



TAX DISPUTE RESOLUTION
ITR ASIA TAX EXECUTIVES' FORUM 2010
Shangri-La Hotel, Singapore

 YOUR GLOBAL NETWORK OF LEADING TAX ADVISORS

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- I. TAX AUDIT DEVELOPMENTS – FOR BETTER OR WORSE?
- II. TAX AUTHORITIES ATTEMPT ON RESOLUTION
- III. REQUIREMENTS FOR MORE EFFECTIVE COMPETITIVE AUTHORITY
- IV. LESSONS FROM KEY TAX DISPUTES
- V. KEY CONTACTS

TAX AUDIT DEVELOPMENT

- In developing countries it has been said:
“tax administration is tax policy”
- Tax disputes are unavoidable but tax systems of any country can be judged by the **stability, certainty, equality and efficiency it promotes**

INDIA

- Aggressive audits
- Increasing focus on cross border / PE issues
- Treaty benefit being challenged

CHINA

- ❖ Following India BUT a step ahead
- ❖ Clampdown on offshore sale of shares with a official notification (similar to Vodafone in India)
- ❖ TP becoming backbone to defend assesseees
- ❖ Reverse royalty audits being initiated

MALAYSIA / KOREA / AUSTRALIA / JAPAN

- Similar developments
- Upsurge in signing of information exchange agreements – potential impact?
- TP audits gaining momentum around Asia to maintain price consistency with global TP policies
- Country specific regulations eg India creating issues
- Audits increasingly focused on IP movement & generation

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ASIA

- ❖ Approach of Revenue aggressive – Singapore seems an exception
- ❖ Revenue considers tax planning as aggressive
- ❖ Financial meltdown further aggravated the situation
- ❖ Dispute resolution mechanisms settlements don't appear to work in Asia
- ❖ Overall approach favours “revenue generation & collection” as opposed to “resolution”

INDIA

- ❖ A step in the right direction with the institution of the DRP (collegium of commissioners)
- ❖ APA in near future – BUT are authorities ready for negotiations/ settlements?
- ❖ 1 step ahead, 2 steps back – GAAR, treaty override

KOREA / JAPAN / CHINA

Best practices to be considered:

- ❖ US: private rulings & negotiations at appeals division accounts for settling of 85-90% of cases before reaching courts at mid level range
- ❖ Australia: introduced the Administrative Appeals Tribunal – which is not a court
- ❖ UK: settles cases by negotiations
- ❖ Canada: adopted an Appeals Bench functioning independent of CRA

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EFFECTIVE COMPETENT AUTHORITY

- ❖ Is the concept of MAP prevalent & effectively being followed to resolve disputes?
- ❖ Is timing of MAP conducive to assesses & transactions?
- ❖ Involvement of assesses in MAP procedure
- ❖ MAP v/s normal administrative appeals procedure – what would you choose?

EFFECTIVE COMPETENT AUTHORITY

- ❖ What are the best practices which could be adopted for an effective MAP?
- ❖ time limit for resolution (say maximum 2 years)
- ❖ bank guarantees for stay of demand
- ❖ open, effective & timely communication

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CASE STUDY(FACTS)

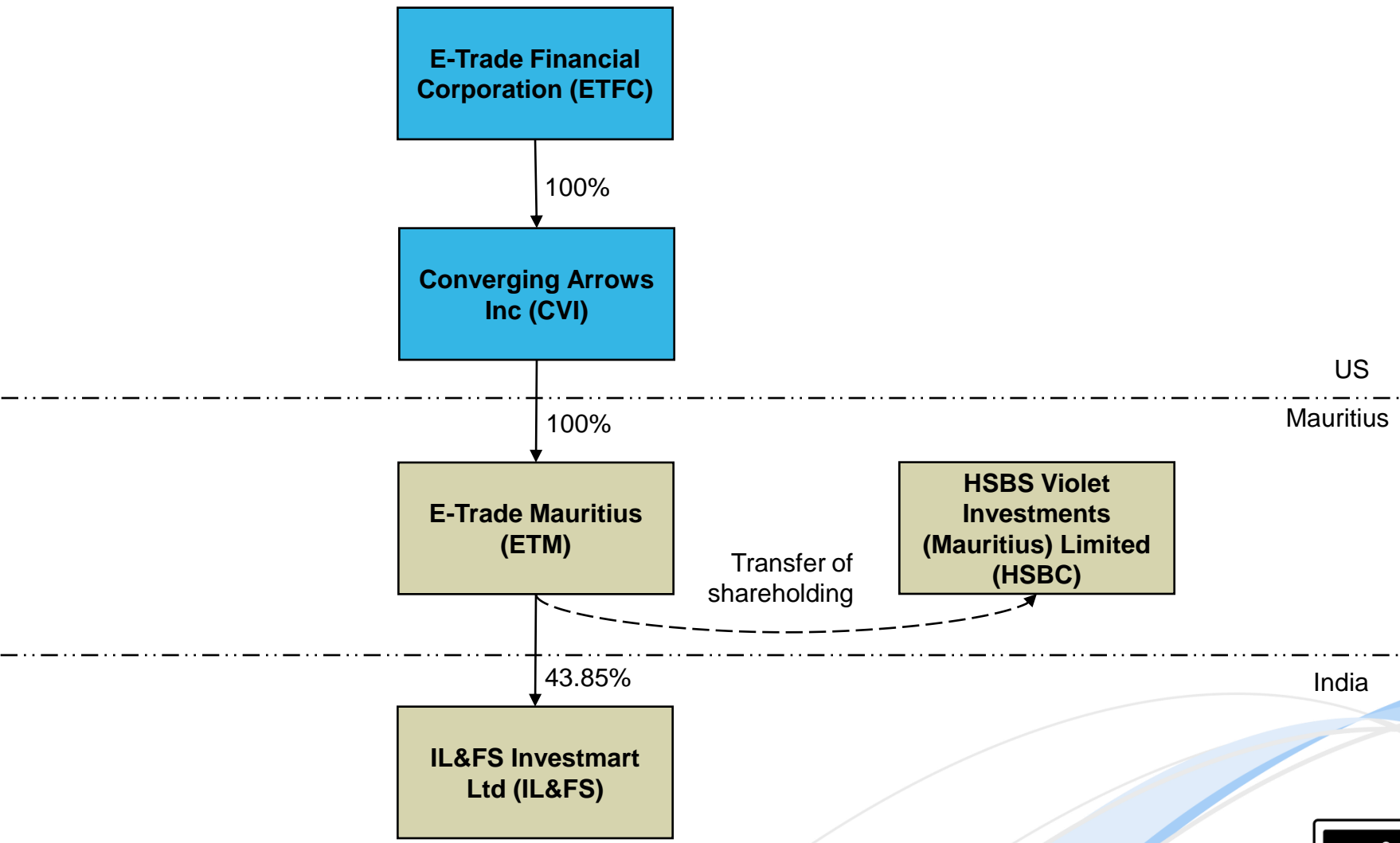
- ❖ Medico - a Singapore based company - sells automated medication dispensing system
- ❖ MMPL, Medico's associated company in country X, has made significant investments to produce components and precision parts for Medico
- ❖ APL, Medico's wholly owned subsidiary in country Z, assembles the final system which is sold by Medico to its customers
- ❖ Medico is billed by MMPL and APL for respective contributions in the value supply chain

CASE STUDY (FACTS)

- ❖ IRAS notice to Medico claiming transactions not at arms length price; not agreed by Medico
- ❖ IRAS intends to take action against Medico for giving incorrect information
- ❖ Review by company reveals company's in-house Tax Manager inadvertently claimed a deduction for foreign exchange losses amounting to \$2,681,900 instead of \$268,190 in the tax return
- ❖ Strict internal procedures not followed due to sudden resignation of Finance Director when the time came for the tax return to be submitted.
- ❖ Had there been an oversight, the company is confident that the error would have been picked up



E-TRADE CASE – HOLDING STRUCTURE



E-TRADE CASE – HOLDING STRUCTURE – A RECAP


- ❖ Taxpayer (ETM) sold its entire equity shareholding in ILFS Investmart to HSBC Violet Investments (Mauritius) Limited under a private arrangement
- ❖ Relying on the beneficial provisions of the treaty, the taxpayer made an application for 'Nil' withholding tax certificate for receiving consideration for sale of shares
- ❖ Revenue denied treaty relief holding that the taxpayer was a 'shell' entity, as the real beneficial owner of shares was E*Trade US

E-TRADE CASE – HOLDING STRUCTURE – A RECAP

- ❖ On appeal, High Court, without going into the merits of the case, referred back the matter to the commissioner for exercise of his revisionary powers – Commissioner denied the treaty relief and tax was deducted and deposited with the Government
- ❖ Taxpayer applied to AAR for determining the applicability of treaty relief on the sale of said shares

AAR RULING

- AAR allow treaty exemptions
- Upheld the principle that treaty shopping and underlying objective of tax mitigation could not be equated to a “colourable device”

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KEY CONTACTS



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