

INVESTMENT INTO AND OUT OF AFRICA

THE BVI MAURITIUS ROUTE

With the recent invitation for South Africa to become the S in Brics, it would seem that the age of Africa has dawned. This has highlighted what Drake has long been an advocate of, and that is that Africa is a continent of diverse opportunities and often above average investment opportunities.

In the investment field it is also true that over time certain investment routes become known as the premier methodology to follow for investing into certain countries or regions. The BVI and Cayman for example are the standard domiciles for the creation of hedge funds. Luxembourg is a well known European fund domicile. However, neither the BVI nor Cayman have any decent tax treaties for investing into Africa, and in fact the African tax treaty network is somewhat sparse.

The main colonial powers have a large tax treaty networks and South Africa has recently negotiated numerous treaties. However, none of these countries are an ideal entry point into the continent given their high domestic tax rates, and the fact that a lot of them have capital gains taxes.

The recent focus on emerging markets, and China's hunt for resources, has meant a new dawn for many African countries. This new economic and social advancement has led to a new search for investment routes into Africa, as well as a multitude of new deals being done on the continent. China, India and South Africa have been particularly active in Africa as they scramble for resources, and the West seems keen to follow suite.

Entry into Africa

Hedge fund investors, looking to enter into Africa in a secure and tax efficient manner, are likely to start out from an investment fund in the BVI or Cayman. A typical fund structure would consist of a BVI investment vehicle in either a corporate or limited partnership format into which investors would invest. The question then is whether that entity should invest directly into Africa, or via a treaty country such as Mauritius, South Africa or Botswana, as shown in figure 1 below.

Along with the Cayman Islands, the BVI is one of the jurisdiction of choice for domiciling investment funds. The reason for domiciling funds in such a location is that they are tax neutral with no taxes on income, dividends or capital gains. However, it is likely that there is significant tax leakage in the African country into which the investment is made, primarily due to

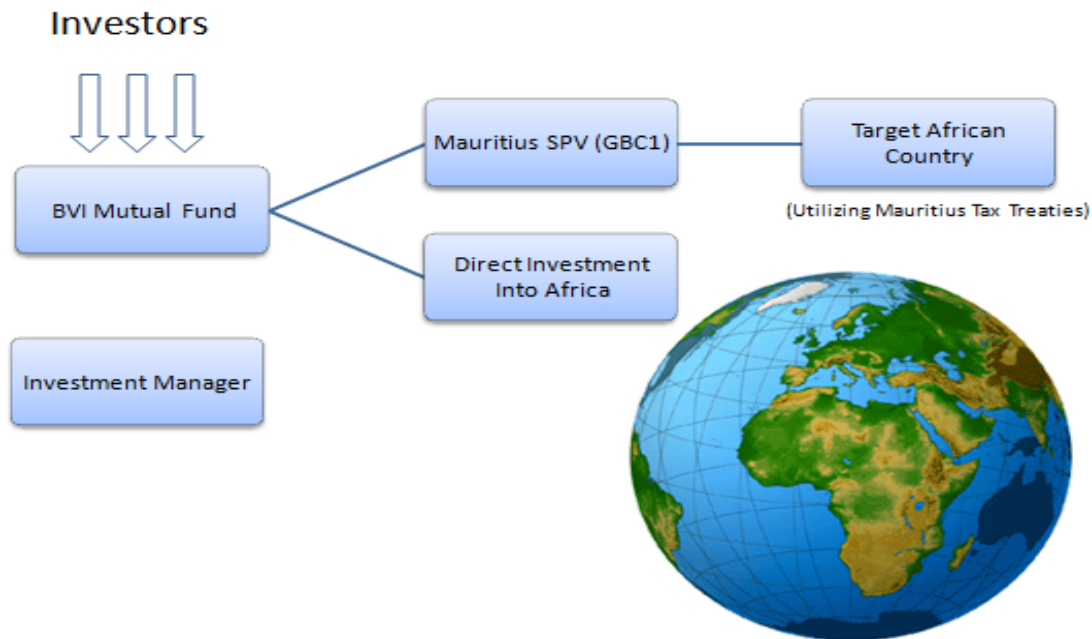
withholding taxes paid on dividends and interest. To overcome this problem use can be made of an intermediate holding company in a suitable jurisdiction.

South Africa has some 21 treaties with Africa and has recently announced its international headquarters regime. However, the regime is untested and when combined with its historic exchange control rules is still not regarded as ideal. Botswana, many years ago introduced an international finance center with a low rate of tax to attempt to act as a gateway into Africa. After many years it is still only negotiated some 6 treaties into Africa.

This leaves Mauritius. Mauritius is a low tax country (no capital gains tax, no withholding tax, no capital duty on issued capital, very low corporate rates of tax, no exchange controls). Mauritius also has a substantial network of treaties and double taxation avoidance agreements in place, in particular with Africa.

In order to access the treaty network, investors need to establish a Category 1 Global Business Company in Mauritius (a GBC1) and ensure that the company is tax resident and managed and controlled in Mauritius by appointing local directors. In addition it must maintain its principal bank account in Mauritius, keep its accounting records at its registered office in Mauritius, and prepare its financial statements and have them audited in Mauritius.

The Mauritius company in the form of the GBC1 is then eligible for a Tax Residence Certificate, which allows it to claim benefits under the various treaties. Although the company is taxable in Mauritius at a flat rate of 15% it is able to claim a credit in respect of foreign tax on income. If there is no clear proof of what that tax is then it is deemed to be an amount equal to 80 per cent of the Mauritius tax chargeable with respect to that income. As a result the effective tax rate is between 3% and 0% depending on whether there is actually any underlying tax.



Mauritius currently has tax treaties with 13 African countries (Botswana, Lesotho, Madagascar, Mozambique, Namibia, Rwanda, Senegal, Seychelles, South Africa, Swaziland, Tunisia, Uganda and Zimbabwe). Six tax treaties have been signed with the countries of Malawi, Nigeria, Zambia, Egypt, Kenya and Congo and are awaiting ratification. Additional treaties are currently being negotiated with Burkina Faso, Algeria and Ghana.

It follows that investments directly into a treaty country is likely to be more efficient via Mauritius, whilst where there are no treaties, the use of Mauritius would simply add a 3% tax cost to the existing underlying taxes.

The use of the treaties would typically assist in restricting the ability of underlying African countries to impose a Capital Gains Tax, as well as offering relief on withholding taxes on interest and dividends. These rates are typically in the range of 10-20%, and are reduced under Mauritian treaties to typically zero per cent, five per cent or 10 per cent, thereby creating potential tax savings of five per cent-20 per cent depending on the African country in question.

The BVI Mauritius combo

From the above analysis it is clear that combining the BVI with Mauritius allows investors to enjoy the best that both jurisdictions have to offer, ensuring that a well known investment vehicle can be combined with tax efficiency, but without condemning the entire investment returns to the extra 3% Mauritian tax.

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