

Tax Hotline

June 01, 2002

INDIA- MAURITIUS TAXATION TREATY CIRCULAR QUASHED BY THE DELHI HIGH COURT

In a surprise decision delivered by the Delhi High Court (**HC**), allowing two public interest litigations (**PIL**) challenging the circular issued by the Central Board of Direct Taxes dated April 13, 2000 (**Circular**), the HC has quashed the Circular.

The Circular had clarified that Foreign Institutional Investors (**FI**) resident in Mauritius, which were issued a "Certificate of Residence" by the Mauritian Authorities, would constitute sufficient evidence for accepting the status of residence as well as beneficial ownership for applying the India - Mauritius taxation treaty.

It must be noted that in November 2000, the HC had refused to stay operation of the Circular and had clearly stated that if the PILs were allowed, the Mauritius resident FIs involved in treaty shopping would have to pay tax with retrospective effect from April 13, 2000.

The Government of India is expected to appeal against this order to the Supreme Court of India. And Mauritius resident FIs may also intervene.

While this tax hotline is based on press reports, we are awaiting the actual text of the judgment for further analysis.

Nishith Desai & Shefali Goradia

Source : The Economic Times dated June 1, 2002

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