

WTS Mauritius Tax Edge

Finance (Miscellaneous Provisions) Bill 2019

Editorial

Dear Business Partner

Following the 2019-2020 Budget Speech presented by the Hon. Prime Minister and Minister of Finance and Economic Development, the Finance (Miscellaneous Provisions) Bill 2019 will be introduced into the National Assembly for parliamentary debates on Friday 12 July 2019.

In this very first edition of our newsletter, we have pleasure in bringing to you our synopsis of the main changes proposed to the tax legislations and other relevant laws impacting structures using Mauritius as platform for international businesses.

The eye-catcher in this year's amendments to the tax legislation is inevitably the introduction of Controlled Foreign Company Rules, which will require group structures with cross-border presence to carefully assess potential implications. On the positive side, the shift in focus from place of effective management to central management and control as a means of determining tax residency is a welcome move for the global business industry. Similarly, the amendments to the Financial Services Act requiring Global Business Companies to henceforth meet substance conditions set-out under income tax legislation, as opposed to an across-the-board compliance obligation, is also a move in the right direction. The details of such substance requirements are now awaited to accurately assess the impact on GBCs.

We hope that you will find this release useful. If you have questions relating to your specific structures, please do not hesitate to contact us. We shall be pleased to analyse your specific circumstances and advise on the way forward.

Best regards

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1. INCOME TAX ACT

1.1 TAX RESIDENCY OF COMPANIES

The provisions relating to 'Place of Effective Management' for the purposes of determining the situs of tax residency of a company incorporated in Mauritius will be amended. Henceforth, a company incorporated in Mauritius will be considered as a tax resident of Mauritius if it is managed and controlled from Mauritius.

1.2 CONTROLLED FOREIGN COMPANY ("CFC")

1.2.1 Where a company resident in Mauritius carries on business through a CFC and the non-distributed income of the CFC is considered to arise from non-genuine arrangements put in place for the essential purpose of obtaining a tax benefit, such income shall be deemed to form part of the chargeable income of the resident company.

1.2.2 An arrangement will be considered as non-genuine if the CFC would not have owned the assets or would not have undertaken the risks that generate either partly or wholly its income if it were not controlled by a company where the significant people functions relevant to those assets and risks are carried out and are instrumental in generating the income of the CFC.

1.2.3 The provisions relating to CFC will not apply in an income year if:

- (a) the accounting profits of the CFC do not exceed EURO 750,000 and non-trading income is less than EURO 75,000;
- (b) accounting profits are less than 10% of operating costs; or
- (c) the tax rate in the CFC's country of tax residence exceeds 50% of the tax rate in Mauritius.

1.2.4 A CFC is defined as a company not resident in Mauritius where more than 50% of its participation rights are held by a Mauritius-resident company alone or together with its associated enterprises. A CFC includes a permanent establishment of the Mauritius resident company.

1.3 TAXATION OF REAL ESTATE INVESTMENT TRUSTS ("REITs")

Collective Investment Schemes or Closed-End Funds authorised by the Financial Services Commission to operate as REITs shall not be liable to income tax provided prescribed conditions are met. Income derived by REITs shall also be exempted from the 2% Corporate Social Responsibility requirement.

Instead, the beneficiaries and/or participants to a REIT shall be taxed on their respective share of distributions made by the REIT. Nonetheless, the first MUR 50,000 (approx USD 1,400) received by an individual from a REIT shall be exempted from income tax.

1.4. TAXATION OF FREEPORT OPERATORS

Freeport Operators and Freeport Developers engaged in the manufacture of goods for the local markets shall be subject to income tax at the rate of 3% provided relevant substance requirements are met. Nonetheless, the chargeable income attributable to local sales shall be subject to 2% Corporate Social Responsibility on a pro-rated basis.

1.5 TAXATION OF SMALL ENTERPRISES

Where a company:

- (a) carries out business activities in the fields of:
 - Agriculture, forestry and fishing;
 - Manufacturing (excluding restaurant business); or
 - Wholesale and/or retail of goods;
- (b) its gross income in an income year does not exceed MUR 10 million (approx USD 275,000); and
- (c) its gross income from sources other than those specified in (a) above do not exceed MUR 400,000 (approx USD 12,000);

it may, through a one-time irrevocable election, opt to pay income tax at the rate of 1% of its gross income. Where such election is made, the company shall not be entitled to claim any deduction, relief or allowance except for credit with respect to tax deducted at source.

1.6. TAX EXEMPTIONS

- 1.6.1 80% of income derived by a company engaged in reinsurance and reinsurance brokering, subject to satisfaction of substance conditions.
- 1.6.2 80% of income derived by a company engaged in leasing and provision of international fibre capacity, subject to satisfaction of substance conditions.
- 1.6.3 80% of income derived by companies engaged in the sale, financing arrangement, asset management of aircraft and its spare parts, and aviation related advisory services related thereto, subject to satisfaction of substance requirements.
- 1.6.4 80% of interest income derived by a person from a Peer-to-Peer Lending operator. Interest or debt from Peer-to-Peer Lending activities which turn out to be irrecoverable may be claimed as bad debts against income from such activities. If such amounts of bad debts cannot be fully relieved in an income year, the unrelieved portion may be carried forward for set-off against future income from the same activities. No time-limits shall be applicable against such carry forwards. Interest income related to Peer-to-Peer Lending is also exempted from the application of Tax Deduction at Source.
- 1.6.5 5-year tax holiday on income derived by a person holding a Peer-to-Peer operator licence from the Financial Services Commission, provided operations are started by 31 December 2020 and substance conditions are satisfied.
- 1.6.6 5-year tax holiday on income derived by a company set-up on or before 30 June 2025 and holding an e-commerce certificate from the Economic Development Board with respect to its e-commerce activities, provided substance requirements met.
- 1.6.7 8-year tax holiday on income derived by a company from intellectual property assets developed in Mauritius on or after 10 June 2019, provided substance conditions are respected.
- 1.6.8 8-year tax holiday on income derived by a company set-up on or after 10 June 2019 from the development of a marina.

1.7 CORPORATE SOCIAL RESPONSIBILITY (“CSR”)

Where the proportion of CSR which is not required to be submitted to the Mauritius Revenue Authority (“MRA”) is not spent in accordance with the requirements of the Income Tax Act, the MRA may raise an assessment on the taxpayer.

1.8 VOLUNTARY DISCLOSURE OF INCOME SCHEME – FOREIGN ASSETS

Voluntary disclosure of undeclared income derived by a person from Mauritius but held in offshore bank accounts or used to purchase assets offshore shall entitle the person to pay tax on such income at 15%, without incurring any penalty or interest, provided such disclosure is made by 31 March 2020.

Where payment of the tax is not effected by 31 March 2020, any unpaid tax shall carry interest at 0.5% per month. This provision shall, however, not apply to persons associated with illegal transactions as detailed in the Finance Bill.

1.9 EXCHANGE OF INFORMATION

Where a taxpayer fails to respond to the Mauritius Revenue Authority (“MRA”) with respect to the provision of information following a request for exchange of information from a foreign country under Section 76 of the Income Tax Act, the MRA may apply to the Judge in Chambers to issue an order for the taxpayer to provide such information.

1.10 SOLIDARITY LEVY

For the purposes of computing the solidarity levy payable by an individual under Section 16B of the Income Tax Act, the definition of leviable income has been extended to include the share of dividends attributable to an individual from a Societe or Succession which has itself received dividends from its business activities in an income year.

1.11 TAXATION OF INDIVIDUALS

1.11.1 Where an individual derives a basic salary, including compensations, not exceeding MUR 50,000 in the first month of an income year and his total net income during that year does not exceed MUR 700,000, he shall be entitled to a tax credit equivalent to 5% of his chargeable income attributable to net income arising from emoluments. The tax credit of 5% shall, however, not apply to an individual whose net income is less than MUR 650,000 since the tax rate applicable up to that level is already 10%.

1.11.2 The income exemption threshold of individuals resident in Mauritius shall be increased as follows:

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|-------|---------------------------------------|---------------------------------|
| (i) | Category A (no dependent): | From MUR 305,000 to MUR 310,000 |
| (ii) | Category B (one dependent): | From MUR 415,000 to MUR 420,000 |
| (iii) | Category C (two dependents): | From MUR 480,000 to MUR 500,000 |
| (iv) | Category D (three dependents): | From MUR 525,000 to MUR 550,000 |
| (v) | Category E (four or more dependents): | From MUR 555,000 to MUR 600,000 |

2. FINANCIAL SERVICES ACT

2.1 CORE INCOME GENERATING ACTIVITIES

The requirements set-out under Section 71(3)(a)(i) of the Financial Services Act for Global Business Licence companies (“GBCs”) to carry out their core income generating activities in or from Mauritius by:

- (a) employing, directly or indirectly, of a reasonable number of suitable qualified persons; and
- (b) incurring a reasonable amount of expenditure, which is proportionate to the level of activities;

have been amended. GBCs are now required to meet such core income generating activities, in or from Mauritius, as may be required under the Income Tax Act.

The amendments brought to the Income Tax Act by the Finance Bill do not currently make mention of any requirement with respect to core income generating activities. It is expected that the relevant amendments will be brought to the Income Tax Regulations, expected to be released soon. With this amendment, it is hoped that the requirements with respect to core income generating activities will be restricted to businesses which are eligible for specific tax benefits under the Income Tax Act.

It is also expected that such Income Tax Regulations will provide more clarity with respect to the conditions associated with indirect employment and the substance of service providers providing such resources.

2.2 AUTHORISED COMPANIES

Consistent with the changes brought to the tax residency rules under the Income Tax Act, the requirement for Authorised Companies to demonstrate their Place of Effective Management outside Mauritius under Section 71A(1)(b) of the Financial Services Act has been amended.

Henceforth, Authorised Companies will be required to demonstrate that their central management and control is situated outside Mauritius.

2.3 DEADLINES FOR STATUTORY COMPLIANCE

The Financial Services Act has been amended to provide the Financial Services Commission (“FSC”) with appropriate powers to entertain applications for extension of deadlines with respect to compliance requirements of licence holders, either prior to any specific deadline or after such deadline.

2.4 SINGLE WINDOW SYSTEM

A Single-Window System will be implemented and administered by the FSC to expedite submissions with respect relevant permits and certificates, such as occupational permits and certificates of incorporations.

2.5 DEFINITION OF FINANCIAL SERVICES

The definition of ‘financial services’ for the purposes of the Financial Services Act has been extended to include activities such as crowdfunding, fintech service providers and robotic and artificial intelligence enabled advisory services.

3. COMPANIES ACT

3.1 BENEFICIAL OWNERSHIP

The definition of 'beneficial owner' or 'ultimate beneficial owner' has been amended to mean any natural person who ultimately owns or controls a company or the natural person on whose behalf a transaction or activity is being conducted in relation to a company. The definition includes:

- (i) the natural person who ultimately owns or controls a company through direct or indirect ownership of a specific percentage of shares (as may be prescribed) or voting rights or ownership interest or other means of control;
- (ii) where no natural person is identified or can be reasonably identified as beneficial owner, the natural person who controls the company in the manner a company controls another company;
- (iii) where none of the above can be identified, the natural person who acts as executive director or has equivalent executive powers.

The Limited Partnership Act has also been amended to align the definition of beneficial owner or ultimate beneficial owner with that under the Companies Act.

Updated information with respect to beneficial owners (along with records of actions taken to identify them) have to be kept by a company for a period of at least 7 years. Where a company ceases to carry on business, the last directors of the company shall keep the said information at least 7 years from the date of cessation of the company. Failure by such companies or directors, including former directors, to keep such information shall constitute an offence, with a fine not exceeding MUR 300,000 (approx USD 10,000).

Information with respect to beneficial owners and ultimate beneficial owners should be filed with the Registrar of Companies within 14 days from the date an entry or alteration is made to the share register.

3.2 Private Companies

A private company is now allowed to have up to 50 shareholders, as opposed to 25 under the previous provisions of the law.

4. MAURITIUS REVENUE ACT

4.1 Process for Appeals at the Assessment Review Committee

Where a taxpayer has made representations to the Assessment Review Committee with respect to any decision, notice or claim for taxes, the case shall be fixed Pro-forma within one month of the representations being filed. Upon hearing the case Pro-forma, the Assessment Review Committee shall require the taxpayer to file its statement of case within a month from the Pro-forma date, unless the Chairperson decides otherwise.

The Statement of Case shall consist of the following:

- Facts of the case;
- Grounds for representations and arguments relating thereto;
- Submissions on any point of law; and
- Any other relevant submissions.

5. VALUE ADDED TAX ACT

5.1 Special Levy on Banks

The special levy rate applicable to banks having a leviable income of more than MUR 1.2 billion has been increased from 4% to 4.5%. The definition of 'leviable income' has been amended to cover transactions with residents, other than companies holding a Global Business Licence.

The definition of a 'resident' has been reviewed as follows:

- To have the same meaning as in Income Tax Act; and
- To include a company incorporated outside Mauritius where its banking transactions are carried out through a permanent establishment in Mauritius but exclude a company incorporated in Mauritius where its banking transactions are carried out through a permanent establishment outside Mauritius.

The special levy for a bank in operation as at 30 June 2018 will be the lower of either:

- (i) 5.5 % or 4.5% of their leviable income depending on whether the latter exceeds MUR 1.2 billion;
or
- (ii) 1.5 times of the levy payable for the year of assessment 2017 -2018.

5.2 Tax liability of principal officer

A principal officer of a private company shall henceforth be answerable for the VAT implications of the company and be required to retain out of any money or property of the company, the amount of VAT payable by the company, failing which he shall be personally liable for such VAT amount payable by the company.

A principal officer has been defined as the executive director or any person who exercises or is entitled to exercise or who controls or is entitled to control, the exercise of powers similar to the Board of directors.

12 July 2019

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