

Tax Hotline

July 04, 2006

INDIA-MAURITIUS TREATY UNDER SCANNER AGAIN!

As per a media report, the Government of India is proposing to amend the existing Double Taxation Avoidance Agreement between India and Mauritius ("DTAA"). According to this media report, the amendment is proposed to avoid the misuse of the benefits of the DTAA by shell and conduit companies who have no or minimal operations in Mauritius. The media report on renegotiation comes across as a stark contradiction to the Finance Minister's clarification on May 23, 2006, stating that there were no talks about renegotiation of the DTAA.

As per the media report, the proposal is that the treaty benefit and in particular exemption from capital gains tax in India will only be available to those Mauritius companies which satisfy the following conditions:

- The company is listed on a recognized stock exchange,
- The company should have a total expenditure of \$ 200,000 or more in Mauritius, for at least two years prior to the date on which the capital gains arise.

The proposition is in line with the protocol signed by India with Singapore on June 29, 2005, wherein if a resident of either of the states satisfies either of the above two conditions, it would be eligible to be exempt from taxation on capital gains arising in the other country.

The current position

Currently as per the DTAA, any capital gains realised by a resident of Mauritius from sale of Indian shares, are only taxed in Mauritius provided the Mauritius company does not have a permanent establishment in India. In 2004, the Supreme Court of India had set at rest the issue of eligibility to DTAA benefits by ruling that as long as the company was a tax resident of Mauritius, it would be entitled to the DTAA benefits. It had also upheld the power of the Indian Government to enter into tax treaties granting such exemption without any limitation to benefits provisions.

Impact of the proposed amendment

While the recently amended tax treaty between India and Singapore has similar conditions which need to be complied with before a Singapore resident can claim capital gains tax exemption in India, the Singapore Government has requested the Indian Government to relax these conditions as they have failed to attract investors in Singapore. In response, the Indian bureaucrat seems to have made a statement that they would like to amend India-Mauritius tax treaty also along these lines. There does not seem to be any official communication in this regard. Since amendment of a tax treaty is a sovereign subject, it requires consent from governments of both the countries before it can be amended. At this stage, there is no indication that the Mauritius government will agree to such a proposal.

- Shreya Rao & Daksha Baxi

Source: The Business Standard July 3, 2006.

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