

04 December 2018

## TAX ALERT

The Mauritius Revenue Authority ("MRA") has, on 28 November 2018, issued a Statement of Practice ("SOP") to clarify the concept of "Place of Effective Management" (or "POEM") as set out in the new section 73A of the Income Tax Act, which was introduced by the Finance (Miscellaneous Provisions) Act 2018.

A company will generally be considered as having its place of effective management in Mauritius if (a) strategic decisions relating to its core income generating activities are taken in or from Mauritius, and (b) either the majority of the board meetings are held in Mauritius or the executive management of the company is regularly exercised in Mauritius.

Ultimately, whether a company's place of effective management is in Mauritius will depend on the facts and circumstances and on the nature of the company's activities.

The MRA's guidance on this new concept of POEM under Mauritius laws is not inconsistent with the OECD's guiding principles on POEM in that it expressly refers to the location where strategic decisions are made. This appears to confirm the subtle difference between "control and management" and "place of effective management" as the POEM of a company is not necessarily determined by (and limited to) the location of its board of directors.

Interestingly, the SOP makes specific reference to the use of ICT in the decision making process of the company being taken into account, presumably so that the concept of POEM is not given an unduly restrictive meaning in a rapidly evolving digital age.

It is hoped that the SOP will remove, at least some, of uncertainty surrounding the meaning of POEM under domestic law. Global business companies category 1 (renamed global business companies from 1 January 2019) will need to ensure that their POEM is in Mauritius so as to be tax resident in Mauritius.

A company which is not incorporated in Mauritius will only have to show that its central control and management is in Mauritius in order to be tax resident in Mauritius.

**For more information please contact:**



**Nicolas Richard**  
Managing Partner  
[nrichard@juristconsult.com](mailto:nrichard@juristconsult.com)



**Johanne Hague**  
Senior Partner & Head of Tax  
[jhague@juristconsult.com](mailto:jhague@juristconsult.com)



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