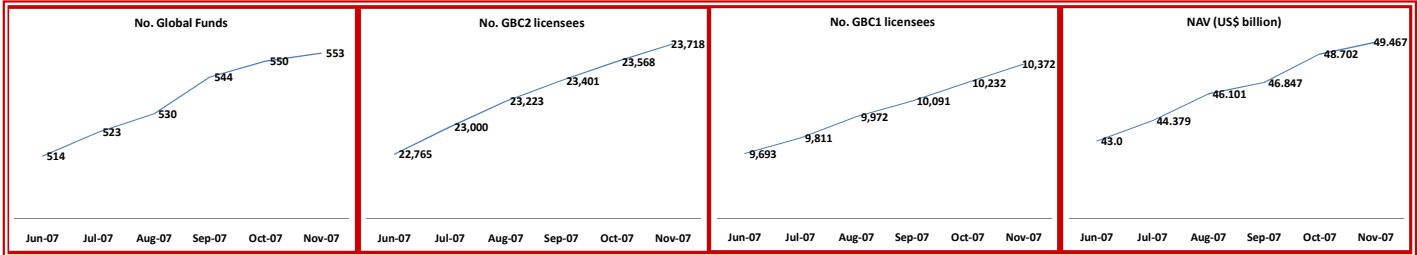




DEDICATED PROFESSIONALS AT YOUR SERVICE



Dear Readers,

2007 has been an eventful year for the financial services sector in Mauritius. As global competition is getting fierce, Mauritius as a jurisdiction has been proactive in keeping its financial services industry at the forefront by promulgating a series of modern and business friendly legislation, whilst at the same time diversifying its offerings and consolidating its technological and human capital.

The later part of the year has also seen a number of changes in other countries that should create new opportunities for Mauritius.

We look forward to your continued support in 2008 and wish you all the very best for the festive season.

Jimmy Wong

Managing Director

### India – UAE tax treaty amended to withdraw capital gains tax exemption in India

On November 28, 2007, the Government of India issued a notification directing that all the provisions of the protocol are to be given effect to in the Union of India, **with effect from April 1, 2008.**

Key amendments to the India – UAE DTAA are summarized below:

- The Article relating to **capital gains tax has been amended** to provide source based taxation. In other words, capital gains earned from sale of investments in shares of Indian companies will be taxed in India. This amendment will directly hit the individual investors and companies investing in India.
- **Withholding tax rate of Dividend has been amended** to 10% in the country of source. Earlier, the withholding tax rate was 5 % where the beneficial owner was a company which owned at least 10 % of shares in the company paying dividends; and 15 % in other cases.
- For a 'Company', **resident of UAE**, it should be **incorporated** in the UAE and should be wholly **managed and controlled from UAE**. Both the conditions should be cumulatively satisfied in order for a Company to be regarded as resident of UAE. The word 'wholly' has been strictly construed in India. Hence, even a fraction of control outside the UAE could potentially make it a non-resident company ineligible for treaty benefits.
- A new clause on '**Limitation of benefits**' ("**LOB**") **has now been included** in the DTAA. The LOB clause provides that the benefits of India – UAE DTAA shall not be available, if the purposes of the creation of such entity was to obtain the benefits of the DTAA between India and UAE. While no precise parameters are laid down in identifying circumstances when an entity may not be entitled to treaty benefits, the DTAA provides that legal entities not having bonafide business activities shall be covered by the LOB article.

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### Mauritius Advantage

Structuring investments through Mauritius presents foreign investors and investment funds with significant fiscal planning opportunities as under the India-Mauritius DTAA, Category One Global Business Licence (GBL1) companies of Mauritius are exempt from any capital gains tax in India.

Further Mauritian law provides for migration of existing entities to Mauritius which once migrated are deemed to be in existence since its original inception date in other jurisdiction.

## MAURITIUS: A Tax Efficient Jurisdiction

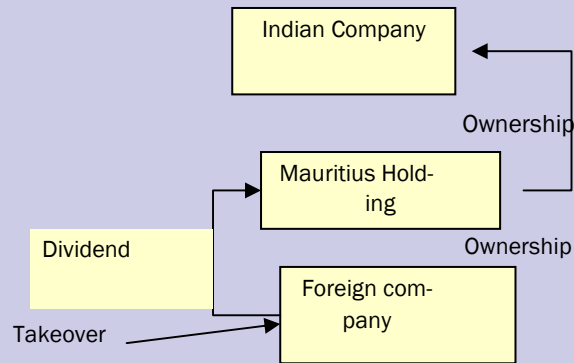
Mauritius's simplified system of taxation, generous unilateral relief and tax treaties with different countries have made Mauritius a leading tax efficient jurisdiction for investments into different markets of the world and in particular India and China.

Mauritius is widely used as International holding company for holding investments, setting up funds under collective investment scheme for both private equity and investments into listed stocks, Intellectual property holding vehicle and set up of trusts.

In this article, I would emphasize on use of Mauritian enterprise for

- 1) Tool for global take over by Indian company
- 2) Migration of company

### 1) Use of a Mauritius Company as a Tool for Global takes over by India



Where the Indian company wants to take over a foreign company, it is permitted under Reserve Bank of India Regulations to invest under automatic route up to 400% of the net worth of the Indian company.

There could be two scenarios;

#### **(a) The take over is within permissible limits of 400% :**

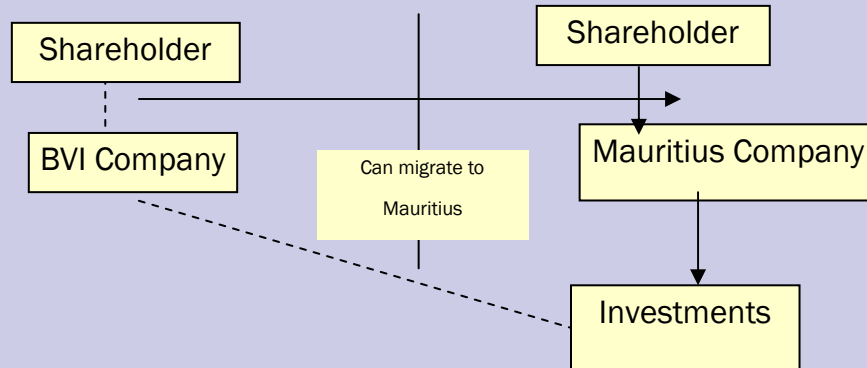
In that situation, the income received from foreign company will be taxed in India at full rate of 33% in the hands of Indian company without any underlying tax credits of foreign company. Whereas, if the takeover of a foreign company is effected through Mauritius company, the dividend income received in Mauritius company can be retained for reinvestments into back to the business without touching India thus avoiding Indian taxes. The disposal of shares of targeted foreign company in future through disposal of Mauritius company will also be tax free from capital gains tax in Mauritius. Alternatively, Mauritius company could be merged into Indian company to unlock the valuation in Indian balance sheet.

#### **(b) The take over is beyond permissible limits of 400% :**

In that situation, if the take over is through Mauritius subsidiary company, Indian company invests up to the permissible limits into Mauritius subsidiary without any permissions under automatic

route and balance funds are borrowed by Subsidiary on the underlying security of targeted company. The borrowing does not get reported to RBI since it is beyond purview and no ECB or FCCB guidelines are flouted. This way take over is faster and without any hassles. The dividend retention planning is also done as per above.

**2) Use of a Mauritius status for Migration of a company to hold Investment in India**

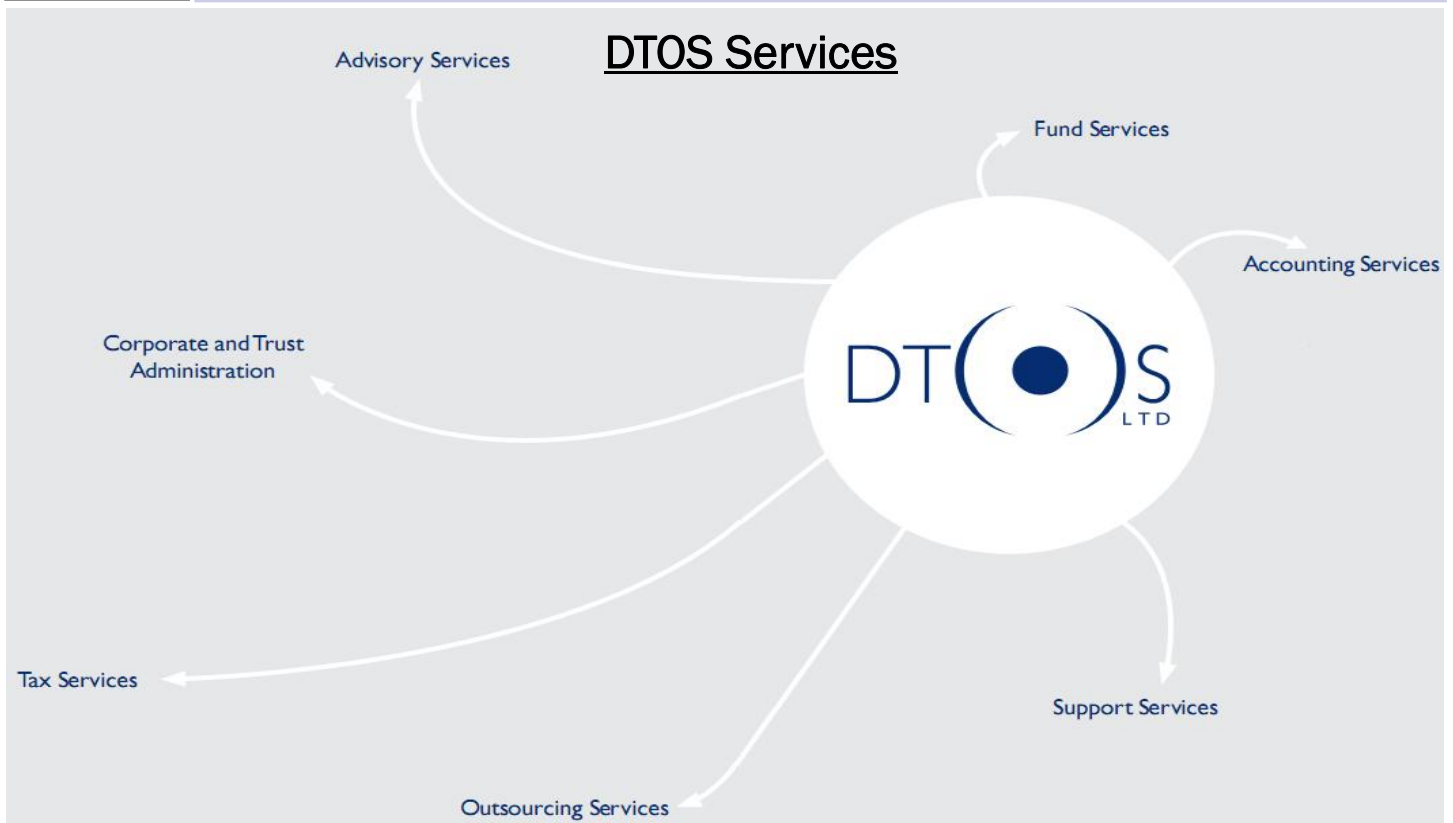


If some one wants to use Mauritius as a base for Investments into India or China and one already has a company in BVI or other offshore jurisdiction, one can migrate the same to Mauritius to take advantage of a favorable treaty benefits between the contracting state and Mauritius without foregoing the track record of the holding entity, as in Mauritius the company is deemed to be incorporated in Mauritius since the inception of migrating company in other jurisdiction.

Finally, India- Mauritius DTAA has been time tested and even supreme court of India has upheld that tax residency certificate issued by Mauritian tax authorities is valid document for provide residency in Mauritius and gain from the benefits under the tax treaty.

By R.L. Kabra

(The author is a director of R.Kabra Corporate Advisors Ltd having global practices)



# **INTEGRATED RESORT SCHEME**

## **♣ What is IRS?**

The Integrated Resort Scheme ("IRS") was first introduced in 2002, following the Investment Promotion (Integrated Resort Scheme) Regulations 2002. Under the IRS scheme, luxury villas are constructed and sold to foreigners for a minimum value of USD 500,000. Upon acquisition of the luxury villa, the buyer and his/her family obtain residency in Mauritius which is enforced, so long as he/she continues to own the property.

The property can either be acquired directly by the foreigner in his own name or through a tax beneficial structure. The acquisition via a tax beneficial structure will in no way impede negatively on residency of the ultimate acquirer or his designated representative.

The extent of land, under IRS, in respect of each villa may not exceed 0.5276 hectare (1.25 arpents). The IRS developments are of interna-

- Golf course
- Individual swimming pool
- A range of sporting facilities
- Marina
- Health and beauty centers
- High class restaurants

tional standards and include high-class facilities and amenities such as:

In addition, maintenance, waste disposal, gardening, security and other household services are also provided.

## **♣ Who can apply to buy a villa under IRS?**

Any one of the following can apply to buy a villa under the Scheme:

- A non- citizen of Mauritius (which includes his spouse and dependants);
- A foreign company under the Companies Act (of Mauritius) 2001;
- A citizen of Mauritius;
- A company incorporated under the Companies Act 2001.

## **♣ Selling of the Villa**

Board of Investment of Mauritius requires a minimum notice of 30 days to sale, before disposing off a villa. However, disposal of the villa would lead to the loss of residency in Mauritius. The residency will be passed on to the acquirer or anyone designated by him.

## **♣ Structure**

Buying a property on the island can be considered as a good long-term investment in a holiday destination in "paradise". However, once a property has been identified by the prospective buyer, a number of questions arise such as:

1. What is the optimum tax efficient structure to purchase the property?
2. Who will manage payment and keep track of all levies, bills and VAT associated with the property when the buyer is not in Mauritius?
3. How will the necessary outgoing payments for the purchase of the property be effected?
4. Where would the buyer go for assistance?

In order to attend all the issues above, we, at DTOS Ltd, have a dedicated team which provides a one stop shop for IRS investors to provide the following services:

- Advice on the appropriate structure to hold the property.
- Set up and management of the holding structure(s).
- Management and administration services and compliance.

## **♣ Financing**

DTOS Ltd has developed a privileged relationship with the banks in Mauritius and can therefore act as an intermediary when application is done to the banks for financing of the property. Most banks on the Island do finance the acquisition of IRS villas, generally, upto 80% of value with maximum term as 10 years.

## **♣ Liaising with the IRS Developer regarding the application**

DTOS Ltd is fully conversant on the procedures to be followed to acquire an IRS Property. The key people of DTOS Ltd have developed a very good relationship with some of the IRS promoters and would be delighted to act as the intermediary between the IRS promoter and the IRS buyer.

## **♣ Managing the property acquired.**

Once a property is acquired, DTOS Ltd is fully equipped to manage the property by providing services such as administration and payment of insurance, collecting rental income if the property is rented out, pay all running costs, VAT registration, accounting, administering the property (where applicable).

For more information on IRS, please contact us at [bd@dtos-mu.com](mailto:bd@dtos-mu.com) or [info@dtos-mu.com](mailto:info@dtos-mu.com)

### Summary of events for the year 2007

#### 1<sup>st</sup> Quarter 2007

- Mauritius Bankers Association presented a new Banking Code of Practice.
- Insurance Companies set up complaint handling procedures as per guidelines issued by FSC.

#### 2<sup>nd</sup> Quarter

- Mauritius signed an Investment Promotion and Protection Agreement (IPPA) with Korea. This IPPA may lead to a Double Taxation Avoidance Agreement (DTAA) between the two countries.

#### 3<sup>rd</sup> Quarter

- A flat rate of 15% tax to apply for corporate as well as individual taxpayers.
- Mauritius signed a Preferential Trade Agreement with Pakistan.
- The DTAA between Mauritius and the United Arab Emirates came into force.

- The Financial Services Act 2007 and Securities Act 2005 were proclaimed.
- Mauritius ranked 3<sup>rd</sup> as most performing country in Africa.
- Amendment of the Mauritius law to allow the provision of Islamic Financial Services.

#### 4<sup>th</sup> Quarter

- Mauritius has negotiated for the conclusion of a DTAA and an IPPA with the State of Qatar.
- India issued a proposal to restrict the use of Participatory notes. India eases norms for FII registration. Collective Investment Scheme licensed in Mauritius can register as FII.
- India-UAE tax treaty amended to withdraw capital gains tax exemption in India.
- India-Kuwait tax treaty amended to withdraw capital gains tax exemption in India.
- China enacts EIT Law

### China New Tax Law will be effective on 1 January 2008

The New Enterprise Income Tax Law enacted on 16 March 2007 will be effective on 1 January 2008. The two major areas affecting primarily Foreign Investment Entities (FIEs) are as follows:-

#### (a) The 20% statutory dividend withholding tax rate has been reduced to 10%.

With effect from 1 January 2008, all the foreign investment enterprises that repatriate dividends to their parent companies would have to withhold taxes in China.

The Mauritius/China DTAA has a very beneficial provision that fixes the maximum rate of WHT on dividends at 5%. We must point out that the Mauritius/China DTAA is very much superior to some other treaties favourable for Chinese investment. Under the Mauritius/China DTAA, **ALL** dividends will receive the 5% benefit. Under many treaties (e.g. the newly signed Singapore DTAA and the new Hong Kong arrangement effective this year), the 5% rate is only available to beneficial owners that are companies owning 25% or more of the capital of the company paying the dividend. Where this 25% ownership level is not met, a 10% withholding rate will typically apply.

*Owing to the past exemption from dividend WHT, many foreign investors have used BVI and other zero tax jurisdictions to incorporate holding companies for their PRC entities. These foreign jurisdictions (BVI, Cayman Islands, etc.) do not enjoy any DTAA with China. It may now be beneficial for the BVI and other companies incorporated in foreign jurisdictions to migrate to Mauritius as a GBL1 Company and benefit from the DTAA that Mauritius has ratified.*

*The foreign investment enterprises in China domiciled in Mauritius would then gain from this favourable WHT rate of 5%.*

#### (b) A 10% withholding tax rate for interest, royalties and gains, etc

A 10% withholding tax rate has been set for these above types of income.

Under the Mauritius/China DTAA, a withholding tax of 10% is applicable for interest and royalties. However, under the present DTAA, the PRC may not impose any WHT on capital gains realised in the disposition of PRC entities unless the assets of the PRC consist directly or indirectly principally of immovable property situated in the PRC. Under the China- Mauritius protocol which becomes effective on 1 January 2008, this benefit would be restricted to Mauritius companies owning less than 25% of the equity of the PRC entity being sold. It may also be possible to structure ownership so that the capital gains exemption in the DTAA continues to apply. Please contact DTOS to discuss different options.

For more information please refer to our special Newsletter on China issued in September 2007 at the following link:

<http://www.dtos-mu.com/downloads/specialissuenelettersep07.pdf>

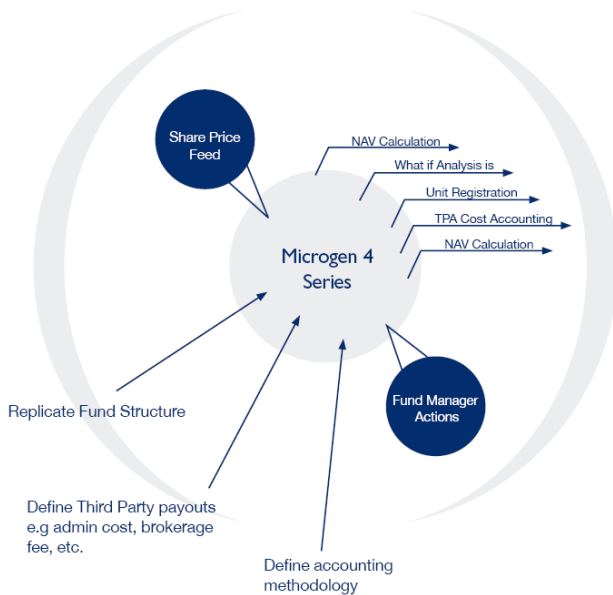
## THIRD PARTY FUND ADMINISTRATION

DTOS Ltd has extensive experience in the administration of different types of funds that covers the traditional one tiered structure funds, master feeder funds, private equity funds, hedge funds. It offers an array of services to funds located in other jurisdictions. The services encompass the following areas:

- Fund accounting (NAV)
- Financial accounting
- Compliance
- Registrar and transfer agency
- Reporting and client services

With the proven capability to deliver high quality services for any size of fund, we offer a truly integrated service that can vary from fund accounting and administration amongst others. Our team services a vast client base including large pension funds, mutual funds, reputable international banks, Fortune 500 companies, institutional investors and their investment managers throughout the world

### Microgen 4 Series Powers DTOS Funds Services



DTOS Fund Services provides a complete and comprehensive range of services regarding set up and administration of funds. Accounting and fund valuation services are provided for funds located in Mauritius and other jurisdictions.

DTOS Ltd is a leading service provider in the global financial services centre of Mauritius. It is a management company duly licensed by the Financial Services Commission (FSC) to provide inter alia, corporate, trustee and fund administration services.

DTOS Trustees Ltd is a wholly owned subsidiary of DTOS Ltd and licensed by the FSC to act as qualified trustee and to provide trust related services.

#### **Board of Directors**

Patrice d'Hotman de Villiers (Chairman)  
 Jimmy Wong (Managing Director)  
 Eric Venpin  
 Gaëtan Lan  
 Simon Pierre Rey  
 Amit Verma

Jimmy Wong, FCA, TEP  
 Amit Verma

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