TR 58

Facts

An investment company was incorporated in Mauritius. It holds a Category 1 Global Business Licence (GBC 1) and earns interest income on inter-group loans. Its central management and control is in Mauritius, but its effective management is in South Africa, so that it is tax resident in both countries as per the Mauritius-South Africa Double Taxation Agreement.

Point of Issue

Whether it can be confirmed that the company

a) is a tax resident of South Africa and therefore has to comply with South African tax filing and tax payment requirements; and
b) is not a tax resident of Mauritius, which therefore means that it does not have to file a tax return or pay any tax in Mauritius.

Ruling

On basis of facts given, the company is deemed to be resident in South Africa by virtue of the tie-breaker clause in Article 4(3) of the Mauritius-South Africa Double Taxation Agreement (DTA). The taxation of income derived by the company from Mauritius and South Africa will be governed by the DTA. Thus, where the DTA confers the taxing right to the source country in respect of an item of income derived by the company from Mauritius, the company will have to file a tax return with the MRA with regard to that income and pay any tax accruing thereon.

In the event the company derives income from abroad from a country other than South Africa, the company will have to declare such income in Mauritius as a resident of Mauritius taxable on its worldwide income. The company will however be entitled to claim foreign tax credit or presumed tax credit in respect of such foreign source income. Where a DTA is in force, the taxation of the foreign source income will be governed by the provisions of the DTA.