Executive summary

On 25 November 2015, representatives of Mauritius and Morocco signed a Double Taxation Avoidance Agreement (the Treaty). The Treaty was signed following the release of the Organisation for Economic Co-operation and Development’s (OECD) final reports addressing Base Erosion and Profit Shifting (BEPS). However, the provisions of the Treaty do not follow a post-BEPS trajectory: the recommendations of the OECD have not been taken into account in the conclusion of the Treaty.

This Alert summarizes the key provisions of the Treaty.

Detailed discussion

Entry into force

The procedures required under the domestic laws of Mauritius and Morocco for the application of the Treaty have not been completed. As such, the Treaty is not yet in force as of the date of publication of this Alert.

Taxes covered

The taxes covered by the Treaty are taxes on income imposed on behalf of a Contracting State or its political subdivisions or local authorities. Taxes on capital are outside the scope of the Treaty.
Permanent establishment
Article 5 of the Treaty
The definition of the term permanent establishment deviates from the one provided in the OECD and United Nations (UN) Model Conventions. The scope has been broadened to include the following:

- Installation or structure used for the exploration of natural resources
- Sales outlet
- Warehouse put at the disposal of a person providing storage facilities for others
- Provision of services, facilities or plant and machinery on hire used for the prospecting for, extraction or exploitation of minerals and hydrocarbon fuels. There is no prescribed time limit for the provision of such services to constitute a permanent establishment.

Domestic law of Mauritius
The term permanent establishment has not been defined in the Mauritian tax laws. Generally, nonresidents are subject to tax on Mauritian sourced income only. The Income Tax Act 1995 (ITA 1995) provides that income derived from the following activities is Mauritian sourced:

- Carrying on of a business wholly or partly in Mauritius
- Performance of any contract wholly or partly in Mauritius

In ascertaining whether a nonresident is carrying on a business in Mauritius, the nature of the activities in question is relevant. Certain activities can be performed for the benefit of a Mauritian based person without the requirement for the foreign service provider to be physically present in Mauritius. It has been ruled that transactions carried out by a foreign company in Mauritius which are merely administrative in nature will not constitute a permanent establishment.

Domestic law of Morocco
Dividends
Article 10 of the Treaty
The right to tax dividends lies with the state of source, provided that the recipient is the beneficial owner of the dividends. The maximum treaty withholding tax rate is 10%. A reduced rate of 8% applies if the beneficial owner is a company holding directly at least 25% of the capital of the company paying the dividends. The reduced rate does not apply where the beneficial owner is a partnership even though the minimum level of shares is held.

The term “dividend” as per Article 10 is similar to the definition provided in the OECD and UN Model Conventions.

Domestic law of Mauritius
Dividends are defined as a distribution authorized by the Board of directors and made out of retained earnings after having made good any accumulated losses at the beginning of the year: this is a tax requirement that is analogous to the corporate requirement. Dividends can be either in cash or shares. To the extent that a company pays a cash dividend out of its retained earnings, no withholding tax applies on the dividends.

Domestic law of Morocco
Dividends are defined as a distribution authorized by the Board of directors, and approved by the General Assembly of shareholders after approving the summary financial statements and ascertaining the availability of distributable funds.

According to Moroccan tax legislation, dividends are subject to withholding at the rate of 15%.

However, dividends distributed to Moroccan companies are exempted from withholding tax.
Interest
Article 11 of the Treaty
The right to tax interest lies with the state of source, provided that the recipient is the beneficial owner of the interest. The treaty withholding tax rate is 10%.

The term “interest” as per Article 11 is similar to the definition provided in the OECD and UN Model Conventions.

Domestic law of Mauritius
The ITA 1995 defines “interest” as being income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits and in particular income from debentures or any other loan instrument including premiums and prizes attaching to such debentures or other loan instrument.

Interest payment to any person other than Mauritian resident companies attracts withholding tax at the rate of 15%. No withholding tax applies where:
- Interest is paid by an individual
- Interest is paid by a bank or a non-bank deposit taking institution under the Banking Act
- Interest is paid by a company holding a Category 1 Global Business License (GBL) out of its foreign source income to a nonresident not carrying on any business in Mauritius.

Domestic law of Morocco
Moroccan tax legislation defines interest as gains from fixed-income investments, received, made available to an individual or a company.

Interest paid to nonresident companies are subject to withholding tax at the rate of 10%.

However there are some exemptions as follows:
- Interest remunerating loans granted in foreign currencies for a period equal or exceeding 10 years
- Interest remunerating loans guaranteed by the Moroccan State

Royalties
Article 12 of the Treaty
The right to tax royalties lies with the state of source, provided that the recipient is the beneficial owner of the royalties. The treaty withholding tax rate is 10%.

The term “royalty” as per Article 12 is largely based on the definition provided in the UN Model Convention. The scope has been widened to include payments for:
- Broadcasting by satellite, cables, optical fibers or similar technology used for public broadcasting
- The use of or right to use magnetic tapes, discs or laser discs
- The use of or right to use any software
- Information concerning agricultural experience

Domestic law of Mauritius
The ITA 1995 defines royalty as payment of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

Royalty payment to nonresidents attracts withholding tax of 15%. No withholding tax applies where:
- Payer is an individual
- Payer is a GBL1 company
- The royalty is paid to a nonresident by a bank from its income derived from its banking transactions with nonresidents and GBL corporations

Domestic law of Morocco
Royalties are defined by the Moroccan tax legislation as remunerations paid in consideration of any services rendered by nonresident entities to Moroccan companies. Royalties are subject in Morocco to withholding tax at the rate of 10%.
Capital gains

Article 13 of the Treaty

Capital gains derived by a resident of a Contracting State from the alienation of any property other than those mentioned in paragraphs 1, 2, 3 and 4 of Article 13 are taxable only in the State in which the alienator is a resident.

Paragraphs 1, 2, 3 and 4 of the Treaty covers alienation of the following assets:

<table>
<thead>
<tr>
<th>Paragraphs</th>
<th>Relevant asset</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Immovable property</td>
</tr>
<tr>
<td>2</td>
<td>Movable property forming part of the business property of a permanent establishment</td>
</tr>
<tr>
<td>3</td>
<td>Ships, aircraft or movable property pertaining to a ship or aircraft</td>
</tr>
<tr>
<td>4</td>
<td>Shares of a company, the property of which consists directly or indirectly principally of immovable property</td>
</tr>
</tbody>
</table>

Domestic law of Mauritius

There is no capital gains tax in Mauritius. The Finance (Miscellaneous Provisions) Act (FMPA) 2010 introduced a capital gains tax regime for transactions in immovable properties and certain share transactions. However, it was repealed by the FMPA 2011 with effect from 5 November 2011.

Any gain on disposal of shares not held for trading will therefore be outside the scope of corporate tax in Mauritius. Gains on disposal of shares by a GBL1 company which have been held for trading for a period of less than six months would be exempt from corporate tax under the ITA 1995.

Domestic law of Morocco

Capital gains derived by nonresident companies in Morocco are subject to corporate income tax at standard corporate income tax rates as detailed below:

<table>
<thead>
<tr>
<th>Profit amount in local currency</th>
<th>Applicable tax rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under or equal to 300,000</td>
<td>10%</td>
</tr>
<tr>
<td>Between 300,001 and 1 million</td>
<td>20%</td>
</tr>
<tr>
<td>Between 1 million and one and 5 million</td>
<td>30%</td>
</tr>
<tr>
<td>Beyond 5 million</td>
<td>31%</td>
</tr>
</tbody>
</table>

However capital derived by nonresident companies on listed shares are exempted.

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