

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.

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

Research Papers

M&A In The Indian Technology Sector

February 19, 2025

Unlocking Capital

February 11, 2025

Fintech

January 28, 2025

Research Articles

Re-Evaluating Press Note 3 Of 2020: Should India's Land Borders Still Define Foreign Investment Boundaries?

February 04, 2025

INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

Key changes to Model Concession Agreements in the Road Sector

January 03, 2025

Audio

Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice

December 18, 2024

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

Renewable Roadmap: Budget 2024 and Beyond - Part I

August 26, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

Arbitration Amendment Bill 2024: A Few Suggestions | Legally Speaking With Tarun Nangia | NewsX

February 12, 2025

What India's Transition to New Data Protection Law Means for Global Businesses

January 23, 2025

India 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 16, 2025
