Mauritius reinforces its position as the hub for investment in Africa

Mauritius has further strengthened its position as the ideal platform for investment in Africa following the publication in the Government Gazette of notices dated 6 March 2015 (the Notices) confirming the coming into operation of Double Taxation Avoidance Agreements (DTAAs) and of Investment Promotion and Protection Agreements (IPPA) 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 are, on the other hand, 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 more and more looking at Mauritius to structure their investment destined to 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 last decade and Mauritius has a significant role to play in this respect since the country possesses invaluable comparative advantages.

Mauritius has so far signed 42 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, as far as other African countries are concerned, DTAAs with Gabon, Kenya, Nigeria and South Africa (New) are awaiting ratification whereas DTAAs with Burkina Faso, Cape Verde, Ghana and Morocco await signature. The Mauritian government is also currently negotiating DTAAs with Algeria, Lesotho (New), Malawi, Tanzania and Yemen.

For a Mauritian tax resident entity wishing to invest in Congo or Egypt, the DTAAs signed by Mauritius with these two countries present various benefits in terms of revenue taxation. Classically, the targeted revenues are dividends, interests and royalties. The DTAAs’ provisions allow for the bypassing of domestic taxes, especially the Congolese rates which are of 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 interests, 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 DTA with Congo states that taxation on royalties shall occur only in the beneficiary 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, in the limit of 12% of the royalties’ gross amount.

Aside from tax reduction, one of the main advantages of the Congo and Egypt DTAAs is certainly the provisions pertaining to capital gains. The treaties distinguish capital gains resulting from the disposal of immovable property (including the sale of shares in a company which principally owns immovable property) from other capital gains. 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 Mauritian resident Company would be exempt of tax as there is no capital gains tax in Mauritius.

It has to be observed that both DTAAs, while they follow the OECD’s (Organisation for Economic Development and Co-operation) Model Convention, differ from it in one particular aspect. Indeed, both DTAAs 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 Mauritanian company, especially one which provides services in Egypt. If the project lasts less than 6 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 DTAAs 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. As at date, Mauritius has signed 26 IPPAs of which 8 IPPAs signed with African countries are in force: Burundi, Congo, Egypt, Madagascar, Mozambique, Senegal and Tanzania.

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