



## Mauritius Global Business Update 20

*The filing of an income-tax return is mandatory for a foreign company in India even if the income is not liable to tax in India under the provisions of a tax treaty.*

*Once a Return of Income (“ROI”) is filed in India, the revenue authorities, on a selective basis, processes certain ROI. From time to time the Central Board of Direct Taxes (CBDT), the apex tax administering authority in India, lays down the criteria for selection of cases for scrutiny.*

*CBDT has just issued Instruction No. 10/2013 dated 5 August 2013 providing detailed guidelines for selecting cases for scrutiny of the ROI for the financial year 2013-14.*

*We bring to you the CBDT notice, a summary of the guidelines and our comments thereto.*

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### 1. Introduction

#### 1.1. The basis for a foreign company to file an income tax return in India

- 1.1.1. In a March 2011 ruling, the Indian Authority for Advance Rulings (the “AAR”), in the case of a Dutch FII, VNU International, ruled that the FII still needed to file a tax return in India even though it claimed to have earned only capital gains in India, which were exempt from tax as per the India Netherlands tax treaty.
- 1.1.2. In essence, the AAR ruled that section 139(1) of the Indian Income Tax Act (the “Act”) makes it mandatory for a foreign company to file an income-tax return in India when the income is liable to tax in India under the provisions of the Act but it is only under the provisions of a Tax Treaty that the resulting income is nil.
- 1.1.3. The AAR also clarified that an applicant being a foreign company, is covered within the definition of a company under section 2(17) of the Act.

### 2. The guidelines

- 2.1. The guidelines, inter alia, provides that the following categories of cases / returns shall be compulsorily scrutinized:
  - 2.1.1. Cases where value of international transactions exceeds INR 150 million
  - 2.1.2. Cases involving addition in an earlier assessment year on the issue of transfer pricing exceeding INR 100 million or more and the same is confirmed in appeal or is pending before an appellate authority.



- 2.1.3. Cases involving addition in an earlier assessment year in excess of INR one million on a substantial and recurring question of law or fact and which is confirmed in appeal or is pending before an appellate authority.
- 2.1.4. Where the ROI was filed in response to notice issued by the tax officer wherein the tax officer has reason to believe that the income chargeable to tax has escaped assessment
- 2.1.5. Cases in respect of which information is received from other Government Department(s) or other authorities pointing out tax-evasion.

### **3. Conclusion**

We understand that the laid down procedures and the criteria for selecting the case for scrutiny assessment occurs automatically through CBDT's Assessment Information System (AST) software.

At the very least, a taxpayer can now determine what gets covered and what's excluded.

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