

Tax Hotline

February 18, 2003

CLARIFICATION IN RELATION DUAL RESIDENCY UNDER THE INDIA MAURITIUS TAX TREATY

The Central Board of Direct Taxes ("CBDT") Circular No. 789 dated April 13, 2000 clarified that 'Certificate of residence' issued by the Mauritius authorities would constitute sufficient evidence for accepting the status of residence, as well as beneficial ownership for entitlement to the benefits of the India Mauritius Tax Treaty. However, the Circular was silent on whether such certificate would also apply in cases of dual residency.

To address this doubt, the CBDT issued Circular No. 1 dated February 10, 2003 clarifying that if a person is found to be resident of both India and Mauritius, his residence is to be decided in accordance with the provisions of Article 4(3) of the India Mauritius Tax Treaty.

Further, where a company is found to have its place of effective management in India, then notwithstanding the fact that it is incorporated in Mauritius, it would be taxed in India as per provisions of the India Mauritius Tax Treaty. It is pertinent to note that this Circular has been issued while the proceedings in relation to Circular No. 789 are at an advanced stage before the Supreme Court of India.

Source: CBDT Circular No. 1 dated February 10, 2003

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