**CALMING WATERS IN MAURITIUS**

*Mauritius has recently been removed from the Financial Action Task Force (FATF) grey list, as well as over the last 5 years materially revising its tax legislation and global business rules to comply with the Organization for Economic Co-operation and Development (OECD) international tax guidelines to stamp out Base Erosion and Profit Shifting ("BEPS"). This article identifies the main changes to the taxation landscape in Mauritius and will hopefully illustrate that Mauritius is most certainly "open for business" as an attractive, credible and competitive jurisdiction for various types of international business and wealth management activities.*

## The FATF Grey Listing Experience in Mauritius

The FATF placed Mauritius on its grey list in February 2020. Such grey listing was not on account of any deficiencies, irregularities or contraventions of EU policies in its BEPS initiatives, so Mauritius has never been "listed" on account of its taxation laws, policies and enforcement. The reaction of Mauritius to the FATF grey listing was swift and demonstrated political commitment to re-instating the credibility of Mauritius in the international arena as a matter of urgency. The result was that Mauritius was removed officially on 21 October 2021, being a period of less than two years when most countries take approximately five years to be removed from the FATF grey list. In my view little damage was done to Mauritius in the long term, including the offshore sector, and instead Mauritius has shown to the world its ability to adapt quickly and demonstrating its commitment to remaining a respected and compliant jurisdiction from which the tax residency of international businesses and wealth preservation structures can be based.

## Changes in Company Taxation

Since around 2016 Mauritius has been placed under pressure by the EU to address various aspects of its taxation regime that were not aligned with the EU strategies to combat BEPS. In mid 2018 following the annual Budget Speech significant changes were announced, including material revisions to the Mauritian Income Tax Act ("MITA"), the Financial Services Act and the Companies Act. The most fundamental change was to remove a tax system of treating foreign owned or foreign income generating legal entities resident in Mauritius with tax preferences that were not available to Mauritian entities owned by Mauritian residents. Commencing 1 January 2019 it was no longer possible to form a Global Business Company

("GBC") under the existing system of category 1 and category 2 GBC licensing where a category 1 GBC enjoyed a blanket effective 3% tax rate based on a fiction of a deemed 80% foreign tax credit, and in the case of a category 2 GBC, notwithstanding that it had its tax residency in Mauritius it enjoyed a blanket exemption from taxation, provided that the majority of the beneficial owners thereof were not Mauritian tax residents or nationals. Existing category 1 and category 2 GBCs had a 3 year "grandfathering" concession whereby they could continue to enjoy the pre-existing tax rules up to 30 June 2021.

Under the new rules a new GBC would be subject to exactly the same tax treatment as any other domestic company owned by Mauritian tax residents or nationals that primarily derive their revenue from within the Mauritian economy. All Mauritian companies (domestic and GBC) are subject to the same company tax rate being 15%, subject certain exceptions mentioned below. Note that there is no tax on dividends declared by a Mauritian company. The only material distinction in terms of tax treatment of a domestic Mauritian company and a GBC is an additional 2% Corporate Social Responsibility Levy (CSRL) that applies to a domestic company and not a GBC. To clarify-

- A domestic Mauritian company may be used where the tax residency of the company takes place in Mauritius (through the concept of "central management and control") provided that at least 50% of its ultimate beneficial ownership are held by Mauritian citizens, or if more than half of its revenue is generated from Mauritian tax resident persons;

- A GBC is required to be used where more than half of its beneficial ownership is held by non-citizens of Mauritius, and more than half of its revenue is generated from non-Mauritian tax resident persons. This is essentially a way in which Mauritius has protected its offshore sector by obliging foreigners to apply for a GBC licensing of a Mauritian incorporated and tax resident company which would require services of a licensed Mauritian management company, an annual audit by a Mauritian auditor and various other enhanced compliance aspects that support the accounting, administration and government licensing revenue of the Mauritian offshore sector;

- An Authorised Company is simply a company that is incorporated in Mauritius, but is not allowed to have its tax residency in Mauritius.

Nevertheless, an Authorised Company still needs to register as a Mauritian taxpayer and submit an annual tax return in order to declare any Mauritian sourced income that would be subject to the same tax as a GBC, as well as to confirm that its "central management and control" does not take place in Mauritius.

## The Taxation of Mauritian Trusts

According to the MITA a trust is a tax resident of Mauritius if both the majority of its trustees and its administration takes place in and from Mauritius. This is a specific definition of tax residency for trusts which differs from that of a company. However, the MITA also provides that in the definition of a "company", it includes a trust. This therefore seems to give the Mauritian Revenue Authority ("MRA') scope to apply company rules in the MITA also to trusts when it is suitable for policy purposes. Until 30 June 2021, the MITA provided (to protect the offshore sector but clearly in breach of BEPS) that each year a Mauritian tax resident trust could obtain a tax exemption on all foreign sourced income by filing a "declaration of non-residence" on the basis that the original settlor of the trust was not a Mauritian tax resident at the date of the establishment of the trust, and during the tax year concerned all of the beneficiaries of the trust were not tax residents of Mauritius. Again, EU pressure required that this rule which applied to both foundations and trusts be removed, which removal was effected as from 1 July 2021. The natural conclusion would be that all trusts would become Mauritian taxpayers and be subject to Mauritian tax on worldwide income like a domestic company if it has Mauritian trustees and local administration. However, again to protect the offshore sector in Mauritius, the MRA came out with an interesting Statement of Practice published on 24 August 2021 (SP24/21) whereby it has taken the official view regarding trusts and foundations that the MRA will only consider them as tax residents of Mauritius if in addition to having its administration and majority of trustees based in Mauritius, the first settlor of the trust must have been a Mauritian resident at the time that the trust was created, <u>and</u> a majority of the beneficiaries are not Mauritian tax residents. Whilst SP24/21 contravened the clear provisions of the MITA, it is the official position of the MRA that may be relied upon. Accordingly, effectively for trusts and foundations the status quo from a tax perspective has been maintained.

## Various Partial Exemptions and Tax Holidays

It was important for Mauritius to maintain its attractiveness to foreigners as a place to incorporate and manage company and trust structures in support of the Mauritian offshore sector. To do so and at the same time comply with EU requirements that do not contravene BEPS, Mauritius took the brave step of introducing a number of "80% partial exemptions" (being an effective 3% tax rate as applied before), and an actual 3% tax rate for a particular business activity, as well as a number of tax holidays. These tax exemptions are available to any Mauritian tax resident legal entity but have a requirement that a requisite amount of "economic substance" takes place within Mauritius. A full list of 80% partial exemptions and tax holidays are too numerous to include in this article. Some of the more relevant include –

- 80% exemption on foreign dividends received by a Mauritian company (which includes a trust and foundation)

- 80% exemption on interest (local and foreign) received by any company (again including a trust and foundation), other than banks and various financial services providers involved with money lending, leasing and insurance

- 80% exemption of income derived by a collective investment scheme (CIS), closed end fund, CIS manager, CIS administrator, investment advisor, investment dealer or asset manager as licensed by the Financial Services Commission

- 80% exemption of income derived by a company from re-insurance and re-insurance brokering activities

A limited period full exemptions (or tax holidays) are numerous, but include the following-

- An 8-year full exemption with respect to certain approved bio-farming projects

- An 8-year full exemption on the income of a company issued with a global headquarters administration license

- A 5-year full exemption on the income derived by a company issued with either a global treasury activity license or a global legal advisory services license

- A 10-year full exemption with respect to the income derived by company holding a family office license.

An actual 3% tax rate (as opposed to a 15% corporate tax rate) applies with respect to taxable income derived from "export activities" which is specifically defined as the purchase as principal of <u>tangible</u> movable products or assets outside of Mauritius and their re-sale to customers outside of Mauritius without such products ever being imported into Mauritius.

**<u>Encouraging Mauritian Residency with a Premium Visa</u>**

Given the travel restrictions that still lingered in 2021, a special renewable one year permit was introduced for foreigners who wish to live and work in Mauritius on the basis that they will conduct their service obligations in and from Mauritius remotely in favour of a non-Mauritian resident employer or as an independent service provider. The premium visa comes with certain attractive Mauritian taxation benefits. The premium visa is easy to obtain through an online process and can be issued prior to even arriving in Mauritius for the first time. From a Mauritian tax perspective ordinarily a foreign tax resident is subject to tax in Mauritius if the source of his income is in Mauritius, being in this case the skill, effort and labour that was exerted in Mauritius that gave rise to the income earned. However, a premium visa exception to this general rule is that such remuneration can only be deemed to have been derived by him when, if and to the extent that it is remitted into Mauritius. Then the premium visa tax incentives go further to say that the spending of money in Mauritius by the premium visa holder through his foreign debit or credit card applying such income for Mauritian expenses shall be deemed not to be a remittance into Mauritius. The MITA has also provided for the tax risk of the employer of a premium visa holder to make it clear that such employee's presence and activities in Mauritius would not constitute a "permanent establishment" of the employer as contemplated in Double Taxation Agreements.

**<u>Economic Substance Rules</u>**

As part of its agenda to combat BEPS the EU require low tax jurisdictions to have local economic substance rules (ESR) to ensure that revenue generating companies, trusts and other juristic vehicles have the requisite substance of activity locally in order to meet transfer pricing obligations and discourage tax treaty shopping. Certain jurisdictions have enacted quite elaborate and sophisticated legislation dealing with its ESR. Mauritius has not, and likely by design until it is obliged to. Instead, the ESR in Mauritius are fairly opaque and the standards are quite minimal and are really only obligatory from a Mauritian tax perspective in qualifying for the 80% partial exemptions. Mauritian ESR is contained in a MRA Statement of Practice (SP22/21) published on 27 January 2021, which depending on the nature of the activities of the taxpayer concerned requires three general conditions to be met-

- Its core income generating activities (CIGA) are carried out in and from Mauritius
- It employed locally, directly or indirectly, and adequate number of suitably qualified persons to conduct its CIGA
- It incurs a minimum expenditure proportionate to its level of activities.

## **Significant Increases in Personal Income Tax and Payroll Taxes in Mauritius**

With the tax exemptions outlined above the tax position of many activities in Mauritius has not changed in the offshore sector. However, this has come at a cost to the Mauritian fiscus as now all domestic Mauritian companies may enjoy the same benefits as GBCs. In addition, the COVID pandemic created massive hardship to the Mauritian fiscus. This required Mauritius to impose an additional tax on high income earning individuals, as well as to introduce socialist measures by imposing high social security contributions that have no correlation to any return on retirement. Mauritius has always held itself out as having a maximum 15% personal income tax rate. Well, this is simply no longer accurate for a Mauritian tax resident person working as an employee of a Mauritian employer. To illustrate, for a person earning approximately USD 8000 per month (taking note that the cost of living is probably 50% higher in Mauritius compared to South Africa), the effective tax rate on that salary is almost a 38% flat rate of tax, which may be broken down as follows-

- PAYE or personal income tax would be approximately 12% (given a certain degree of progressive tax rates)
- A 9% contribution to social security (known as Contributions Social Generalisee), being a 3% contribution by the employee and a 6% contribution by the employer. Note that even if one qualifies for benefits after decades of living in Mauritius, the

"government pension" bears zero correlation to the contributions made, so this is simply a tax that never comes back

- A 3.5% contribution to the National Savings Fund
- A 1% contribution to the National Training Levy
- A 4% contribution to a portable retirement gratuity (being a compulsory contribution by the employer), where possibly some or all of these contributions may one day come back to the employee, but one would not provide for any growth given the high cost of most gratuity funds
- 8% as a personal wealth tax on a high income individuals known as the Individual Solidary Levy ("ISL"). No ISL applies to the first MUR 3 million (about ZAR 1.2 million), but thereafter kicks in at a rate of 25% with a rider that the total ISL on all taxable remuneration (including local dividends) shall not exceed 10%.

**In Summary**

The Mauritian government has had a difficult mandate to appease the EU and align itself to combatting BEPS, yet at the same time wishing to preserve the historical tax benefits associated with Mauritius and thereby retain and grow its offshore sector, as well as encourage the investment of foreign skills and foreign money into Mauritius. Other than the big increase in personal income tax rates and the fact that any intellectual property and digital driven activities, non-financial services and agency activities would now be exposed to a 15% tax rate compared to a previous 3% tax rate, many other important industries, particularly in the area of financial services and trading in tangibles continue to enjoy the same tax benefits as before. In the case of wealth management and the use of Mauritian based offshore trusts the tax benefits have not changed. Accordingly, in my view Mauritius has weathered the storm well to preserve the attractiveness of its offshore sector. This is supported by the fact that over the last 2 years thousands of South African and European residents have physically moved their tax residency to Mauritius not only to enjoy acceptable tax laws, but also to enjoy a country far away from war, with an improving and working infrastructure, a booming property market, social stability and a sound system of law and order.

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