

# Tax times\*

Mauritius

December 2009 – Issue No 9



**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.

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# Contents

Foreword	2
Tax Practice	3
- What constitutes manufacturing for the purpose of qualifying for Investment Allowance?	
- Overlap of profits and double taxation during the transitional period	
Tax Treaties	6
Investing in Mozambique through Mauritius – Treaty and non-treaty based planning	
Tax Profile – Cathie Hannelas	7
Tax Briefs	8
Tax Fundamentals	10
The effectiveness of the arm's length approach	
Tax Profile – Shameemah Abdool Raman-Sahebally	11
Contact Us	12
About Us	13

# Foreword

PricewaterhouseCoopers is pleased to release its fourth and final edition for the year 2009.

The last edition covered the use of Mauritius to channel investments from the US to the Asian countries, namely Singapore. In this edition, we consider the fiscal advantages of using Mauritius to invest in Africa, using the Mozambique treaty as example.

We also comment on the amendments brought by the Finance Act 2009 in the application of the change in the fiscal year, as well as the potential double taxation of overlap profits. We further review the use of investment allowance, which many would consider as an incentive enjoyed only by the traditional manufacturing sector, and share our view on the arm's length principle where we believe that there is still room in Mauritius for legislation improvement on the subject.

We hope that you enjoy this final 2009 edition and we would like to take this opportunity to wish our readers a happy new year and all best wishes for 2010.

Best regards

The Editorial Team

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

# Tax Practice

## What constitutes manufacturing for the purpose of qualifying for Investment Allowance?

By Bobby Yerkiah – Tax Manager

Investment allowances were covered under the now defunct Sections 25 and 64 of the Income Tax Act ('the Act'). These sections were repealed by the Finance Act 2006 with effect from 1 July 2007.

However, Section 161A (10), provides that even though repealed, Section 64A shall still apply to:

“a manufacturing company that has incurred capital expenditure on the acquisition of state-of-the-art technological equipment”

Therefore, if a company qualifies for an investment allowance based on the above, it would be entitled to 25% tax allowance in its first year of acquisition in addition to the normal annual allowance it is eligible to claim.

### Analysis and comments

A manufacturing company is defined in Section 2 of the Act as “a company which derives at least 75 per cent of its gross income from manufacturing activities in Mauritius” and manufacture means:

- (a) the transformation of materials or semi-processed materials into finished or semi-finished goods; and
- (b) includes the assembly of parts into a piece of machinery or equipment or other product.

Whilst, in some cases it is obvious that a company is involved in manufacturing such as companies in the textile industry, in other cases it is more difficult to determine whether a manufacturing activity actually occurs. This therefore makes claiming the investment allowance under Section 161A (10) of the Act less obvious.

Under such circumstances, the Tax Ruling 10 issued by the Mauritius Revenue Authority ('MRA') provides some useful insights as to what may constitute a manufacturing process and in particular, with regards to transformation.

### TR 10 – Facts

“The main activity of the company is airline catering. More than 90% of the gross income of airline catering was derived from the sale of food processed by it. Raw materials including semi-finished goods are purchased locally. These are subsequently sanitized, processed and stored. They are then cooked/grilled, fried or baked according to the set of menus.”

#### The point at issue was to assess:

“whether the activities and transformation processes mean “manufacture” as defined in the Income Tax Act 1995.” The MRA opined that:

“the processing activities of the company fall within the ambit of the word “manufacture” as defined in the Income Tax Act 1995.”

Transformation is not defined in the Act and in ordinary terms, it means:

“a marked change in nature, form or appearance.”

In the present case, the raw materials including the semi-finished goods have undergone a transformation which resulted in a marked change in the nature and appearance of the input. Accordingly, such a process would qualify as a “manufacturing” process as defined in the Act.

### Conclusion

The investment allowance available in respect of state of the art equipment provides significant tax benefits and incentives. Manufacturing covers more than the traditional textile sector and many companies involved in a transformation activity may be entitled to claim the Section 64A investment allowance irrespective of the date of purchase.

# Tax Practice

## Overlap of profits and double taxation during the transitional period

by Ryan Allas – Tax Manager

Under Section 4 of the Income Tax Act ('the Act'), a company is liable to income tax in respect of a year of assessment on its income derived during the preceding year.

A year of assessment ('YOA') is defined under the Act as the year in which and for which tax is payable.

### Introduction

Prior to 2005/2006, if a company had an accounting period other than 30 June, it could under Section 118 of the Act apply for an approved return date which coincided with its accounting period. Following the Finance Act 2005, Section 117A allowed for all companies, incorporated on or after 1 July 2005 and with an accounting period other than 30 June, to file their returns based on their accounts without requiring any prior approval from the Mauritius Revenue Authority.

A company, without an approved return date and with an accounting period other than 30 June, should prepare its tax return on a split basis to form the basis period for the year 1 July to 30 June. For example, a company, with a 31 March year end, would be taxed in respect of the YOA 2008/2009 based on nine months in respect of 31 March 2008 and three months in respect of 31 March 2009.

### Changes under Finance Act 2009

From 1 July 2009, the definition of fiscal year has changed and means a 12 months period starting on 1 January.

Section 118A was introduced under the Finance Act 2009 and relates to companies with an approved return date. Under that Section, income derived during the period ending 30 June 2010, for example, would be deemed to be income derived during the period from 1 January 2009 to 31 December 2009 and will be subject to tax in the YOA 2010.

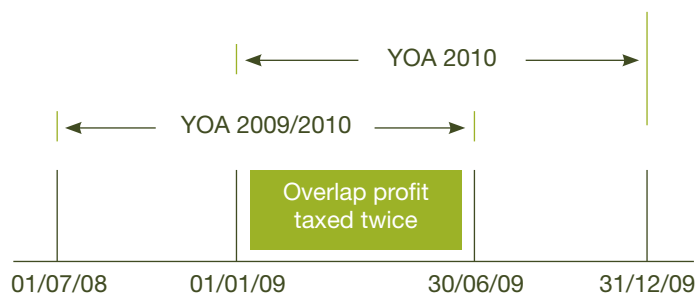
It should be noted that the Finance Act 2009 did not include any provisions in respect of companies with no approved return dates.

### Overlap of profits and double taxation

The change in the definition of 'year', introduced under the Finance Act 2009, means that companies, without an approved return date, must now submit their tax returns based on the income derived during the year commencing on 1 January to 31 December.

A company, filing on a split basis, will submit its tax return for the YOA 2009/2010 on 31 December 2009 based on the income derived during the period from 1 July 2008 to 30 June 2009. The tax return for the YOA 2010 would be due on 30 June 2010 and should be based on the income derived during the year from 1 January 2009 to 31 December 2009.

As depicted below, the profits for the six months period from 1 January 2009 to 30 June 2009 will be taxed twice, that is, in the YOA 2009/2010 and in the YOA 2010. The current tax legislation does not deal with the taxing of overlapping profits.



# Tax Practice

## Overlap of profits and double taxation during the transitional period (cont'd)

### Conclusion

It is therefore critical that a solution be worked out in respect of overlapping profits. In our opinion, there are two options available:

1. Allow those companies to continue to file their return based on income derived from 1 July to 30 June and deemed the 30 June to be their approved return date for tax purposes; or
2. Deem their accounting period end date to be the approved return date as from YOA 2010 for tax purposes.

In the first scenario, there would be no overlapping profits but going forward the tax returns would continue to be prepared on a split basis. The second option may give rise in some cases to overlapping profits but relief would be available under paragraph 22(C) of the Income Tax Regulations 1996. However, given that filing tax returns based on split accounts is more costly and difficult to administer, in our opinion, the second option best addresses the issue.

## Occupation Permit

A non-resident should hold an occupation permit to work and live in Mauritius. The occupation permit comprises of both a work permit and a residence permit.

In order to obtain an occupation permit, an application form must be submitted to the Passport Office through the Board of Investment ("BOI") and must be signed by both the employer and the expatriate. A registration form also needs to be completed by the employer at the same time to register its business activity with the BOI.

There are basically four types of application that can be made and the following criteria must be met.

- As an Investor – The Investor is eligible if the annual turnover of the proposed business activity exceeds the threshold of Rs 3 million

- As a Self-employed – The Self-Employed is eligible if the annual income of the proposed business activity exceeds the threshold of Rs 600,000
- As a Professional – The Professional non-resident is eligible if his basic salary under a contract of employment exceeds the threshold of Rs 30,000
- As a Retired non-citizen – The Retired non-citizen is eligible if he transfers an equivalent of at least USD 40,000 in order to meet his living expenses in Mauritius

The occupation permit is valid for a period of 6 months to three years, depending on the requirements of the expatriate. It is worth pointing out that the BOI may cancel the occupation permit should it feel that the expatriate does not meet the minimum requirements as stated above.

# Tax Treaties

## Investing in Mozambique through Mauritius – Treaty and non-treaty based planning – Royalty

By Cathie Hannelas – Tax Manager

In the previous edition, we covered the tax impact on dividend and interest income of investing in Singapore through Mauritius by a US investor. We will now analyse the tax impact on royalty income receivable by a foreign investor from a country with which Mauritius has a Double Taxation Agreement.

To illustrate the above, we will consider the case of a Dutch investor investing in and receiving royalty income from Mozambique. The investors can opt to invest directly in Mozambique or invest via an intermediate company incorporated in Mauritius.

The two investment structures are depicted below.

### Scenario 1:

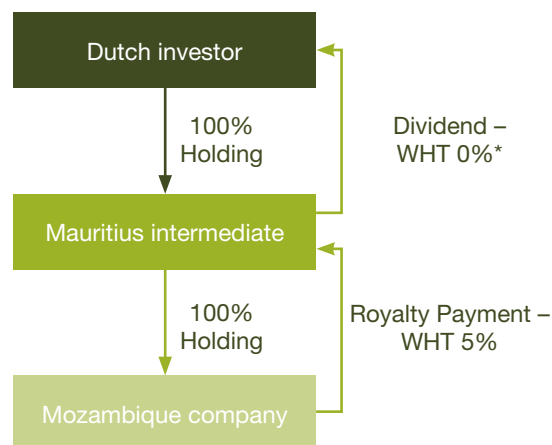
- The Dutch investor leases the intellectual property ('IP') directly to Mozambique.
- The Dutch investor receives royalty income from the Mozambique company.



### Scenario 2:

- The Dutch parent company:
  - owns a Mauritius intermediate company, which in turn holds investment in the Mozambique company.
  - assigns the licence/services rights to the Mauritius intermediate company.
- The Mauritius intermediate company:
  - receives royalty income from the Mozambique company on the services provided.
  - pays dividend to the Dutch parent company.

This is diagrammatically represented below:



\* There is no WHT on dividend payments in Mauritius



# Tax Treaties

## Investing in Mozambique through Mauritius – Treaty and non-treaty based planning – Royalty (cont'd)

### Tax impact:

- Direct investment from Holland to Mozambique
  - The Dutch company will suffer WHT at a maximum rate of 20% on royalties paid in Mozambique.
  - The Dutch company will be taxed at the local rate on the royalty income received from the Mozambique company.
- Investing in Mozambique via Mauritius
  - The Mauritian entity will suffer WHT at a maximum rate of 5% on the royalties in Mozambique.
  - The Dutch company may choose to accumulate the royalty income at the intermediary level and repatriate the funds as dividend in due course or to reinvest the funds.
  - The Dutch parent will not be taxed on the dividend received from Mauritius due to the participation exemption legislation which exempts dividend income received by Dutch companies provided that the following conditions are satisfied:
    - the Dutch parent must hold at least 5% of the Mauritius subsidiary's shares;
    - the shares must be held since the beginning of fiscal year;
    - the subsidiary must pay tax on its profits in the foreign jurisdiction no matter how low those tax rates may be;
    - the Dutch parent must actively involve itself in its subsidiary's management;
    - the subsidiary must not be held as passive investment.
  - The domestic tax rate in Mauritius is 15%. Companies holding a Category 1 Global Business Licence benefit from deemed foreign tax credit of 80%. The effective tax rate is thus 3%.

### Conclusion:

The more beneficial route to receive royalty from Mozambique is via Mauritius as the withholding tax will not exceed 5% and the Dutch company will not suffer any Dutch taxes on the repatriation of the dividend to Holland.

## Tax Profile Cathie Hannelas



Cathie joined the Assurance department of PricewaterhouseCoopers in August 2004. She was involved on the audits of companies in various sectors, namely banking, financial, manufacturing and retail.

She joined the Tax department in July 2007. She manages a portfolio in excess of 100 clients for the provision of tax compliance work. The portfolio includes individuals (Mauritian citizen and expatriates) and corporate clients (multinationals, offshore corporations, companies in the hotel, manufacturing and export sectors). She also assists clients in investigations carried out by the Mauritius Revenue Authority.

Cathie is the responsible person for the application of risk management procedures in the department.

#### Qualifications

- B.Sc (Hons) Accounting with Information Systems
- ACCA Affiliate

# Tax briefs

## China (People's Republic)

### Close Monitoring of Related Transactions\*

On 6<sup>th</sup> July 2009, the Chinese State Administration of Taxation issued a notice with the intent to prevent multinational enterprises from shifting their offshore losses to their related companies in China, especially in the financial crisis period.

The notice stipulates that Multinational Enterprises ('MNEs') engaged in manufacturing, distribution or research & development should maintain a reasonable profit margin subject to the functions and risks. Where losses are incurred, contemporary documentation and other related materials for the year of losses must be prepared and submitted to the Tax Authority before 20<sup>th</sup> June of the following tax year, irrespective of whether the MNEs have reached the threshold for the preparation of contemporary documentation. The notice also requires the Tax Authority to:

1. Monitor closely cross border related transactions;
2. Focus on suspected MNEs which are trying to shift their offshore losses into China;
3. Assess the MNEs on reasonable profit level subject to functions and risks.

## Basic Tax on Foreign Income of Individuals\*

An Alternative Minimum Tax ('AMT') on foreign income of individuals will be imposed with effect from January 2010. Details regarding same have already been communicated by the Ministry of Finance.

Below are some of the different categories of foreign income derived by individuals that are subject to AMT:

1. Wages and Salaries
2. Interest
3. Dividends
4. Capital Gains
5. Rental Income

The foreign income derived by individuals is subject to Basic Tax if such income exceeds TWD 1 million.

Any cost /expenses incurred relating to these income are deductible provided that they are supported by proper documents otherwise, a percentage of income is deemed as taxable amount as set out below:

- 12% of the sale of foreign houses and lands
- 20% of the sale of foreign stocks, and
- 20% of other income.

The return for the 2010 tax year should be filed in May 2011.

## Tax joke

Death and taxes are inevitable, but death doesn't repeat itself.

# Tax briefs

(cont'd)

## Italy

### Recent Tax Amnesty measures\*

Tax amnesty measures provided in the Law Decree No.103 were converted into Law No.141 on 3 October 2009. Since 15 September 2009, Italian tax residents are called upon to:

1. Regularise their offshore funds and assets held abroad as at 31 December 2008 that have not been declared to the Italian Tax Authority;
2. Repatriate funds held in Liechtenstein, Luxembourg, San Marino, or Switzerland;
3. Regularise, without being compulsorily transferred to Italy, all funds held in the EU or in Norway and Iceland or in countries that have an exchange of information with Italy like Australia, Canada, Japan, Korea(Rep), Mexico, New Zealand, Turkey and the United States.

## European Union

### The Application of Mutual Assistance Directive\*

On 4 September 2009, the European Commission adopted a report Com (2009) 451 on the use of the provisions on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures between 2005 and 2008. According to statistics, the amount of tax due recovered between the Member States have increased through mutual recovery assistance. However, facts show that the amounts recovered is low compared to the amounts that member states claim to recover.

Despite the increasing use of mutual assistance, it has been reported that, in many cases, the member states still do not use the possibilities offered by the Mutual Assistance Directive. As such the Commission stresses on strengthening the recovery instruments available in the domestic legislation of the Member States. Also, in order to reinforce the mutual recovery assistance, the Commission requests the European Council and European Parliament to quickly adopt the Directive proposal of 2 February 2009.

\* source: IBFD Reports year 2009

## Useful Links

PricewaterhouseCoopers website in Mauritius  
[www.pwc.com/mu](http://www.pwc.com/mu)

Access to worldwide VAT news and technical material on GlobalVATonline  
[www.globalvatonline.pwc.com](http://www.globalvatonline.pwc.com)

International Bureau of Fiscal Documentation (IBFD)  
[www.ibfd.org](http://www.ibfd.org)

Chartered Institute of Taxation (CIOT)  
[www.tax.org.uk](http://www.tax.org.uk)

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

Board of Investment  
[www.boimauritius.com](http://www.boimauritius.com)

# Tax Fundamentals

## The effectiveness of the arm's length approach

By Shameemah Abdool Raman-Sahebally – Tax Manager

Transactions are done either between independent parties or between related parties. A related party transaction, be it commercial or financial, is often scrutinised by tax authorities as there is an element of doubt as to the genuineness of these transactions. In fact, tax authorities expect these transactions to take place at prices which would have prevailed had they been effected between unrelated parties, that is, at arm's length.

The concept of arm's length is covered in Article 9 of the OECD Model Tax Treaty and conveys that the price charged by the related party should be the same had the transaction been carried out between non related parties. In addition, it is worth noting that if there is a transaction between two related companies in two different countries and the tax authority in one country has successfully imposed an arm's length adjustment on the transaction, Article 9 requires that a corresponding adjustment be made in the other country.

Under the Mauritian domestic tax law, the arm's length principle is covered under Section 75 of the Income Tax Act 1995, ('the Act'). Section 75 provides that, where the Mauritius Revenue Authority ('MRA') is of the opinion that the net income from a transaction between related enterprises is not at arm's length, such a transaction should be recomputed to that amount which would have been derived had the transaction occurred between non related parties and under similar conditions.

The arm's length principle can be viewed as an anti-avoidance tool and it is important to bear in mind that an adjustment under the arm's length principle arises irrespective of whether there is any contractual obligation undertaken by the parties to pay a particular price, or whether there was any intention to minimize tax.

Given its simplicity, the arm's length principle is widely used by OECD member countries. It is effective in typical business cases, such as buying and selling of commodities where comparables are easily available. In many cases, financial indicators such as mark-up or gross margin can be used as comparables. However, the arm's length principle has inherent drawbacks and a few of them are discussed below:

### 1. Nature of Transactions

Often associated enterprises (particularly multinational companies) are engaged in transactions that are not common, such as dealing in highly specialised and unique products. In such cases, there is little or no evidence of the market prices of the goods and therefore this makes the application of the arm's length difficult. Further, factors such as innovation, new product development, trade secrets inevitably make comparability between dependent and independent enterprises almost impossible.

### 2. Availability of Information

It is also difficult for both the Tax Authority and the taxpayer to obtain adequate information to apply the arm's length principle. The use of uncontrolled prices is a determinant factor in estimating the arm's length price and, often uncontrolled prices are not available for similar transactions. The information that is accessible may be incomplete and difficult to interpret whilst, due to confidentiality issues, obtaining information from independent enterprises is a complex issue.

## Did you know?

For the individual taxpayer, the due date for the submission of the return and payment of tax for the income year ending 31 December 2009 shall be 5 April 2010.

# Tax Fundamentals

## The effectiveness of the arm's length approach (cont'd)

### 3. Other factors

Commercial and financial transactions may also be affected by other cross-border factors such as exchange or price controls, anti-dumping duties and high customs valuations and these add another layer of complexity to the arm's length principle. It is already difficult to assess related party transactions which would occur within one country and now, with cross-border issues, the arm's length approach would become even more difficult.

### Conclusion

The arm's length principle has all its merits as it is an approach that provides a fair estimate of commercial prices. Any move away from it would imply moving away from the sound theoretical basis set in the OECD Model, thereby substantially increasing the risk of double taxation. In Mauritius, apart from Section 75, there are no other guidelines or legislation to cover transactions between related parties. Given the significance of such transactions, the MRA should elaborate on the applicability of Section 75 and issue further guidance on its operation and administration to the taxpayer.

## Tax Profile

### Shameemah Abdool Raman-Sahebally



Shameemah joined PricewaterhouseCoopers in July 2008 and provides advisory services on domestic tax issues, international tax planning and the application of tax treaties to clients in a range of industries. She supervises a portfolio of over 100 clients for the provision of tax compliance work ranging from individuals to multinationals

and offshore corporations. She also deals with queries from and investigations by the MRA.

Prior to joining PricewaterhouseCoopers, Shameemah worked for over 10 years at the Income Tax Department (now the Mauritius Revenue Authority) including seven years in the International Taxation Section. She is also member of International Fiscal Association (Mauritius) Branch.

#### Qualifications

- B.Sc (Hons) Economics
- Post Graduate Diploma in International Taxation
- ACCA Diploma in Financial Management (completing)

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# About Us

PricewaterhouseCoopers Mauritius ([www.pwc.com/mu](http://www.pwc.com/mu)) is recognised as a thought leader and a change initiator, offering the resources of a global organisation combined with detailed knowledge of local issues.

With over 200 professional staff, we serve a large number of multinational companies doing business in Mauritius, a cross section of the local business community as well as public institutions.

## Tax Services

### Assessment and appeals

- Attending to assessments and processing objections
- Preparation of appeal documents
- Representation at tax appeal tribunals

### Corporate (Income) Tax services

- Preparation, review and filing of tax returns
- Monitoring compliance with filing and payment deadlines
- Correspondence or meetings with authorities to finalise tax assessments

### International Assignee Solutions

We provide expatriates with tailor made tax planning and tax compliance services.

### Value Added Tax services

- Advice on VAT compliance obligations
- Preparation, review and filing of tax returns
- Monitoring compliance with filing and payment deadlines
- Correspondence or meetings with authorities to finalise tax assessments

### Tax Health Checks

We carry out tax health checks to provide assurance on compliance with Income tax, PAYE, social security and VAT.

### Tax Advisory and Planning services

This includes general tax issues arising from Mergers and Acquisitions, Restructurings, and Disposals including:

- Property relating taxes
- Value Added Tax
- International taxation
- Customs and excise duties

### Expatriate Support and Residency

- Handling applications for occupation permits for professional expatriate personnel
- Handling applications for permanent residence under the Permanent Residence Scheme

### E-Filing Centre

- Filing of annual and quarterly Corporate tax returns 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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