Marutitus Income Tax (Amendment) Act

Why in news?

Mauritius amended its Income Tax Act and inserted a clause to determine the place of effective management, in line with global best practices.

What is the recent amendment in Mauritius' Income Tax Act?

- Mauritius has inserted a clause for determining the place of effective management (POEM), making it difficult to establish residency in the country.
- Mauritius Revenue Authority (MRA) issued a Statement of Practice (SOP) regarding POEM.

What is a POEM?

- A POEM is aimed at ensuring that sufficient economic activity takes place in a particular country and determining a foreign company's residential status.
- It also helps to assess if companies are setting up shell subsidiaries abroad to evade taxes.
- In other words it has been defined to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made.

What has changed?

- Currently, Mauritius issues a Tax Residency Certificate (TRC) to companies incorporated and operating in Mauritius, based on criteria such as whether the company is managed by a board in Mauritius and whether the bank accounts and books of account are maintained in that country.
- Maurutius Revenue Authority is one of the more liberal authorities as its interest lies in getting more companies to use its jurisdiction.
- Typically, most professional service providers easily get TRCs for companies they service.
- This may change with the new amendment.

What are the new rules?

- Any Mauritian company to be considered to be tax resident in Mauritius**, all**

its strategic decisions relating to its core income generating activities should be made in the country.
- Depending on the business activities of the company, it may have income generating activities in more than one country.
- Additionally, the majority of the board of director's meetings should be held in Mauritius or its executive management should be regularly exercised in Mauritius.

What are the anticipated challenges under the new regime?

- There is subjectivity on what is meant by "taking strategic decisions on core income generating activity".
- A tussle Mauritius tax authorities and other country authorities may rise on what constitutes POEM, and whose ruling should prevail.
- The new amendment refers to the place of decision making and not the place of income earning activities.

Does India have its own POEM?

- POEM guidelines in India became applicable from FY16-17.
- The Central Board of Direct Taxes issued its final guidelines in January 2017.
- The shift to POEM signifies a shift from an objective criterion for tax residence to subjective criteria

How does the Indian POEM impact companies?

- Until April 1, 2016, a subsidiary or a parent of an Indian company was not subject to income tax in India unless its affairs were "wholly controlled and managed" in India.
- So, there was no tax incidence here unless the entire decision-making team was in India.
- Now if a company's POEM is in India, its global income will be taxable in the country.
- For Indian companies that have made outbound investments, there is a risk that POEM of such outbound investments could be considered to be in India in case the management of such overseas entities is determined to be in India.
- In simple words,if the strategic decisions are taken in our country then even though the investments are made out of the country,the income may be taxed.



SHANKAR
IAS PARLIAMENT
Information is Empowering