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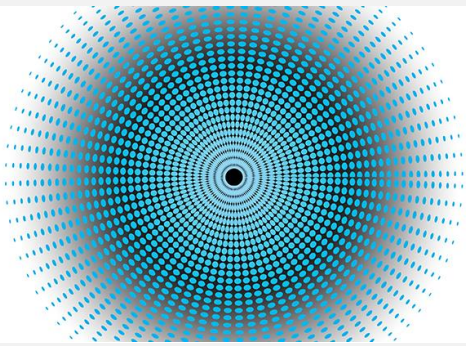

Singapore Business Tax developments
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Update on the Multilateral Instrument (MLI)—Mauritius includes treaty with Singapore as a Covered Tax Agreement (CTA)

On 10 October 2018, Mauritius released a revised provisional list of reservations and notifications to the MLI, according to an update published by the OECD.

The revised list supersedes the list that Mauritius deposited at the time of signature of the MLI on 5 July 2017.

Amongst others, the number of double tax agreements that Mauritius wishes to have covered by the MLI now stands at 41 treaties, an increase from 23 in the previous list. The Singapore–Mauritius double tax agreement (DTA) is amongst the new additions.

The Singapore–Mauritius DTA
The Singapore–Mauritius DTA is notable for according taxing rights on interest (Article 11) and royalties (Article 12) to the jurisdiction where the beneficial owner of the respective income is resident in. Put simply, the withholding tax rate for the payments of interest and royalties arising in either Singapore or Mauritius and paid to a resident of the other jurisdiction is reduced to zero percent.

For reference, the domestic withholding tax rates on interest and royalty payments to non-residents are as follows:

Types of payment	Arising from Singapore and paid to non-residents of Singapore	Arising from Mauritius and paid to non-residents of Mauritius

Interest	15%	15%
Royalties	10%	15%

Inclusion as a CTA

A key implication arising from the inclusion of the Singapore-Mauritius DTA as a CTA is that, upon ratification of the MLI by both Singapore and Mauritius, the Principal Purpose Test (PPT) must be satisfied before interest and royalty income qualify for treaty benefits under the Singapore–Mauritius DTA.

Briefly, the PPT seeks to deny treaty benefits provided under a DTA in abusive cases where it is reasonable to conclude that the principal purpose or one of the principal purposes of the arrangement or transaction in question is to obtain the benefits under the DTA in a manner that would not be in accordance with the object and purpose of the relevant DTA provisions.

It is also noteworthy that both Singapore and Mauritius have opted to introduce the PPT with a discretionary benefits provision. Accordingly, should treaty benefits be denied to a taxpayer, the discretionary benefits provision would nevertheless allow the competent authority to grant treaty benefits, if, upon request from the taxpayer and after consideration of the relevant facts and circumstances, that authority determines that such benefits would have been granted to that taxpayer in the absence of the transaction or arrangement.

Separately, Mauritius has indicated that the application of the PPT will be an interim measure and it intends, where possible, to adopt a limitation of benefits provision through bilateral negotiations (i.e., on a treaty-by-treaty basis) to replace the PPT.

Singapore has ratified the MLI on 21 December 2018 whilst Mauritius has yet to do so. Should Mauritius ratify the MLI by September 2019, the PPT should apply to the Singapore-Mauritius treaty with effect from 1 January 2020 in relation to taxes withheld at source on amounts paid to or credited to non-residents.

With this in mind, the focus turns to how IRAS would apply the PPT. The IRAS has indicated in its e-Tax Guide *Avoidance of Double Taxation Agreements*, first issued on 11 October 2017, that the principal purpose of an arrangement or transaction is a question of fact and is an objective enquiry. Based on such objective analysis, it must be reasonable to conclude that one of the principal purpose was to obtain the benefits of the DTA in an improper and abusive manner before the PPT is invoked to deny the DTA benefits.

Importantly, the principal purpose of an arrangement or transaction should not be determined by just reviewing the effects of the arrangement or transaction but should also take into account all relevant facts and circumstances concerning

the arrangement or transaction. In respect of the latter, where the arrangement is connected with a core commercial activity and its form is not contrived, it would not be reasonable to conclude that one of the principal purposes of the arrangement was to obtain a DTA benefit.

Deloitte Singapore's views

The interpretation and application of the PPT by the IRAS is currently untested. Some may contend that a parallel could be drawn to certain DTAs that Singapore has concluded which includes a "Main Purpose Test" (MPT). An example would be Article 28 of the Singapore–France DTA, which reads:

> "The benefits of any reduction in or exemption from tax provided for in this Convention shall not be available where the main purpose for entering into certain transactions or arrangements was to secure a more favourable tax position and obtaining that more favourable treatment in these circumstances would be contrary to the object and purpose of the relevant provisions of this Convention."

Arguably, the MPT that exists in some of Singapore's DTAs is not *in pari materia* with the PPT and there may also be a dearth of literature as well as practical experience on the IRAS' application of the MPT.

In view of the above, businesses should undertake a review of their current arrangements or structures involving transactions with residents of Mauritius to understand how the MLI may impact legacy structures and if required, to consider steps to ensure that these are connected with a core commercial activity and their form is not contrived.

Contacts

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