

MAURITIUS TRUSTS IN WEALTH PLANNING AND CROSS BORDER TRANSACTIONS

Devalingum Gopalla – August 2009

General

The Mauritius Trust Act 2001 is based on the English common law trust model and provides for the setting up of private trusts (whether discretionary or fixed interest), charitable trusts, non-charitable purpose trusts (which must be certain, reasonable and lawful) and commercial trusts (e.g. pension and employee benefit trusts). All trusts must be created by written instrument. All trusts are limited to a maximum perpetuity period of 99 years, except for charitable trusts, which may be of perpetual duration, and non-charitable purpose trusts, which are limited to 25 years.

A Mauritius Offshore Trust is a trust of which (i) the settlor is not resident in Mauritius, (ii) none of the assets are Mauritius real estate, and (iii) at least one trustee is resident in Mauritius (the trustee can be an individual, a Mauritius offshore management company duly authorized by the Mauritius Financial Services Commission or an offshore bank in Mauritius).

One of the distinguishing features of Mauritius is its interesting taxation treaty network which allows Mauritius to serve as a gateway for African and Asian investments. Singapore, Cyprus, and India all have taxation treaties with Mauritius which are appealing to European and North American Investors. For trusts it is necessary under every double tax agreement (“DTA”) to satisfy two requirements: one that the trustee is a resident of the residence country, and secondly that the recipient should be a beneficial owner.

Also, confidentiality is guaranteed by the Trust Act. Trustees are not required to disclose any confidential information to any person not legally entitled to it. Nor can they be required to produce or divulge that confidential information to any Court, tribunal, committee of enquiry or other authority in Mauritius or elsewhere except where ordered by the court in accordance with the Law.

Taxation Planning

One of the primary reasons for using a Mauritius offshore trust is for tax purposes. A Mauritius offshore trust may either elect to be a resident trust or a non-resident trust for tax purposes; both types have their advantages and which to choose will depend on the primary objectives of the trust.

Non-Resident Trusts

A Mauritius offshore trust which elects to be treated as non-resident for income tax purposes pays no income tax on income derived outside Mauritius. However, non-resident trusts do not benefit from Mauritius’ network of DTAs. A non-resident trust will be appropriate where the income of the trust is to be accumulated as for example in the case of a family trust. It should be noted that this type of trust is also the preferred vehicle in structured finance transactions where the trust will typically be a special purpose trust set up to hold shares in a special purpose vehicle. A non-resident trust is exempt from tax and filing requirements in Mauritius, as are non-resident beneficiaries.

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Resident Trusts

A resident trust, licensed as a Category 1 Global Business, is taxable in Mauritius on its chargeable income at the rate of 15% per annum. However, according to the Mauritius Income Tax (Foreign Tax Credit) regulations 1996, the resident trust is allowed a credit for foreign tax on its income which is not derived from Mauritius which is presumed to be equal to 80% of the Mauritius tax chargeable with respect to that income. The effective rate of income tax is, therefore, 3.0%. It is trite to understand that chargeable income which is subject to tax is defined as the difference between: (a) the net income derived by the trust; and (b) the aggregate amount distributed to the beneficiaries under the terms of the trust deed. Non-resident beneficiaries of an offshore trust are exempt from income tax on the income derived from the trust; the Mauritius resident trust can effectively pay no income tax by distributing all its income to its non-resident beneficiaries.

The main advantage of a resident trust is its accessibility to the DTA. As of 2009, a number of DTAs to which Mauritius is a party now specifically include "trust" in the definition of "person" eligible to benefit from the DTA. For example, the India-Mauritius DTA defines the term "person" as including an individual, a company and any other entity, corporate or non-corporate, which is treated as a taxable unit under the taxation laws in force in the respective Contracting States.

Dividend, Interest and Capital Gains

With respect to dividends, a Mauritius offshore trust can be used to hold shares in a company of the other contracting country and benefit from a preferential rate of taxation on any dividend distributions pursuant to Article 10 of the DTA. In terms of treaty benefits on interest, a Mauritius offshore trust can be useful in a back-to-back loan structure which can result in substantial tax savings on interest payment by virtue of Article 11 of the DTA. A Mauritius offshore trust is often used to save capital gains tax that are payable on the sale of shares of companies of the other contracting state, because according to Article 13 of the DTA, only Mauritius can tax such capital gains. Mauritius has no capital gains tax on disposal of shares (other than shares of a company holding immovable property in Mauritius). Using a Mauritius offshore trust leads to savings on capital gains tax.

Mauritius offshore trusts are also useful in life insurance and private trust companies. Mauritian private trust companies are guaranteed confidentiality and there is no registration requirement for each underlying trust of the private trust company.

Indeed, through careful trust and corporate planning, Mauritius investment vehicles and its network of DTAs are proving appealing to Indian and Chinese investors looking to invest in Africa, Europe and the US. In the current investment climate, migration of asset protection trust to Mauritius can prove beneficial.

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Notes to Editors

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