing rights

Written by Ryan Dennis Allas – Tax Manager

Domestic law

Under our domestic tax law, a company is tax resident in Mauritius either if it is incorporated in Mauritius or if it is centrally managed and controlled in Mauritius.

Tax resident companies are taxable on their worldwide income.

Non resident Mauritius entities (Branches of foreign corporations) are taxable on income derived from Mauritius.

International tax law

Each country follows its own tax rules and defines “residence” differently. Therefore, a taxpayer may find itself resident in two countries.

According to Article 4 of most tax treaties actually in force, a company resident in both Contracting States under their domestic law, is deemed to be resident in the country in which it has its place of effective management.

Tax Ruling 58 – Taxation of third country income in Mauritius under the Mauritius – South Africa Double Taxation Agreement (DTA)

Facts: An investment company was incorporated in Mauritius. It holds a Category 1 Global Business Licence (GBC 1) and earns interest income on inter-group loans. Its central management and control is in Mauritius, but its effective management is in South Africa, so that it is tax resident in both countries as per the Mauritius-South Africa DTA.

Point in issue: Whether it can be confirmed that the company:

(i) is a tax resident of South Africa and therefore has to

comply with South African tax filing and tax payment requirements; and

(ii) is not a tax resident of Mauritius, which therefore means that it does not have to file a tax return or pay any tax in Mauritius.

Ruling: (i) On basis of facts given, the company is deemed to be resident in South Africa by virtue of the tie-breaker clause in Article 4(3) of the Mauritius-South Africa DTA. The taxation of income derived by the company from Mauritius and South Africa will be governed by the DTA. Thus, where the DTA confers the taxing right to the source country in respect of an item of income derived by the company from Mauritius, the company will have to file a tax return with the Mauritius Revenue Authority with regard to that income and pay any tax accruing thereon.

(ii) In the event the company derives income from abroad from a country other than South Africa, the company will have to declare such income in Mauritius as a resident of Mauritius taxable on its worldwide income. The company will however be entitled to claim foreign tax credit or presumed tax credit in respect of such foreign source income. Where a DTA is in force, the taxation of the foreign source income will be governed by the provisions of the DTA.

PwC Comment on Tax Ruling 58

According to the above ruling, a company incorporated in Mauritius and which has its place of effective management in South Africa is resident for treaty purposes in South Africa. The company is therefore taxable in South Africa on its worldwide income according to South African tax laws. However, the company is still liable to tax on income sourced in Mauritius where the double tax treaty between Mauritius and South Africa allocates taxing rights to the country of source.

Tax Practice

Taxing rights (cont'd)

The above ruling also pointed out that any income derived by the above company in a country other than South Africa is taxable in Mauritius under our domestic law. The ruling further states that the company being a tax resident under Mauritian law by virtue of incorporation, is taxable on its worldwide income in Mauritius and the tax treaty between Mauritius and South Africa covers only income arising in Mauritius or South Africa.

Article 22, "Other Income", of the treaty between Mauritius and South Africa gives exclusive ("shall be taxable only") taxing rights to South Africa, if the income of the company, wherever arising, is "not dealt with" under the other Articles of the DTA. According to the OECD Model commentary on Article 22, the exclusive taxing rights apply even if South Africa does not tax the income. The provision of Article 22 is restricted to persons who are residents of one or both Contracting States (Article 1), and to income, which is subject to taxes covered by the treaty (Article 2). It includes items or types of income that are omitted and the sources of income that are not covered in the other Articles.

The OECD Model Commentary on Article 22 "Other Income" further states that when an income arises in a third State and the recipient of this income is considered as a resident of both Contracting States under their domestic law, the application of Article 4 on residence will result in the recipient being treated as a resident of one Contracting State only and being liable to full tax liability in that State only. In such a case, the other Contracting State may not impose tax on any income arising from the third State, even if the recipient is not taxed by the State of which he is considered a resident under Article 4.

Treaty benefits from third country

Article 4(1) defines residence under a tax treaty. The term "resident of a Contracting State" means a person who is (i) liable to tax in a Contracting State (ii) under its domestic Law (iii) by reason of (iv) his domicile, residence, place of management or any other criterion of a similar nature. In the above ruling, the company is subject to tax in Mauritius under our domestic law. The above definition may lead us to the conclusion that the company being a resident under Mauritius domestic law but not resident when applying the Mauritius-South Africa DTA can still take benefits of other treaties entered into by Mauritius.

However OECD Commentary on Article 4 specifically excludes "the" or "a" Mauritian entity from benefits of other treaties entered by Mauritius when it is not resident in Mauritius when applying another tax treaty signed by Mauritius

Conclusion

In the above ruling, the company is resident in both Mauritius and South Africa under the respective domestic laws. However, after application of the tax treaty between the two countries, the company is deemed resident in South Africa only. Therefore, it is taxable in South Africa on its worldwide income. The company is not subject to tax in Mauritius on its worldwide income.

Any income arising in a third country is taxable in South Africa only. The company is taxable in Mauritius only on income derived from there when the treaty allocates taxing rights to the source country. Moreover, the company cannot take benefits of other tax treaties signed by Mauritius. ■

Tax Briefs

Global tax news in brief

Written by Bobby Yerkihah – Tax Manager

1. India/United States*

Treaty between India and US (non-discrimination) – Indian decision on applicability of withholding tax on lease rentals paid to non-residents and deductibility of such payments for Indian tax purposes.

Issue: Whether tax needs to be withheld from a payment to a non-resident where the tax authorities have not decided whether the payment is liable to tax in India, and in the absence of such a tax being withheld, whether the payment can be disallowed as a deductible expense.

Facts: The taxpayer was engaged in the business of setting up e-commerce websites. In order to host these websites, the taxpayer leased servers from non-residents based in the US and paid lease rentals. As the non-residents did not have a permanent establishment in India and that the services obtained from them were not in the nature of technical services, no tax was withheld from such lease rentals. But the taxpayer claimed the lease rentals as deductible business expenditure in its tax assessment. The tax authorities, however, disallowed the claim for deduction with reference to the provisions of Sec. 40(a)(i) of the Indian Income Tax Act (ITA) 1961 on the ground that the taxpayer had defaulted in its responsibility to withhold applicable taxes when making payment for the lease rentals. The taxpayer appealed to the Income Tax Appellate Tribunal (ITAT).

[Sec.40(a) (i) of the ITA provides that when a payment which is subject to tax in India is made to a non-resident and the payer has not withheld the applicable withholding tax, the amount cannot be claimed by the payer as a deduction in the tax return].

The issues before the ITAT were whether payments made by the taxpayer to the non-residents were taxable in India, and whether tax must be withheld at source in the absence of determination that a particular payment was chargeable to tax in India or not.

Decision: The ITAT held that the payments made by the taxpayer were not chargeable to tax in India and therefore, it was not obliged to withhold any tax from such payment.

Accordingly, the non-withholding of tax from such payments would not result in denial of deduction for such business expenditure under Sec. 40(a)(i) of the ITA. ITAT observed that subject to article 26(3) of the India-United States tax treaty which provides relief from discrimination, the payments made between residents and non-residents should be allowed using the same conditions as if the payment was made to a resident. As such in view of that article, the tax authority cannot override the tax treaty by seeking to invoke the provisions of Sec. 40(a)(i) of the ITA in order to disallow a deduction when computing the taxable business of the payer entity.

Did you know?

The agreement on the promotion and protection of investments between Finland and Mauritius, signed in Helsinki on 12 September 2007, entered into force on 17 October 2008.

Tax Briefs

Global tax news in brief (cont'd)

2. France*

Guidelines on deductibility of penalties.

The French tax administration issued Guidelines commenting on the amendments to the rules on the deductibility of penalties, introduced by Article 23 of the Finance Law 2008.

As from 31 December 2007, most penalties are no longer deductible for corporate income tax purposes. Some of the non-deductible penalties are:

- Tax penalties;
- Customs penalties;
- Labour law penalties;
- Penalties from the Independent Administrative Authorities
- EU Commission penalties

3. Madagascar*

Budget Bill for 2009 released

On 28 October 2008, the government released the 2009 Budget Bill. The key tax proposals are as follows:

- to decrease the corporate tax rate from 25% to 24% and individual tax rate on non-employment income from 25% to 24%;
- to streamline the employment income tax rate as follows:

Up to MGA 250,000	Rate (%) 0
Over MGA 250,000	24;
- to raise the individual income tax credit available per dependant from MGA 2,400 to MGA 24,000 per year. However, for individuals, the tax credit is applicable only when their taxable income exceeds MGA 250,000;

- standard withholding tax rate on income is reduced from 25% to 24% on income from movable capital;
- capital gains tax rate on immovable property disposed by individuals is reduced from 25% to 24%;
- refund of excess input VAT is extended to all businesses when the credit is generated from investment operations- previously it was limited to export oriented businesses and businesses established in free zones.
- registration duty is reduced from 2% to 0.5% on transfer of shares and other corporate rights;
- rate of presumptive tax is reduced from 6% to 5%.

4. Tax Treaty: India and Mauritius*

The Indian Tax Authority's long dated ally, the Foreign Investment Promotion Board (FIPB), now seems to distance itself from its perceptions of treaty shopping issues regarding the India- Mauritius Tax Treaty. To recall that the FIPB has, until recently, been rejecting foreign direct investment proposals from Mauritius for several months on grounds of treaty shopping. Being independent of the tax authorities, the FIPB now adopts a new approach. According to the FIPB, regulatory approvals governing foreign investment into India should not be governed by tax regulations. ■

Did you know?

Dividends paid by a resident company are exempt from tax in Mauritius. Dividends as well as any other distributions made by a company holding a Category 2 Global Business Licence issued under the Financial Services Act 2007, are also exempt from tax in Mauritius.

* This information is based on IFBD Reports 2008

Tax Treaties

Mauritius – United Kingdom of Great Britain and Northern Ireland

Written by Shameemah Abdool Raman-Sahebally – Tax Manager

The treaty between these two Contracting States has been in force since 1987. Hereunder is an overview of the main articles.

Resident – Article 4

This Convention shall apply to persons who are residents of one or both of the Contracting States. Resident of a state is defined as any person who is liable to taxation under the law of either state by reason of his domicile, residence, place of effective management or any other criterion of a similar nature. For the purpose of this Convention, a “person” includes an individual, a company and any other body of persons, corporate or not corporate.

Permanent Establishment/Business Profits- Article 5 and 7

The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. Permanent establishment means a fixed place of business in which the business of the enterprise is wholly or partly carried on. Permanent establishment can be a place of management, a branch, an office, a factory, a workshop, a farm or plantation. Any building site or construction or assembly project or supervisory activities in connection to these, would constitute a permanent establishment if the project or activity last for more than six months. A dependent agent, in either Contracting State, acting on behalf of an enterprise found in the other Contracting State shall be considered as a permanent establishment if he has an authority to conclude contracts, unless his activities are restricted to the purchase of goods or merchandise for the enterprise.

Dividends- Article 10

Dividends derived from a company which is a resident of UK by a resident of Mauritius who is the beneficial owner of the dividends shall be exempt from any tax in the UK.

Dividends derived from a Mauritian company by a resident of UK may be taxed in Mauritius. However, as dividends paid by a company resident in Mauritius are exempt from tax, the UK recipient will not suffer any withholding tax on dividends received from Mauritius.

A Mauritian company receiving a dividend from a UK company, provided he is the beneficial owner of the dividend, shall be entitled to the same tax credit to which an individual resident of UK would have been entitled had he received that dividend and to the payment of any excess of that tax credit over his liability to UK tax. However, this is not applicable where the beneficial owner of the dividends controls directly or indirectly 10% or more of the voting power in the company paying the dividend either alone or in association with one or more associated companies.

Did you know?

The tax treaty between Mauritius and Tunisia, signed on 12 February 2008, has been ratified on 6 October 2008.

Tax Treaties

Mauritius – United Kingdom of Great Britain and Northern Ireland (Cont'd)

Interest – Article 11

Interest arising in a Contracting State may be taxed in the state where the interest arises. Equally the state where the recipient is resident may tax the interest according to the laws of that state.

Interest arising in a Contracting State and paid to either:

1. the Government or local authority of the other state;
2. any agency or Government Institutions of the other Contracting State as may be agreed between the competent authorities of both Contracting States; or
3. a bank carrying on a bona fide banking business which is a resident of the other Contracting State, shall be exempt from tax in the state in which it arises.

If the debt-claim in respect of which the interest is paid was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons, the provisions of the article governing interest income shall not apply.

Under Mauritius tax law, interest paid by a company holding a Global Business Licence Category 1 or a bank holding a banking licence to a UK resident not carrying on any business in Mauritius is exempt from tax.

Royalties – Article 12

Royalties may be taxed in either Contracting State according to its domestic tax laws.

The tax charged in the Contracting State in which the royalty arises shall not exceed 15% of the gross amount of the royalty.

However according to the Mauritian Income Tax Act, royalties payable to a UK resident by a corporation holding a Category 1 Global Business Licence or by a bank holding a banking licence, in so far as the royalty is paid out of gross income derived from its banking transactions with non-residents and with corporations holding a Global Business Licence or a trust, is exempt from tax.

Useful Links

PricewaterhouseCoopers web site 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 Treaties

Mauritius – United Kingdom of Great Britain and Northern Ireland (Cont'd)

Capital Gains – Article 13

Capital gains arising from the sale of immovable property located in Mauritius may be taxed in Mauritius.

However, as there is no capital gains tax in Mauritius, any capital gains arising in Mauritius from the alienation of immovable property found in Mauritius will not be subject to tax.

According to the treaty, any capital gain arising from the sale of shares held by a company shall be taxable in the Contracting State in which the company is resident. According to the Mauritius Income Tax Act, there is no tax on gains arising from the sale of shares.

General

Income derived from outside Mauritius by an individual is deemed to be derived by him when it is received by him in Mauritius. There are instances however, where income from outside Mauritius remitted to Mauritius is not subject to tax in Mauritius. For example under the UK-Mauritius tax treaty, a UK resident who is temporarily present in Mauritius solely as an employee of or under a UK Government contract for the purpose of acquiring technical, professional or business experience shall be exempt from Mauritius tax for a period not exceeding twelve months from the date of his first arrival in Mauritius on all remittances he receives from abroad. ■

Tax Profile

Dheerend Puholoo



Dheerend joined PwC in December 2008 as Senior Manager. He is a fellow of the Chartered Association of Certified Accountants and is a holder of a Master of Business Administration. He started his tax career at the Income Tax Department in 1989, as trainee Inspector of taxes.

He subsequently occupied various managerial posts namely Investigating Officer, Senior Investigating Officer and Principal Investigating Officer. His work at the Income Tax Department mainly constituted of carrying out investigation work in suspected cases of tax evasion.

He moved to the then Large Taxpayer Department in 2003 as Assistant Commissioner where he dealt mainly with the cases of large taxpayers.

With the inception of the Mauritius Revenue Authority, in 2006, he was appointed as Section Head in the Large Taxpayer Department and was in charge of the Audit section within the Department.

At PwC, Dheerend provides taxation advice on both domestic and 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, while dealing with queries from and investigations by the MRA. ■

Tax Fundamentals

Tax treatment of different sources of income derived from Mauritius

Written by Shameemah Abdool Raman-Sahebally – Tax Manager

Mauritius taxes income under both the source and residence rules.

Under Section 5 “Derivation of Income” of the Income Tax Act 1995 (‘The Act’), income shall be deemed to be derived by a person when the income is derived from Mauritius, whether the person is resident in Mauritius or elsewhere. This constitutes the source rule. Income is also deemed to be derived by a person at the time the person is resident in Mauritius, whether the income is received from Mauritius or elsewhere. This is the residence rule.

Section 74 “Income derived from Mauritius” of the Act provides a list of income derived from Mauritius. This should be read in conjunction with section 5 when deciding whether a particular income is taxable in Mauritius or not.

Emoluments

Any person deriving income from an office or employment, the duties of which are performed wholly or mainly in Mauritius, whether such emoluments are received in Mauritius or not, is considered as income derived from Mauritius. Where the tax authority is satisfied that the job is performed wholly or mainly in Mauritius, then Mauritius will claim its taxing right over that income. Where a treaty exists between Mauritius and a country in which the employee is resident, then Article 15 of the treaty between the two countries is applicable.

The said Article 15 stipulates that if a resident of a treaty partner of Mauritius derived emoluments from Mauritius, that person will not be taxed in Mauritius if the following conditions apply:

- the recipient has not spent more than 183 days in Mauritius; and
- the remuneration is borne by an employer who is not resident in Mauritius; and
- the remuneration is not borne by a permanent establishment which the employer has in Mauritius.

In the absence of a tax treaty, generally, the determining factor regarding the source of income in the case of an employee remains the country in which the employment is exercised.

Annuity and Pensions

Annuity and pensions, including pension in respect of past services performed in Mauritius, are taxed in Mauritius whether received in Mauritius or elsewhere. However, pensions under Double Taxation Agreements are not always taxed in the country in which they arise.

Business Income

As regards business income, Section 74 of the Act considers any income derived from any business carried on wholly or partly in Mauritius as derived from Mauritius.

Tax Fundamentals

Tax treatment of different sources of income derived from Mauritius (Cont'd)

Tax ruling (TR4) illustrates the above fact - a Mauritius resident company proposed to undertake services of a foreign company for general overseas information sourcing, inspection of goods before shipment, consultancy services, etc. These services were provided from outside Mauritius and the local Mauritius resident company did not envisage recruiting personnel to come to Mauritius in connection with those services.

One of the points at issue was whether the fees received by the non-resident company would attract tax in Mauritius.

The ruling read as follows: *“fees received by a non-resident for services performed outside Mauritius to a resident of Mauritius are not taxable in Mauritius”*.¹ Where a contract is performed wholly or partly in Mauritius, it is clear that the income arising therefrom would normally constitute income derived from Mauritius. However, where a contract is signed in Mauritius, but the services are provided mainly outside Mauritius, it is always difficult to determine whether and to what extent income has been derived from Mauritius.

Income derived from a contract wholly performed outside Mauritius does not constitute income derived from Mauritius. This is confirmed by TR14 that concerned the case of a foreign company which proposed to form a Mauritius company holding a Category One Global Business Licence to provide access to a satellite based digital telecommunication

system to service providers in other countries pursuant to a contract. To enable it to fulfill its contractual obligations towards its clients, the Mauritius company had to contractually obtain access to the corresponding telecom networks in return for payment of access fees.

The point at issue was whether the payments would be subject to tax in Mauritius. The ruling was that the foreign telecom company would not be liable to tax in Mauritius on the access fees since the services provided to the Mauritian company were performed from overseas, i.e. “not wholly or partly in Mauritius”.

In the above case, even though there was a contract between the Mauritius company and the foreign company, the contract was not performed “partly or wholly” in Mauritius. The services were provided from abroad.

In our next edition, we shall highlight the tax treatment of dividend, interest and royalties derived from Mauritius by both residents and non-residents ■

Did you know?

All income derived from overseas by an individual resident in Mauritius is taxable to the extent it is remitted to Mauritius or dealt with in his interest or on his behalf.

¹Source: <http://hto.intnet.mu555/intranet/TR4.htm>

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 180 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 electronically 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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