

Using Mauritius

Businesses with royalty streams from multiple jurisdictions can benefit from a structure that draws on a wide net of double taxation treaties.

Elizabeth Thomson outlines the advantages of using Mauritius as a domicile for certain types of China investments

Introduction

Mauritius has long been recognized as an important conduit of investment funds into India and other parts of South Asia. However, the 1983 double taxation treaty that is the backbone of this special regional relationship is just one part of a broad range of similar treaties the government has concluded. In fact, Mauritius is currently a party to 31 double taxation treaties, with nine more awaiting ratification and another five being negotiated.

In 1994, Mauritius and China concluded a comprehensive treaty on the avoidance of double taxation. As a result, China ventures owned by Mauritius holding structures enjoy a variety of reduced tax rates, especially in the area of withholding taxes on royalty payments. And since Mauritius has similar arrangements with such a wide variety of other countries, it can be the ideal domicile for complex structures that involve royalty payments across a number of jurisdictions.

Mauritius Companies & Tax

In the December 2005 issue we discussed the Barbados-China double taxation treaty, and stressed that it could be accessed through a very familiar international business

company (IBC) structure. Mauritius is a more complicated jurisdiction – even the naming of the company types is unique and unfamiliar – so it is necessary to have a brief discussion about the nature of the available vehicles and how they relate to international tax planning.

The Companies Act of 2001 removed any distinction between onshore and offshore companies. However, non-residents who set up Mauritius companies that are not intended to transact business inside the country can take advantage of special tax concessions by applying for a Global Business License (GBL). These licenses come in two categories, the most straightforward of which is the Category 2 license. A company with this license, usually referred to as a GBL2, is very similar to a traditional IBC structure – it is not subject to any tax in Mauritius, but it also cannot access the country's tax treaty network.

A GBL1, on the other hand, is eligible to take advantage of treaty benefits, but it is subject to tax at the same rate as that assessed against Mauritius tax incentive companies – 15%. However, Mauritius companies are entitled to claim a credit for tax paid in other jurisdictions. Depending on the nature of the

GBL1's business, these credits could wipe out the entire tax liability in Mauritius; if no evidence of actual tax paid is provided to the Mauritius tax authorities, GBL1s are entitled to an assumed credit equal to 80% of their tax liability in Mauritius, so their effective tax rate is a maximum of 3%.

GBL1 companies have some additional restrictions. Unlike GBL2 companies, they require two resident directors and a resident company secretary. Board meetings must be held in Mauritius, and the banking must also flow through Mauritius. The company must submit audited accounts each year, and must obtain a Tax Residence Certificate and submit a business plan in order to be eligible for the double taxation treaties.

The dual licensing system has a couple of interesting features. First, a company with a category 2 license can at a later date apply for a category 1 license, thus switching from a GBL2 company to a GBL1 company. As a result, if a company knows that the nature of its operations will change, it can nonetheless operate tax-free as a GBL2 company until such time as it needs to access the treaty network. Secondly, a GBL2 company can establish a GBL1 subsidiary in such a

Country	Project Duration for Permanent Establishment Purposes	Maximum Tax Rates Applicable in the Country		
		Dividends	Interest	Royalties
Barbados	> 6 months	5%	5%	5%
Belgium	> 6 months	5% & 10%	10%	exempt
Botswana	> 12 months	5% & 10%	12%	12.50%
China	> 12 months	5%	10%	10%
Croatia	> 12 months	exempt	exempt	exempt
Cyprus	> 12 months	exempt	exempt	exempt
France	> 6 months	5% & 15%	Same rate as under domestic law	15%
Germany	> 6 months	5% & 15%	do	15%
India	> 9 months	5% & 15%	do	15%
Indonesia (terminated)	> 6 months	5% & 10%	10%	10%
Italy	> 6 months	5% & 15%	Same rate as under domestic law	15%
Kuwait	> 9 months	exempt	5%	10%
Lesotho	> 6 months	10%	10%	10%
Luxembourg	> 6 months	5% & 10%	exempt	exempt
Madagascar	> 6 months	5% & 10%	10%	5%
Malaysia	> 6 months	5% & 15%	10%	15%
Mozambique	> 6 months	8%, 10%, 15%	8%	5%
Namibia	> 6 months	5% & 10%	10%	5%
Nepal	> 6 months	5%, 10%, 15%	10% & 15%	15%
Oman	> 6 months	exempt	exempt	exempt
Pakistan	> 6 months	10%	10%	12.50%
Rwanda	> 12 months	exempt	exempt	exempt
Seychelles	> 12 months	exempt	exempt	exempt
Singapore	> 9 months	exempt	exempt	exempt
South Africa	> 9 months	5% & 15%	exempt	exempt
Sri Lanka	> 183 days	10% & 15%	10%	10%
Swaziland	> 6 months	7.50%	5%	7.50%
Sweden	> 6 months	5% & 15%	10%	15%
Thailand	> 6 months	10%	10% & 15%	15%
Uganda	> 6 months	10%	10%	10%
United Kingdom	> 6 months	10% & 15%	Same rate as under domestic law	15%
Zimbabwe	> 6 months	10% & 20%	10%	15%

Source: Mauritius Income Tax Department

way as to reduce overall tax liability. This situation will be explored below in the section on sample structures.

Tax Treaties

As discussed above, Mauritius is currently a party to 31 double taxation treaties (see attached chart for a summary of the preferential withholding tax rates on various income flows). In 2004, the Indonesian government announced its intention to cancel its treaty with Mauritius over concerns about third-country interests using Mauritius companies to invest in Indonesian businesses. This cancellation took effect on January 1, 2005, despite ongoing efforts by the Mauritius government to find a solution.

According to the Mauritius government, treaties with Bangladesh, Malawi, Nigeria, Russia, Senegal, Tunisia, United Arab Emirates, Vietnam and Zambia have been concluded, and are awaiting ratification. Further treaties with Canada, Czech Republic, Greece, Iran and Portugal are currently under negotiation.

Sample Structures

Mauritius structures can be used as straightforward trading and holding structures for doing business in China, but in most instances they are not particularly cost or tax competitive relative to other low-tax jurisdictions such as Hong Kong.

For instance, to source goods in China and then sell them back to retailers in the developed world, a business person can choose between either a GBL1 or GBL2. With a GBL2, there is no tax on the profits, but many companies find it difficult to sell to certain customers from IBC-type companies because of their lack of commercial reputation. With a GBL1, the company might be able to take advantage of certain treaty

benefits, especially if it does not have a permanent establishment in China. However, at 3%, the tax rate is higher than Hong Kong, for instance, where there is no tax on offshore trading profits. The added cost of having resident directors and of other aspects of qualifying for the category 1 license further erodes this structure's cost-effectiveness.

GBL1 companies can be good solutions for individuals from high-tax jurisdictions providing professional services into China without a permanent establishment. The professional fees or technical service fees earned by such a Mauritius company (or individual resident) in China are taxed only in Mauritius. Through a GBL1 company, the maximum tax rate for this business would be 3%, compared to, for instance, 16% or 17.5% in Hong Kong, depending on whether the business is undertaken by an individual or by a business, respectively.

The GBL1 company structure becomes truly interesting, however, when the structure involves more complicated businesses that stretch across multiple jurisdictions that are all (or mostly) captured in the Mauritius tax treaty network. For instance, consider a company that holds intellectual property that will be licensed in a number of Asian countries, including China, Thailand, Singapore and Malaysia. The parent establishes a GBL1 company in Mauritius to hold the intellectual property, and expects to receive streams of royalties from all four countries.

Once the company has received a Tax Residence Certificate from the government, it can take advantage of terms of the double tax treaties that offer favourable withholding tax rates (or an exemption from withholding tax in the case of Singapore). In

Mauritius, these income streams, less the cost of maintaining the structure and any other relevant operating costs, are taxed at an effective rate of no more than 3%.

Depending on the scope of the business and the potential tax savings involved, the company may consider incorporating a GBL2 company to hold the intellectual property, and then license it to a GBL1 subsidiary. The GBL1 company's business would then be as a sub-licensor, and its taxable income could be defrayed by the master license fees paid to the GBL2 parent company. None of the income would be taxable in the GBL2 company's hands, and no withholding tax would apply to the payment of royalties from one Mauritius company to the other. Thus, for the cost of the second company (the one with the category 2 license), it may be possible to reduce the overall tax paid in this business almost to zero.

Conclusion

For more than 20 years, Mauritius has focused on building a world-class financial services sector which attracts companies from all over the world with its low-tax regime and its network of double taxation avoidance agreements. In most cases, simple structuring solutions can be devised more cost-effectively through Hong Kong or some traditional offshore jurisdictions. Mauritius companies, however, can be very helpful in defraying tax for individual professional service providers doing business in China without a permanent establishment, or for companies with multiple royalty streams involving several of Mauritius's treaty partners.

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利用毛里求斯節稅

在多個司法管轄區均有使用費收益的企業可以藉廣泛的雙重課稅條約網絡所建立的架構而獲益。Elizabeth L Thomson 簡介利用毛里求斯作為某些中國投資類別的居籍的好處



Photo: Ashveen Rampeera

引言

毛里求斯長期以來都被視為是投資資金進入印度及其它南亞地區的重要通道。但是，作為這個特殊地區關係的中樞，於 1983 年訂立的雙重課稅條約僅為該國政府簽署的眾多類似條約中的一部分。事實上，毛里求斯現已加入 31 個雙重課稅條約，另有 9 個正候批准，有 5 個在談判之中。

在 1994 年，毛里求斯與中國簽署了關於避免雙重課稅的綜合性條約。所以，由毛里求斯控股公司所有的中國投資享有諸多的減稅優惠，特別在使用費之預扣稅方面。因為毛里求斯和很多其他國家有類似的條約，所以對於涉及跨越多個司法管轄區使用費的複雜架構而言，它乃是最佳的居籍。

毛里求斯公司及稅項

在本刊 2005 年 12 月號，我們討論了巴巴多斯—中國雙重課稅條約，並且強調可以借助為人熟悉的國際商業公司（IBC）架構來運用該條約。毛里求斯是一個較為複雜的司法管轄區，甚至連公司類別的名稱也是獨特和不為人熟悉。所以我們須就可供選擇的方式之性質及其與國際稅務規劃的相互關係進行一簡要探討。

2001 年的《公司法》廢除了離岸與非離岸公司的區分。但是，對於非居民來說，如果建立了目的不是在境內進行交易的毛里求斯公司，則可以通過申請環球商業牌照（簡稱 GBL）而獲得特殊的稅收減免。上述證書分為兩類，其中最為簡單明了的乃第 2 類牌照。持有此類牌照的公司

通常稱為 GBL2 型公司，其結構與傳統的 IBC 結構很相似，它無需向毛里求斯繳稅，但也不能納入該國的稅務條約網絡。

反之，GBL1 型公司有條件獲得稅務條約所賦予的利益，但是其課稅稅率與毛里求斯的獲稅務激勵的公司之稅率相同，即均為 15%。然而，毛里求斯公司如果在別的司法管轄區繳稅，將可獲得稅收抵免。視乎這類 GBL1 型公司的業務性質，該等稅收抵免數額可足以免除所有給毛里求斯繳稅的責任。如果沒有向毛里求斯稅務部門提供實際納稅的證明，那麼 GBL1 型公司可以享有相當於其在毛里求斯需要繳納的稅項的 80% 的稅收抵免，因此其最高的實際稅率為 3%。

國家	為永久組織目的 的項目持續時間	來源國適用的最高稅率		
		股息	利息	使用費
巴巴多斯	> 6 個月	5%	5%	5%
比利時	> 6 個月	5% & 10%	10%	豁免
博茨瓦納	> 12 個月	5%	12%	12.50%
中國	> 12 個月	5%	10%	10%
克羅地亞	> 12 個月	豁免	豁免	豁免
塞浦路斯	> 12 個月	豁免	豁免	豁免
法國	> 6 個月	5% & 15%	利率與本地法例規定的相同	15%
德國	> 6 個月	5% & 15%	do	15%
印度	> 9 個月	5% & 15%	do	15%
印尼 (終止)	> 12 個月	5% & 10%	10%	10%
意大利	> 6 個月	5% & 15%	利率與本地法例規定的相同	15%
科威特	> 9 個月	豁免	5%	10%
萊索托	> 6 個月	10%	10%	10%
盧森堡	> 6 個月	5% & 10%	豁免	豁免
馬達加斯加	> 6 個月	5% & 10%	10%	5%
馬來西亞	> 6 個月	5% & 15%	10%	15%
莫桑比克	> 6 個月	8%, 10%, 15%	8%	5%
納米比亞	> 6 個月	5% & 10%	10%	5%
尼泊爾	> 6 個月	5%, 10%, 15%	10% & 15%	15%
阿曼	> 6 個月	豁免	豁免	豁免
巴基斯坦	> 6 個月	10%	10%	12.50%
盧旺達	> 12 個月	豁免	豁免	豁免
塞舌爾	> 9 個月	豁免	豁免	豁免
新加坡	> 9 個月	豁免	豁免	豁免
南非	> 9 個月	5% & 15%	豁免	豁免
斯里蘭卡	> 183 天	10% & 15%	10%	10%
斯威士蘭	> 6 個月	7.50%	5%	7.50%
瑞典	> 6 個月	5% & 15%	10%	15%
泰國	> 6 個月	10%	10% & 15%	5% & 15%
烏干達	> 6 個月	10%	10%	10%
英國	> 6 個月	10% & 15%	利率與本地法例規定的相同	15%
津巴布韋	> 6 個月	10% & 20%	10%	15%

資料來源：Mauritius Income Tax Department

GBL1 型公司亦須面對一些額外的限制。與 GBL2 型公司不同，它們需要有兩名居於當地的董事和一名居於當地的公司秘書。董事會會議必須在毛里求斯召開，銀行業務往來亦需要通過毛里求斯進出。公司每年需要提交經審計的賬目，必須獲得稅務居籍證明書，以及提交企業計劃書以符合雙重課稅條約的要求。

雙重牌照制度有幾個有趣的特點。第一，有第 2 類牌照的公司可以在稍後申請第 1 類牌照，從 GBL2 型公司轉為 GBL1 型公司。因此，如果一家公司知道其營運性質將會改變，便可以以 GBL2 型公司的形式免稅經營，直至需要納入條約網絡為止。第二，GBL2 型公司可以建立 GBL1 型子公司以減少整體納稅義務。這種情形於下述的樣本公司結構一節加以探討。

稅務條約

上面討論到，毛里求斯現在加入了 31 個雙重稅務條約（參看所附表格：各種收入源流的優惠預扣稅一覽表）。2004 年，印尼政府因為關注到第三國利益方通過毛里求斯公司投資於印尼企業，所以宣佈打算取消與毛里求斯訂立的條約。儘管毛里求斯政府努力尋找解決方法，但條約還是於 2005 年 1 月 1 日取消了。

據毛里求斯政府消息，與孟加拉、尼日利亞、俄羅斯、塞內加爾、突尼斯、阿拉伯聯合酋長國、越南和尚比亞等國的條約已經簽訂，正等待批准。與加拿大、捷克共和國、希臘、伊朗和葡萄牙的條約也正在協商之中。

樣本公司結構

毛里求斯的架構形式可用於為了在中國做生意而設立的簡單明了的貿易架

構或是控股架構，但很多時候，與像香港等其他低稅收司法管轄區相比，其在成本或稅務上便不顯得別具競爭力。

比如說，為了在中國獲取貨物然後賣給發達國家的零售商，商人可以選擇 GBL1 型公司或者 GBL2 型公司來運作。假如選擇 GBL2 型公司，所獲得的利潤不需要繳稅，但是很多公司發現因為 IBC 型公司缺乏商業聲譽，所以難以向某些此類公司的顧客銷售產品。而 GBL1 型公司則可以利用條約的優惠，特別是當其在中國沒有設立永久組織的情況下。但是，因為香港對離岸貿易的利潤不徵稅，所以，在這種情況下，3% 的稅率比香港的為高；而其需要有居於當地的董事，以及為符合第 1 類牌照的資格而增加的費用，減低了這種結構的成本效益。

對於在中國提供專業服務而又沒有設立永久組織的個人而言，BGL1 型公司可以是一個不錯的解決方案。此類毛里求斯公司（或者個人居民）在中國賺取的專業收費和技術服務收費只在毛里求斯納稅。而對於 GBL1 型公司而言，這種業務的最高稅率是 3%；而在香港，個人經營和企業經營之相應稅率則分別是 16% 和 17%。

但是，當 GBL1 型公司涉及更為複雜的業務，而且業務跨越多個均屬於（或者大部分屬於）毛里求斯稅務條約網絡的司法管轄區時，這種架構便有趣多了。例如，假設有一家公司持有知識產權並要將許可授予數個亞洲國家，包括中國、泰國、新加坡和馬來西亞。該母公司在毛里求斯建立了 GBL1 型公司以持有該知識產權，並期待收取來自上述 4 個國家的使用費。

一旦該公司從政府處獲得稅務居

籍證明書，它便可以利用到雙重課稅條約有關預扣稅稅率的優惠條款（在新加坡是免稅）。在毛里求斯，當減去維持該架構的費用以及其他有關的營運費用後，這些收入源流的實際稅率實際不高於 3%。

視乎公司業務的範圍以及可能獲得的稅收減省情況而定，公司可以考慮註冊成立 GBL2 型公司來持有知識產權，然後把許可授予屬於 GBL1 型的子公司。GBL1 公司的業務便有如分許可商一般，其應課稅的收入可因已經向 GBL2 型母公司支付的主許可費而得以減低。GBL2 型公司擁有的收入便無需納稅，而預扣稅也不適用於從一家毛里求斯公司付給另一家毛里求斯公司的許可費。因此，就第二家公司（持有 2 類牌照那家）的開支而言，將此項業務所涉及的整體稅額減至幾乎等於零是有可能的。

結論

20 多年來，毛里求斯專注建設一個達世界水平的金融服務業，以低稅收體系及避免雙重課稅條約網絡吸引全世界的公司。在大多數情況下，簡單架構方案可以透過香港或是一些傳統離岸司法管轄區，以更具成本效益的方式來設計。對於在中國經營而又沒有永久組織的個人專業服務提供者，或是有多個使用費源流並涉及數個毛里求斯簽約國的公司而言，毛里求斯公司在分擔他們的稅務方面便很有幫助。

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