

Taxation of Income derived from outside Mauritius

The importance of sections 73 and 5 of the Mauritius Income Tax Act

In the wake of a surge in cross-border employments and increasing opportunities made available by foreign companies, Mauritius is faced with an emigration of the young generations. On the other hand, a significant number of persons especially retirees and those seeking a peaceful life are attracted to Mauritius, and they would like to come and settle here.

One of the most important questions is whether those moving abroad for a living are aware of their tax implications especially when remunerations from employment are transferred to Mauritius. It is similarly important for those persons immigrating to Mauritius to be aware of the tax implications of money earned by them while they were living abroad which they would want to bring with them upon becoming resident in Mauritius.

The main factors worth considering are the residency status of a person and what constitutes derivation of income.

Section 73

Section 73 of the Mauritius Income Tax 1995 enunciates that an individual is resident for tax purposes in Mauritius, in an income year, if:

- “(i) he has his domicile in Mauritius unless his permanent place of abode is outside Mauritius;*
- (ii) he has been present in Mauritius in that income year, for a period of, or an aggregate period of, 183 days or more; or*
- (iii) he has been present in Mauritius in that income year and the 2 preceding income years, for an aggregate period of 270 days or more.”*

Section 5

Section 5 of the Mauritius Income Tax Act 1995 stipulates the following provisions in connection with the derivation of income:

- “(1) Income shall be deemed to be derived by a person where:*
 - (a) the income was derived from Mauritius, whether the person was resident in Mauritius or elsewhere (the Mauritius Source Rule); or*
 - (b) the income was derived at a time when the person was resident in Mauritius, whether the income was derived from Mauritius or elsewhere (the Residence Based Rule).*
- (2) Subject to the other provisions of the Act, income shall be deemed to be derived by a person when:*
 - (a) it has been earned or has accrued; or*
 - (b) it has been dealt with in his interest or on his behalf, whether or not it has become due or receivable.*

(3) Income derived by an individual from outside Mauritius shall be deemed to be derived by the individual when (the Remittance Basis Rule):

(a) it is received in Mauritius by him or on his behalf; or

(b) it is dealt with in Mauritius in his interest or on his behalf.”

It is often very challenging to determine the taxation of a person's income depending on whether he is a resident individual or a non-resident individual, and the mechanism behind the remittance basis. Many controversies revolve around the charging provisions of sections 5 and 73. The recent Supreme Court case referred to below has helped to clear up some grey areas.

Case Law – MRA and ARC vs Mr Hilmi Mohammad Ehsan Dilloo

An enlightening judgement has been delivered last year by the Supreme Court of Mauritius in the case of Hilmi Mohammad Ehsan Dilloo, as the appellant, and the Mauritius Revenue Authority and Assessment Review Committee, as the respondents. The facts of the case are underscored hereunder.

Summarised Facts

- Mr Dilloo moved to settle in Saudi Arabia for around 7 years after contracting a job at Microsoft Arabia;
- His children were born in Saudi Arabia;
- He held a Resident Identity Card which allowed him to work in Saudi Arabia;
- He paid an Expatriate Tax in Saudi Arabia on his remunerations;
- He remitted his earnings from employment into his savings account at a local Mauritius bank over the years 2016 to 2018 which were used partly to acquire a property in Mauritius;
- The property was let out for a rental income.

MRA's /ARC's Decisions

- The Mauritius Revenue Authority (MRA) contended that Mr Dilloo should be taxed in Mauritius on the remitted income as he failed to demonstrate to the satisfaction of the MRA that firstly, he was not resident in Mauritius in the year of remittance but resident in Saudi Arabia as per section 73, and secondly, the MRA was of the view that the money transferred was therefore taxable income since it was remitted to Mauritius as per section 5 (3).
- The taxation of the rental income was not disputed as it was conspicuous that same would squarely fall within section 5.
- The ARC ruled in favour of the MRA but held that the remittance basis under section 5(3) of the Income Tax Act is applicable to residents as well as non-residents.
- Mr Dilloo appealed to the Supreme Court against the ARC's decision and the MRA also lodged an appeal to the Supreme Court challenging the ARC's stand that the remittance basis applies regardless of whether an individual is resident in Mauritius or not.

Supreme Court Decisions in a nutshell

- The Supreme Court could not conclude on the residency status of Mr Dilloo during the periods under review in the absence of conclusive evidence from the latter to establish that he was not resident in Mauritius at that time. Mr Dilloo could not factually prove that his permanent place of abode was outside Mauritius. Moreso, he was unable to demonstrate any intention to change his domicile status and was thus deemed to be domiciled in Mauritius by way of origin.
- The most captivating decision of the Supreme Court is the delineation around section 5(3) which as per the Court should not be interpreted independently from section 5(1).
- As adjudicated by the Supreme Court, sections 5(1) and 5(3) are inextricably linked.
- The Court clearly underlined that section 5(3) cannot be enforced as a stand-alone provision.
- The crux of the matter is that any resident person deriving income from outside Mauritius will only be taxed on such income when remitted to Mauritius under the interconnecting provisions of sections 5(1) and 5(3).
- In the context of Mr Dilloo, he would not have been taxable on his remitted income if he was proven to be non-resident in Mauritius at the time of transferring his money. This was unfortunately not the case since the Court was unable to deliberate on the residency status of Mr Dilloo. He was thus subject to tax on his remitted income.

Concluding Remarks

In our view, it is legitimate to tax an individual resident in Mauritius on any income derived from outside Mauritius once it is remitted to Mauritius. The approach of the ARC seeking to tax foreign source income regardless of the tax residency of an individual is absolutely flawed and falls outside the Residence and Source based Rules. The Supreme Court has rightly set aside this contention of the ARC.

It is compelling for employees to maintain the right documentation to prove their tax residency when working abroad. Of note, the tax certificate and any official proof of foreign taxes paid shall stem from the concerned tax authority. The onus of proof always lies with the taxpayers.

Other considerations

There are different instances where an individual might be caught up with taxation of income derived from outside Mauritius and this should start with the individual being a tax resident person in Mauritius. A couple of worthy examples in the same breath would be:

- A retiring individual bringing his lumpsum in Mauritius after residing abroad for decades and being subject to tax there cannot be doubly taxed in Mauritius on the remitted fund as the person was not resident in Mauritius when the income was actually derived;

- A resident individual deriving income from outside Mauritius and remitting his fund in Mauritius a few years later will definitely be taxed in Mauritius in the year of remittance;
- An individual deriving income from outside Mauritius and remitting his fund in a local bank account in Mauritius whilst being resident elsewhere at that time will not be subject to tax in Mauritius in a subsequent year after acquiring tax residency in Mauritius.

Could the Tie Breaker Rules under the tax treaties of Mauritius ease the determination of the residency status of an individual. We invite you to have a look at our article published last year on the Tie Breaker Rules by accessing the link below.

Please do not hesitate to connect with our fully equipped and dedicated tax team on taxadvisory@dtos-mu.com for any advice on your residency status and the impact of your taxable income.

Get in touch with us

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