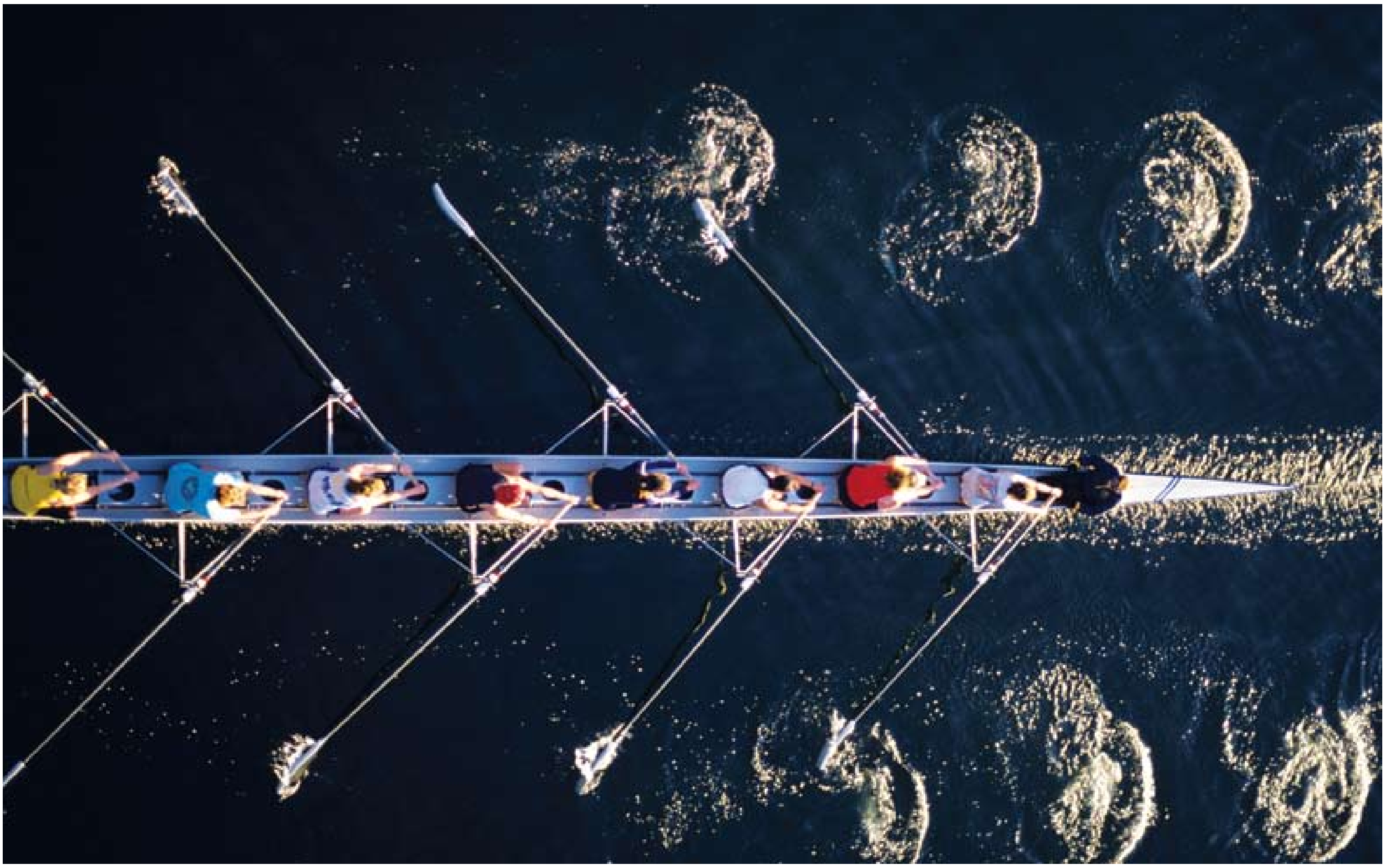
Tax Services

Tax times*

Mauritius

April 2009 – Issue No 7



*connectedthinking

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:
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.

For any tax questions, please contact:

PricewaterhouseCoopers
18, CyberCity
Ebène
Mauritius
Tel: +230 404-5000
Fax: +230 404 5088/9

Contents

Foreword

PricewaterhouseCoopers Mauritius is pleased to release its 7th edition of Tax Times, which provides our readers with insight on tax matters both at the international and domestic level.

This edition covers a number of issues, including the tax exposure of passive income (dividend income, interest and royalty income) and the recent and well publicized Vodafone case in India. We also analyse the concept of beneficial ownership in the context of the Natwest and PT. Transportasi Gas Indonesia v. Direktur Jenderal Pajak cases and the two tax rulings regarding redeemable preference shares. Given their potential implication on global businesses, these will be of particular interest to tax practitioners and investors.

Our tax team has been consolidated with the coming of Anthony Leung Shing, as the new Tax Director, and we have now a team of 14 full-time tax experts. This further reinforces PricewaterhouseCoopers' position as a leading provider of taxation advisory and compliance services in Mauritius.

Finally, we would encourage all readers to give us their appreciation of any particular articles as this would help improve future editions of Tax Times. Our tax team would be pleased to listen to your comments and assist you in any tax matters.

Best regards

The Editorial Team

Tax Practice

Effects of IAS 32 on the tax treatment of dividend paid

By Ryan Allas - Tax Manager

Accounting treatment of dividend under International Accounting Standards ("IAS")

IAS 32 sets the rules for classifying financial instruments as liabilities or equity. An issuer of a financial instrument, under IAS 32, classifies an instrument according to its substance. An instrument is classified as a liability if the issuer has a contractual obligation to deliver cash to the holder, whilst it is classified as equity if it has no contractual obligation to deliver cash/ financial asset to the holder. It is also worth noting that the treatment of financial instruments under the United Kingdom Financial Reporting Standards ("FRS") follows the same principles as under the International Accounting Standards.

Based on the above, a redeemable preference share is classified as a liability and a dividend, paid in respect of the preference share, is treated as a finance expense through the Income Statement. On the other hand, a dividend in respect of a share classified as equity is reported in the Statement of Changes in Equity (retained earnings).

Tax treatment of dividend and interest

For tax purposes, interest (finance expense) incurred in the production of gross income is normally deductible whilst dividend is not an allowable expense.

Dividend payment classified as finance expense in the income statement

Under the Income Tax Act 1995 ("the Act"), any dividend paid by a company resident in Mauritius is exempt from tax.

The Mauritius Revenue Authority ("MRA") has issued two apparently contradictory rulings which deal with the tax treatment of preference dividend payments charged as a finance expense under IAS and FRS.

Tax Ruling 7 ("TR7")

Facts: An offshore company proposes to issue non-voting redeemable fixed rate preference shares to a group entity and intends to account for the transaction as a **short term** loan rather than equity and accordingly treat dividends payable as interest under the Financial Reporting Standard 5 ("FRS 5").

Point at issue: To consider whether the tax treatment should follow the accounting treatment, that is, the transaction should follow its economic substance where it differs from its legal form.

Ruling: The preference shares cannot be considered as a short term loan for tax purposes. It may be that, given the terms and conditions attached to the preference shares, these shares are classified as short term loans under accounting standards. However, for tax purposes, the preference shares would still be treated as equity and any distribution would be deemed as dividends and not as interest.

Tax Practice

Effects of IAS 32 on the tax treatment of dividend paid (cont'd)

Tax Ruling 82 ("TR82")

Facts: A Ltd holds a Category 1 Global Business Licence and operates as a collective investment scheme. The preference shares issued by A Ltd have been categorised as a liability in accordance with IAS and are therefore debt in nature. Further, in lieu of a performance fee, which is usually an allowable expense, a preference share dividend is declared and payable based on the performance of A Ltd.

Point in issue: To consider whether the preference share dividend should be treated as an allowable expense for tax purposes.

Ruling: Any dividends paid in respect of the preference shares, classified as a liability, should be treated as an allowable expense.

Analysis and Comments on TR7 and TR82

Under TR7, irrespective of the treatment applied under accounting standards, a preference share dividend cannot be treated as interest for tax purposes. It is worth noting that any dividend paid by a Mauritian resident company is exempt from tax only if the dividend meets the definition in the Act. Under Section 2 of the Act, if the dividend has been treated as interest in arriving at the profit for the year, it will not satisfy that definition and will, accordingly, not be exempt in the hands of the recipient. However, TR7 states that the distribution would be treated as a dividend and, on this basis, any amount received is exempt from tax in the hands of the recipient.

TR82 is contrary to TR7 and allows for a preference share dividend, which meets the definition of a liability under IAS, to be treated as an allowable expense. Therefore, the existence of two different tax rulings on the same issue may allow for tax planning opportunities to taxpayers.

Conclusion

If a Mauritian resident company (A) finances another resident company (B) through a loan, interest payable by B is deductible for tax purposes and interest income of A is taxable. However, if A finances B through equity, dividend paid by B is not deductible for tax purposes and dividend received by A is exempt from income tax.

If A instead finances B through redeemable preference shares (which meets the definition of a liability under IAS 32) and any dividend by B to A is classified as a finance expense under IAS 32, both A and B may get a tax benefit. Under TR82, B can claim the preference share dividend as an allowable expense for tax purposes whilst, under TR7, A can treat the amount received as a dividend and therefore be exempt from tax.

It is worth noting that Section 159(4) of the Act indicates that a tax ruling is binding and Section 159(7) allows for a taxpayer to rely on a ruling issued under Section 159. However, the Director General may, under Section 159(8) and by way of a publication in the Government Gazette, notify that a tax ruling shall cease to be binding but a tax ruling cannot cease to be binding at a date earlier than it is published.

Source: http://www.gov.mu/portal/sites/mra/legis.htm

Tax Practice
The Vodafone case

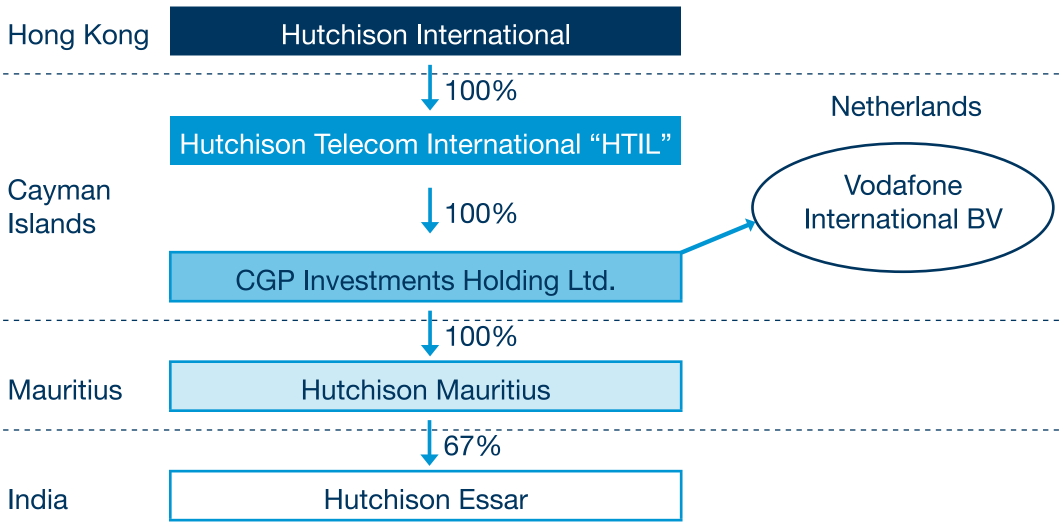
By Bobby Yerkiah - Tax Manager

The summarized comments and analysis below are based on publicly available information and from the judgements delivered by the High Court and the Supreme Court of India.

A brief recapitulation of the case

- Vodafone International BV ("Vodafone"), a Dutch entity, acquired the shares of CGP Investment (Holdings) Limited ("CGP Investments"), incorporated in the Cayman Islands.
- CGP Investments was owned by Hutchison Telecommunications International Cayman Holdings Ltd ("HTIL"), incorporated in the Cayman Islands.
- CGP Investments had a fully owned subsidiary in Mauritius (Hutchison Mauritius).
- HTIL is a subsidiary of the Hong Kong based Huthchison Group ("Hutch").
- Through CGP Investments, Hutch directly and indirectly owned 67% controlling interest in an Indian entity, Hutchison Essar Limited ("HEL").
- In February 2007, Vodafone made an agreement with Hutch for the acquisition of the Indian interest of HTIL.
- The shareholders of HTIL were informed that their controlling interest in HEL would be realised for USD 11.1 billion and that the estimated gain before tax would be USD 9.6 billion.
- Vodafone disclosed the sale to the US SEC and Hong Kong Authorities and in its annual accounts.
- Following the sale, the Indian Tax Authorities served a "show cause" notice on Vodafone to justify why tax had not been withheld on the capital gains realised.

The above is diagrammatically shown below:



Tax Practice
The Vodafone case (cont'd)

Vodafone challenged the notice through the filing of a writ petition with the High Court in Bombay.

Contentions of Vodafone

Vodafone argued that:

- It did not have any presence in India and therefore it was under no obligation to withhold tax in India;
- It acquired the share capital of CGP Investments, which is situated in the Cayman Islands, and therefore the transfer of asset was between two residents outside India;
- Indian law does not provide that when a shareholder buys shares of a company, actually buys any interest in the property of the said company; and

Contentions of the Indian Tax Authorities

The Indian Tax Authorities observed that:

- The capital gain was deemed to have accrued in India;
- The consideration was for the sole purpose of the transfer of the business/economic interest in India; and
- The acquisition of the shares amounted to acquisition of a capital asset in India.

Decision of the High Court

The High Court upheld the "show cause" notice and observed that:

- Prima facie, the transaction would be subject to Indian tax law since the purpose of the transaction was to acquire the controlling interest in an Indian company;
- The Indian Tax Authorities had the jurisdiction to investigate and the Vodafone's writ to petition was premature; and
- The US principle of "Effects Doctrine" could be relied upon. The principle states that "any State may impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within its borders which the State represents".

Vodafone appealed to the Supreme Court against the decision of the High Court.

Decision of the Supreme Court

The Supreme Court dismissed the appeal of Vodafone and observed that:

- The appeal was in regard to a "show cause" and the move to the Supreme Court was premature;
- The Indian Tax Authorities are to address the issue of which jurisdiction has the taxing rights; and
- If the Indian Tax Authorities find that there is a jurisdiction to tax, Vodafone can file another petition with the High Court to decide on this matter of law.

Tax Practice
The Vodafone case (cont'd)

Comments and analysis

Given that the sale was undertaken at the CGP Investments level and there is no treaty between Cayman Islands and India, the transaction is not treaty protected.

This case challenges the fundamental principles of taxing rights. It would be interesting to consider whether the following would have been an issue, if the shares of the Mauritian company (with a valid tax residence certificate) were sold instead of the Cayman Islands company.

- Would the Indian Tax Authorities have raised questions of substance over form and disregard the transaction?
- Would the principle that "an act which is otherwise valid in law can be treated as non-est merely on the basis of some underlying motive supposedly resulting in some economic detriment or prejudice to the national interests" under the Azadi Bachao Andolan (2003) case be questioned again?

As there is a tax treaty between Mauritius and India, such a transaction would, in principle, be treaty protected and a tax residence certificate issued by the Mauritius Tax Authorities should be sufficient to benefit from the treaty. Nonetheless, in light of the Vodafone case, these are interesting questions that have been raised and we will keep you updated on the case in future editions of Tax Times.

Should you want to share your opinion with us, you're welcome to write to us on **taxtimes@mu.pwc.com**

Did you know?

In the case of companies having a turnover less than 100 million rupees, Advance Payment System (APS) is applicable as from 01 July 2009.

Tax Briefs

China (People's Rep.)*

Controlled Foreign Company (CFC) - List of countries meeting effective tax rate threshold published.

On 21 January 2008 the State Administration of Taxation (SAT) issued a ruling stating that Australia, Canada, France, Germany, India, Italy, Japan, New Zealand, Norway, South Africa, the United Kingdom AND the United States are considered to have effective tax rates being higher than the threshold referred in the CFC rules of the Enterprise Income Tax Law.

As such, there is no need for the Chinese resident to include in their taxable income any undistributed or under-distributed profits arising from CFC's of the above listed countries, provided the residency of the resident shareholder can be proven.

Singapore*

Transfer pricing rules for related party loans and services.

The IRAS released a supplementary circular on 23 February 2009 providing guidance on the application of the arm's length principle to related party loans and services which are outlined as follows:

- All related domestic and cross border loans should reflect an arm's length rate of interest;
- The current 'interest restriction' method limiting the amount of interest deductible for loans which are interest free or whose interest rate are not supported by a transfer pricing analysis will be accepted by the IRAS, in respect of (a) domestic related loans provided the lender is not in the business of borrowing and lending funds; and (b) related cross border loans - for a period of transition beginning from 1January 2009 to 31 December 2010;
- The comparable uncontrolled price method (CUP) is the preferred method for the determination of the arm's length price;
- All relevant factors like nature and purpose of loan, market condition at the time the loan is granted, principal amount duration and terms of the loan, etc must be considered;
- For related party services, a service is considered to be rendered when there is a reasonable expectation to receive the benefit, even if the expected benefit does not eventually materialize;
- No service is considered to be rendered if there is no economic or commercial value to the benefit that an independent party would expect to receive or pay for the supply of the service;
- If the related party has no need for such activity, no service is considered to be rendered;
- The CUP method and the cost-plus method are preferred in determining the arm's length fee for related party services.

* Ref: IBFD Report, 2009

Tax Briefs
(cont'd)

South Africa*
Budget 2009/10 – direct taxation

The Ministry of Finance presented the budget 2009/10 on 11 February 2009 to the Parliament which became effective on 1st March 2009. Some highlights are as follows:

- to grant an additional capital allowance of up to 15% to companies investing in energy-efficient equipment;
- to implement the dividend tax reform by the second half of 2010 after the treaties ratification processes; and
- to maintain the existing corporate tax rates.

Personal taxation

The personal income tax brackets are now as follows:

Amount (ZAR)	Rate (%)
up to 132,000	18
132,001 - 210,000	25
210,001 - 290,000	30
290,001 - 410,000	35
410,001 - 525,000	38
over 525,000	40

- To increase the primary rebate for all individuals from ZAR 8,280 to ZAR 9,756 per annum;
- To increase the secondary rebate for individuals over 65 years old from ZAR 5,040 to ZAR 5,400 per annum;
- To increase the annual exemption on interest earned by individuals younger than 65 years from ZAR 19,000 to ZAR 21,000;
- To increase the annual exemption on interest earned by individuals older than 65 years from ZAR 27,500 to ZAR 30,000;
- To increase the threshold for the tax-free interest and dividends from foreign investment to ZAR 3,500 (previously ZAR 3,200);
- To increase the annual exclusion threshold for capital gain or losses from ZAR 16,000 to ZAR 17,500; and
- To increase the tax exempt or deductible portion of monthly contributions to medical schemes from ZAR 570 to ZAR 625 for each of the first two beneficiaries, and from ZAR 345 to ZAR 380 for each additional beneficiary.

Other direct taxes

The effective date for the mineral and petroleum royalties has been changed from 1 May 2009 to 1 March 2010.

Did you know?

The income tax exemption under the transitional provisions granted to a private freeport developer or freeport operator has been extended up to and including income year ending 30 June 2011 under the Additional Stimulus Package Act 2009.

Tax Treaties

Limitation of Benefits Clause in Tax Treaties – Beneficial Ownership

By Cathie Hannelas - Senior Tax Consultant

Introduction

A tax treaty is meant for the benefit of residents of the contracting states. However, in cases of attractive treaties, residents of third states often set up shell companies in one of the contracting states to take advantage of a tax treaty. This is known as treaty shopping. As a result, many states now include a Limitation of Benefits (LoB) clause in the treaties they conclude in order to counteract these tax avoidance schemes.

A LoB clause seeks to restrict the benefits of a treaty to 'qualified' residents of the contracting states only. A party (receiving dividend, interest and royalty income under Article 10, 11 and 12 of a treaty) is treated as a 'qualified' resident only if the party is deemed to be a resident in one of the contracting state and also be the beneficial owner of the income.

There is no precise definition of "beneficial ownership" and, to understand the concept, we need to refer to tax cases. For the purpose of this article, two tax cases are used to illustrate the concept of beneficial ownership as follows:

1. Natwest Case, 1995

This case refers to two companies incorporated in Mauritius and wholly owned by a British company. The Mauritian companies, which held shares in an Indian company, requested a ruling from the Advanced Authority for Ruling (AAR) in India in respect of capital gains and dividends received from the Indian company under Articles 10 and 13 of the Double Taxation Agreement (DTA) between Mauritius and India.

The issues, which were to be addressed by the AAR, were as follows:

- Whether the dividends received by the Mauritian companies from the Indian company would be subject to the reduced rate of 5%. Article 10 (1) states that "Dividends paid by a company resident in India to a company resident in Mauritius is taxable in India at a maximum rate of 5% if the Mauritian company is the beneficial owner of the income" ; and
- Whether capital gains on transfer of shares held by the Mauritian companies would be exempt from capital gains tax. Article 13 (4) of the Mauritius/ India tax treaty states that "Gains from the sale of Indian shares by a company resident in Mauritius are taxable in Mauritius only."

The AAR observed that, if the British company had invested directly in the Indian company, then, under the DTA between UK and India

- Dividends would be taxed at 15%; and
- Gains from the sale of shares would be taxable in both countries.

Tax Treaties

Limitation of Benefits Clause in Tax Treaties – Beneficial Ownership (cont'd)

Based on the above observations, the AAR ruled as follows:

- Dividend

  Under Article 10, for a company resident in Mauritius to benefit from the 5% tax rate on dividend, the Mauritian company needs to be the beneficial owner of the shares in the Indian company. However, since a British company owned the Mauritian companies, the British company was seen as the beneficial owner and the Mauritian companies were merely considered as the legal owners. Therefore, given that the Mauritian companies were not the beneficial owners, they could not benefit from the 5% tax rate.

- Capital Gain

  Article 13 does not contain a LoB clause and, in the absence of such a clause, the Mauritian companies can benefit from Article 13 whereby capital gains are taxed in the country of residence. Since there is no capital gains tax in Mauritius, the gain is neither taxable in India nor in Mauritius.

2. PT. Transportasi Gas Indonesia v. Direktur Jenderal Pajak, 2008*

This case refers to a Mauritian consortium which provided a loan to an Indonesian company. Under the terms of the loan, the Mauritian consortium received interest from the Indonesian company.

Under Article 11 of the now defunct DTA between Mauritius and Indonesia, the Indonesian company could withhold tax at a rate of 10% instead of 20%, as prescribed under Indonesian law. The reduced rate of 10% was applicable only if the recipient was the beneficial owner of the income. The Indonesian company provided the Indonesian Tax Authorities with the Certificate of Domicile of the Mauritian company to benefit from Article 11.

The Indonesian Tax Authorities ruled that the Mauritian consortium could not benefit from the reduced withholding tax as it was not the beneficial owner of the income. The Indonesian Tax Authorities referred to the circular number SE-04/PJ.34/2005, issued by them, and which stated that conduit companies did not constitute beneficial owners.

* Ref: IBFD Report, 2009

Did you know?

The Double Taxation Avoidance Agreement between the Republic of Tunisia and the Republic of Mauritius has come into operation on 28th October 2008. The treaty generally applies from 01 January 09 in respect of Tunisia and from 1 July 09 in respect of Mauritius.

Tax Treaties

Limitation of Benefits Clause in Tax Treaties – Beneficial Ownership (cont'd)

On appeal against the decision of the Indonesian Tax Authorities, the Indonesian Tax Court decided that:

- The determination of whether the Mauritian consortium was the beneficial owner of the income lies with the country of residence, i.e. Mauritius;
- The Indonesian Tax Authorities did not have sufficient means to argue against the Certificate of Domicile issued by the Mauritian Authorities;
- The Certificate of Domicile proved that the consortium was resident in Mauritius and therefore could benefit from the DTA. However, this was not a means of verifying beneficial ownership;
- It is up to the Indonesian Tax Authorities to prove that the Mauritian consortium was not the beneficial owner; and
- The interpretation of beneficial ownership should have been defined at the time the treaty was signed to ensure that its meaning was binding when the treaty came into force.

Analysis and Comments

The concept of "beneficial ownership" was introduced as an anti-avoidance measure. Given the differing views on the matter, it is not always possible to assign a definition to the concept which is workable to each and everyone.

Some countries have issued guidance on who should be regarded as the beneficial owner. For example, in the case of Indonesia, a beneficial owner is the one who is directly entitled to fully benefit from the dividend/ interest/ royalty income. Therefore, special purpose vehicles (such as conduit companies, paper box companies and pass through companies) are not seen as beneficial owners. The Indonesian guidance also specifies that a foreign company, seeking to benefit from the DTA, should provide a Certificate of Residence as well as a Certificate of Beneficial Ownership.

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

Limitation of Benefits Clause in Tax Treaties – Beneficial Ownership (cont'd)

The OECD suggests that the concept should be interpreted in a wider sense to take into account its function and exclude entities which are set up only with the view to benefit from treaties. Granting treaty benefits to an intermediary recipient of an income (such as agent, nominee or conduit company) based on the sole fact that it is resident of the other contracting state defeats the purpose of the OECD Model Tax Convention.

Conclusion

In the absence of a universal definition, each tax jurisdiction tends to decide on whether the recipient is the beneficial owner or not by relying on the facts and merits of each case. Tax cases on beneficial ownership are only of persuasive value and the same applies to commentaries from the OECD. One thing is certain; tax jurisdictions are increasingly adopting aggressive measures to nullify the effect of sham transactions. The submission of a Certificate of Beneficial Ownership to obtain treaty benefits is one such measure.

Tax Profile

Anthony Leung Shing

Anthony Leung Shing joined PricewaterhouseCoopers (PwC) in February 2009 as Director of Tax Services. Aged 32, Anthony is an associate of the Institute of Chartered Accountants in England and Wales, and an associate of the Chartered Institute of Taxation (UK). He holds a Bachelor degree in Economics and a Master's degree in Business Administration.

He started his career as a trainee Chartered Accountant with PKF (UK), where he remained for some 10 years. After qualifying as a Chartered Accountant in 2001, he moved internally, and was appointed Tax Manager after specialisation in UK Corporation Tax. He then joined their Management Consultancy Services in 2004, where he occupied various managerial positions and specialised in Project Finance. In 2007, he was appointed Associate Director and Head of the Project Finance team of 20 Management Consultants at PKF (UK), working on a wide range of projects for various funding banks. He coordinated amongst others, their taxation work on projects, dealing with international network offices on local compliance issues.

At PwC, Anthony heads the Tax Services Line of Service where he shall coordinate the delivery of taxation compliance and taxation advisory services to a wide range of local and overseas clients.

Anthony is married, with a one year old daughter. He is a football and Liverpool fan, loves fishing and is learning to play golf.

Tax Fundamentals

Tax treatment of dividend, interest and royalties derived from Mauritius

By Shameemah Sahebally - Tax Manager

Royalty, dividend and interest are included in gross income by virtue of Section 10(c) and (d) of the Income Tax Act 1995 ("the Act").

Royalty Income

Definition

The Act defines royalty as the *"payment of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience."*

Tax Treatment of Royalty Income

- Royalty income received is taxable at the rate of 15%.
- If the income is received from foreign source, it may be subject to tax in the source country as well as in Mauritius. However, the domestic tax law will provide relief for foreign tax suffered on the income.
- A company holding a Category 1 Global Business Licence ("GBC1"), receiving royalty income from abroad, is eligible for a foreign tax credit equivalent to 80% of the Mauritian tax payable on the royalty or the actual foreign tax paid, whichever is the higher.
- Any royalty paid by a GBC1 or a company holding a Category 2 Global Business Licence ("GBC2") to a non-resident is exempt from Mauritian tax in the hands of the recipient.

Under tax treaties, the taxing right on royalty is devolved either to the resident state or the source state. However, in some cases, the taxing rights are shared and any foreign tax suffered in the source state will be allowed as a foreign tax credit in the resident state.

Dividend Income

Definition

The Act defines dividend as:

a) a distribution authorised by the Board of Directors of a company and made out of the retained earnings of the company, after having made good any accumulated losses at the beginning of its accounting period, either in cash or in shares to its shareholders; and

b) includes a distribution under section 45(3)[a]; but

c) does not include interest deemed to be dividends under section 84[b] and a benefit to shareholder referred to in section 86A[c]

Tax Treatment of Dividend Income

- Dividend income received from a Mauritian resident company is exempt from Mauritian tax.
- A GBC1 company, receiving dividend income from abroad, is liable to tax at 15%. However, the GBC1 company is eligible to a foreign tax credit equivalent to 80% of the Mauritius tax payable on the dividend or the actual foreign tax paid, whichever is the higher.
- The Mauritian law provides for underlying tax credit, which is applicable if the recipient company holds directly or indirectly not less than 5% of the shares of the company paying the dividend. Therefore, there may be a nil tax effect in the Mauritian resident company if the withholding tax and the underlying tax exceed the Mauritian tax.

[a] Any distribution to a unit holder out of the net income derived by the unit trust schemes shall be deemed to be a dividend to a shareholder.

[b] Interest paid on debentures issued by a company to its shareholders by reference to the number or value of shares held by them is deemed to be dividend received by the shareholders.

[c] A benefit granted by a company to any of its shareholders or a relative of the shareholder, other than a dividend payment, is treated as income from any other source and is liable to tax.

Tax Fundamentals

Tax treatment of dividend, interest and royalties derived from Mauritius (Cont'd)

Dividend income received by a GBC1 from another GBC1 is not considered as a foreign source income and is therefore exempt from Mauritian tax. As a general note, Mauritius seeks to mitigate economic double taxation (the taxation of company's profits at the company's level and of dividends at the shareholder's level) and juridical double taxation (taxation of the same income in the hands of the same taxpayer in different states) by granting foreign tax credit on dividends.

Interest Income

The Act defines interest as the *"income from debt-claims of every kind including deposits with a financial institution, whether or not secured by mortgage and whether or not carrying a right to participate in the debtors' profits and in particular income from debentures or any other loan instrument including premiums and prizes attaching to such debentures or other loan instrument."*

Further, under Section 74(g), interest income is said to be derived in Mauritius when the income is derived from money lent:

- In Mauritius; or
- Outside Mauritius to:
  a) A resident, other than a resident banking company, provided that the resident does not use the money for the purpose of a business carried on by him outside Mauritius through a fixed base located outside Mauritius; or
  b) A non-resident, if the money lent is used by him for the purpose of a business carried on by him in Mauritius through a fixed base, subject to the business not being in the trade of money lending.

Tax Treatment of Interest Income

- Interest income received is taxable at the rate of 15%.
- A GBC1 company is exempt from Mauritian tax on any interest received from a Mauritian registered bank.
- A GBC1 company, receiving interest income from abroad, is taxed at a rate of 15% but is eligible to a foreign tax credit equivalent to 80% of the Mauritian tax payable on the interest or the actual foreign tax payable, whichever is the higher.
- Interest paid by a GBC1 or a GBC2 company to non-residents (with no business activities in Mauritius) is exempt from Mauritian tax in the hands of the recipient.

Generally, under most tax treaties, Mauritius shares its taxing rights with the other contracting state and relief for the foreign tax paid is available. However, in tax treaties where beneficial ownership is a criterion for allocating taxing rights and it is established that the immediate recipient is not the beneficial owner, then the source country will have exclusive taxing rights.

Contact Us

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

Anthony Leung Shing
Director of Tax Services
anthony.leung.shing@mu.pwc.com

Dheerend Puholoo
Senior Manager
d.puholoo@mu.pwc.com

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

Bobby Yerkiah
Manager
bobby.yerkiah@mu.pwc.com

Ryan Allas
Manager
ryan.allas@mu.pwc.com

Shameemah Abdool Raman-Sahebally
Manager
shameemah.raman-sahebally@mu.pwc.com

PricewaterhouseCoopers
18, CyberCity
Ebène
Republic of Mauritius
Tel: +230 404-5000
Fax: +230 404 5088/9
www.pwc.com/mu

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 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

pwc.com/mu

PricewaterhouseCoopers (www.pwc.com/mu) provides industry-focused assurance, tax and advisory services to build public trust and enhance value for clients and their stakeholders. More than 155,000 people in 153 countries across our network share their thinking, experience and solutions to develop fresh perspectives and practical advice.