LEGAL Alert

MMAKS ALN

Conflict between the Income Tax Act and the Double Taxation Agreement or treaty shopping?

A Mauritian company has sued the Uganda Revenue Authority (URA) seeking a declaration that the assessment raised against them is illegal.

The Plaintiff received dividends from a Ugandan company with tax withheld at 10% as a benefit under the Mauritius Uganda Double Taxation Agreement (DTA), instead of at the usual withholding tax rate of 15%. Following a request for information by URA, it came to light that the Mauritian entity was held entirely by a Kenyan resident. The Mauritian company's only economic activity in Mauritius was to hold the shares in the Ugandan company.

URA ruled that the Mauritian company being held by a non-Mauritian entity did not qualify for the lower rate of withholding tax under the DTA with Uganda, under S. 88(5) of the Income Tax Act on the basis that the underlying shareholder of the Mauritian entity was not resident in Mauritius. URA therefore raised an additional assessment on the dividends at the 15% rate. The Plaintiff's argument is that URA's claim is based on language of the Income Tax Act, applying a qualifying residency test, which language is not included in the DTA. Under the same Act, an international agreement such as a DTA trumps the Act in event of a conflict between the two. The Act provision can therefore only be enforceable if the Treaty is amended.

URA in its defence denies any conflict between the Act and the DTA and accuses the Plaintiff of treaty shopping.

We will update on further developments relating to this case.