

Tax times*

Mauritius

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Tax practice

Retiring Allowances and Lump Sum Pension Payments

1. The Income Tax Act 1995

The following provisions are relevant with regards to the taxation of retiring allowances and lump sum pension payments:

Second Schedule (Exempt Income)

Part II

Item 2 — Any lump sum or gratuity paid under a pension law.

Item 5 — The first 1,400,000 rupees of any sum received by way of retiring allowance by a person who has attained the appropriate retiring age and retires after completing not less than 10 years employment on such conditions as may be prescribed.

Item 6 — Any lump sum received by way of death gratuity or as consolidated compensation for death or injury or as commutation of pension paid —

(a) by virtue of any enactment;

(b) from a superannuation fund; or

(c) under a personal pension scheme approved by the Commissioner.

2. Tax implications

The above provisions of the law mean that a person receiving the following emoluments will be exempted from income tax:

(a) Any lump sum received under a pension law;

(b) The first Rs1.4m of a retiring allowance; or

(c) Any lump sum received as part of a commuted pension.

3. The Issue

Whether a person receiving more than one of the above payments is exempt from income tax on one or all of the payments made.

4. The Income Tax (IT) Regulations 1996 (as amended by FA 2003)

Regulation 3 (Exempt Income)

Item 1 - The exemption under item 5 of Part II of the Second Schedule to the Act shall not apply to a payment by way of retiring allowance, which is made:

(a) to a person who is paid as commutation of pension, a lump sum which is exempt under item 6 of Part II of the Second Schedule to the Act; ... ,

5. Comments on IT Regulation 3 (1)

Unfair Tax?

This means that a person receiving a lump sum as part of a commuted pension AND a retiring allowance will be exempt from income tax on the lump sum but NOT on the first Rs1.4m of the retiring allowance, irrespective of the lump sum amount.

This can result in an unfair situation where a person is exempted from tax on, say Rs100,000 of pension lump sum and then taxed on Rs1m of retiring allowance.

We doubt that this was the result intended when the regulation was drafted.

Questions

IT Regulation 3 (1) does NOT preclude a person receiving an exempt lump sum under Item 2 of the Second Schedule Part II to also receive an exempt retiring allowance under Item 5 of same schedule.

Isn't a commutation of pension paid under a pension law ?

Can someone then claim an exemption on Rs100,000 of commuted lump sum payment under Item 2 and then ALSO claim an exemption on Rs1m of retiring allowance under Item 5?

What's the definition of a good tax advisor?

Someone who has a loophole named after him.

Tax briefs

Australia – Capital Gains Tax

It is expected that by July 2006, foreign investors holding shares in Australian companies that are not engaged in real property business will no longer be subject to Capital Gains Tax. It is another step of Australia with a move towards a more residence based treaty policy.

India – Ruling on Tax Residency

The Indian Authority for Advanced Rules has ruled that a US based pension trust does not qualify as resident under the US-India tax treaty if it is not subject to tax in the US.

U.K – Ruling on 3-yr Cap and Input VAT

The UK Court of Appeal has unanimously allowed the taxpayer's appeal in a recent case which concerned a late claim for input tax made after the introduction of the input tax cap [3 yr cap].

Singapore – Malaysia Treaty

A new double taxation avoidance agreement with respect to taxes on income entered into force this week between Singapore and Malaysia, following the completion of ratification formalities

Netherlands – Withholding Tax

The Tax Arrangement between Netherlands, the Antilles and Aruba will now provide for a withholding tax on dividends of 0%-5% compared to 8.3 % previously. The long-term aim of the Dutch government is to abolish withholding tax on dividend.

European Union – Ruling on Group Losses

European Court of Justice has ruled that UK firm, Marks & Spencer, can claim relief for losses of its European subsidiaries if they are unable to claim these losses in their country of residence

Singapore – Improvement in Tax Incentives

Singapore's Prime Minister and Minister for Finance, Lee Hsien Loong has announced a range of tax and other initiatives aimed at spurring growth in the financial services and asset management industry in the 2006 budget, although the corporate tax rate has been left on hold at 20%

Tax Profile



Ram Luchmun Roy is a director in the Tax Department in the Mauritius office of PricewaterhouseCoopers.

Ram has a 22-year experience at the Income Tax Department, where he was Deputy Commissioner of Income Tax (1987-1992) and acting Commissioner of Income Tax (1991-1992). He participated in several reform projects such as the reorganisation and restructuring of the Income Tax Department (following recommendations by the World Bank in 1987) and the computerisation of the Department in 1990.

He was the chief of delegation which negotiated the double taxation treaty with Malaysia and Sweden in 1991. As Head of the Investigation Division of the Income Tax Department (1982-1987), his main responsibility was to investigate into suspected cases of fraud and substantial tax evasion.

Ram joined Price Waterhouse in 1993 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 entities, and deals with queries from and investigations by the Income Tax Authorities.

VAT specialist, he lectured on VAT and led VAT seminars with the introduction of the VAT Act in 1998.

Ram is a Fellow of the Association of Chartered Certified Accountants and followed the International Tax Programme course at Harvard Law School.

Quote:

"In this world nothing is certain but death and taxes."

Benjamin Franklin

Tax treaties

Mauritius – South Africa Treaty

Resident

The treaty applies to any person who is resident in one or both states. In the case of Mauritius, resident means a person who is liable to tax under its laws by reason of his domicile, residence, place of management or any other criterion of a similar nature. In the case of South Africa, resident means any individual who is ordinarily resident in South Africa and any legal person having its place of management in South Africa. A person includes an individual, a company, a trust and any other body of persons which is treated as an entity for tax purposes.

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 installation project lasting more than 9 months.

Dividends

Dividends may be subject to tax 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 and royalties

No tax is levied on interest or royalties in the source country. 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 exempt from tax. So are royalties paid by a company holding a Global Business Licence Category 1 to a non-resident.

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 provides for credit in respect of underlying tax relating to dividends received from South Africa. Under both the treaty and Mauritius tax law, tax sparing relief is available in respect of tax exemption or reduction granted by a state.

General

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



Tax Basics

Key concepts, definitions and regulations

Personal Taxation

Chargeable Income

In the case of an individual, the chargeable income is calculated as follows:

	Rs
Gross Income	XX
Less Allowable Deductions	<u>XX</u>
Net Income	XX
Less Personal Reliefs and Deductions	<u>XX</u>
Chargeable Income	<u>XX</u>

Gross Income broadly means the amount of income, other than exempt income, derived from a particular source without any deduction from that amount.

Gross Income usually includes the following (money or money's worth):

- Salaries and wages
- Annuity and pension
- Bonus, gratuity or reward
- Income from business
- Income from property (Rent)
- Foreign dividends
- Royalty
- Interest

Passages, by sea, air or land between Mauritius and another country are not included as part of Gross Income as long as they are provided under the contract of employment.

Allowable deductions means, in the case of an individual, any expenditure or allowance which is deductible in accordance with the law for the purpose of ascertaining the net income.

The most common allowable deductions are:

- Expenditure incurred in the production of income
- Losses
- Bad debts
- Annual and investment allowances (in lieu of depreciation)

Personal Reliefs and deductions are only available to Mauritian tax residents.

A citizen of Mauritius, who is not a tax resident in an income year, may only claim the basic personal deduction, presently at Rs80,000.

Reliefs and deductions include the following:

- Deductions for dependent spouse and children
- Deductions for handicapped persons
- Relief for interest paid on home loans and tertiary education loans
- Relief for investment in certain shares and funds
- Relief for educational expenses (self, school fees and university fees in Mauritius and abroad)
- Relief for medical expenses not refunded
- Relief for pension payments
- Relief for life insurance premiums
- Relief for contributions to medical schemes
- Relief for donations to specified charitable institutions

Please note that this list is not exhaustive. The deductions and reliefs listed above are available under specific conditions and are, in most cases, capped.

Did you know?

Where no declaration is made by a couple regarding income derived by a married woman jointly with her husband, the income shall be deemed to be derived by them in equal proportion.

Tax Basics

Key concepts, definitions and regulations

Corporate Taxation

Are donations to charitable institutions allowable deductions?

A company may, in any income year, be allowed a deduction from its gross income in that income year in respect of any donation made to an approved charitable institution.

The deduction is however limited to Rs400,000 in aggregate.

The list of approved charitable institutions can be found on the Income Tax Department's website, through the Government portal (www.gov.mu/portal/site/incometax).

For how long should you keep relevant books and records?

A company is required to keep every book, record or document for a period of at least 5 years after the completion of the transaction, act or operation to which it relates.

The books and records can be kept on computer or otherwise and can be in English or French.

VAT

Can rulings be requested prior to a transaction taking place?

Yes. A person, who makes taxable supplies for the purposes of VAT, may apply to the Commissioner for a ruling with respect to any supply made to or by that person.

The written application should include the following:

- Details of the transaction relating to the supply
- The question(s) as to which the ruling(s) is(are) requested
- The prescribed fee – presently at Rs5,000

The Commissioner is required by law to give a ruling within 30 days of receipt of the application.

The ruling shall then be binding on the Commissioner, assuming that there are no material differences between the actual facts and the application.

International Taxation

Foreign Tax Credits – Tax Sparing Relief

Issue 2 of Tax times addressed the various tax credits available to a corporation in relation to its foreign source income. One of the tax credits available is the tax sparing relief which is explained further in this issue.

Mauritius domestic law provides for tax sparing relief whereby credit is allowed for foreign tax deemed to be paid though not actually paid.

For example, a foreign subsidiary may be granted a tax holiday by a state / country.

Credit can be claimed by the Mauritian entity, in relation to dividends received from the foreign subsidiary, for tax spared in that country.

The credit is, however, only available in instances of tax exemption or reductions granted by a state / country, underlaws passed for the economic development of the state / country. It is usually not granted where the non-payment/reduction of tax is the result of a policy or system which is available to all corporations.

Singapore, for example, has a one-tier tax system which is in force since 1 January 1993 which allows all companies incorporated in Singapore to pay exempt dividends, under certain conditions.

No tax sparing relief is available in such cases.

Please note that most double taxation treaties signed by Mauritius also provide for such relief.

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

About us

PricewaterhouseCoopers Mauritius (www.pwc.com/mu) was created on 1 July 1998, following the merger of Price Waterhouse and Coopers & Lybrand.

PricewaterhouseCoopers in Mauritius 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 120 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

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