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India is central to meaning of "resident" in the Gulf

In the context of the application of Middle East regional tax treaties and the potential conflict between regional taxing systems and standard tax treaty language, at the heart of the debate about whether regionally-based businesses qualify as 'residents' for treaty purposes, and of considerable interest to regional businesses with historic and significant trade links with the sub-continent, is the application of the Indian tax treaties in the region, particularly India's treaty with the UAE. In this context it is interesting to note the decision of the Income Tax Appellate Tribunal in Mumbai in India.

The case considers that of a Green Emirate Shipping and Travels, a UAE-based business, which sought exemption from Indian tax on capital gains under the provisions of the India-UAE tax treaty. The Indian tax authority had argued that since the UAE does not in practice have a tax regime, the provisions of the India-UAE treaty could not apply since a UAE-based business would not qualify as a "resident" of the UAE.

The tribunal held that when the right to tax UAE residents vests with the UAE government, that right, whether exercised at present or not, remains the exclusive right of the UAE government. The tribunal observed that the exemption from tax is independent of whether the UAE levies the tax or not, adding that a tax treaty takes into account not just current taxation, but also potential double taxation.

The tribunal bench added:

It is certainly more desirable for the government to take a clear-cut stand on this issue or let the matter be resolved at the level of the governments of the contracting states. This is perhaps a better solution for quickly resolving disputes on such a fundamental aspect of a tax treaty as to who will be eligible for the benefits of the tax treaty.

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