

Dossier

by Marc HEIN S.C.

Tax advisers wary of new OECD rules

In this opinion paper, lawyer Marc Hein, partner at Jurisconsult, warns that new OECD rules on Base Erosion and Profit Shifting could cripple the Mauritian financial services industry.

THE annual conference of the Mauritius Branch of the International Fiscal Association (IFA) is being held on Thursday and Friday. There are a number of expert foreign participants and such conferences are opportunities for Mauritians involved in financial, corporate, accountancy and legal services to deepen their knowledge and expertise. It is important to understand the dynamic worldwide context and its issues, how Mauritian businesses and services can grow, how to grab opportunities so as to plan ahead and develop a vision for our international financial and corporate services centre. This is as much valid for operators in the private sector as also for Government and governmental authorities.

It should not be forgotten that the Mauritius Revenue Authority (MRA) perceives huge sums in the taxation of global business companies and other ancillary corporations operating within that sector, notably, banks, financial institutions, management companies, brokers, accountancy firms, law firms. The MRA also perceives significant sums through income tax imposed on well-paid Mauritians and expatri-

ates operating in that sector. It is estimated that as many as 13,000 persons work directly or indirectly in the field of financial and corporate services and that sector today represents around 12% of our GDP. In fact, the future of many diverse activities such as international arbitration, the audit of international companies, the development of banking, insurance and law firms are all today interlinked and interwoven.

But there are dark clouds looming on those services as orchestrated by the Organisation for Economic Cooperation and Development (OECD). We recently have had to implement the Common Reporting Standard (CRS) sponsored by the OECD. Basically, this means that bank confidentiality is gone and foreigners having bank accounts here are to be reported, via our MRA, to their home countries. Similarly, Mauritians with accounts overseas will be reported to the MRA through an automatic exchange of information. We have fully cooperated with the OECD in this matter by fully implementing the CRS. We are a solidly regulated jurisdiction except for certain mishaps which happen everywhere. We are a business-friendly nation with an independent judiciary and we should normally score good marks with institutions like the OECD.

What is not nice though is that many countries have refused to sign the international agreements of the OECD and many international financial centres are not complying with same. This, in our view, amounts to an unfair and imbalanced competition. Other countries which have signed the said agreements are not showing any willingness to implement what they ought to have implemented. We may have to wonder if it is in our island's best interest to be one of the best students in the classroom of the OECD!

What is further not nice is that certain USA states, such as Delaware and Nevada

are openly doing the contrary and attracting at any cost business from other jurisdictions. Many clients from various financial centres have thus migrated to the USA. It would be interesting to see if the USA under President Donald Trump is at all bothered by the dictates of the OECD in that field. It is easy to incorporate a company in Delaware or Nevada without the need to disclose the relevant information which one would need to disclose in a well-regulated place like Mauritius. If well advised, The Know Your Client (KYC) process is so simple there that you may incorporate a company in 48 hours. It is openly rumoured that such a company may then open a bank account with a minimum of KYC compliance and operate on a worldwide basis. And we are not here talking of some rogue nation but of the United States of America.

CYCLONE WARNING

But let us come back to the cyclone approaching bearing the name of BEPS (Base Erosion and Profit Shifting), the new scheme of the OECD. The official motivation behind the scheme is for companies to stop paying taxes in low tax jurisdictions and rather pay their taxes in their home countries which are members of the OECD. We will not here go into the details of the BEPS project which consists of 15 action points which are extremely complex and which will have extreme consequences on world taxation. The aim is to establish supra-national standards which shall apply to all signatory countries and which will render the local laws and rules of taxation inoperative.

Unlike certain uncooperative countries, Mauritius has chosen again to fully collaborate with the OECD by actively participating in the committees in charge of the future implementation of the BEPS project.

BEPS attacks directly and indirectly low tax countries like ours and has the clear intent of influencing our international clients not to use Mauritius as a platform for structuring their cross-border transactions. As such, the project would diminish the advantages of the Mauritian jurisdiction. What I personally see as intolerable is the way the OECD is bluntly interfering with our sovereignty and our freedom of deciding how and who we tax in our country. This is our fundamental right as an independent state.

Most occidental states spend so much on welfare, have become so inefficient and so indebted that they want to tax as much as possible, as far as possible their corporations and citizens doing business elsewhere. The message of these countries to their companies is basically: "go to the world, do business globally, make money, exploit as much as you want but come back to pay your taxes home". To them, a jurisdiction like Mauritius has no place in this vision of what



should be globalisation. This hypocritical stance baffles me.

We have transformed Mauritius from being a monolithic sugar cane economy to a nation where 70% of its GDP is based on the services sector. Some 47 years ago, we started the export processing zone with tax holidays in order to attract foreign investors, give jobs to our people, develop value added in our economy and encourage exports. This worked well, mainly in the manufacturing field and we were requested by institutions like the World Bank to get into the business of providing services to international clients in order to attract them here in Mauritius. We even enacted new laws to establish the export services zone, again with tax holidays. We went further and after many years of trial and error, much soul searching and the vision of dedicated Mauritians from the public and private sector, we developed our international financial and corporate centre as we know it today.

We are now being told that this is wrong, that low taxation is immoral and that other persons elsewhere, who know better, should dictate to us the way we ought to tax our taxpayers. This is annoying to say the least and there is no way out from the system apparently. The instructions from overseas are clear: comply or your country will be blacklisted and potentially amenable to direct and indirect sanctions. I would in legal terms put it this way: under public international law, this atti-

13,000 jobs

12% of GDP

The offshore industry in figures

tude amounts to an illicit abuse of power of an international organisation in a dominant position. This attitude has been described as a new form of imperialism and neo-colonialism whereby new rules are imposed upon countries like ours for the good health of rich countries, members of the OECD. Not for our own good health.

What a strange coincidence that all is fine when international companies come here, pay low wages and low taxes, use our blue collar workers to manufacture T-shirts, jeans or pull-overs and sell them to rich countries. However, when we happen to have a number of white collar workers who are apt and able to provide and sell professional, administrative, secretarial, fiscal, audit and legal services to international companies at a low cost and with low taxes, it seems that this becomes wrong.

Is it because we are entering the "chasse gardée" of the OECD's elite? Simply stated, we should be content with manufacturing textiles and be privileged to be allowed to sell them overseas to rich countries!

But so be it! We have chosen to collaborate in the establishment of the new taxation norms and we have to live with our times. However we have to innovate. We need to find the silver linings in the new clouds. We need to see how we may turn new constraints into opportunities. Not simply to tax our taxpayers, but more to safeguard jobs, open avenues for the next generation and maintain our reputation as the best jurisdiction to do business in Africa.

The OECD, the World Bank and the IMF should understand the real and serious consequences the implementation of the BEPS project will have on our economy. They should allow us the time to change, help us to find new perspectives, train our workforce and enable us to gain a better access to the digital world.

Mauritius has survived many cyclones. Let us be aware that there is a big one coming and let us see how we can adapt and innovate.

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WHAT IS BASE EROSION AND PROFIT SHIFTING?

BEPS refers to tax planning strategies that exploit international tax rules to shift profits to low or no-tax locations. Although some of the schemes used are illegal, most are not.

The OECD produced an action plan to fight these tax-planning strategies at the request of the G20. They were introduced at the G20 Finance Ministers' meeting in Moscow in 2013. It comprises of an action plan that identifies 15 specific ac-

tions. It includes closer international co-operation between governments to close gaps that, on paper, allow income to 'disappear' for tax purposes by using multiple deductions for the same expense and "treaty-shopping".

Action 15 of these measures would require Mauritius to renegotiate the existing bilateral tax treaties. Such a measure has to be addressed with caution warns Jurisconsult.

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