

Tax Hotline

December 15, 2004

INDIA WANTS TO REWORK TAX TREATY WITH MAURITIUS

The Indian Finance Minister, while replying to questions in the Parliament, said on Friday that India is likely to revisit the double taxation avoidance agreement (DTAA) with Mauritius and bring it in line with the model treaty developed by the finance ministry.

While the India-Mauritius DTAA provides for periodic review, it does not provide for reopening treaty negotiations. Since the Indian Government is keen on renegotiating the DTAA, it has indicated that Mauritius should be convinced for re-negotiating as otherwise India could give the benefit given under the India- Mauritius DTAA to countries such as Singapore and other Asean countries with which it is negotiating comprehensive economic cooperation agreements.

India would like to have three major changes in this DTAA to improve tax collection from companies coming through Mauritius:

1. Shift from residence based to source based taxation, particularly in relation to capital gains tax
2. Introduce "Limitation of Benefit" article to check treaty shopping.
3. Rework the rates of withholding tax

The Finance Minister has also stated that India's DTAA's with Malta, Zambia, Qatar and Cyprus are also proposed to be reworked. Interestingly, some of these DTAA's also have residence based taxation.

The aim of the exercise is, of course, to curb the tax avoidance by entities otherwise taxable in India escaping through the Mauritius route. In this context, **the ruling by the Supreme Court ("SC") in the case of *Azadi Bachao Andolan vs. Union of India and Others*** is of relevance, where the SC upheld a circular issued by the Central Board of Direct Taxes, which clarified that the certificate of residence issued by the Mauritius tax authorities was sufficient for determining residence for the purposes of availing the treaty benefit. The curative petition against this decision has been dismissed by the SC.

In view of **the recent ruling of the AAR that the income derived by a foreign institutional investor ("FI")**, on trading in securities is business income and is not taxable in India in absence of a permanent establishment in India, it is debatable whether the proposed changes in the DTAA treaty would render any substantial benefit to the Indian exchequer. It is to be noted that FIs are a major source of flow of foreign investments into India.

While many tax treaties entered into by India provide for periodic review, they require the consent of the other country to renegotiate the treaty. Treaty negotiation is a very lengthy process and India would need to take a long term view and think strategically prior to embarking on treaty re-negotiation.

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

Littlel International Guide (India) 2024

November 08, 2024

Unmasking Deepfakes

October 25, 2024

Are we ready for Designer Babies

October 24, 2024

Research Articles

The Bitcoin Effect

November 14, 2024

Acquirers Beware: Indian Merger Control Regime Revamped!

September 15, 2024

Navigating the Boom: Rise of M&A in Healthcare

August 23, 2024

Audio

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

November 19, 2024

Renewable Roadmap: Budget 2024 and Beyond - Part I

August 26, 2024

Renewable Roadmap: Budget 2024 and Beyond - Part II

August 26, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

"Investment return is not enough" Nishith Desai with Nikunj Dalmia (ET Now) at FI8 event in Riyadh

October 31, 2024

Analysing SEBI's Consultation Paper on Simplification of registration for FPIs

September 26, 2024

