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Potential beyond boundaries

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TAX CUSHION

Forget dubious havens. NRIs & PIOs are now seeking out tax-favoured jurisdictions, finds Ishani Duttagupta

WITH various governments, including India, cracking down on money-laundering and stressing on transparency in financial transactions for both individuals and corporates, tax havens are increasingly being seen in relation to tax avoidance. In fact, the term 'tax havens' is now almost derogatory.

Tax authorities of most countries try to make a distinction between 'low tax' or 'tax favoured' jurisdictions and pure 'tax havens'. While the global debate on how to make a distinction between the two is still ongoing, most countries - based on the Organisation for Economic Co-operation and Development's report on harmful tax competition - consider the following factors for making this distinction:

- No or nominal tax rates
- Lack of transparency, secrecy rules
- Absence of effective exchange of information
- No substantial activities

OECD has been regularly reviewing policy development and legislation in the area of harmful tax practices and in a recent update finds that its aims to crack down on harmful tax practices and on the ability of individuals to evade taxation by banking, doing business or residing in certain countries are becoming more and more successful.

"Countries such as Mauritius and Cyprus do not fall in the category of tax havens. In fact, Mauritius which was initially on the OECD watch list has since been removed from the list based on changes made to the tax and regulatory system to accommodate OECD's concerns. Also, Mauritius has signed tax treaties with over 25 countries (including EU countries like Netherlands, Belgium) and most of these tax treaties (including the one with India) contain provisions of exchange of information in case of tax evasion," says Amitabh Singh, partner, global tax advisory services, direct tax at Ernst & Young.

Besides, there are jurisdictions which are apparently high tax countries but in reality practically no tax becomes payable due to certain situations. "These countries include Netherlands, UK and several other European jurisdictions where participation exemptions exist. Then there are also treaty havens which by virtue of tax treaties situations are created whereby no or negligible taxes are paid. These include countries such as Mauritius, Cyprus, Barbados and Singapore," says Nishith Desai, founder of Nishith Desai Associates.

In recent months, OECD has also announced the removal of Liberia and Marshall Islands from its list of 'uncooperative tax havens'.

"The most favoured (and respectable) locations for high net worth individuals (including non-resident Indians and people of Indian origin) has been the United Kingdom due to its beneficial tax treatment for nondomiciled individuals. However, with UK showing signs of framing regulations to curb this, it is possible that many individuals will now look for other locations. To the best of my knowledge, there are no favourites as far as NRIs / PIOs are concerned. Switzerland may be a good bet after UK due to its proximity to the European Union. Most of the other jurisdictions may be favoured as places to hold and manage investments from but not as places to live with your family. Mauritius, due to its Indian heritage, may be a more comfortable location for NRIs/PIOs as compared to other places," Mr Singh says.

Mr Desai too agrees that Mauritius is a good jurisdiction for inbound investments into India. "When Indians and Indian companies invest abroad, they look for corporate and tax laws, credibility and political stability. Other important parameters are exchange control and residency requirements. Besides, people of ethnic Indian origin are present in substantial numbers in Mauritius which may add comfort and India has a tax treaty with that jurisdiction as well," Mr Desai says.

What makes Mauritius a bigger draw for Indians and NRIs & PIOs are schemes such as integrated resort scheme and scheme to attract professionals for emerging sectors. While IRS is a project for the construction and sale of luxury villas to foreigners; SAPES is to attract non-citizens professionals with talent, expertise and skills in emerging sectors to come, work and live in Mauritius with the aim to provide professional services of the highest standard to investors. Under IRS, the acquisition of a villa for residential purposes by a foreigner allows the foreigner and their family to reside in Mauritius as long as they hold the property. The acquisition of a villa under the scheme grants resident status to the investor, their spouse and dependants. Under SAPES, some of the sectors that are covered include IT, financial services and others that are approved by the Mauritius Board of Investment.

"Such schemes are not unique to Mauritius. There are many other countries which are more accessible and could be of great interest to NRIs. These also have a low rate of tax and are extremely well connected with other parts of the world. Many Indians have relocated to such tax jurisdictions," Mr Desai says.

Skilled Indians, in certain job categories, enjoy special tax benefits in the Netherlands too, which is called the '30% facility' for foreign employees temporarily working in the country. The benefits, that are provided to certain employees with specific expertise who are recruited from abroad, include tax free allowances up to 30% of current employment income; tax free allowance to cover cost of certain international schools for children and if the employee becomes a tax resident of the Netherlands they may be considered as a non-resident tax-payer of the country for certain items of income. "Switzerland is also a popular jurisdiction for forming holding companies and special types of trusts. Further, there are highly experienced wealth managers in Switzerland who manage HNIs. It is also a good centre for setting up not-for-profit entities," Mr Desai says.

Meanwhile, countries such as Belgium too have got a pat on the back from OECD for implementing policy measures to bring about more transparency in international taxation matters. Earlier in 2007, Belgium signed its first tax treaty providing for exchange of bank information for all tax purposes.

And while offshore tax havens are no longer the money laundering centres that they were once considered to be, they do allow for creative tax planning and the ability for legitimate tax reduction for qualifying individuals and entities. In the majority of cases they are also well regulated fiscal centres that have in place proper legislation and effective anti moneylaundering or tax evasion strategies.

An example is Hong Kong which has recently cut its taxes. Expatriate tax saving in Hong Kong is now very possible. Following a similar step by Singapore to reduce taxes earlier in the year, HK was forced to go further if it wanted to remain ahead of regional competition and retain and attract new business. For NRIs and PIOs, both HK and Singapore are good options in Asia in view of the historic links with both these countries which have very large segments of Indian population.

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