Mauritius

Changes in the tax treaty with India, what this means for investors

The Double Taxation Avoidance Agreement (**DTAA**) with Mauritius has been amended. The new protocol gives India the right to tax capital gains arising from the sale or transfer of shares of an Indian company acquired by a Mauritian tax resident. Investments made before 1 April 2017 are exempt and shares acquired between 1 April 2017 and 31 March 2019 will attract capital gains tax at a 50% discount on the Indian tax rate — ie at 7.5% for listed equities and 20% for unlisted. The full tax impact of the protocol will fall on investments beginning 1 April 2019, when capital gains will attract tax at the full Indian domestic rates of 15% and 40%.

The DTAA is a major reason for a large number of foreign portfolio investors (**FPI**) and foreign entities to route their investments in India through Mauritius. Between April 2000 and December 2015, Mauritius accounted for fully USD93.6 billion — or 33.7% — of the total foreign direct investment.

> The full impact of the new protocol will be felt on investments starting 1 April 2019, when capital gains will attract tax at the full rates of 15% and 40%

Why amend the Treaty?

Simply put, to put the brakes on round-tripping, boost anti-money laundering initiatives and raise tax revenue. It is also expected to discourage speculators which the government expects will reduce volatility in the market.

Impact on investments routed through Singapore?

Singapore has emerged as the more favoured investment route recently. The terms of the Singapore-India DTA however mean that it is expected that the amended tax regime for Mauritius will be applicable to capital gains for Singapore tax residents too. Intuitively it feels as though the change will impact volumes in both Singapore and Mauritius as a result.

What is unclear is whether the grace periods under the DTAA will be extended to Singapore. Singapore will no doubt be pushing for such a stance from the Indian government to ensure a level playing field.

Will the treaty impact P-Notes?

No, P-Notes are instruments issued by registered foreign institutional investors to overseas investors and do not form part of the DTAA. It is important to remember that while the FPIs are registered with the Securities and Exchange Board of India (SEBI), the overseas investors investing in P-Notes are not registered with the market regulator, and thus their identity is not known to the authorities. Probably as a result of the restrictions imposed in 2007 the share of P-notes in the total FPI investment has come down from around 50% in 2007 to 10% now.

Mauritian resident companies

In the interim Mauritian companies, like Singapore companies, that are able to take advantage of the DTAA continue to benefit greatly from the reduced capital gains rates. After 2019 however, it will become more about minimising risk; putting the investor in a secure and certain legal environment.

For more information please liaise with your usual Marbury contact.