

Financial services and taxation: An update from Mauritius

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The Financial Services Commission (FSC) of Mauritius is the regulator of all non-banking financial services and the Bank of Mauritius acting as Central Bank is the regulator for banking. The FSC regulates the global business sector (what used to be called the offshore sector), capital markets, insurance and private pensions. It is a serious, well respected institution with a board of seven members, a Chief Executive Officer and fourteen heads of clusters. It operates from Ebene in the centre of the Island.

We know that Mauritius enjoys a very special relationship with India which goes back almost three centuries. We also know that there are very strong political, cultural, religious, linguistic and economic links between the two countries.

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We are fortunate to report that just like India has progressed along the years, we have also progressed and especially in the fields of financial services turning Mauritius from a little offshore centre twenty years ago into a mature International Financial Centre (“IFC”) today.

We have enacted new laws, developed new products for our IFC and simplified our tax laws. It is known however that in the last years the Double Taxation Avoidance Agreement between our two countries has been a controversial issue within some sectors, especially in India. The governmental authorities in Mauritius have been aware of this and have taken a number of positive measures in favour of India to alleviate fears from the Indian Authorities – let us recapitulate on these quickly:

- ◆ There is mutual assistance in criminal and related matters
- ◆ The Mauritian Tax Residence Certificates are issued on an annual basis
- ◆ There are stringent “Indian” conditions to prevent round-tripping
- ◆ An officer of the **Indian Revenue Department** is now based in Mauritius

The Tax Information Exchange Agreement (“TIEA”) is ready, has been negotiated and finalised by both countries. Mauritius is in fact already applying it whilst awaiting signature. Since we are at the level of exchange of information may I venture to say more; there are other avenues where information is exchanged and let me take one: The Financial Intelligence Unit (FIU) exists in Mauritius since 2002 and through its membership to the Egmont group, Mauritius was the lead sponsor for the admission of India to the Egmont group in 2007. The Mauritius and India FIUs have signed a memorandum in 2008 and they do exchange information in relation to Money Laundering and Terrorist Financing. I may mention here the Memorandum of Understanding (MoU) existing between SEBI and the FSC which has been in place since 2002. This MoU has been used extensively.

1. COMMERCIAL AND ECONOMIC SUBSTANCE

But let us now go straight to the issue of commercial and economic substance. We want substance from the global business companies basically for two reasons: the first is that we want companies and investors using the Mauritian IFC to have more economic nexus with our country. We want them to interact more with our economy, provide more jobs to our people, rent more offices, spend more money in Mauritius and indeed keep on paying more taxes.

The second reason is that the Mauritian authorities want more substance so that nobody can challenge our Global Business Companies Category 1 (GBCs1) as not being truly tax residents; so that they are clearly controlled and managed from Mauritius. Let us therefore be reminded of the existing substance requirements.

The substance requirements for corporates have been as follows for a number of years:

- ◆ The need for two resident directors
- ◆ Board meetings to be held and chaired in Mauritius
- ◆ The accounting records in Mauritius to be maintained at the registered office in Mauritius
- ◆ The principal bank account held in Mauritius
- ◆ The accounts audit to be based on IFRS and approved GAAPs
- ◆ The accounts to be audited from Mauritius

We recently went further and enacted new rules. One will remember that GBCs1 need a tax residence certificate – the TRC – to prove that they are tax residents of Mauritius – this certificate is delivered yearly by the Mauritius Revenue Authority (MRA) after confirmation and recommendation from the FSC. This is often a long and tedious process and to obtain this TRC, not only do licensees need to meet those previous conditions but also the Guide to Global Business has been amended by the FSC to provide more requirements. Each

company needs by 2015 to comply with at least one of the following criteria:

- ◆ Having office premises in Mauritius
- ◆ Employing at least one Mauritian resident at administrative or technical level
- ◆ The constitution of the company containing an integrated arbitration clause providing for automatic arbitration in Mauritius for dispute resolution
- ◆ The company holding or expected to hold assets in Mauritius worth at least 100,000 USD for the next twelve months
- ◆ The company being listed on the Stock Exchange of Mauritius
- ◆ The company having a reasonable yearly expenditure in relation to its type of activities in Mauritius.

We may explain further the case for Mauritius. As stated, we are now a mature IFC offering various and more sophisticated services with a higher level of skill and expertise. These are some of the distinct features of the jurisdiction:

- ◆ A solid regulatory framework
- ◆ A pool of qualified local professionals
- ◆ Good corporate governance
- ◆ A range of financial products and services
- ◆ Competitive operational costs.

It is proper to mention here the Rule of Law in Mauritius with a strong independent judiciary. In fact, may I mention that tax disputes sometimes end up before the Supreme Court and investors often feel comforted to know that we kept the Privy Council in the United Kingdom as our ultimate Court of Appeal. Indeed a tax case on Value Added Tax (VAT) went all the way to the Privy Council in early 2013. This case illustrates the democratic and independent process within the Mauritian judicial system. The Mauritius Revenue Authority claimed VAT payment from the Central Water Authority, the latter contested the claim and the matter went to the Assessment

Review Committee which ruled in favour of the Central Water Authority. The MRA went to the Supreme Court which approved the decision of the Assessment Review Committee. The final appeal was heard by the Privy Council which finally overruled our Supreme Court and decided in favour of the MRA after five points of law were disputed.

In fact concerning matters of dispute resolution, the image would not be complete if arbitration in Mauritius was not mentioned with the implementation of the International Arbitration Act of 2009 establishing Mauritius as a serious, modern IFC.

Let us further look at the additional reasons why Mauritius today attracts investors – investors do not come as some may believe only for tax reasons. It is appropriate to note that in international benchmarks, Mauritius is always leading as first in Africa in terms of good governance, democracy, ease of doing business and the protection of investors.

Further, when discussing of international norms and standards, we may here look at the latest OECD report just published in November 2013.

Mauritius emerges out of it very well as being a 'largely compliant' jurisdiction with respect to the Implementation of the Standards in Practice for transparency and exchange of information for tax purposes. Some years back, Mauritius volunteered to be reviewed in both Phase I & Phase II and we now come well out based on the latest release on the Phase II Peer Review rating. There are many IFCs, competitors of Mauritius which do not even qualify to go to the OECD Phase II Peer Review and are stuck still in the Phase I Assessment, *i.e.*, assessment on the Legal & Regulatory Framework.

Our annual budget was presented on the 8th November 2013 and it consolidates our jurisdiction as remaining a low tax jurisdiction. The Vice Prime Minister and Minister of Finance announced no new taxes. The tax bracket of Income Tax for individuals is still 15%, Corporate

Tax is still at 15% and VAT is maintained at 15%. VAT today covers about 43% of revenue raised from tax. The Minister in fact noted that the global business sector was remaining the most productive sector of our economy and as far as substance was concerned, a continued increase in commercial substance was crucial for the growth of the sector.

Further, last year was announced a renewed measure concerning advanced tax rulings. They can be obtained from the MRA at a cost of ~ 10,000 *i.e.* 300 US\$ and the MRA has to render its ruling within 30 days.

This brings me to the new fiscal policy decisions taken this year. The Government of Mauritius took the commitment to sign the OECD Multilateral Convention on Mutual Administrative Assistance. It indeed does reflect on our objective of being a transparent IFC as opposed to so many other similar jurisdictions. In fact the TIEA, ready to be signed with India, reflects the same terms as the OECD multilateral convention.

As far as the Foreign Account Tax Compliant Act (FATCA) is concerned, the TIEA between Mauritius and the United States together with the InterGovernment Agreement (IGA) Model 1 was signed on the 27th of December 2013. In relation to India, it is hoped that in 2014, the Joint Working Group between the

two countries will meet again and conclude through mutual agreement the Limitation of Benefits clauses in the Double Taxation Avoidance Agreement.

2. AFRICA STRATEGY

Mauritius forms part of regional groupings such as the Southern Africa Development Community (SADC) and Common Market for Eastern and Southern Africa (COMESA). Government plays a very active role in the negotiations for policy framework, instruments and terms of doing business in these regional groupings. The SADC and the COMESA remain the main focus of our 'trade in goods' dimension with the Continent.

Mauritius has successfully negotiated and concluded an extensive network of bilateral Double Taxation Avoidance Agreements (DTAAs) and Investment Protection and Promotion Agreements (IPPA) with a large number of African countries.

3. CONCLUSION

The above shows that over the years Mauritius has now matured into a modern and well regulated International Financial Centre still very much geared towards India but with a new African strategy also well in place.

