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Indian tax authority clears air on investments via Mauritius

Analysts say ambiguity to continue till Supreme Court takes a stand.

BY ISHAAN GERA

The Authority for Advance Rulings, a quasi-judicial tax body under the finance ministry, has reaffirmed that capital gains earned by a Mauritius-registered company from transfer of shares of an Indian firm shall not be taxable in the country if the foreign corporation doesn’t have a local permanent establishment.

In doing so, the authority reiterated the basic tenet of the Double Tax Avoidance Agreement between India and Mauritius.

The ruling came last month in a case filed by Mauritius-registered Dow AgroSciences Agricultural Products Ltd. The company had transferred shares of its Indian subsidiary to a Singapore unit as part of a restructuring exercise.

The tax authority said that the investment in the Indian subsidiary, which had been held for a long period of time, cannot be considered to be a device for tax avoidance. It also said that the Mauritius company was not liable to pay any tax in India and that provisions dealing with withholding tax, transfer pricing and filing tax returns will not come into play.

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The authority consists of a chairman, who is a retired judge of the Supreme Court, and one member each of the rank of additional secretary from Indian Revenue Services and Indian Legal Services.

The ruling from the three-member body comes in the light of cases of a stricter measure from authorities that view Mauritius as a safe haven for tax avoidance. Mauritius has been the top origin country for foreign direct investment into India since 2000 with inflows totaling $91.2 billion (Rs 4,49,148 crore), according to government data. The country had last year in June said that it won't allow shell companies to operate from its soil.

Analysts at law firm Nishith Desai Associates said the ruling reiterates the fundamentals of established principles and provides re-assurance in the context of several doubts being raised on Mauritius structures, particularly in the light of discussions between the Indian and Mauritius government for amending the Mauritius tax treaty and the General Anti-Avoidance Rules set to come into force from April 1, 2017.

“As there are conflicting rulings on these points, ambiguity may continue till a position is taken by the Supreme Court, particularly as a 2013 amendment to the income tax rules provides that tax returns are required to be filed to claim relief under tax treaties,” they added.