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High Court rules on
sufficiency of Mauritius tax
residency certificate to avail
treaty benefits

Issue no: GBTA/54/2015

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Punjab and Haryana High Court in the case of Serco BPO Private Limited (assessee) has held that Mauritian tax residency certificate is sufficient to avail treaty benefits.

In the case before the Court, assessee, an Indian company, had purchased shares of an Indian company from two Mauritius companies. Assessee approached the Authority for Advance Ruling (AAR) to seek ruling on taxability of capital gains arising to Mauritius companies on sale of shares to assessee and consequent obligation of assessee to withhold tax at source while making payment of sales consideration to these Mauritius companies. The AAR held that it was a prima facie case of transaction/ arrangement being designed for avoidance of income tax and thus rejected the application and declined to give ruling on it. Assessee filed a writ petition before the High Court against the AAR decision.

High Court reversed the AAR ruling and held that certificates of residence issued by the Mauritius authorities constitute sufficient evidence for accepting the status of residence as well as the beneficial ownership for purposes of applying the treaty. High Court after analyzing the facts of the case like date of investment made by Mauritius Companies, period of holding in India, number of employees deployed in India etc. and observed that investment made by the Mauritius entities into Indian company was not with a view to only taking advantage of the India- Mauritius Tax Treaty and therefore AAR finding that there is a prima-facie case of the transaction being designed for avoidance of income tax in India is not correct.

Relying on circulars issued by CBDT and Supreme Court decision in the case of *UOI vs Azadi Bachao Andolan*, the High Court held that the Tax Residency Certificates issued by Mauritius authorities are sufficient proof of Mauritius residency. High Court remarked that Circular No. 789 issued by CBDT was based on trust reposed by Indian Government in Mauritian authorities & thus its validity cannot be sought to be questioned by Indian authorities. It was held that it is incumbent upon the authorities in India to accept the certificates of residence issued by the Mauritius authorities. A refusal to accept the validity of a certificate issued by the contracting states would be contrary to the Convention and constitute an erosion of the faith and trust reposed by the contracting states in each other.

On treaty shopping, the High Court heavily relied on *Azadi Bachao Andolan (supra)* and observed that many developed countries tolerate or encourage treaty shopping, even if it is unintended, improper or unjustified, for other non-tax reasons. The countries take a holistic view keeping in mind the fiscal necessity and political compulsions. High Court further held that entering into a treaty and terms and conditions thereof are the sovereign functions involving important aspects of policy. Such decisions must be left to the policy makers who are best

equipped and have been entrusted with the responsibility of negotiating the treaty to the greatest advantage and good of the country.

On these facts, High Court held that there was no capital gain tax that was payable by Mauritius companies in India nor was there any withholding tax liability on assessee.

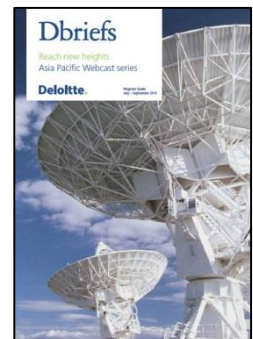
The Court reiterated the principles laid down by the Supreme Court in the case of *Azadi Bachao Aandolan* in accepting the tax residence certificate issued by the Mauritius authority as a method of determining whether the companies are in fact resident in Mauritius. This reiteration is significant given the continuous trend of litigation revolving around India-Mauritius tax treaty benefits.

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Transfer Pricing Developments in India: Range, Multiple Year Data, Advance Pricing Agreements, and Audits

On 10 September 2015 from 11:30 AM to 12:30 PM IST

Recent transfer pricing developments in India include proposals from the Government to reduce the extent of audits and litigation. The range and multiple year data concept will soon be incorporated into law. Furthermore, some high profile judgments are ensuring that the path to transfer pricing certainty slowly becomes clear in India. What does this mean for your Indian operations? Find out how companies impacted by Indian transfer pricing can navigate the regime with these updates. For more information, visit the [Dbriefs](#) page.



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