

Inbound Investment into India through Mauritius Incorporated Entities

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The global business industry in Mauritius has been quite active mainly for inbound investment into India, Africa and China.

Since the double taxation treaty between Mauritius and India (the "Mauritius treaty") is more favourable compared to other jurisdictions, Mauritius has become the preferred jurisdiction for providing foreign direct investment in India. As a result, many investment and/or hedge funds were incorporated in Mauritius for the purpose of investment in India. This has, over the years, resulted in over 439 investment funds having been incorporated in Mauritius and assets in excess of USD43 billion.

For example, the income of a Mauritius fund will be subject to income tax in Mauritius at the rate of 15%. However, the Mauritius fund will be allowed a credit for foreign tax on its income which is not derived from Mauritius against the Mauritius tax computed by reference to that same income. If no written evidence is presented to the Mauritius Commissioner of Income Tax showing the amount of foreign tax charged, the amount of foreign tax shall nevertheless be conclusively presumed to be equal to 80% of the Mauritius tax chargeable with respect to that income, which would reduce the rate of tax effectively to 3%. Capital gains derived from the sale of securities held by the Mauritius fund will not be subject to Mauritius tax, and any dividends and proceeds paid by the Mauritius fund to the shareholders will be exempt from Mauritius withholding tax.

Under the Mauritius treaty, capital gains, if any, that the Mauritius fund realises on transfer of investments in Indian securities would not be liable to tax in India so long as the Mauritius fund does not have a permanent establishment in India to which its investment holdings may be attributed. Accordingly, based on the

Mauritius treaty, the Mauritius fund should be exempt from paying tax in India on capital gains realised on the transfer of investments in Indian securities. The Mauritius treaty has always been and continues to be a subject of controversy. While the Supreme Court of India in *Azadi Bachao Andolan & Anr* [263 ITR 706] has upheld the use of Mauritius to invest into India, nevertheless, media reports bring up news items which suggest further challenges in investing through Mauritius. Mauritius has also tightened its tax residency requirements and formulated strict anti-money laundering laws. In addition, a Memorandum of Understanding (MoU) signed between India and Mauritius provides for effective exchange of information in the detection of fraudulent market practices. Certain procedures have been established for effective exchange of information, both on request and on a voluntary basis, about suspicious securities dealings between the two countries. It should be noted that the intention behind the MoU is to track down transactions tainted by fraud and financial crime, not to target bona fide legitimate transactions. Until the two nations decide to re-negotiate the Mauritius treaty, Mauritius shall continue to be a recommended and effective jurisdiction for inbound investments into India and shall continue to be the number one jurisdiction in providing foreign direct investment in India.

Regulation & Compliance

In keeping with its longstanding commitment to "keep out the unscrupulous", Mauritius enacted sweeping anti-money laundering legislation in 2003. The Financial Intelligence and Anti-Money Laundering Act 2003 (the Anti-Money Laundering Act) complies with the recommendations of the Financial Action Task Force established by the G7 countries in 1989. Mauritius has embraced the

passage of the Anti-Money Laundering Act and its subsequent codes issued by the Mauritius Financial Services Commission (the FSC). According to the FSC, "...these codes aim to preserve high standards of practice and the integrity of Mauritius as a reputable financial services center... and the minimum criteria to be followed by companies and market intermediaries to prevent the exploitation of the financial services industry in Mauritius." Compliance has not proved difficult for most companies as Mauritius has always had a deep-seated "know your client" culture. The Anti-Money Laundering Act applies to all Mauritius companies, and it is important for all Mauritius incorporated entities to establish and observe appropriately high standards of client identification and verification, record-keeping, internal reporting and employee training. In this regard, many large blue-chip institutional clients have welcomed the opportunity to be (and to be seen to be) subject to such standards of business conduct which clearly accord with their own high operating standards in the international marketplace and underline the high standard being applied in Mauritius. There are also mechanisms for on-site inspections and off-site supervision where the FSC is called upon to verify the business conduct of client companies, their record keeping and the regulatory status with respect to the Financial Services Act 2007, codes, regulations and the anti-money laundering codes issued by the FSC.

Mauritius' reputation rests on sound regulation. There is sufficient oversight to ensure probity and accountability, and, although there are often rumblings in the media about possible challenges of investing in India through Mauritius, the double tax treaty is still effective and various mutually beneficial strides towards targeting fraudulent transactions and financial crime have been made, including the effective exchange of information. Mauritius has also tightened its tax residency requirements and formulated strict anti-money laundering laws. Until the two nations decide to re-negotiate the Mauritius treaty, Mauritius shall continue to be a recommended and effective jurisdiction for inbound investments into India and shall continue to be the number one jurisdiction in providing foreign direct investment in India. So whether utilising a collective investment scheme, a closed-end fund or a myriad of other investment vehicles, Mauritius is the offshore jurisdiction for dynamic opportunities for investment in Indian, African and Asian markets.



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