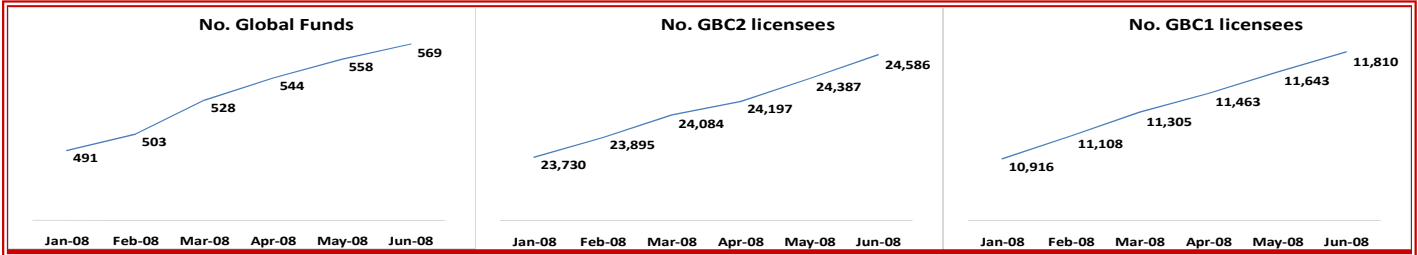




DEDICATED PROFESSIONALS AT YOUR SERVICE



Dear Readers

The government has recently introduced daylight savings measures. The clock will go forward one hour as from 26 October 2008 and the measure will end on 29 March 2009. We wish to reassure our clients that we have taken the appropriate steps in order to ensure the continuing smooth operations of their affairs.

Amidst the growing concerns of a world economic crisis, some positive news on the domestic front namely the ranking of Mauritius in the global rankings of the Ease of Doing Business 2009 World Bank report. Mauritius is continuing in its drive to attract international business to Mauritius and will position itself in order to offer interesting opportunities for businesses once the economic environment starts to settle.

Jimmy Wong

Managing Director

Mauritius Summer Time
 We would like to bring to the attention of our Global Business customers that Mauritius will soon be introducing **SUMMER TIME (GMT +5 hours)**, one hour in advance of our Standard time (GMT +4 hours). This new measure will be effective **from 26 October 2008 and will end on 29 March 2009**

Mauritius ranks top in Africa on the "Ease of Doing Business"

Mauritius tops the rank in Africa on the ease of doing business and takes the 24th position in the global rankings, says the World Bank in its Doing Business 2009 report.

Mauritius has climbed five steps from its previous ranking that is, 29th position in the Doing Business 2008 report. This is due to the direct result of the economic reforms undertaken by Government. The World Bank further points out that Mauritius continues to provide inspiration for reform and good practices to other economies across Africa. The runner-up in these overall rankings is South Africa at 32, followed by Botswana at 38.

According to the Doing Business 2009 report, Mauritius is also known to be the best economy in the COMESA and best ranked in starting a business, protecting investors, paying taxes and trading across borders in the region.

The remarkable performance of Mauritius can be attributed mainly due to the three main areas of reforms on which the country has embarked. They are namely; Starting a Business, Registering Property, Getting Credit (Information). The country has further simplified the transfer of property by abolishing certain procedures. For example, it is no longer necessary to obtain a clearance certificate from the Waste Water Authority or a tax clearance certificate for municipal taxes.

Doing Business 2009 is the sixth in an annual series of reports issued by the International Finance Corporation and the World Bank which ranks 181 economies on the overall ease of doing business. The ratings are based on ten indicators of business registration, among which, time and cost to meet government requirements in business start-up; operation; trade; taxation and closure.

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Recent Juris Prudence on International Taxation

India's rapid integration with the global economy has been accompanied by a significant increase in the scale and complexity of international transactions. In order to obtain a secure and fair taxation process in a highly changing business environment, the Indian Courts are continuously adopting clear position on contentions arising between the revenue authorities and the taxpayer, in order for the latter to structure their transactions in a more informed environment.

In this direction, major steps have been constructed recently by Indian Courts in relation to corporate tax. This article aims to highlight these decisions and analyze their consequences.

Rupee Finance and Management (P) Ltd ¹

The said ruling will help corporate, intending to transfer capital assets to other companies at a cost price in a bonafide transaction.

In this case, the appellant was an investment company and under an MOU between the group companies, shares of a group company were transferred to another group company at a cost price. The cost price was less than the market price.

The Hon'ble Mumbai Tribunal observed that capital gain is to be computed as the difference between 'full value of consideration' received or accruing as the result of the transfer of capital asset and not 'the fair value of capital asset' so transferred and accordingly, held that the difference between the cost price and the prevailing market price cannot be construed as capital gains, if the shares were transferred at the cost price.

The decision is significant as it will have a bearing on companies who for various reasons, transfer capital assets within the group companies at the cost price, which may not necessarily reflect the market price.

SET Satellite (Singapore) PTE Ltd. ²

Recently, the Hon'ble Mumbai High Court examined the issue of the attribution of profit to the permanent establishment, beyond the "arm's length remuneration", paid by the foreign entity to its local agent.

In this case, SET India was set up to source advertising for AXN, a channel owned by Singapore-based SET Satellite. While SET India paid the tax on the commission earned by it, SET Satellite did not pay any tax on the advertising revenue that it sourced from India on the ground that it was carrying on the activity through a commission agent. Further, all payments made to the commission agent (*i.e.* SET India) were at arm's length or market price.

The Hon'ble High Court relying upon the decision of the apex court in the case of Morgan Stanley³, upheld the '*single payer approach*' and held that once remunerations are made at arm's length to the permanent establishment, no further attribution can be made on the foreign entity.

¹ (2008) 22 SOT 174

² 218 CTR 452

³ (2007) 292 ITR 416

This decision again consolidates the '*single payer approach*', which will be significant for all the foreign entities, contesting the issue of 'permanent establishment' in India.

Avaya Global Connect Ltd ⁴

This ruling is of the paramount importance for the loss making undertakings, which can be transferred to other companies, through arrangements (and not sale), without attracting the incidence of tax under the head 'Capital Gains'.

The Hon'ble Mumbai Tribunal analyzed the capital gains liabilities on transfer of loss making undertakings, through a business arrangement, other than sale.

In this case, Avaya Global Connect Ltd. transferred one of its undertakings i.e. Tata Fane Division (TFD) as a going concern to ITEL Industries Private Limited, under a scheme of arrangement sanctioned by the Mumbai High Court. Under this scheme, no consideration was payable to the assessee company or its shareholders as the undertaking transferred was having the 'negative networth'.

The Hon'ble Tribunal held that the said transfer of undertaking would not qualify as '*demerger*' as all the conditions enumerated under Section 2(19AA) of the Income Tax Act, 1961 were not fulfilled. Further, the current transaction is not 'slump sale' because of the fact that the undertaking has been transferred under arrangement and not as a sale. Accordingly, it was held that the capital gains cannot be levied as the machinery provision of computation of cost of acquisition of an undertaking fails.

The application of the above decision in structuring the transfer of the undertaking as an arrangement can not be ruled out.

In Re Cushman and Wakefield (S) Pte Ltd ⁵

In Re Cushman and Wakefield (S) Pte Ltd., the Authority for Advance Rulings ('AAR') examined the taxability of the referral fees received by a Singapore based company having no permanent establishment in India, from an Indian entity.

Cushman & Wakefield (S) Pte Ltd ("CWS"), a Singapore-based company provided referral services on a global basis to other C&W offices in various countries. Each serving C&W Company was liable to pay a referral fee to the referring group company in respect of such reference.

Accordingly, the Cushman & Wakefield India Pvt Ltd. ("CWI"), an Indian company paid 30% of the fee received from the referred customers as referral commission to CWS.

The AAR rejected the contentions posed by the revenue and pointed out that the CWS did not carry out any business activity in India. There was no real and intimate relationship between the trading activities carried on outside India by CWS and the activities in India which contributed to the earning of income.

⁴ I.T.A. No. 832/Mum/07, ITAT Mumbai

⁵ 172 Taxman 179

Accordingly, the AAR held that the referral fees for introducing customers can neither amount to royalty income, nor fee for technical service.

The application of the above ruling in characterization of the payments as 'referral fees' by Indian entities can not be ruled out.

CIT v. First Leasing Co. of India Ltd ⁶

The Hon'ble Chennai High Court, while examining the issue of allowability of the expenses incurred with respect to the issue of convertible debentures, held that the expenditures incurred on obtaining loan (through debenture or any other instrument) for work-in-capital is allowable as business expenditure.

This said decision of Hon'ble High Court would provide a relief to the corporate intending to raise funds through debt.

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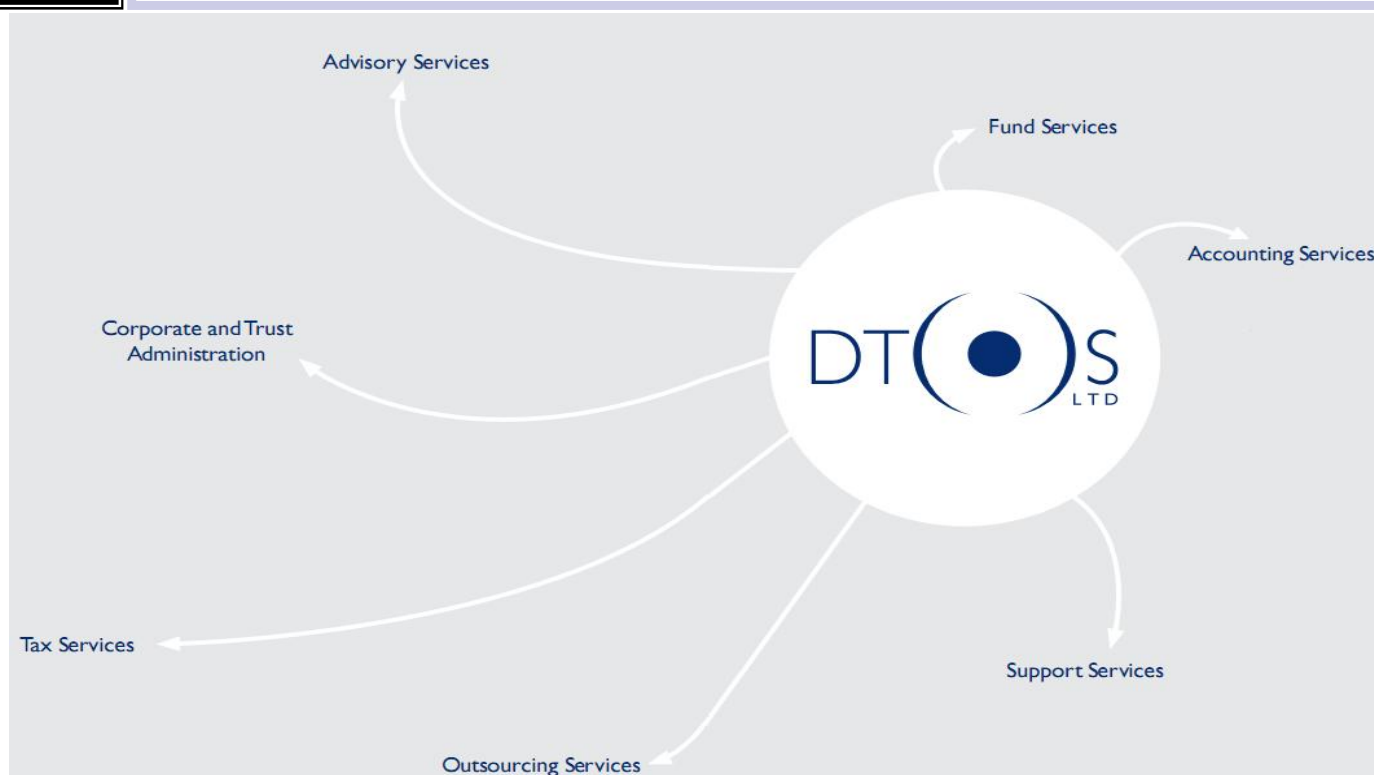
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⁶ 2008 304 ITR 67 (Mad.)



SEBI's U-turn decision on P-notes: FII in India

India relaxed restrictions on foreign portfolio investment introduced last year in October 2007. The Securities and Exchange Board of India on Monday did a U-turn by doing away with the restrictions on the issue of participatory notes by foreign institutional investors against securities and derivatives. SEBI has also decided to encourage promotion of dedicated exchanges and/or dedicated platforms of the exchanges for listing and trading of securities issued by Small and Medium Enterprises. SEBI has further decided to enhance the limit of shareholding in recognized stock exchanges in India from 5% to 15% for specified category of shareholders.

In October last year, the market's regulator (SEBI) had put a 40% cap on FII's total asset holding via participatory notes or overseas derivatives instruments and stopped them from issuing fresh renewal of old ones. Moreover, SEBI had given FII an 18-months deadline ending in March 2009 to do the needful.

This step taken by SEBI to remove the restrictions on issuance of Offshore Derivative Instruments, also known as participatory notes is in favour of FII as well as unregistered foreign investors who intend to invest in the Indian Securities market. On 6th October, SEBI's board discussed and they decided on the following measures:

1. SEBI decided to remove the restrictions on the issue of Offshore Derivative Instruments (ODIs) by FIIs against securities.
2. FIIs may now be allowed to issue ODIs with underlying as derivatives such as futures & options.
3. The restriction on FIIs to issue ODIs beyond 40% of their total Assets Under Custody (AUC), may be removed.
4. SEBI will put out a detailed consultative paper on this for comments from the public.

The steps taken by SEBI would benefit Investors willing to invest in the Indian economy. This relaxation by SEBI would at large benefit the foreign hedge funds intending to invest in the Indian securities market. After the restrictions imposed in October 2007, these hedge funds could not invest through ODIs and were forced to register directly as FIIs or sub accounts which was a time consuming process and was proving to be administratively difficult and cumbersome. Further, these measures would also provide the much needed leverage for funding their investments in India and worldwide, which may be difficult through direct investments as it requires prior regulatory approval which may not be extremely forthcoming.

Licence Fees in case payment is made after the due date

This table is applicable from 1st October 2008 and the penalty will be counted from 1st July 2008.

Description	Fees and charges Payable for US \$	
	GBC 1	GBC 2
If Annual Fee paid on		
Due Date	1,500	235
Within 1 month after due date	1,650	260
After 1 month but within 3 months after due date	1,875	300
After 3 months but within 6 months after due date	2,250	350
After 6 months, but within 12 months after due date	3,000	470

The VPM & Minister of Finance leads a mission on Financial Services in Europe from 22-26 Sept 08

The Board of Investment had organized a financial services mission to London, Paris and Zurich. The objective of the mission, which was led by Dr. Hon. Rama Sithanen Vice Prime Minister and Minister of Finance and Economic Development, was to promote Mauritius as a dynamic financial services centre where, in addition to global business management, there are increasing opportunities for substantive high value-added international financial services.

The mission aimed at presenting the full spectrum of facilities available for the financial services in Mauritius, including its modern legislative framework, its solid and secure banking environment, the pool of professionals (accountants, lawyers, consultants) in the sector, the state-of-the-art infrastructure and connectivity as well as the country's network of investment promotion and protection agreements and double taxation agreements.

Minister Boolell chairs Coordinating Committee on WTO and EPA

The Coordinating Committee on the World Trade Organisation (WTO) and the Economic Partnership Agreement (EPA) met recently in Port Louis under the chairmanship of the Minister of Foreign Affairs, Regional Integration and International Trade, Mr. Arvin Boolell.

In his address, Dr. Boolell said that focus will be on the WTO Negotiations, the conclusion of a full and comprehensive Economic Partnership Agreement with Europe, improving relations with the United States in the context of the Trade and Investment Framework Agreement and the eventual negotiations of the Bilateral Investment Treaty.

The Minister spoke of the need for intensifying lobbying efforts in a bid to secure the extension of the Third Country Fabric derogation under the AGOA. At the regional level, the consolidation of the COMESA and SADC Free Trade Area will remain a key priority, he said adding that a strategy relating to the COMESA and SADC Customs Union will be worked upon.

It will be recalled that Mauritius initialed an interim EPA with the European Commission in December 2007. The main objective for the initialing of the agreement was to preserve the market access of Mauritius on the European Union (EU) market. In 2000, the EU and the African Caribbean and Pacific countries (ACP) agreed to negotiate a new trade agreement which moved away from the traditional, non-preferential trade relationship between the ACP and the EU towards one based on reciprocity as was required under the provisions of the WTO.

World Bank Country Director visits Mauritius

The new country Director of the World Bank for the southern region of Africa, Ms. Ruth Kagia, was on a four-day visit in Mauritius from 21 to 24 September.

The purpose of this visit is mainly to attend the Joint Country Programme Review scheduled for today. During this exercise, both the World Bank and the Government of Mauritius will take stock of the assistance the country is receiving from its development partners, including the World Bank. World Bank assistance to Mauritius is provided under its Country Partnership Strategy (CPS), which establishes a framework for the World Bank's engagement in Mauritius up to 2013 when a new CPS will be put in place.

Ms. Ruth Kagia, who is also on her first visit to Mauritius, will take the opportunity to meet Senior Government Officials, representatives from the private sector and donor partners. A meeting with the media is also scheduled.

It is to be recalled that the World Bank has up to now provided continued commitment to supporting the Government's reform programme since June 2006 through a three-year Development Policy Loan (DPL) series which has been extended to six years. The second DPL was approved by the Bank's Board in February 2008 to enhance competitiveness of Mauritius in the global economy.

Besides providing knowledge in areas of food security and social protection, the World Bank programme in Mauritius has expanded to include investment in infrastructure, public enterprise reform and support for the growth of small and medium enterprises.

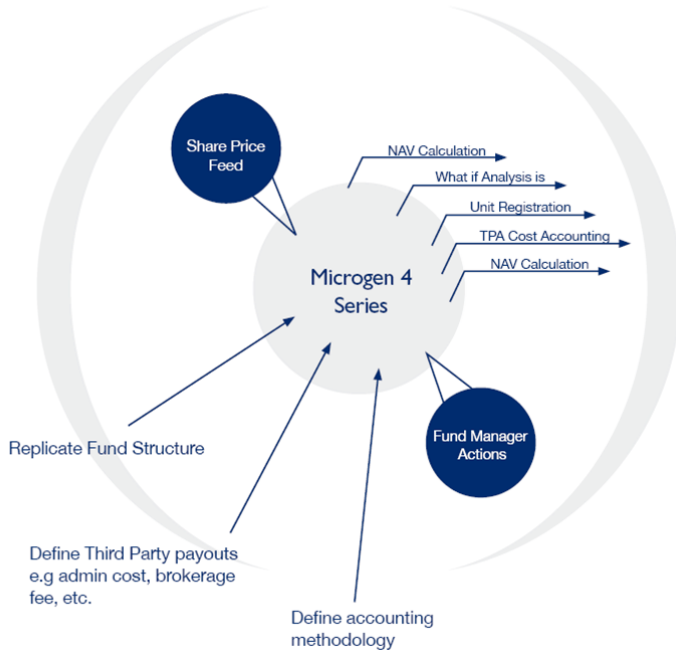
THIRD PARTY FUND ADMINISTRATION

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.

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Jimmy Wong (Managing Director)
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Disclaimer

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