

Cyprus comes calling after Mauritius treaty faces heat

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MUMBAI: In the past few weeks, tax practitioners from the Eastern Mediterranean island Cyprus have been calling up some of the chartered accountants and lawyers in Mumbai to figure out the Mauritius fiasco.

They fear that if India decides to tax investors from Mauritius, Cyprus - another tax haven that has been growing in importance - can't escape the heat.

Cyprus, whose treaty with India is in certain ways 'friendlier' than the Indo-Mauritius treaty, went on the back-foot some years ago, after nearly agreeing to change the rules to allow India to tax its investors. "Strategically, Cyprus may delay any talks with India till Mauritius is resolved. Its negotiating powers are less than those of Mauritius," said Shefali Goradia, partner at the law firm BMR & Associates.

Till now, Cyprus has been a hot favourite for offshore investors betting on the Indian real estate sector and FIIs putting money in Indian bonds. An investor based in Cyprus pays as little as 10% tax on interest earned from bonds issued by the Indian government and companies, and quasi-debt instruments sold by property firms.

"In recent times, there has been an increasing amount of capital coming in from Cyprus. The uncertainty around Mauritius may be just one of the reasons for that," said Siddharth Shah who heads the fund practices at Nishith Desai Associates.

Some feel that Cyprus may take advantage of the current situation to market itself more aggressively as a tax haven, even though there is a widely shared perception that amending the Indo-Mauritius treaty may be easier said than done. As per the treaty, no foreign investor is required to pay any capital gains tax - irrespective of whether the gains are short term or long term in nature and whether the investee company is listed or closely-held.

What's often overlooked is the significance that other developed countries like the US and China are attaching to Mauritius. China has a treaty with Mauritius and is trying to establish a base there, while the US has a trade treaty (though not a tax avoidance pact) with Mauritius which can serve as a gateway to Africa.

New Delhi's current stance on the treaty may be driven by a conviction that it makes little sense to lose tax revenue as India as a market can no longer be ignored by global investors. And, it's Mauritius that has to fear more than India. "Well, in the short run, Mauritius may lose out much more if the treaty is amended. But who knows over the next decade we may lose out to Africa," said Siddharth Shah.

For the first 10 years since the birth of the Mauritius treaty in '83, Mauritius was used by Indian businessmen for outbound investments to Africa. The importance of Mauritius increased dramatically after '91-92 when the doors to the Indian stock market were thrown open to foreign portfolio managers. Since then, overseas stock traders as well as strategic investors used Mauritius to reach out to India.

Given its importance, India may insert certain caveats in the treaty instead of scrapping all tax benefits. "I strongly feel that a possible amendment to the treaty could make it similar to the treaty between India and Singapore. Certain conditions may be applied, though with lower thresholds," said H Jayesh, founder partner at law firm JurisCorp. For investors entering India from Singapore must have a proper establishment and spend a minimum amount in Singapore to enjoy tax benefits.

Many international funds having Singapore as their Asia hub may prefer Singapore to Cyprus "It's stable and has no stigma. But we have spotted in recent year that several European funds find Cyprus more convenient," said Anup Shah, partner at Pravin P Shah, a Mumbai-based CA firm.

According to Shah, there is a distinct possibility that some investors may shift to Cyprus if uncertainty around the Indo-Mauritius treaty lingers. Only a few kosher investors may choose to stay away from Cyprus, with Greece on the verge of default and the entire Euro zone feeling the tremours.

"Even if India and Mauritius decide to limit some of the benefits, it will not happen overnight," said Siddharth Shah. This gives jurisdictions like Cyprus, with a treaty as good as - and according to some even better - than the Indo-Mauritius a chance to attract more business. May be, the team from Cyprus that's scheduled to visit Mumbai this month will snoop around for such an opportunity.



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