Reinforcing its position as the hub for investment in Africa

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Mauritius has further strengthened its position as the ideal platform for investment in Africa following the publication of notices dated 6 March 2015 confirming the Double Taxation Avoidance Agreements (DTAAs) and Investment Promotion and Protection Agreements (IPPAAs) with the Republic of Congo and the Arab Republic of Egypt.

According to the Notices, the DTAAs with Congo and Egypt are deemed to have come into operation on 8 October 2014 and 10 March 2014 respectively. The IPPAs, on the other hand, are deemed to have come into operation on 15 December 2013 for the one entered into with Congo and 17 October 2014 for the Egyptian IPPA.

Investors are looking more and more to Mauritius to structure their investment destined for the African continent. The potential for profitable Foreign Direct Investment (FDI) in Africa is significant, and the commodity boom has opened a window of opportunity for mineral-rich countries to accelerate their development. Flows of FDI to Africa have been increasing meaningfully during the past decade and Mauritius has a significant role to play as the country possesses invaluable comparative advantages.

Mauritius has, so far, signed forty-two DTAAs with countries worldwide, including treaties with the following 16 African countries: Botswana, Congo, Egypt, Lesotho, Madagascar, Mozambique, Namibia, Rwanda, Senegal, Seychelles, South-Africa, Swaziland, Tunisia, Uganda, Zambia and Zimbabwe.

Moreover, DTAAs with Gabon, Kenya, Nigeria, and South Africa (New) are awaiting ratification while DTAAs with Burkina Faso, Cape Verde, Ghana and Morocco await signature. The Mauritius government is also currently negotiating DTAAs with Algeria, Lesotho (New), Malawi, Tanzania and Yemen.

Key benefits of the Egypt and Republic of Congo DTAAs for Mauritian investors

For a Mauritian tax resident entity wishing to invest in Congo or Egypt, the DTAAs present various benefits in terms of revenue taxation. Classically, the targeted revenues are dividends, interests and royalties (Articles 10, 11 and 12 of the Mauritius-Congo and Mauritius-Egypt DTAAs). The DTAAs’ provisions allow domestic rates to be bypassed, especially the Congolese rates which are 20% for all three revenue categories targeted.

Indeed, Articles 10-2 of both DTAAs limit dividend taxation. For example, dividends paid by a company resident in Congo to a Mauritian resident entity may be taxed in Congo at the maximum rate of 5%.

However, if the Mauritian resident entity holds at least 25% of the capital of the Congo company, Mauritius has exclusive taxing rights and, as such, the dividend will not be subject to any taxation in Congo.

These advantageous provisions can also be found for interest as interest paid by a resident of Congo to a resident of Mauritius is subject to a maximum tax rate of 5%. Lastly, the two Agreements differ on the treatment of royalties. The DTAAs with Egypt and Congo states that taxation on royalties will occur only in the beneficial owner’s state of residence. Therefore, a Mauritian company deriving income by way of royalty from Congo shall not be subject to any tax in Congo. The DTA with Egypt provides the possibility for the royalties to be taxed in the state of origin and limited to 12% of the royalties’ gross amount.

Aside from tax reduction, one of the main advantages of the Congo and Egypt DTAAs are certainly the provisions pertaining to capital gains (Articles 13 of the Mauritius-Congo and Mauritius-Egypt DTAAs). The
treaties distinguish capital gains resulting from the disposal of immovable property from other capital gains. This includes the sale of shares in a company which principally owns immovable property. (As per article 13-4 of the Mauritius-Egypt DTAA: "Gains from the alienation of shares of the capital stock of any other shares of the company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that state"). The first category of capital gains is to be taxed in the country where the immovable property is located. However, for all other capital gains, taxation will occur in the country where the alienator is situated. Therefore, all capital gains earned by a Mauritius resident company would be exempt of tax as there is no capital gains tax in Mauritius.

While both DTAAAs follow the OECD’s (Organisation for Economic Development and Cooperation) Model Convention, they differ from it in one particular aspect. Both DTAAAs contain “Service Permanent Establishment” clauses which aim at circumventing the notion of “Permanent Establishment”. These clauses provide that “the furnishing of services including consultancy services by an enterprise of a Contracting State through employees or other personnel engaged in the other Contracting State, provided that such activities continue for the same or a connected project for a period or periods aggregating to more than 6 months within any 12 month period”.

This could be an incentive for a Mauritian company, especially one which provides services in Egypt; if the project lasts less than six months, the Mauritian company will not be deemed as having a Permanent Establishment in Egypt and the profits it makes from its activity will not be taxable in Egypt. As for the rest of the DTAA’s features, they keep a classical dimension by allowing tax credits to Mauritian residents deriving income from both countries so as to avoid double taxation.

For investors cautious about investing in Africa, Mauritius can put forward the various IPPAs which it has signed with African countries. To date, Mauritius has signed twenty-six IPPAs, eight of which are in force with Burundi, Congo, Egypt, Madagascar, Mozambique, Senegal and Tanzania.

These IPPAs inter alia provide for free repatriation of investment capital and returns; guarantee against expropriation; most favoured nation rule with respect to treatment of investment and compensation for losses in case of armed conflict. In addition to its political stability, it is worthwhile noting that Mauritius is a member of the major African regional organisations such as the African Union, South African Development Community (SADC), the Common Market for Eastern and Southern Africa (COMESA) and the Indian Ocean Rim Association for Regional Cooperation (IOR-ARC).

The continued development of the IPPAs and tax treaties networks with African countries will reinforce the position of the country as a leading tax planning destination and as the financial centre of choice for investment in Africa.  

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1 Article 5-3 (b) of the DTAA between Mauritius and Egypt, whereas Article 5-3 (b) of the Mauritius-Congo DTAA counts the furnishing of services as a Permanent Establishment after a 12-month period.